

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Subject: ANWR 1002 Lease Terms

To: "Gieryic, Michael S" <Mike.Gieryic@sol.doi.gov> "Moody, Aaron G" <Aaron.Moody@sol.doi.gov>

Sent: Thu, 06 Aug 2020 15:03:28 -0400 (Thu, 06 Aug 2020 19:03:28 GMT)

Attachment 1: Draft Coastal Plain Lease Form 08.06.20.doc

Mike and Aaron, Please review the attached and give me your thoughts. Thanks, Gregg

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: ANWR 1002 ROD Package
To: "Cardinale, Richard" <Richard_Cardinale@ios.doi.gov>
CC: "MacGregor, Katharine S" <katharine_macgregor@ios.doi.gov>
Sent: Sun, 16 Aug 2020 16:19:56 -0400 (Sun, 16 Aug 2020 20:19:56 GMT)

Rich, The Secretary plans to sign the ROD Monday (8/17). He is scheduled for a press call on the ROD at 9:30 am. Ideally he would have signed it and we would have the ROD uploaded by around that time. The package is with Kate and so I have copied her here. The package also includes the FR Notice and the Delegation Memo, which also is to be signed. Thanks, Gregg

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Subject: ANWR Coastal Plain Lease Sale Call for Nominations

To: "Cardinale, Richard" <Richard_Cardinale@ios.doi.gov> "Patnaik, Bivan R" <bivan_patnaik@ios.doi.gov>
"Willens, Todd D" <todd_willens@ios.doi.gov>

Sent: Fri, 06 Nov 2020 10:55:41 -0500 (Fri, 06 Nov 2020 15:55:41 GMT)

Bivan, Todd has verbally cleared the Call For Nominations federal register notice and the Secretary has signed the delegation memo. I'll bring the package to you so that BLM can get it sent to OFR. Thanks, Gregg

Gregg D. Renkes

Deputy Chief of Staff/Senior Counselor

Office of the Secretary

U.S. Department of the Interior

(202) 208-4043 (O)

(202) 774-4833 (C)

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From: [Gieryc, Michael S](#)
To: [MacGregor, Katharine S](#); [Renkes, Gregg D](#); [Cason, James E](#); [Bockmier, John M](#); [Wackowski, Stephen M](#); [Hammond, Casey B](#); [Dermody, Matthew D](#); [Pendley, William P](#); [Nedd, Michael D](#); [Benedetto, Kathleen M](#); [Kaster, Amanda E](#); [Padgett, Chad B](#); [Murphy, Ted A](#); [Pendergast, Kevin J](#); [Jones, Nichelle \(Shelly\) W](#); [Sveinoha, Wayne](#); [Brumbaugh, Robert](#); [Kendall, Gina](#); [Sweet, Serena E](#); [Hayes, Miriam \(Nicole\) N](#); [Lord, Satrina R](#); [Ellis-Wouters, Lesli J](#); [Tausch, Eric C](#); [Siekaniec, Greg E](#)
Cc: [Jorjani, Daniel H](#); [Zerzan, Gregory P](#); [Noble, Michaela E](#); [Marie, Marc G](#); [Moody, Aaron G](#); [O'Scannlain, Kevin S](#); [Hawbecker, Karen X](#); [Budd-Falen, Karen J](#); [Romanik, Peg A](#); [Deam, Seth R](#); [Lord, Kenneth M](#); [Collier, Briana W](#); [Mellinger, Larry P](#); [Dorman, Wendy S](#); [Dimauro, Danielle N](#); [Bernhardt, Leah B](#)
Subject: ANWR Coastal Plain Oil and Gas Leasing Program Lawsuits
Date: Monday, August 24, 2020 11:56:54 PM
Attachments: [Gwichin Steering Committee v Bernhardt 24Aug2020.pdf](#)
[National Audubon Society v Bernhardt 24Aug2020.pdf](#)

FYI -

Today a Native organization and two groups of environmental plaintiffs filed two separate complaints in U.S. District Court for the District of Alaska, challenging the Department's August 17th Record of Decision (ROD) adopting an oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge, as required by Section 20001 of the Tax Cuts and Jobs Act of 2017.

The first lawsuit, *Gwich'in Steering Committee et al. v. Bernhardt et al.* (filed by Trustees for Alaska on behalf of thirteen plaintiffs), names Secretary Bernhardt, the Department of the Interior, BLM, and USFWS as defendants, alleging violations of the APA, NEPA, ESA, ANILCA, National Wildlife Refuge System Administration Act, Wilderness Act, and the Tax Cuts and Jobs Act.

The second lawsuit, *National Audubon Society et al. v. Bernhardt et al.* (filed by NRDC and EarthJustice on behalf of four plaintiffs), names Secretary Bernhardt, BLM, and USFWS as defendants, alleging violations of the APA, NEPA, ESA, and the National Wildlife Refuge System Administration Act.

The complaints seek various relief including setting aside the Final EIS, ANILCA Section 810 Subsistence Evaluation, USFWS Biological Opinion, and Secretary Bernhardt's ROD, and an injunction against any lease sale or other action implementing the ROD.

The attached unofficial complaints (without docket numbers) are from the plaintiffs' websites. I have not yet been able to download the filed complaints from Pacer, however I wanted to get this note out ASAP given that news outlets are already carrying stories of the lawsuits. I will send the docketed complaints on Tuesday.

Mike Gieryc
Attorney-Adviser
Office of the Regional Solicitor

U.S. Department of the Interior
4230 University Drive, Suite 300
Anchorage, AK 99508
Phone: (907) 271-1420
mike.gieryic@sol.doi.gov

From: Moody, Aaron G <Aaron.Moody@sol.doi.gov>
Subject: ANWR call for nominations
To: "Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov>
CC: "Kaster, Amanda E" <amanda_kaster@ios.doi.gov> "Jorjani, Daniel H" <daniel.jorjani@sol.doi.gov> "Deam, Seth R" <seth.deam@sol.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
Sent: Fri, 13 Nov 2020 18:30:33 -0500 (Fri, 13 Nov 2020 23:30:33 GMT)
Attachment 1: NRS-#1282900-v1-ANWR-NVV_20201113_DRAFT_Notice_CFN +MG+PT.docx

Hi Ben-

Just a heads up that as soon as tonight (although possibly Monday), DOJ intends to file a notice along the lines of the attached in the 4 cases challenging the Coastal Plain ROD. The exact language is still being worked on as I type. I will circulate a final version once filed.

-Aaron

Aaron G. Moody
Associate Solicitor
Division of Land Resources
Office of the Solicitor
U.S. Department of the Interior
202-208-3495 (o)
202-309-6928 (c)

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From: Willens, Todd D <todd_willens@ios.doi.gov>

Subject: ANWR

To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>

Sent: Tue, 11 Aug 2020 20:14:18 -0400 (Wed, 12 Aug 2020 00:14:18 GMT)

We are going to push ANWR release to Monday. You can do embargoed interviews Friday, but the launch will be held to Monday. We need to have the weekday hours to manage and respond. I understand that this will require staff to adjust travel and other planning. Please make adjustments accordingly. We can talk at 9 am tmrw about specifics.

Todd D. Willens

Chief of Staff

U.S. Department of the Interior

202-208-3437 - office

202-706-9041 - mobile

From: Moody, Aaron G <Aaron.Moody@sol.doi.gov>

Subject: CP press

To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov> "Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov>

CC: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Deam, Seth R" <seth.deam@sol.doi.gov>

Sent: Mon, 16 Nov 2020 10:51:55 -0500 (Mon, 16 Nov 2020 15:51:55 GMT)

Attachment 1: Coastal Plain Call for Noms Press Release 9.30.20.docx

Attachment 2: NRS-#1282910-v1-ANWR-NVV_20201113_FINAL_Notice_CFN.DOCX

Hi Nick & Ben-

Attached is the latest of the press release that I have. Would you all be able to keep me in the loop on any changes? Just want to make sure we're being consistent in our filings with the court (our latest draft is attached).

-Aaron

Aaron G. Moody

Associate Solicitor

Division of Land Resources

Office of the Solicitor

U.S. Department of the Interior

202-208-3495 (o)

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PAUL E. SALAMANCA
Deputy Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

PAUL A. TURCKE (Idaho Bar No. 4759)
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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

NATIVE VILLAGE OF VENETIE TRIBAL)	
GOVERNMENT, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:20-cv-00223-SLG
)	
DAVID L. BERNHARDT, et al.,)	
)	
Defendants.)	
_____)	

DEFENDANTS' NOTICE OF FILING

Defendants David L. Bernhardt, *et al.*, by and through undersigned counsel, are hereby providing notice that Defendant Bureau of Land Management (BLM) has placed on file with the Office of the Federal Register a “Call for Nominations and Comments for the Coastal Plain Alaska Oil and Gas Lease Sale” (“Call for Nominations”), for publication in the Federal Register on November 17, 2020. The Call for Nominations seeks nominations and comments on the lease tracts considered for the upcoming Coastal

Plain Oil and Gas Lease Sale pursuant to the Record of Decision (ROD) dated August 17, 2020 and the procedures set forth at 43 C.F.R. § 3131.2. The ROD adopts an oil and gas leasing program on the Arctic National Wildlife Refuge Coastal Plain pursuant to Section 20001 of the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

BLM will receive nominations and comments for a 30-day period. Subsequently, should BLM determine to issue a notice of sale, the next step in the lease sale process, it will publish such notice in the Federal Register at least 30 days prior to the date of any such sale, as provided in 43 C.F.R. § 3131.4-1.

Defendants are filing this Notice to keep the Court and the parties informed concerning developments that may be relevant to Plaintiffs' claims in the above-captioned case.

DATED: November 13, 2020.

PAUL E. SALAMANCA
Deputy Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Div.

/s/ DRAFT

PAUL A. TURCKE
Idaho Bar No. 4759
Trial Attorney
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Of Counsel:

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mike.gieryic@sol.doi.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2020, a copy of the foregoing was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Paul A. Turcke
Paul A. Turcke

From: Gieryic, Michael S <Mike.Gieryic@sol.doi.gov>
Subject: Coastal Plain Lease Sales - Call for Nominations Confidentiality
To: "Wackowski, Stephen M" <stephen_wackowski@ios.doi.gov>
CC: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Padgett, Chad B" <cpadgett@blm.gov>
Sent: Fri, 21 Aug 2020 02:42:42 -0400 (Fri, 21 Aug 2020 06:42:42 GMT)

Mr. Wackowski,

This message follows up on our discussion today regarding the confidential status of lease tract nominations received by BLM in response to its calls for nominations preceding oil and gas lease sales.

Based on longstanding legal advice from the Office of the Solicitor, BLM Alaska has always treated nominations as confidential, withholding them under FOIA Exemption 4 due to their status as comprising confidential commercial information under the Trade Secrets Act, which makes it a crime for federal employees to release such information. If a company's nominations were released to the public, competitors could use that information to gain an unfair advantage in the lease sale bidding process, thereby harming the economic well being of the nominating company. Such a situation would also have a tendency to reduce the high bid amounts at a loss to the Federal government and State of Alaska.

In the case of the statutorily mandated initial two lease sales for the ANWR Coastal Plain, the Office of the Solicitor is advising BLM not only to withhold nominations from FOIA requesters, but also to neither confirm nor deny the existence of any nominations received. In FOIA parlance, this is known as a "Glomar response". Given the high monetary stakes potentially involved in the first rounds of bidding for this newly available oil and gas province, as well as potential economic harm that may be caused to nominating companies from ongoing campaigns against oil and gas companies and banks supporting petroleum development in the U.S. Arctic, the mere identification or quantification of nominations could cause substantial economic harm to nominator-bidders as well as to the Federal and State governments in the form of lower bid amounts.

If you have any questions please do not hesitate to contact me. Note that this message does not itself contain any confidential information and thus may be freely shared.

Mike Gieryic
Attorney-Advisor
Office of the Solicitor, Alaska Region
(907) 271-1420

From: Abernathy, Justin R <justin_abernathy@ios.doi.gov>
Subject: Delegation of Authority Memo - BLM Oil & Gas Leasing on the Coastal Plain of the ANWR (DTS # REG-10567)
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Moody, Aaron G" <Aaron.Moody@sol.doi.gov>
CC: "Cardinale, Richard" <Richard_Cardinale@ios.doi.gov>
Sent: Thu, 17 Sep 2020 11:34:17 -0400 (Thu, 17 Sep 2020 15:34:17 GMT)
Attachment 1: Signed Delegation Memo.pdf
Gregg/Aaron:

Rich informed me that you might be looking for the signed memo authorizing the BLM Director to issue oil and gas leases on the coastal plain of the Arctic National Wildlife Refuge in Alaska. I have attached a copy of that signed memo to this email.

If you have any questions or need anything further, just let me know.

Thanks,

JA


Justin Abernathy
Deputy Director for Policy
Office of the Executive Secretariat and Regulatory Affairs
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Cell Phone: 202-213-9142



THE SECRETARY OF THE INTERIOR
WASHINGTON

Memorandum

To: Director, Bureau of Land Management

From: Secretary 

Subject: Delegation of Authority under Sections 20001 of the Tax Cuts and Jobs Act, P.L. 115-97 (December 22, 2017)

The Departmental Manual delegates the authority to issue and administer operations on mineral leases to the Director of the Bureau of Land Management, 235 DM 1.1K, but that delegation does not include “the approval of oil and gas leases on lands within wildlife refuges unless prior authorization is obtained from the Secretary of the Interior.” 235 DM 1.2D. The Tax Cuts and Jobs Act, Pub. L. No. 115-97, Section 20001 (Dec. 22, 2017) (the Act) directs the Secretary of the Interior, through the Bureau of Land Management, to establish and administer a competitive oil and gas program for the “leasing, development, production, and transportation of oil and gas” in and from the Coastal Plain of the Arctic National Wildlife Refuge.

In accordance with 235 DM 1.2D and the Act, this memorandum constitutes my authorization to the Director, Bureau of Land Management, to issue leases on lands within the Coastal Plain in accordance with the Act. This memorandum further confirms that all of the authority granted to the Secretary of the Interior under the Act is, in accordance with the Act and 235 DM 1.1K, delegated to the Director, Bureau of Land Management and that it may be redelegated.

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Embargoed ANWR Press Release
To: "Larry_Burton@sullivan.senate.gov" <Larry_Burton@sullivan.senate.gov>
Sent: Sun, 16 Aug 2020 17:15:41 -0400 (Sun, 16 Aug 2020 21:15:41 GMT)
Attachment 1: EMBARGOED - Coastal Plain ANWR ROD Press Release.docx

Larry, Just got your quote and added it. Attached it the embargoed release. Please keep it close hold. Gregg

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: FATAL FLAW REVIEW/GOING AT 9:30AM: Secretary Bernhardt Signs Decision to Implement the Coastal Plain Oil and Gas Leasing Program in Alaska: TEST
To: "Willens, Todd D" <todd_willens@ios.doi.gov> "MacGregor, Katharine S" <katharine_macgregor@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Hammond, Casey B" <casey_hammond@ios.doi.gov> "Rojewski, Cole J" <cole_rojewski@ios.doi.gov> "Williams, Timothy G" <timothy_williams@ios.doi.gov> "Jorjani, Daniel H" <daniel.jorjani@sol.doi.gov> "Zerzan, Gregory P" <gregory.zerzan@sol.doi.gov> "Lawkowski, Gary M" <gary_lawkowski@ios.doi.gov> "Pendley, William P" <wpendley@blm.gov>
CC:"Swanson, Conner D" <conner_swanson@ios.doi.gov> "Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov>
Sent: Mon, 17 Aug 2020 08:25:47 -0400 (Mon, 17 Aug 2020 12:25:47 GMT)

This is going out at 9:30am. (link at the bottom will be live/updated)

Thanks,

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



Having trouble viewing this email? [View it as a Web page.](#)



Date: Monday, August 17, 2020

Contact: Interior_Press@ios.doi.gov

Secretary Bernhardt Signs Decision to Implement the Coastal Plain Oil and Gas Leasing Program in Alaska

Major step in carrying out mandate from the 2017 Tax Cuts and Jobs Act supporting energy security, job creation and economic growth for future generations

WASHINGTON – Today, U.S. Secretary of the Interior David L. Bernhardt signed a Record of Decision approving the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge (ANWR) in Alaska. The leasing program is required by law in the Tax Cuts and Jobs Act of 2017 (Public Law 115-97), which was passed by Congress and signed into law by President Trump on December 22, 2017. The decision determines where and under what terms and conditions leasing will occur in the 1.56 million-acre Coastal Plain within the 19.3 million-acre ANWR.

“Congress directed us to hold lease sales in the ANWR Coastal Plain, and we have taken a significant step in meeting our obligations by determining where and under what conditions the oil and gas development program will occur,” said **Secretary Bernhardt**. “Our program meets the legal mandate that Coastal Plain leaseholders get the necessary rights-of-way, easements and land areas for production and support facilities they need to find and develop these important Arctic oil and gas resources.”

The energy potential of the ANWR Coastal Plain was finally unlocked after 30 years of gridlock when President Trump signed the Tax Cuts and Jobs Act into law, finally settling the question of whether the leasing, exploration and development of oil and gas will occur on about 8 percent of the refuge that lies with an oil and gas province of national significance. The legislation was unique because it didn’t just allow for an oil and gas development program, it requires one that delivers energy to the nation and revenue to the treasury.

The Act changes the purposes of ANWR management to include oil and gas development in a small but potentially energy rich area along the Arctic coast, directing the Secretary of the Interior to carry out an aggressive, competitive energy development program that could keep oil flowing in the nation’s energy artery, the 800 mile Trans-Alaska Pipeline, decades from now.

“Today’s announcement marks a milestone in Alaska’s forty-year journey to responsibly develop our State and our Nation’s new energy frontier - the 1002 Area. The Record of Decision is a definitive step in the right direction to developing this area’s energy potential - between 4.3 and 11.8 billion barrels of technically recoverable oil reserves,” said **Alaska Governor Michael J. Dunleavy**. “In 2017, the U.S. Congress, under the leadership of Senators Murkowski and Sullivan and Congressman Young, authorized the leasing of lands in the 1002 Area, recognizing the critical role that Alaska plays in our Nation’s energy independence. I would like to thank Secretary Bernhardt and the U.S. Department of the Interior for their hard work and fulfilling their commitment to work with and consult with Alaskans on this important development. Alaska plays a critical role in our Nation’s energy security. The vision of Secretary Bernhardt and President Donald J. Trump will lead to the responsible development of Alaska’s abundant resources, create new jobs, support economic growth and prosperity, and most importantly, retain well into the future Alaska’s critical role in our Nation’s energy policy.”

“This is a capstone moment in our decades-long push to allow for the responsible development of a small part of Alaska’s 1002 Area. I appreciate the significant work of Secretary Bernhardt and his team to get us to this point. I’m confident the ROD has been developed carefully and comprehensively and look forward to the lease sales mandated by law,” said **Senator Lisa Murkowski**. “New opportunity in the 1002 Area is needed both now, as Alaskans navigate incredibly challenging times, and well into the future as we seek a lasting economic foundation for our state. Through this program, we will build on our already-strong record of an increasingly minimal footprint for responsible resource development.”

“We’ve made historic progress this past month for Alaska jobs and our economy,” said **Senator Dan Sullivan**. “First, we had a record of decision for the Ambler Road project, then a final Environmental Impact Statement for the Willow project in the NPR-A, and now the

record of decision for the responsible development of ANWR. This is what happens when the executive branch and Congress work together to create opportunities for Alaskans, not shut us down. I thank all Alaskans who have worked for more than 40 years for responsible resource development in the 1002 area of ANWR. I particularly applaud the tireless advocacy of the many Alaska Natives—who call the area home—and who know firsthand how responsible oil production can provide enormous economic and social benefits while having minimal impact on the environment. Finally, I appreciate all of the hard work and diligence of Secretary Bernhardt and the Department of the Interior to produce this record of decision—bringing us that much closer to unleashing America’s energy potential, filling up the Trans Alaska Pipeline, boosting our economy, and providing good jobs for Alaskans, all while protecting the Coastal Plain’s ecosystem.”

“Today is a great day, not only for the State of Alaska, but also for American energy independence. I have long fought to realize the original promise of ANILCA, which designated the 1002 Area of ANWR’s Coastal Plain for responsible oil exploration. In Alaska, we have proven that protecting the environment, honoring our history, and developing our natural resources can go hand-in-hand. The ROD released today is a crucial milestone in our efforts to make the 1002 Area’s vast oil reserves available for development. Thousands of Alaskans are employed in our oil industry, and their livelihoods depend on the good-paying jobs created by our state’s reserves. Today, we are one step closer to securing a bright future for these Alaskans and their families. I want to thank President Trump, Secretary Bernhardt, and the countless others at the Department of the Interior for the important work they have done. As we approach the day where the first drilling rigs arrive and crude starts flowing, I will continue working with great excitement to ensure that Alaska is front and center as we blaze the trail toward American energy dominance,” said **Congressman Don Young**.

The Tax Cuts and Jobs Act of 2017 directs the Secretary of the Interior, acting through the Bureau of Land Management (BLM), to conduct at least two area-wide leasing sales, not less than 400,000 acres each, within the Coastal Plain Oil and Gas Program area of ANWR. The lease sales must be held within seven years with the first lease sale taking place before December 22, 2021 and the second lease sale before December 22, 2024. The Act also requires the Secretary of the Interior to grant rights-of-way and easements necessary for successful development of the oil and gas resources and authorize up to 2,000 surface acres, or .01 percent of ANWR’s 19.3 million acres, to be covered by production and support facilities.

Today’s decision makes the approximately 1,563,500 acres, or the entire Coastal Plain program area, available for oil and gas leasing, and consequently for potential future exploration, development and transportation. While providing these opportunities, the program adopted in the Record of Decision also provides protections for surface resources and other uses, including subsistence use, through a comprehensive package of lease stipulations and required operating procedures that will apply to future oil and gas activities.

Congress opened 8 percent of ANWR for oil and gas development, leaving 92 percent of the 19.3-million-acre refuge off-limits to energy development by law, including 8 million acres in the Mollie Beattie Wilderness included in the National Wilderness Preservation System. Including oil and gas development on the Coastal Plain as a purpose of the refuge, Congress struck a balance between access to national important energy resources and the permanent preservation of vast areas of wilderness.

Under the approved plan, a majority of the Coastal Plain Oil and Gas Leasing Program area will be subject to no surface occupancy restrictions (359,400 acres) and operational timing limitations (585,400 acres) to protect habitat and wildlife. All permitted activities will incorporate required operating procedures and stipulated restrictions based on the best science and technology to ensure that energy development does not come at the expense of the environment.

The Bureau of Land Management received almost two million public comments, each of which were considered in developing an environmentally responsible plan for Congress's oil and gas program. More than 70 specialists contributed their expertise to the analysis, working more than 30,000 hours to ensure the plan was thorough and robust.

View the ROD on the [Coastal Plain project page](#).

###

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The Department of the Interior conserves and manages the Nation's natural resources and cultural heritage for the benefit and enjoyment of the American people, provides scientific and other information about natural resources and natural hazards to address societal challenges and create opportunities for the American people, and honors the Nation's trust responsibilities or special commitments to American Indians, Alaska Natives and affiliated island communities to help them prosper.



U.S. Department of the Interior



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GOVDELIVERY 

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: FOR REVIEW: Final Release - Please load and send a test tonight
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
CC: "Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov> "Swanson, Conner D" <conner_swanson@ios.doi.gov>
Sent: Sun, 16 Aug 2020 23:36:45 -0400 (Mon, 17 Aug 2020 03:36:45 GMT)
Attachment 1: EMBARGOED - Coastal Plain ANWR ROD Press Release-edit.docx

Gregg,

Per our convo, see the attached updated release. I tracked the changes. Let use know if you're good with this.

Thanks!

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Goodwin, Nicholas R
Sent: Sunday, August 16, 2020 5:02 PM
To: Swanson, Conner D <conner_swanson@ios.doi.gov>
Cc: Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>
Subject: Final Release - Please load and send a test tonight

Thanks,

From: Russo, Jennifer R <jennifer_russo@ios.doi.gov>
Subject: For Awareness: BLM news release -- The BLM Alaska Seeks Coastal Plain Oil and Gas Lease Sale Nominations
To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov> "Rojewski, Cole J" <cole_rojewski@ios.doi.gov>
"Williams, Timothy G" <timothy_williams@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
"Lawkowski, Gary M" <gary_lawkowski@ios.doi.gov>
CC:"Eisenman, Theresa M" <theresa_eisenman@ios.doi.gov>
Sent: Thu, 12 Nov 2020 13:21:41 -0500 (Thu, 12 Nov 2020 18:21:41 GMT)
Attachment 1: Coastal Plain Call for Noms Press Release 9.30.20.docx

This release was circulated & cleared in October. BLM Alaska plans to distribute on Monday, 11/16.

Bureau: BLM

Subject or Headline: The BLM Alaska Seeks Coastal Plain Oil and Gas Lease Sale Nominations

Materials: News Release

Target Date: 11/16

Please comment by: **For Awareness Only**

The Bureau of Land Management Alaska Seeks Coastal Plain Oil and Gas Lease Sale Nominations

BLM moves closer to first lease sale in fulfillment of Administration's commitment to promote America's energy independence and job creation

ANCHORAGE, Alaska —The BLM today published a notice calling for nominations and comments on tracts to consider in its upcoming Coastal Plain Oil and Gas Lease Sale.

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“Receiving input from industry on which tracts to make available for leasing is vital in conducting a successful lease sale,” said BLM Alaska State Director Chad Padgett. “This call for nominations brings us one step closer to holding a historic first Coastal Plain lease sale, satisfying the directive of Congress in the 2017 Tax Cuts and Jobs Act and advancing this administration’s policy of energy independence.”

As required by the 2017 Tax Cuts and Jobs Act, the first Coastal Plain Oil and Gas Lease Sale, which was passed by Congress and signed into law by President Trump on December 22, 2017, will offer at least 400,000 acres of high-potential hydrocarbon lands for bid, and a notice of sale will be published in the *Federal Register* at least 30 days prior to the sale. The Record of Decision for the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement expected was signed in Aug.17 2020, which says a lease sale may be held.

The energy potential of the ANWR Coastal Plain was finally unlocked after 30 years of gridlock when President Trump signed the Tax Cuts and Jobs Act into law, finally settling the question of whether the leasing, exploration and development of oil and gas will occur on about 8 percent of the refuge that lies with an oil and gas province of national significance. The legislation was unique because it didn’t just allow for an oil and gas development program, it requires one that delivers energy to the nation and revenue to the treasury.

The Act changes the purposes of ANWR management to include oil and gas development in a small but potentially energy rich area along the Arctic coast, directing the Secretary of the Interior to carry out an aggressive, competitive energy development program that could keep oil flowing in the nation’s energy artery, the 800 mile Trans-Alaska Pipeline, decades from now.

Nominations and comments can be submitted to:

State Director, Bureau of Land Management
Alaska State Office
222 West 7th Avenue, Mailstop #13
Anchorage, Alaska 99513-7504

A map showing potential lease tracts and additional information is available at the [BLM Alaska Coastal Plain Oil and Gas Lease Sale](#) web page.



U.S. Department of the Interior
Bureau of Land Management

News Release

Bureau of Land Management, Alaska State Office, Office of Communications

222 W. 7th Avenue #13, Anchorage AK 99513-7504

Tel: 907-271-5555 Fax: 907-271-5421

www.blm.gov/alaska

FOR IMMEDIATE RELEASE

Contact: Lesli Ellis-Wouters, lellis@blm.gov; 907-271-4418

News Release No. 19-XX

Date: MONTH XX, 2020

The Bureau of Land Management Alaska Seeks Coastal Plain Oil and Gas Lease Sale Nominations

*BLM moves closer to first lease sale in fulfillment of Administration's commitment to promote
America's energy independence and job creation*

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###

The BLM manages more than 245 million acres of public land located primarily in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. Diverse activities authorized on these lands generated \$96 billion in sales of goods and services throughout the American economy in fiscal year 2017. These activities supported more than 468,000 jobs.

From: Russo, Jennifer R <jennifer_russo@ios.doi.gov>
Subject: For Review: BLM news release -- The BLM Alaska Seeks Coastal Plain Oil and Gas Lease Sale Nominations
To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov> "Rojewski, Cole J" <cole_rojewski@ios.doi.gov>
"Williams, Timothy G" <timothy_williams@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
"Lawkowski, Gary M" <gary_lawkowski@ios.doi.gov>
CC:"Eisenman, Theresa M" <theresa_eisenman@ios.doi.gov>
Sent: Thu, 01 Oct 2020 14:37:06 -0400 (Thu, 01 Oct 2020 18:37:06 GMT)
Attachment 1: Coastal Plain Call for Noms Press Release 9.30.20.docx

Bureau: BLM

Subject or Headline: The BLM Alaska Seeks Coastal Plain Oil and Gas Lease Sale Nominations

Materials: News Release

Target Date: 10/5

Please comment by: 10/2 by 5 p.m.

The Bureau of Land Management Alaska Seeks Coastal Plain Oil and Gas Lease Sale Nominations

BLM moves closer to first lease sale in fulfillment of Administration's commitment to promote America's energy independence and job creation

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Alaska State Office

222 West 7th Avenue, Mailstop #13
Anchorage, Alaska 99513-7504

A map showing potential lease tracts and additional information is available at the [BLM Alaska Coastal Plain Oil and Gas Lease Sale](#) web page.

From: Small, Jeffrey D <jeffrey_small@ios.doi.gov>
Subject: Fw: ANWR Comms for Monday
To: "Knudson, Kip C (GOV)" <kip.knudson@Alaska.gov>
CC: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
Sent: Wed, 12 Aug 2020 09:40:21 -0400 (Wed, 12 Aug 2020 13:40:21 GMT)
Attachment 1: DRAFT - Coastal Plain ROD Press Release.docx

Hi Kip,

Good speaking with you yesterday. Sounds like the ANWR ROD is going Monday now. Attached is the draft release which is embargoed until released by BLM.

The draft release already includes a quote from the Governor. Let us know if you all have any updates to the quotes but if we don't here back we will assume it is good to go as is.

Sincerely,

Jeff Small
Senior Advisor to the Secretary
U.S. Department of the Interior
Intergovernmental Affairs/External Affairs/Communications
1849 C Street NW
Office 6217
Washington D.C. 20240
202-208-6649 (direct)
202-344-5532 (work cell)
jeffrey_small@ios.doi.gov

Note: Every email and text I send or receive is subject to public release under the Freedom of Information Act.

From: [Budd-Falen, Karen J](#)
To: [MacGregor, Katharine S](#)
Subject: Fw: Draft Dir Order re: Kaktovik Rights of Traditional Access
Date: Thursday, November 12, 2020 11:58:38 AM

I am not sure why Gregg R. doesn't want you to sign this---but I will see if I can find a legal reason just in case.

I am assuming you want to still do this, but if not, let me know.

Karen Budd-Falen
Deputy Solicitor Fish, Wildlife and Parks
Department of the Interior
1849 C Street NW
Room 6348 Washington D.C. 20240
Telephone: 202-208-4507
Cell: 202-365-5854

Karen.budd-falen@sol.doi.gov

From: Skipwith, Aurelia <aurelia_skipwith@fws.gov>
Sent: Thursday, November 12, 2020 11:54 AM
To: Taylor, Sara M <sara_taylor@ios.doi.gov>; Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: Draft Dir Order re: Kaktovik Rights of Traditional Access

All,

I have one additional comment, based on the edits.

Please let me know your final draft, because I had already started to finalize within FWS. Also, if you want to Deputy Secretary to sign, this will not be a Director's Order. So, I need to know today if you go that route and I will halt what I am doing.

With that said, I'd like to get this DO signed by next week.

Aurelia Skipwith

Director, U.S. Fish and Wildlife Service
Department of the Interior
1849 C Street, NW
Washington, DC 20240
(202) 208-4545

From: Taylor, Sara M <sara_taylor@ios.doi.gov>
Sent: Monday, November 9, 2020 4:03 PM
To: Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Skipwith, Aurelia <aurelia_skipwith@fws.gov>
Cc: Dove, William <William_Dove@fws.gov>
Subject: RE: Draft Dir Order re: Kaktovik Rights of Traditional Access
Some quick responses, happy to provide more detail.
Sara

From: Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>
Sent: Monday, November 9, 2020 11:08 AM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Taylor, Sara M <sara_taylor@ios.doi.gov>;
Skipwith, Aurelia <aurelia_skipwith@fws.gov>
Cc: Dove, William <William_Dove@fws.gov>
Subject: Re: Draft Dir Order re: Kaktovik Rights of Traditional Access

Sara:

I have some questions about the DO that hopefully you can answer.

Thanks

Karen Budd-Falen
Deputy Solicitor Fish, Wildlife and Parks
Department of the Interior
1849 C Street NW
Room 6348 Washington D.C. 20240
Telephone: 202-208-4507
Cell: 202-365-5854
Karen.budd-falen@sol.doi.gov

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Wednesday, October 28, 2020 12:16 PM
To: Taylor, Sara M <sara_taylor@ios.doi.gov>; Skipwith, Aurelia <aurelia_skipwith@fws.gov>
Cc: Dove, William <William_Dove@fws.gov>; Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>
Subject: RE: Draft Dir Order re: Kaktovik Rights of Traditional Access

This looks good. I have made a couple track edits (attached) and this should be ready to run in final. This order seems to reflect Option 3 in the options memo. Gregg

Gregg D. Renkes

Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: Taylor, Sara M <sara_taylor@ios.doi.gov>
Sent: Tuesday, October 27, 2020 3:45 PM
To: Skipwith, Aurelia <aurelia_skipwith@fws.gov>
Cc: Dove, William <William_Dove@fws.gov>; Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>;
Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: Draft Dir Order re: Kaktovik Rights of Traditional Access

My apologies for the delayed incorporation of your comments and suggestions into the draft materials (attached). I wanted to be confident a revised approach would fit within the scope of our authority and was both creative and cautious in doing so considering the circumstances. In addition to and essential for providing and managing these protected rights of access, the revised approach

fosters improved coordination, institutional awareness, and accountability to rebuild and maintain trust with the affected communities and our management partners.

You will notice some substantial changes to the briefing and remedial direction in the draft Order in response to your feedback. Tracked changes are available on request but are not included in the attached to simplify review. I would also be happy to walk you through the changes and associated rationale at any time.

I am confident the attached drafts will address most of your comments. There was one very direct question you posed regarding enforcement, and specifically regarding any further need to demonstrate a right of access by users on the ground. Changes to the approach have obviated the opportunity for a direct answer in the attached, but do not totally eliminate associated concerns. I did inquire and the information I received was taken into account in the recommended management response. In discretely polling resources and assets amounting to over 100 combined years of applicable enforcement experience, the answer to “What might a user be required to show in order to demonstrate their eligibility to use off-road vehicles on federal public lands in the Refuge?” is, essentially, that the Refuge would need to demonstrate otherwise. This conclusion is supported by applicable regulatory procedures, which receive more emphasis in the attached.

I am available any time for questions and any additional edits, thank you again for your patience,
Sara
(907)205-8904

From: Taylor, Sara M <sara_taylor@ios.doi.gov>

Sent: Friday, October 9, 2020 10:19 AM

To: Skipwith, Aurelia <aurelia_skipwith@fws.gov>

Cc: Dove, William <William_Dove@fws.gov>; Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Subject: Re: Draft Dir Order re: Kaktovik Rights of Traditional Access

Thank you for the detailed review and transformative insights! I should have a revised draft ready by Monday. If inspiration strikes as to a position or office that is better suited for the second tier review spot (#3), please advise.

Sara

From: Skipwith, Aurelia <aurelia_skipwith@fws.gov>

Sent: Friday, October 9, 2020 2:27:11 AM

To: Taylor, Sara M <sara_taylor@ios.doi.gov>

Cc: Dove, William <William_Dove@fws.gov>; Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Subject: RE: Draft Dir Order re: Kaktovik Rights of Traditional Access

Good morning Sara,

It was good to speak with you last night and discuss the following items for update in the DO: 1) flushing out criteria to for people to submit proper documents to establish evidence of traditional use 2) engaging Alaska Fish and Game for awareness, not presenting the DO with FWS 3) appropriate personnel for the appeals process to ensure an objective review and 4) documentation to memorialize the decision - for FWS's records and for the community and 5) clarify that community, not members of the community submit the documentation for establishing history of traditional use.

Thanks again for taking the time to chat with me.

Aurelia Skipwith

Director, U.S. Fish and Wildlife Service

Department of the Interior

1849 C Street, NW

Washington, DC 20240

(202) 208-4545

From: Taylor, Sara M <sara_taylor@ios.doi.gov>

Sent: Tuesday, October 6, 2020 12:24 PM

To: Skipwith, Aurelia <aurelia_skipwith@fws.gov>

Cc: Dove, William <William_Dove@fws.gov>; Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Subject: Draft Dir Order re: Kaktovik Rights of Traditional Access

Director Skipwith,

Please find attached a draft Order and Decision Briefing to address longstanding traditional access issues for the residents of Kaktovik, Alaska, the only presently occupied village within the Arctic National Wildlife Refuge. For decades, residents have attempted to exercise, clarify, and meaningfully secure legal rights of access on Refuge-managed lands with inconsistent and diminishing success. This includes frequently unresolved or denied requests to access inholdings during the snow-free period, including Kaktovik itself and dozens of Native allotments, and a recent refusal to recognize motorized methods of access as traditionally employed for subsistence purposes.

ANILCA and FWS regulation/policy are clear these rights of access shall be provided in the Refuge unless restricted through specific procedures which have not been initiated. The attached draft Order would provide the necessary and requested clarity for staff, residents, and the public as to the demonstrated existence of these rights. This will enable residents to access their property and subsistence resources under a well-understood regulatory status and, where necessary, would allow the Refuge to manage use through the appropriate procedures, consistent with precedent and Congressional direction.

A few things to note regarding the attached:

- While Kaktovik was the only community to approach the Secretary with evidence of existing and effectively unrealized rights of access, it is possible other communities and remote households which use the Refuge for subsistence or have private inholdings may also have such evidence in their possession. To ensure equitable application and availability among those similarly situated, a limited opportunity is provided to present that evidence for equal consideration.
 - State-Federal-Tribal coordination is strongly encouraged and may realize significant benefits. Under ANILCA, federal land managers are directed to cooperate with the State of Alaska, adjacent landowners, Alaska Native corporations, and others in managing subsistence activities. Department policy also encourages bringing in our partners where practicable, and opportunities therein for confidential data sharing could be an important element in verifying claims. The Alaska Department of Fish and Game has cooperated on all traditional access studies statewide, and already works closely with FWS to administer subsistence use and harvest surveys to the eligible communities and households.
 - The appeal structure intentionally includes opportunity for review within and outside the Region, consistent with the barriers to recognition experienced by Kaktovik

residents which led to this process. This opportunity will only be available for a short time to the six communities and few individuals already identified by FWS as using the Refuge for subsistence purposes or to access non-federal inholdings. Even if everyone who could appeal did appeal, it would almost certainly be fewer than a dozen inquiries by a date certain.

- When Congress was considering how to demonstrate a method or activity was “traditional.” it was noted that “if uses were generally occurring in the area prior to its designation, those uses shall be allowed to continue and no proof of pre-existing use will be required.” As such, a community or household would only need to show a method of access was employed for subsistence purposes by local rural residents prior to and as of December 2, 1980. Requiring proof such methods were used in a particular area in order for it to continue is contrary to Congressional intent.
 - The draft Order recognizes that off-road vehicles were traditionally employed by Kaktovik residents to engage in a subsistence way of life prior to and following designation, including within designated Wilderness. The minimal burden of proof was abundantly satisfied by documentary and testimonial evidence of pre-1980 use. These uses are allowed by law and this recognition will ensure appropriate implementation and enforcement.
- When Congress was considering how to ensure adequate and feasible access to non-federal inholdings for economic and other purposes, it was noted “such rights may include the right to traverse the Federal land with aircraft, motor boats, or land vehicles” and, where necessary, an established route “which will permit economic access to, and the use of, such lands while also seeking to ameliorate adverse impacts on the area[.]” The Secretary is expected “to be reasonable and fair in his judgements regarding access in these situations” and is directed to “grant the owner of an inholding such rights as are necessary to assure adequate access to the inholding . . . to assure a permanent right of access to the concerned land across, through, or over these Federal lands by such State or private owners or occupiers and their successors in interest.”
 - The draft Order recognizes that off-road vehicles have been authorized and employed by Kaktovik residents to access inholdings within the Refuge, primarily along coastal beaches and gravel bars. There remains a formal statutory process to authorize specific access routes, methods, and means, initiated by the inholder through Form SF-299. This recognition will help provide a fact-based and formative baseline for that process.

If you have any questions or require additional information or support, please do not hesitate to ask.

Thank you for your time and consideration,

Sara Taylor

Policy Advisor | Region 11

Office of the Secretary

US Department of the Interior

(907)205-8904

From: [Mills, Katie E](#)
To: [MacGregor, Katharine S](#)
Cc: [Baptiste, OS Thomas](#); [Cameron, Scott J](#)
Subject: Fw: NEPA tracker
Date: Thursday, September 17, 2020 11:51:03 AM
Attachments: [EISs started and finished since SO3355 onSept19,2020.docx](#)
[EST-16868 - Letter to Larry Kudlow \(signed 9-14-2020\).pdf](#)

Please let me know if this encompasses what you'd like to see, or if you'd like more detail.
Thank you!

Katie E. Mills

Acting Principal Deputy Assistant Secretary for Policy, Management and Budget

U.S. Department of the Interior

Katie_Mills@ios.doi.gov

202-208-4591-Office

202-802-2114-Cell

From: Tryon, Stephen G <stephen_tryon@ios.doi.gov>

Sent: Thursday, September 17, 2020 11:43 AM

To: Mills, Katie E <katie_mills@ios.doi.gov>; Glomb, Steve J <Steve_Glomb@ios.doi.gov>

Cc: Cameron, Scott J <scott_cameron@ios.doi.gov>; Braegelmann, Carol
<carol_braegelmann@ios.doi.gov>

Subject: RE: NEPA tracker

Good morning, Katie.

Secretarial Order 3355 was signed by then Deputy Secretary David Bernhardt on August 31, 2017.

Since then, 28 environmental impact statements have progressed from Notice of Intent to Record of Decision. Those EISs are attached, for reference.

1. Of those 28, 6 were FAST41/EO 13807 projects, the average time to complete those was 1.59 years and the average FEIS page count was 154. The average time for these projects is well within the time prescribed for FAST41/EO projects.
2. For the other 22 EISs, the average time was 1.37 years and the average FEIS page count was 156 pages.
3. Combined, the average time to complete was 1.42 years and the average FEIS page count was 155 pages.

We are also projecting completion of all the EISs on the table that reports completion under EO 13927 by January 2021 (see attached).

There are examples of EISs completed in as little as 12 months, if that would be helpful.

Since implementation EO 13807 and SO 3355, the average time and page length required to complete an environmental impact statements (EIS) has been reduced from over five years and 850 pages to 1.42 years and 155 pages.

Steve Tryon

Director, Office of Environmental Policy and Compliance

U.S. Department of the Interior

(o) 202-208-4221

(c) 202-527-2651

From: Mills, Katie E <katie_mills@ios.doi.gov>

Sent: Thursday, September 17, 2020 10:21 AM

To: Glomb, Steve J <Steve_Glomb@ios.doi.gov>; Tryon, Stephen G <stephen_tryon@ios.doi.gov>

Cc: Cameron, Scott J <scott_cameron@ios.doi.gov>

Subject: Re: NEPA tracker

Dep Sec needs it ASAP this morning.

Katie E. Mills

Acting Principal Deputy Assistant Secretary for Policy, Management and Budget

U.S. Department of the Interior

[Katie_mills@ios.doi.gov](mailto:katie_mills@ios.doi.gov)

202-208-4591-Office

202-802-2114-Cell

From: Mills, Katie E <katie_mills@ios.doi.gov>

Sent: Thursday, September 17, 2020 10:11 AM

To: Glomb, Steve J; Tryon, Stephen G

Cc: Cameron, Scott J

Subject: Fwd: NEPA tracker

Hi Steve and Steve, can you help with this request from the Dep Sec? How quickly do you think we can get this together? Thank you!

Katie E. Mills

Acting Principal Deputy Assistant Secretary for Policy, Management and Budget

U.S. Department of the Interior

[Katie_mills@ios.doi.gov](mailto:katie_mills@ios.doi.gov)

202-208-4591-Office

202-802-2114-Cell

From: MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>

Sent: Thursday, September 17, 2020 10:09 AM

To: Mills, Katie E

Subject: NEPA tracker

Katie - Can you send me the bullets on our NEPA reform efforts under SO 3350? Previous timelines and avg pages vs. current timelines and avg. pages of our NEPA documents?

Deputy Secretary

U.S. Department of the Interior

Projects with Environmental Impact Statements Started and Completed under SO3355

Project Title	Bureau	FAST-41/ EO 13807 Project	Notice of Intent (NOI) Completion Date	FEIS Page Length	Record of Decision Completion Date
Leavitt Reservoir Expansion Project	BLM	Yes	9/29/2017	144	10/18/2019
Oregon Sage Grouse RMP Amendment	BLM	No	10/1/2017	136	3/15/2019
Alkali Creek Reservoir Project	BLM	Yes	10/11/2017	180	10/18/2019
Colorado Resource Management Plan Amendment and Draft Environmental Impact Statement for Greater Sage- Grouse Conservation	BLM	No	10/11/2017	93	3/14/2019
Idaho Greater Sage-Grouse Land Use Plan Amendment	BLM	No	10/11/2017	85	3/14/2019
Nevada and Northeastern California Greater Sage-Grouse Land Use Plan Amendment	BLM	No	10/11/2017	145	3/15/2019
Utah Greater Sage-Grouse Resource Management Plan Amendments (2018)	BLM	No	10/11/2017	153	3/20/2019
Wyoming Greater Sage-Grouse RMP Amendment and EIS	BLM	No	10/11/2017	120	3/15/2019
US Gypsum Company Mine Expansion and Modernization Project SEIS	BLM	No	11/27/2017	149	1/31/2020
Programmatic EIS for Fuel Breaks in the Great Basin	BLM	No	12/22/2017	147	4/2/2020
Reinitiation of Consultation on the Coordinated Long-term Operation of the Central Valley Project (CVP) and State Water Project (SWP) Environmental Impact Statement (EIS)	BOR	No	12/29/2017	281	2/18/2020
Bears Ears National Monument - Monument Management Plans for the Indian Creek and Shash Jaa Units	BLM	No	1/16/2018	173	2/6/2020
Grand Staircase-Escalante National Monument - Grand Staircase, Kaiparowits, and Escalante Canyons Units and Kanab Field Office-Escalante Area Resource Management Plans	BLM	No	1/16/2018	274	2/6/2020
Skookumchuck Wind Energy Project Habitat Conservation Plan	FWS	No	5/3/2018	141	7/2/2019
Programmatic EIS for Four Wind Energy Projects in Hawaii	FWS	No	6/1/2018	150	9/3/2019

Proposed Burning Man Event 10-Year Special Recreation Permit, Pershing County, Nevada	BLM	No	6/20/2018	144	7/16/2019
Gemini Solar Project-F41	BLM	Yes	7/13/2018	171	5/8/2020
Bakersfield Field Office Hydraulic Fracturing SEIS and Potential RMP Amendment	BLM	No	8/8/2018	122	12/13/2019
Campo Wind Energy Project	BIA	Yes	11/21/2018	145	4/6/2020
Buffalo RMP Coal Supplemental EIS	BLM	No	11/28/2018	43	11/22/2019
Miles City Field Office RMP Supplemental EIS/Plan Amendment	BLM	No	11/28/2018	81	11/25/2019
Eagle Shadow Mountain Solar Project	BIA	Yes	2/4/2019	119	2/10/2020
Coeur Rochester Mine Plan	BLM	No	3/6/2019	153	3/30/2020
Browns Canyon National Monument RMP/EIS	BLM	No	5/14/2019	149	7/21/2020
Parkdale Competitive Mineral Materials Sale	BLM	No	7/31/2019	143	7/24/2020
Borderlands Wind Project	BLM	Yes	11/9/2018	168	8/3/2020
Blackrock Land Exchange	BLM	No	5/20/2019	148	8/12/2020
Coastal Plain Oil and Gas Leasing and Development Plan	BLM	No	4/20/2018	400	8/17/2020



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

SEP 14 2020

The Honorable Larry Kudlow
Assistant to the President for Economic Policy
and Director, National Economic Council
1650 Pennsylvania Avenue
Washington, DC 20502

Dear Mr. Kudlow:

I am responding on behalf of the Department of the Interior (Department) with the recurring 30-day follow-up report, as required in Executive Order (E.O.) 13927 on “Accelerating the Nation’s Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities.”

In response to section 5 of E.O. 13927, we are enclosing the list of infrastructure, energy, environmental, and natural resource environmental impact statements (EIS) for projects that are within the authority of the Secretary of the Interior to perform or advance. The Department will continue to examine these and other qualifying projects for additional expedited review. All of these projects will assist in the Nation’s economic recovery.

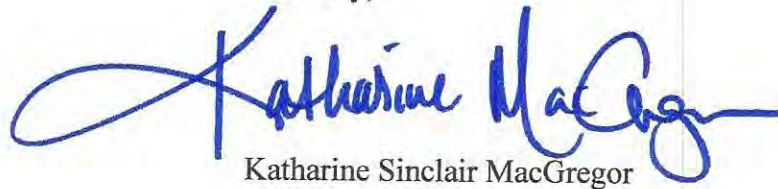
In response to sections 2 and 6, the Department’s 2018 guidance on adhering to the National Environmental Policy Act (NEPA) during emergencies was re-sent to all subunits of the Department to facilitate response to the COVID-19 emergency. The Department also continues to use virtual meetings and other publicly accessible tools to meaningfully engage with stakeholders, State governments, partner agencies, and the public. This has enabled the Department to continue public scoping for EISs and maintain project schedules for activities proposed by the National Park Service (NPS), Bureau of Land Management (BLM), Bureau of Ocean Energy Management, and Bureau of Reclamation.

Currently, BLM is conducting several efforts to expedite NEPA projects during the COVID-19 pandemic. The BLM is using the Direct Hiring Authority to expedite hiring of BLM firefighters to combat wildfires. The NPS is using expedited Schedule A hiring authority provided through the Coronavirus Aid, Relief, and Economic Security Act to meet needs in national parks nationwide where services or staff availability have been negatively impacted by the COVID-19 pandemic, such as facilities maintenance positions to ensure bathrooms are cleaned and trash is removed.

The Department will continue to make its resources and facilities available to our partners in response to the emergency. We will also continue to look for, and implement, efficiencies that will help strengthen the economy and return Americans to work, while providing appropriate protections for public health and safety, natural resources, and the environment. The enclosed

table of EIS projects will be updated and shared with you monthly throughout the duration of the COVID-19 pandemic and associated economic recovery.

Sincerely,

A handwritten signature in blue ink that reads "Katharine MacGregor". The signature is fluid and cursive, with a large initial "K" and a long horizontal flourish at the end.

Katharine Sinclair MacGregor

Enclosure

cc: The Honorable Russell Vought, Acting Director, Office of Management and Budget
The Honorable Mary Neumayr, Chair, Council on Environmental Quality

**Department of the Interior Report for Executive Order 13927:
Infrastructure, Energy, and Natural Resources Projects that Support Economic Recovery
Environmental Impact Statements Expected to be Completed During the COVID-19 Emergency
(March 13, 2020 to January 31, 2021)**

Project Title	Lead Agency (Cooperating DOI)	Document Status	State/Location	Project Focus
Coeur Rochester Silver and Gold Mine Plan	BLM	Completed	NV	Mining
Three Bars Ecosystem and Landscape Restoration Project	BLM	Completed	NV	Habitat Restoration, Invasive Species Removal
Programmatic EIS for Fuel Breaks in the Great Basin	BLM	Completed	ID	Wildland Fire Management
Campo Wind Energy Project	BIA	Completed	CA	Renewable Energy
Dairy Syncline Phosphate Mine Project EIS	BLM	Completed	ID	Mining
Long-Term Water Transfers	BOR	Completed	CA	Water Delivery
Haiwee Geothermal Leasing Area Supplemental EIS and Land Use Plan Amendment	BLM	Completed	CA	Renewable Energy
Tucker Hill Perlite Mine Expansion	BLM	Completed	OR	Mining
Tri-State Fuel Breaks Project	BLM	Completed	ID	Wildland Fire Management
Gemini Solar Project-F41	BLM	Completed	NV	Renewable Energy
Upper Santa Ana River Wash Habitat Conservation Plan	FWS	In Progress	CA	Water Conservation, Aggregate Mining, Recreation, Flood Control, Other Public Services
Converse County Oil and Gas Project	BLM	In Progress	WY	Oil and Gas Development
Moneta Divide Natural Gas and Oil Development Project	BLM	In Progress	WY	Oil and Gas Development
Gunnison Field Office Domestic Sheep Grazing Permit Renewals EIS	BLM	In Progress	CO	Livestock Grazing, Wildlife
Point Reyes National Seashore General Management Plan Amendment	NPS	In Progress	CA	Livestock Grazing, Wildlife
Blackrock Land Exchange	BLM	In Progress	ID	Mining
Parkdale Competitive Mineral Materials Sale Environmental Impact Statement	BLM	In Progress	CO	Mining
Proposed East Smoky Panel Phosphate Mine Project	BLM	In Progress	ID	Mining
National Petroleum Reserve in Alaska Integrated Activity Plan	BLM	In Progress	AK	Oil and Gas Development
Placer Habitat Conservation Plan/Natural Community Conservation Plan/County Aquatic Resources Plan	FWS	In Progress	CA	Development Certainty, Water Resources
Borderlands Wind Project	BLM	In Progress	NM	Renewable Energy
Osage County Oil and Gas Development	BIA	In Progress	OK	Oil and Gas Development
Willow Master Development Plan Environmental Impact Statement	BLM	In Progress	AK	Oil and Gas Development
Columbia River System Operations EIS	BOR	In Progress		Water Delivery
Crimson Solar Project	BLM	In Progress	CA	Renewable Energy
Paradox Valley Unit EIS	BOR	In Progress	CO	Water Quality, Desalination
Yellow Pine Solar-F41	BLM	In Progress	NV	Renewable Energy
Programmatic EIS for Fuels Reduction and Rangeland Restoration in the Great Basin	BLM	In Progress	ID	Wildland Fire Management
Friant-Kern Canal Middle Reach Capacity Correction Project	BOR	In Progress	CA	Water Delivery
Truckee Canal Extraordinary Maintenance	BOR	In Progress	NV	Water Delivery
Eastern North Dakota Alternate Water Supply (ENDAWS)	BOR	In Progress	ND	Water Delivery
Wyoming Pipeline Corridor Initiative	BLM	In Progress	WY	Oil and Gas Development
Tejon Indian Tribe's Proposed Trust Acquisition and Casino Project	BIA	In Progress	CA	Gaming
Louse Canyon Geographic Management Area Rangeland Health Management Actions Environmental Impact Statement	BLM	In Progress	OR	Livestock Grazing, Wildlife
East Collier Multi-Species Habitat Conservation Plan	FWS	In Progress	FL	Development Certainty
Farmington Mancos-Gallup RMP Amendment	BLM	In Progress	NM	Oil and Gas Development
New Mexico Unit	BOR	In Progress	NM	Water Delivery
Vineyard Wind, LLC's Proposed Wind Energy Facility Offshore Massachusetts	BOEM	In Progress	OCS Offshore Massachusetts	Renewable Energy
Thacker Pass Lithium Mine project	BLM	In Progress	NV	Mining
Lakeview Resource Management Plan Amendment	BLM	In Progress	OR	Livestock Grazing, Wildland Fire Management
Whitewater River Groundwater Replenishment Facility	BLM	In Progress	CA	Water Resources
Lake Powell Pipeline	BOR	In Progress	UT	Water Delivery
Northern Corridor Highway Right-of-Way, Issuance of an Incidental Take Permit, and Resource Management Plan Amendments, Washington County, Utah	BLM	In Progress	UT	Transportation
Arrow Canyon Solar Project	BIA	In Progress	NV	Renewable Energy
Coastal Plain Oil and Gas Leasing and Development Plan (ANWR)	BLM	In Progress	AK	Oil and Gas Development
Road to Ambler/Ambler Mining District Industrial Road Access	BLM	In Progress	AK	Mining
Alaska Liquefied Natural Gas Project	FERC (FWS, NPS, BLM)	In Progress	AK	Natural Gas
Cardinal-Hickory Creek 345 kV Transmission Line Project	USDA (FWS)	In Progress	IA	Energy Transmission
Gulf Liquefied Natural Gas Liquefaction Project	FERC (FWS)	In Progress	MS	Natural Gas
Jordan Cove Liquefied Natural Gas Terminal and Pacific Connector Gas Pipeline	FERC (FWS, BLM)	In Progress	OR	Natural Gas

Mid-Barataria Sediment Diversion	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance
Mid-Breton Sediment Diversion	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance
Port of Corpus Christi Authority Channel Deepening Project	DOD-USACE (FWS)	In Progress	FL	Waterway Construction and Maintenance
Swan Lake North Pumped Storage	FERC (FWS, BLM, BOR)	In Progress	OR	Energy Storage
Venture Global Calcasieu Pass Terminal and TransCameron Pipeline Project	FERC (FWS)	In Progress	LA	Natural Gas
Amite River and Tributaries-East of the Mississippi River, Louisiana, Flood Risk Management Feasibility Study	DOD-USACE (FWS)	In Progress	LA	Storm Management
Collier County Coastal Storm Risk Management Project	DOD-USACE (BOEM, FWS)	In Progress	FL	Storm Management
Coos Bay, Oregon Section 408/204(f) Channel Modification	DOD-USACE (FWS)	In Progress	OR	Waterway Construction and Maintenance
Florida Keys Coastal Storm Risk Management Project	DOD-USACE (FWS)	In Progress	FL	Storm Management
I-285 Top End Express Lanes	DOT-FHWA (FWS)	In Progress	GA	Transportation
I-495/I-270 Managed Lanes Study	DOT-FHWA (NPS, FWS)	In Progress	MD	Transportation
I-526 Lowcountry Corridor West Improvements	DOT-FHWA (FWS, NPS)	In Progress	SC	Transportation
Lake Pontchartrain and Vicinity, Louisiana General Re-evaluation Report	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance
Mountain Valley Pipeline Southgate CP19-14	FERC (FWS)	In Progress	VA	Natural Gas
McClellanville 115 kV Transmission Line Project	USDA-RUS (FWS)	In Progress	SC	Energy Transmission
Miami-Dade County Back-Bay Coastal Storm Risk Management Project	DOD-USACE (FWS)	In Progress	FL	Storm Management
Mineville Energy Storage Project	FERC (FWS)	In Progress	NY	Energy Storage
New Jersey Back Bays Coastal Storm Risk Management Feasibility Study	DOD-USACE (FWS)	In Progress	NJ	Storm Management
Pier B On-Dock Rail Support Facility	DOT (FWS)	In Progress	NY	Transportation
Surry-Skiffes Creek-Wheaton Aerial Transmission Line	DOD-USACE (NPS)	In Progress	VA	Energy Transmission
U.S. Route 58/220 Bypass to North Carolina State Line Limited-Access Study	DOT-FHWA (FWS)	In Progress	NC	Transportation
US 275 West Point to Scribner	DOD-USACE (FWS)	In Progress	NE	Transportation
Upper Barataria Basin Feasibility Study	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance
West Bank and Vicinity, Louisiana General Re-evaluation Report	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance

From: [Budd-Falen, Karen J](#)
To: [MacGregor, Katharine S](#); [Dove, William](#)
Subject: Fw: SOLIS Update
Date: Wednesday, November 18, 2020 10:31:50 AM
Attachments: [Active SOL Litigation By RegDiv-FldBr \(2020-11-17\).xlsx](#)

Per my discussion with Kate, I looked at the litigation tracker from Kevin and it was not helpful for our purpose. The only other litigation tracker includes ALL litigation---

If this is something Billy can help me with, I think I can go through and at least start on a list that we should consider for review.

Karen Budd-Falen
Deputy Solicitor Fish, Wildlife and Parks
Department of the Interior
1849 C Street NW
Room 6348 Washington D.C. 20240
Telephone: 202-208-4507
Cell: 202-365-5854

Karen.budd-falen@sol.doi.gov

From: Plater-Zyberk, Josaphat A <josaphat.plater-zyberk@sol.doi.gov>
Sent: Tuesday, November 17, 2020 8:03 PM
To: Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>
Cc: Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>; Smith, Marc A <marc.smith@sol.doi.gov>; Ranger, Steven R <steven.ranger@sol.doi.gov>
Subject: Fw: SOLIS Update
Good Evening Karen,

As Marc explained, the SOLIS case/matter tracking system can generate a wide variety of reports that might meet your needs, and as we continue our quality assurance work and get closer to the December 18th deadline to have all active cases and matters added into the system the data included on the reports should become increasingly accurate and complete.

I understand from your email to Marc that you are looking for a list of DOI's pending cases. The system's "Active SOL Litigation By Reg/Div-Fld/Br" report lists all litigation-type SOLIS records that are visible to the user and do not have a status of "Closed." It groups these records by the SOL component that is primarily responsible for the record and the type of litigation, and it shows any associated forum information that has been entered by the assigned lead attorney. I've exported the attached Microsoft-Excel version of this report for

your reference, but as a SOLIS user you can access this report on-demand at the following location:

(b) (5)

Please note that I've exported the attached list of records in a manner that excludes the 129 active litigation records that are being managed by DGL's Employment and Labor Law Unit and the 98 active litigation records that are being managed by DGL's Torts Practice Branch. Please let me know if you'd like me to send you a broader version of the attached report that includes these more sensitive records.

If you are more interested in determining how many cases have been filed in each forum, then you may prefer the system's "Active SOL Litigation By Forum" report which lists the forum entries that have been added to the litigation records which (a.) are visible to the user and (b.) do not have a status of "Closed." It groups these forum entries by the type of litigation, the type of forum, and the forum, and it further sorts the entries by the SOL component that is primarily responsible for each litigation record. Because of the way that this report groups forum entries, a single litigation record will appear multiple times on the report if the litigation was filed in more than one forum. As a SOLIS user you can access this report on-demand at the following location:

(b) (5)

If you need a report which includes not only active litigation records but also active non-litigation records, then you may find the system's "Active SOL Records" report more useful. It lists the SOLIS records that are visible to the user and do not have a status of "Closed," and it groups those records by Region/Division, Field/Branch, and Record Type. SOLIS users can access this report on-demand at the following location:

(b) (5)

Given the scope of these three reports, users can manually navigate to them by accessing the "Reports" menu in SOLIS, clicking the "All Folders" option in the left-hand navigation bar, and opening the following series of folders:

00 System Reports > 01 SOL Records > Active

If you find any of these reports helpful, please remember that you can mark a report as a

"Favorite" after you've opened it by clicking the star icon (to the left of the plus sign icon in the top right corner of the SOLIS interface) so that you'll be able to quickly access it by clicking the down-triangle icon (to the right of the star icon).

Please let me know if you have any questions or if you'd like me to join you in a Teams screen-sharing session to discuss any changes to the existing reports that you may need.

Thanks,
Jack

Josaphat Plater-Zyberk

Attorney-Advisor, Division of Administration
Office of the Solicitor, U.S. Department of the Interior
[Teams Chat](#), Office: 202-513-0782, Mobile: 202-649-0395

From: Smith, Marc A <marc.smith@sol.doi.gov>
Sent: Monday, November 16, 2020 2:22 PM
To: Plater-Zyberk, Josaphat A <josaphat.plater-zyberk@sol.doi.gov>
Cc: Ranger, Steven R <steven.ranger@sol.doi.gov>
Subject: FW: SOLIS Update

Jack,
Per the email exchange below, please contact Karen Budd-Falen.
Thank you.

From: Smith, Marc A
Sent: Monday, November 16, 2020 2:21 PM
To: Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>
Cc: Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>
Subject: RE: SOLIS Update

Karen,
SOLIS can generate a list of active cases that have been entered, though it is not going to be complete. The Solicitor's directive gave folks until the middle of December to get their active cases entered, and many attorneys have not yet begun that effort. I will ask Jack Plater-Zyberk to contact you to find out what information from SOLIS you would like to receive.

From: Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>
Sent: Monday, November 16, 2020 2:16 PM
To: Smith, Marc A <marc.smith@sol.doi.gov>
Cc: Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>
Subject: Re: SOLIS Update

Marc:

I have been asked for an actual case list of DOI pending cases. I am assuming SOLIS would have that. Can you tell me how to access that list?

thanks

Karen Budd-Falen
Deputy Solicitor Fish, Wildlife and Parks
Department of the Interior
1849 C Street NW
Room 6348 Washington D.C. 20240
Telephone: 202-208-4507
Cell: 202-365-5854
Karen.budd-falen@sol.doi.gov

From: Smith, Marc A <marc.smith@sol.doi.gov>

Sent: Monday, November 9, 2020 2:29 PM

To: SOL-Associate & Regional Solicitors <SOL-Associate&RegionalSolicitors@sol.doi.gov>; SOL-Assistant & Field Solicitors <SOL-Assistant&FieldSolicitors@sol.doi.gov>

Cc: Ranger, Steven R <steven.ranger@sol.doi.gov>; Plater-Zyberk, Josaphat A <josaphat.plater-zyberk@sol.doi.gov>; SOL-Immediate Office <IOS@sol.doi.gov>

Subject: RE: SOLIS Update

While we did not break another record, we did have another very impressive week with 1,141 new cases and matters entered into SOLIS.

Let's keep the momentum going!

From: Smith, Marc A

Sent: Monday, November 2, 2020 2:59 PM

To: SOL-Associate & Regional Solicitors <SOL-Associate&RegionalSolicitors@sol.doi.gov>; SOL-Assistant & Field Solicitors <SOL-Assistant&FieldSolicitors@sol.doi.gov>

Cc: Ranger, Steven R <steven.ranger@sol.doi.gov>; Plater-Zyberk, Josaphat A <josaphat.plater-zyberk@sol.doi.gov>; SOL-Immediate Office <IOS@sol.doi.gov>

Subject: SOLIS Update

For the seventh week in a row, we broke our weekly record for entry of new cases and matters in SOLIS. In fact, we obliterated it, with 1222 new records entered!

Thank you to all of the SOL offices that have stepped it up. This past week we saw significant increases from the Division of Indian Affairs and the Intermountain Region. Last Friday, we emailed all SOL employees who have not activated their SOLIS accounts, as well as all employees who have not signed into SOLIS in the past 60 days. Starting next week, we will be providing you specific data on those members of your staff who have not yet jumped on the SOLIS bandwagon.

Marc.

From: [Swanson, Conner D](#)
To: [Brittany M. EOP/WHO](#); [Daravi, Roma S. EOP/WHO](#); [Deere, Judd P. EOP/WHO](#); [Horstman, John H. EOP/WHO](#); [Hurley, Carolina L. EOP/WHO](#); [Jennifer Kelly](#); [Kasey Lovett](#); [Mallory Blount](#); [Nance, Claire Y. EOP/WHO](#); [O'Malley, Erin A. EOP/WHO](#); [Peter Hoffman](#); [Smith, Steven M. EOP/WHO](#); [Symonds, Tori O. EOP/WHO](#)
Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Handzlik, Craig E](#); [Lendrum, Eric C](#); [Swanson, Conner D](#)
Subject: Interior Daily Communications Report 10.23.20
Date: Friday, October 23, 2020 7:04:53 PM
Attachments: [Interior Daily Communications Report 10.23.20.docx](#)
[image001.png](#)

Interior Daily Communications Report

October 23, 2020

BOOKINGS/INTERVIEWS

- **National TV:** N/A
- **Local TV:** N/A
- **Radio:**
 - October 23, 2020
 - Outlet: The Heidi Harris Show
 - Topics: Great American Outdoors Act, trip to Nevada
 - Time: 10:00 A.M. EDT
- **National or Local Print:** N/A
- **Press Briefing Call:** N/A

SECRETARY EVENTS AND TRAVEL

- N/A

PRESS INQUIRIES

- Public lands' role in the presidential election
 - Reuters, Carey Biron;
 - I'm a reporter with the Thomson Reuters Foundation, currently working on a story on how public lands are figuring in the presidential election. The story quotes interviews that make two points: Referencing a May report from the Center for American Progress finding that the Trump administration has attempted to remove protections from almost 35 million acres of public lands, 1,000 times more than the administration has approved. The administration has "disrupted" delicate multistakeholder initiatives around public lands governance, including around sage grouse

protections. I'm wondering if anyone from the Department would be interested in offering a comment or broader context on either of these points.

- **Response**

- Homeless encampments on public lands

- NBN, Megan Murat;

- I'm reaching out in regards to a plot of land in Pennington County, South Dakota. We recently learned that a homeless encampment relocated from Rapid City limits to an area of trust land west of the city. I wish I could be more specific but that's why I am reaching out. I spoke with an FBI spokesperson yesterday who told me the land was entrusted in 2017 to the Pine Ridge, Cheyenne River, and Rosebud Indian Reservations as Dept. of Interior land. My questions are as follows: Is there record of this trust and why the land was transferred (if that's the correct word) and from whom? Has the DOI been notified of any activity on this land? What is this land intended for? Can people live on it? What rules are in place for it's use? Who has jurisdiction over this land should any emergencies (medical or non) or crimes occur? Please let me know if you need any additional information to aid in answering the above questions.

- **Sent to Bureau**

- Perry Pendley Lawsuit

- The Hill, Rebecca, Beitsch

- let me know if you have additional comment on the Grijalva letter

- **Responded**

- Seismic Testing in ANWR

- Politico, Ben Lefebvre; Heather Richards

- I just heard that BLM/DOI may be posting an application today from SAExploration to do seismic survey work in ANWR 10-02. Is that correct? If so, can you address concerns that a) SA is bankrupt and b) the SEC charged with accounting fraud a bunch of folks who had until recently been executives at the company? Are there any other companies applying to do seismic survey tests in ANWR?

- **Sent to Bureau**

OP-ED

- N/A

ROLLOUT

- N/A

NEWSWORTHY/SUBSTANTIAL GRANTS

- N/A

Conner Swanson
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior
Direct #: (202) 208-5205
Cell #: (202) 340-6295



From: [Swanson, Conner D](#)
To: [Brittany M. EOP/WHO](#); [Daravi, Roma S. EOP/WHO](#); [Deere, Judd P. EOP/WHO](#); [Horstman, John H. EOP/WHO](#); [Hurley, Carolina L. EOP/WHO](#); [Jennifer Kelly](#); [Kasey Lovett](#); [Mallory Blount](#); [Nance, Claire Y. EOP/WHO](#); [O'Malley, Erin A. EOP/WHO](#); [Peter Hoffman](#); [Smith, Steven M. EOP/WHO](#); [Symonds, Tori O. EOP/WHO](#)
Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Handzlik, Craig E](#); [Swanson, Conner D](#)
Subject: Interior Daily Communications Report 10.27.20
Date: Tuesday, October 27, 2020 7:45:04 PM
Attachments: [image001.png](#)
[Interior Daily Communications Report 10.27.20.docx](#)

Interior Daily Communications Report

October 27, 2020

BOOKINGS/INTERVIEWS

• **National TV:** N/A

• **Local TV:** N/A

• **Radio:**

- October 28th, 2020
 - Outlet: The Simon Conway Show
 - Topic: Gold Star Families/Veterans Announcement; Garden of American Heroes
 - Time: 6:24pm EDT
- October 29th, 2020
 - Outlet: Vicky McKenna Show
 - Topic: Gray wolf delisting
 - Time: 4:15pm EDT

• **National or Local Print:** N/A

• **Press Briefing Call:**

- October 28th, 2020
 - Press Gaggle at an Event for Gold Star Families
 - Outlet: Radio Iowa; KCCI (CBS)
 - Time: 4:00pm EDT
- October 29th, 2020
 - Press Gaggle at Gray Wolf Delisting Event
 - Outlet: TBD
 - Time: 2:00pm EDT

SECRETARY EVENTS AND TRAVEL

- Secretary Bernhardt will travel to Iowa and Minnesota on Wednesday and Thursday for multiple events. Press engagements will be arranged as plans are finalized.

PRESS INQUIRIES

- Seismic Surveys in the ANWR

- Inside Climate News, Sabrina Shankman
 - I'm working on an article for InsideClimate News about the plan to conduct seismic surveys in the Arctic Refuge this winter, and have a few questions I was hoping you could answer. In the "Plan of Operations" document submitted by Kaktovik Inupiat Corporation, there is a list of permits that are required for the project. Can you tell me the status of those (below)?

- **Sent to Bureau**

- Jeremy Carl Joining DOI

- The Hill, Rebecca Beitsch; E&E News, Jennifer Yachnin; HuffPost, Chris D'Angelo
 - What makes Mr. Carl qualified to guide policy at FWS/NPS? What specifically will he be working on? Why was this position filled weeks before an election? Why not sooner? Does the agency have any concerns about Mr. Carl's op-eds/personal views, including that Black Lives Matter is "racist" and that peaceful protesters are "more destructive than the looters and rioters." Did the agency have anything to do with Mr. Carl making his Twitter profile private? Does Mr. Carl have any historical ties to current Trump Interior officials? Did he previously work with anyone else now in a leadership role? I understand I'm not the only reporter asking about Mr. Carl and his new job. Why does this agency feel it does not have to answer questions about leadership personnel?

- **Did not Respond**

- Jeremy Carl Joining DOI

- Washington Post, Darryl Fears; E&E News, Mike Doyle
 - I'm following up on a Huffington Post report regarding the writings of Interior official Jeremy Carl. As the report shows, Mr. Carl defended Kyle Rittenhouse, a teen who's accused of homicide for the shooting death of a man in Kenosha, Ore. and linked to an article in a publication identified as white supremacist. The revelation comes barely more than a month after the Interior Department halted classes aimed at diversity training at the agency.
https://www.huffpost.com/entry/interior-department-jeremy-carl-race_n_5f935672c5b63bc74ba690d3
 - Questions: Is Interior aware of Mr. Carl's writings? Has Interior taken any action as a result of his writings? What action, if any, has been considered or taken? Is Interior content that Mr. Carl did nothing wrong?

- **Responded**

- Lawsuit on Colorado RMPs and Perry Pendley

- E&E News, Scott Streater; The Hill, Rebecca, Beitsch; Associated Press, Matt Brown; Reuters, Sebastien Malo
 - So these groups have filed an amended lawsuit that is the first to challenge Pendley's role -- in this case the Uncompahgre RMP revision -- as exercising the authority of director of BLM in the wake of Judge Morris' orders last month and this month. Does Interior have a response?
 - **Sent to Bureau**
- Mountain Valley Pipeline BiOp Lawsuit
 - E&E News, Niina Farah
 - would you like to offer a comment on the latest lawsuit challenging the Fish and Wildlife Service's biological opinion and incidental take statement for the Mountain Valley pipeline. Environmental groups are arguing that the BiOp doesn't adequately assess the risks of the project to bat and certain fish species. I'm working on a very brief article on this for tomorrow morning.
 - **Sent to Bureau**
- Lawsuit for BOR
 - Law360, Clark Mindock
 - Just reaching out to see if DOI has a comment or reaction to the 9th Circ. decision in the case referenced above.
 - **Sent to Bureau**
- Lawsuit on Locating, Recording and Maintaining Mining Claims or Sites" and "Mining Claims Under the General Mining Laws
 - Law360, Morgan Conley
 - I am covering Judge Contreras ruling yesterday granting summary judgment in favor of the U.S. Department of the Interior and the Bureau of Land Management against a suit brought by environmental groups challenging two rulemakings of the George W. Bush administration, "Locating, Recording and Maintaining Mining Claims or Sites" and "Mining Claims Under the General Mining Laws." Does the DOI have any comment on the ruling yesterday that ended over a decade of litigation?
 - **Sent to Bureau**
- Sault Ste. Marie Tribe Of Chippewa Indians' suit against the Department of the Interior
 - Law360, Joyce Hanson
 - I'm writing for Law360 today, on deadline for 7 p.m. ET, about the federal appellants' brief filed Oct. 26 in the Sault Ste. Marie Tribe Of Chippewa Indians'

suit against the Department of the Interior, USCA Case #20-5125, in the U.S. Court of Appeals for the District of Columbia Circuit. I'm working from this brief:

<https://assets.law360news.com/1323000/1323359/sault%2010%2026%20brief.pdf>

Would you like to comment on the brief arguing that the district court erred in failing to defer to the department's interpretation of the Michigan Indian Land Claims Settlement Act, and asking the appellate court to reverse the lower court's holding?

- **Sent to Bureau**

- Gray Wolf Delisting Potential Announcement
 - E&E News, Mike Doyle
 - Good afternoon: the grapevine is a buzz with suggestions that the gray wolf delisting may happen Thursday. I am interested.

- **Did not Respond**

OP-ED

- N/A

ROLLOUT

- N/A

NEWSWORTHY/SUBSTANTIAL GRANTS

- N/A

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From: [Swanson, Conner D](#)
To: [Brittany M. EOP/WHO](#); [Daravi, Roma S. EOP/WHO](#); [Deere, Judd P. EOP/WHO](#); (b) (6); [Horstman, John H. EOP/WHO](#); [Hurley, Carolina L. EOP/WHO](#); [Jennifer Kelly](#); [Kasey Lovett](#); [Mallory Blount](#); [Nance, Claire Y. EOP/WHO](#); [O'Malley, Erin A. EOP/WHO](#); [Peter Hoffman](#); [Smith, Steven M. EOP/WHO](#); [Symonds, Tori Q. EOP/WHO](#)
Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Handzlik, Craig E](#); [Swanson, Conner D](#)
Subject: Interior Daily Communications Report 11.13.20
Date: Friday, November 13, 2020 6:07:51 PM
Attachments: [Interior Daily Communications Report 11.13.20.docx](#)
[image001.png](#)

Interior Daily Communications Report

November 13, 2020

BOOKINGS/INTERVIEWS

- **National TV:** N/A
- **Local TV:** N/A
- **Radio:** N/A
- **National or Local Print:** N/A
- **Press Briefing Call:** N/A

SECRETARY EVENTS AND TRAVEL

- N/A

PRESS INQUIRIES

- Gray Wolves Delisting
 - Smithsonian Magazine, Max Levy
 - Due the recent delisting of the gray wolves, and the agency's years of expertise managing them, I'd love to arrange a call with a member of your team. My particular interests (all pertaining to the gray wolf specifically) are as follows: How does the recent delisting affect USFWS on-the-ground activities for managing gray wolves? What is the most convincing evidence for the importance of lethal management to effect a net positive impact on US interests? What are the most compelling reasons for the use of nonlethal deterrents? What are the most effective non-lethal deterrents deployed by USFWS specifically? To what degree is the USFWS incorporating new ideas/scientific knowledge on wildlife management into policy?

- **Sent to Bureau**

- ANWR Lease Offering
 - Bloomberg, Jen Dlouhy; E&E News, Heather Richards; The Hill, Rachel Frazin; Reuters, Nichola Groom;
 - We understand the BLM is set to issue a call for nominations for the 1002 area as soon as Monday. This, of course, is being read as an effort to hold a sale before Jan. 20 (though, candidly, I wonder about the timeline for getting leases through the post-sale review and formally issued in time). Do you wish to comment on this?

• **Did not Respond**

- LWCF Secretary's Order
 - Bloomberg, Bobby Magill
 - I'm writing a story about Bernhardt's LWCF order today. Can you explain to me why Interior is giving states veto power over accepting LWCF funds? What's the benefit of this? Would Biden's Interior secretary be able to overturn rescind this order? What effect would that have on vetoed LWCF funding?

• **Responded**

- Court Ruling Overturning BLM Lease Sales
 - Associated Press, Matt Brown; Reuters, Nichola Groom; Bloomberg, Ellen Gilmer; E&E News, Niina Farah
 - Seeking any response that BLM can offer to judge's ruling faulting the agency for (again) not giving a hard look at climate change implications of oil and gas leases in Wyoming. Ruling is attached. Does the BLM plan to appeal? Can you tell me how many permits have already been issued to date on these leases?

• **Responded**

OP-ED

- N/A

ROLLOUT

- N/A

NEWSWORTHY/SUBSTANTIAL GRANTS

- N/A

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Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Handzlik, Craig E](#); [Swanson, Conner D](#)
Subject: Interior Daily Communications Report 11.16.20
Date: Monday, November 16, 2020 6:24:06 PM
Attachments: [Interior Daily Communications Report 11.16.20.docx](#)
[image001.png](#)

Interior Daily Communications Report

November 16, 2020

BOOKINGS/INTERVIEWS

- **National TV:** N/A
- **Local TV:** N/A
- **Radio:** N/A
- **National or Local Print:** N/A
- **Press Briefing Call:** N/A

SECRETARY EVENTS AND TRAVEL

- N/A

PRESS INQUIRIES

- ANWR Call for Nominations
 - Washington Post, Juliet Eilperin; The New York Times, Henry Fountain, Coral Davenport; Outside Magazine, Wes Siler; Argus Media, Chris Knight; Independent, Louise Boyle;
 - When the final call for nominations are finalized, does BLM identify which companies provided input, or which ones identified specific tracts, or is that confidential business information, and therefore not identified? Are the nominations made public at all, or are they just incorporated into the agency's auction plan?
 - **Responded**
- Court Ruling Overturning BLM Lease Sales
 - Casper Star-Tribune, Camille Erickson
 - I noticed another opinion was filed by Judge Contreras on Friday (attached)

on Wildearth Guardians v. Bernhardt. May I ask if BLM would be willing to provide comment on this recent ruling for the story we will be running in the Casper Star-Trib? It appears the supplemental EA and FONSI have been remanded to the department again.

- **Sent to Bureau**
- Pending Final Rulings
 - Washington Post, Dino Grandoni
 - Hope you're well. I'm writing in to ask if the department has any guidance about what rulemaking it plans to finalize before Jan. 20 — including the new definition for habitat under the Endangered Species Act and for incidental take under the Migratory Bird Treaty Act.
 - **Waiting to Respond**
- Buena Vista Rancheria Suit
 - Law360, Andrew Westney
 - This is Andrew Westney with Law360, working on a story on deadline today about Judge Chen's decision that the BIA must take certain land into trust for the Buena Vista Rancheria of Me-Wuk Indians under the Hardwick settlement (case no. 79-cv-01710 in Northern California federal court). Please let me know if a representative for the DOI/BIA would be available to comment or if there is an official statement/release available.
 - **Sent to Bureau**
- Arizona Water & ESA Lawsuit
 - Law360, Daniel Wilson
 - I'm covering a motion for summary judgment filed Friday in Arizona federal court in a lawsuit from the Center for Biological Diversity and two other environmental/wildlife groups, alleging that DOI, the Fish and Wildlife Service and the U.S Army violated the Endangered Species Act. The groups argue the Service wrongly assumed, against evidence, that groundwater pumping at Fort Huachuca in Arizona would have a positive impact on the San Pedro River and should have reopened related consultations when new species were listed; and that the Army violated its obligation to ensure its pumping did not affect listed species or related habitat.
 - **Sent to Bureau**

OP-ED

- N/A

ROLLOUT

- N/A

NEWSWORTHY/SUBSTANTIAL GRANTS

- N/A

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From: [Swanson, Conner D](#)
To: [Brittany M. EOP/WHO](#); [Daravi, Roma S. EOP/WHO](#); [Deere, Judd P. EOP/WHO](#); (b) (6); [Horstman, John H. EOP/WHO](#); [Hurley, Carolina L. EOP/WHO](#); [Jennifer Kelly](#); [Mallory Blount](#); [Nance, Claire Y. EOP/WHO](#); [O'Malley, Erin A. EOP/WHO](#); [Peter Hoffman](#); [Smith, Steven M. EOP/WHO](#); [Symonds, Tori O. EOP/WHO](#)
Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Handzlik, Craig E](#); [Swanson, Conner D](#)
Subject: Interior Daily Communications Report 11.17.20
Date: Tuesday, November 17, 2020 6:22:05 PM
Attachments: [image001.png](#)

Interior Daily Communications Report

November 17, 2020

BOOKINGS/INTERVIEWS

- **National TV:** N/A
- **Local TV:** N/A
- **Radio:** N/A
- **National or Local Print:** N/A
- **Press Briefing Call:** N/A

SECRETARY EVENTS AND TRAVEL

- N/A

PRESS INQUIRIES

- ANWR Call for Nominations
 - Law360, Emma Whitford
 - **here:** <https://www.federalregister.gov/documents/2020/11/17/2020-25316/call-for-nominations-and-comments-for-the-coastal-plain-alaska-oil-and-gas-lease-sale>. If you would like to comment on environmentalist concerns that the Trump admin is seeking to expedite these sales during his first term, that would be helpful!
 - **Responded**
- Lawsuit on NPR-A
 - Bloomberg, Maya Earls; The Hill, Rebecca Beitsch; Law360, Andrew Westney
 - I'm covering a lawsuit filed today against the Department of the Interior over its approval of the Willow Master Development Plan, and I would like to get in touch with a representative for comment. The case is Sovereign Inupiat for a Living Artic v. Bureau of Land Management, and it was filed in the District of Alaska.
 - **Sent to Bureau**
- Pending Final Rulings
 - The Associated Press, Matt Brown
 - We're doing a story on some of the last minute regulatory and other actions by the Department in the closing days of the Trump administration. This includes the lease sale notification for ANWR and the recent submissions to OMB of rules to govern the take of migratory birds under the MBTA and revisions to critical habitat under the Endangered Species Act. We're also noting that decisions are pending on resource management plans affecting the Chaco Canyon area of New Mexico, interior Alaska and elsewhere. Can you please tell me the agency's timeline for completing the critical habitat designation or any of the outstanding RMPs? I have a response from FWS already on MBTA) More broadly, does Interior want to comment on the practice of so-called "midnight rulemaking"? There was a spate of them under President Obama (41, according to The Regulatory Review) including as ya'll know several that were repealed under the Congressional Review Act, including the Stream Protection Rule and others that were revised through new regulations.
 - **Responded**
- ANWR Leasing Letter from Rep. McCollum
 - The Hill, Rebecca Beitsch

Wanted to see if you had comment on this letter.

<https://mccollum.house.gov/sites/mccollum.house.gov/files/documents/20%201117%20McCollum%20ltr-Bernhardt%20on%20ANWR.pdf>

- **Waiting to Respond**

OP-ED

- N/A

ROLLOUT

- N/A

NEWSWORTHY/SUBSTANTIAL GRANTS

- N/A

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From: [Lendrum, Eric C](#)
To: [Brittany M. EOP/WHO](#); [Daravi, Roma S. EOP/WHO](#); [Deere, Judd P. EOP/WHO](#); [Horstman, John H. EOP/WHO](#); [Hurley, Carolina L. EOP/WHO](#); [Jennifer Kelly](#); [Kasey Lovett](#); [Mallory Blount](#); [Nance, Claire Y. EOP/WHO](#); [O'Malley, Erin A. EOP/WHO](#); [Peter Hoffman](#); [Smith, Steven M. EOP/WHO](#); [Symonds, Tori O. EOP/WHO](#)
Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Handzlik, Craig E](#); [Swanson, Conner D](#); [Lendrum, Eric C](#)
Subject: Interior Daily Communications Report October 2, 2020
Date: Friday, October 2, 2020 6:28:22 PM
Attachments: [Interior Daily Communications Report 10.2.20.docx](#)

Interior Daily Communications Report

October 2, 2020

BOOKINGS/INTERVIEWS

- **National TV:** N/A

- **Local TV:** N/A

- **Radio:**

- October 2nd, 2020

- Outlet: Ross Kaminsky Show

- Topics: Outdoor recreation; the Great American Outdoors Act

- Time: 7:05 A.M., MDT

- **National or Local Print:**

- October 2nd, 2020

- Outlet: Pueblo Chieftain, Editorial Board

- Topics: Arkansas Valley Conduit groundbreaking ceremony; Outdoor recreation; the Great American Outdoors Act; BLM relocation; President Trump's conservation legacy

- Time: 2:30 P.M., MDT

- October 2nd, 2020

- Outlet: Colorado Springs Gazette, Editorial Board

- Topics: Outdoor recreation; the Great American Outdoors Act; BLM relocation; President Trump's conservation legacy

- Time: 10:30 A.M., MDT

- **Press Briefing Call:**

- October 3rd, 2020

- Press gaggle at Arkansas Valley Conduit groundbreaking
 - Time: 12:00 P.M., MDT

SECRETARY EVENTS AND TRAVEL

- Secretary Bernhardt will be traveling to Colorado and New Mexico, October 2nd – 6th. Multiple press engagements are being planned.

PRESS INQUIRIES

- Impact of President Trump and First Lady's COVID diagnosis on DOI
 - E&E News, Mike Doyle; Bloomberg, Jennifer Dlouhy; ABC, Stephanie Ebbs; Politico, Ben Lefebvre; CNBC, Mary Catherine Wellons; CNN, Gregory Wallace;
 - I hope all is well. Since President Trump and First Lady Melania Trump tested positive for COVID-19, I have several questions: When and where did any DoI official last have contact with President Trump and/or First Lady Melania Trump? When did any DoI official last visit the White House? Has Secretary Bernhardt been tested for COVID-19? How many DoI employees have tested positive for COVID-19? How many EPA have died from COVID-19?
 - **Responded**
 - USGS report on polar bear abundance
 - I noticed that the polar bear abundance research USGS performed in the Arctic was released yesterday. Notably, the Washington Post reported this week that this study was being held back by USGS Chief James Reilly and had been “ready” for publication for three months. Would USGS care to comment on criticism that this research was withheld due to its potentially negative findings about oil and gas impacts to the South Beaufort Sea polar bear population? Was the study's publication a response to the WaPo reporting? Lastly, on process, is research notes that the abundance study undergirds the USFWS findings on industrial impacts, correct? Why was this done now? Is this part of the NEPA process for a specific project? USFWS published a no jeopardy finding earlier this year in regard to the ANWR oil and gas program specifically, so wondering if there is something specific that this research was meant to support or if it's more general.
 - **Waiting to respond**
- Perry Pendley decision
 - New York Times, Lisa Friedman;
 - I'm doing a story on Mr. Pendley. Can you clarify for me what his position currently is at BLM and whether Sec. Bernhardt intends to remove him from his position? Further - is Interior expecting comply with the part of the judge's order to compile by Monday a list of the decisions he has made?

- **Responded**

- WWF Funding

- Al-Jazeera English, James Reinl;
 - I'm a journalist who's writing for Al Jazeera about a US government funding freeze to WWF over reports of rights abuses on conservation projects in Africa and Asia. This info comes from a leaked letter (attached) between DOI and FWS. Does your department plan to make a statement about this or speak with journalists? I'd be really interested in getting your comments on the review, concerns within the department and the decision.

- **Responded**

- Lawsuit against NPS

- Mountain West News Bureau, Nate Hegyi;
 - Nate Hegyi here from the Mountain West News Bureau, a consortium of NPR member stations covering the region. I'm working on a short story today about the lawsuit filed by two environmental watchdogs to oust the acting NPS head. Do you have a statement on this?

- **Responded**

- Seismic testing permit for ANWR

- E&E News, Heather Richards;
 - Politico has reported that the Kaktovik Inupiat Corp is seeking a seismic testing permit for ANWR's 1002, with hopes to perform seismic as soon as this winter. No application is currently live on eplanning. Could Interior confirm whether a company is seeking a permit to perform seismic testing in ANWR's coastal plain?

- **Sent to Bureau (BLM)**

- Montana Wildlife Federation lawsuit

- Reuters, Sebastien Malo;
 - Hi, can you pls comment on the motion for summary judgment plaintiffs filed today in Montana Wildlife Federation et al v. Bernhardt et al?

- **Waiting to respond**

OP-ED

- Title: President Trump's Unprecedented Environment and Conservation Record
 - Author: U.S. Secretary of the Interior David L. Bernhardt
 - Target Publication: USA Today

- Target Date: October 5th, 2020
- Title: The Trump Administration and its partners are building the long-awaited Arkansas Valley Conduit to deliver clean and reliable water to rural Colorado
 - Author: U.S. Secretary of the Interior David L. Bernhardt
 - Target Publication: Colorado Springs Gazette
 - Target Date: October 5th, 2020
 - Author: U.S. Secretary of the Interior David L. Bernhardt
 - Target Publication: Duluth News Tribune
 - Target Date: October 4th, 2020

ROLLOUT

- Today, the Department of Interior announced the implementation of a nationwide policy to increase the use of e-bikes on public lands, so that Americans who may ordinarily have trouble getting around can more easily explore and recreate in America's parks. Secretary Bernhardt made the announcement after visiting Big Ring Cycles in Denver, Colorado.

NEWSWORTHY/SUBSTANTIAL GRANTS

- N/A

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Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Handzlik, Craig E](#); [Swanson, Conner D](#); [Lendrum, Eric C](#)
Subject: Interior Daily Communications Report October 6, 2020
Date: Tuesday, October 6, 2020 6:09:20 PM
Attachments: [Interior Daily Communications Report 10.6.20.docx](#)

Interior Daily Communications Report

October 6, 2020

BOOKINGS/INTERVIEWS

• **National TV:** N/A

• **Local TV:** N/A

• **Radio:**

- October 6th, 2020
 - Outlet: 106.5 KSVP, Mike Winters
 - Topics: Great American Outdoors Act, POTUS's conservation legacy, supporting American energy independence, POTUS's support for law enforcement
 - Time: 9:15 A.M., MDT

• **National or Local Print:**

- October 6th, 2020
 - Outlet: Roswell Daily Record, Editorial Board
 - Topics: Great American Outdoors Act, POTUS's conservation legacy, supporting American energy independence
 - Time: 1:00 P.M., MDT
- October 6th, 2020
 - Outlet: Carlsbad Current-Argus, Mike Smith
 - Topics: Great American Outdoors Act, POTUS's conservation legacy, supporting American energy independence, POTUS's support for law enforcement
 - Time: 4:45 P.M., MDT

• **Press Briefing Call:** N/A

SECRETARY EVENTS AND TRAVEL

- Secretary Bernhardt will be traveling to Colorado and New Mexico, October 2nd – 6th. Multiple press engagements are being planned.

PRESS INQUIRIES

- Seismic surveys on the Arctic Refuge
 - Arctic Today, Yereth Rosen;
 - Could you give me information on the new application from SAExploration and its partners for permission to do seismic surveys on the coastal plain of the Arctic Refuge? I understand the geographic scope is limited to the Native-owned land within the refuge boundaries. Is the application going to be published on the BLM website and/or in the Federal Register? What is the status of an application for an incidental take permit for polar bears? Is that application published or going to be published? What is the proposed timeline for permitting of a seismic program and actual seismic work? And how have the concerns about severe environmental impacts to tundra, permafrost and wildlife been addressed? The concerns were raised by a team of UAF scientists who published a white paper late last year and this summer published their peer-reviewed findings.

- **Sent to Bureau (BLM)**

- GAO report on royalty rate reduction
 - Politico, Ben Lefebvre; AP, Matthew Brown; Argus Media, Chris Knight; The Hill, Rachel Frazin; E&E News, Heather Richards; S&P Global Market Intelligence, Ellie Potter; Washington Post, Dino Grandoni; Reuters, Nichola Groom;
 - I see a GAO report this morning states that Interior did not properly analyze the possible impacts is royalty rate reduction policy would have before allowing the rate cuts; that it didn't properly explain to BLM state offices how to process the applications for royalty reductions, and that the department hasn't provided evidence that the cuts prevented any businesses from going under. What's the department reaction? Is it still processing applications for royalty cuts from the temporary program?

- **Responded**

- Perry Pendley case
 - Bloomberg, Bobby Magill; Denver Post, Judith Kohler; Law360, Michael Phillis; Politico, Kelsey Tamborrino;
 - I'm writing a story on Interior's Monday filing in the Pendley case in Montana. Can you update me on Pendley's current status, which appears to be a deputy director co-leading the BLM with Michael Nedd. When does

Interior plan to appeal the ruling?

- **Responded**

OP-ED

- Title: [‘Made in America’ starts with Minnesota mining](#)
 - Author: U.S. Secretary of the Interior David L. Bernhardt
 - Publication: Duluth News Tribune
 - October 6th, 2020
- Title: President Trump’s Unprecedented Environment and Conservation Record
 - Author: U.S. Secretary of the Interior David L. Bernhardt
 - Target Publication: USA Today
 - Target Date: TBD
- Title: The Trump Administration and its partners are building the long-awaited Arkansas Valley Conduit to deliver clean and reliable water to rural Colorado
 - Author: U.S. Secretary of the Interior David L. Bernhardt
 - Target Publication: Colorado Springs Gazette
 - Target Date: TBD

ROLLOUT

- N/A

NEWSWORTHY/SUBSTANTIAL GRANTS

- N/A

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Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Swanson, Conner D](#)
Subject: Interior Daily Communications Report September 9, 2020
Date: Wednesday, September 9, 2020 6:10:42 PM
Attachments: [Interior Daily Communications Report 9.9.20.docx](#)
[image001.png](#)

Interior Daily Communications Report

September 9, 2020

BOOKINGS/INTERVIEWS

• National TV:

- September 9th, 2020
 - Outlet: Eric Bolling Show
 - Topic: Protecting America's Monuments
 - Time: 2:30 p.m. EDT
- September 9th, 2020
 - Outlet: Newsmax, The Greg Kelly Reports
 - Topic: President Trump's visit to Florida; Protecting America's Monuments
 - Time: 7:15 p.m. EDT

• Local TV: N/A

• Radio: N/A

• National or Local Print:

- September 10th, 2020
 - Outlet: Johnstown Tribune-Democrat, Editorial Board
 - Topic: Flight 93 Memorial; Protecting America's Monuments; Hunt Fish Rule; Great American Outdoors Act; Importance of the outdoor recreation economy; Deregulation efforts
 - Time: 1:15 p.m. EDT

• Press Briefing Call: N/A

SECRETARY EVENTS AND TRAVEL

- Secretary Bernhardt will travel to the flight 93 memorial in Shanksville, PA to observe

9/11. Multiple press engagements are planned.

PRESS INQUIRIES

- 15 States' Lawsuit Over ANWR Plan
 - The Hill, Rachel Frazin; Bloomberg, Jennifer Dlouhy; Politico, Ben Lefebvre; Law360, Juan Carlos Rodriguez; CNN, Caroline Kelly;
 - Do you have any response to the complaint filed today challenging the Coastal Plain record of decision by a coalition of states including Washington?
 - **Responded**
- 198 Groups Call for William Perry Pendley Removal
 - E&E News, Scott Streater; Grand Junction Daily Sentinel, Dennis Webb; Colorado Public Radio, Caitlyn Kim; Bloomberg, Kellie Lunney;
 - Specifically, calls from Democrats and some conservation groups that he should not be leading the agency, esp in light of the failed confirmation process? Also, you're basing his ability to exercise authority based on the agency's succession orders still, correct? Or does Sec. Bernhardt plan to issue a delegation order again.
 - **Sent to Bureau**
- FY20 Projected PILT Payments
 - Cronkite News, Josh Ortega
 - I'm Josh Ortega with Cronkite News, a part of Arizona PBS. I just finished a call with National Association of Counties. Do you have any information on how much the FY20 budget will be for PILTS?
 - **Responded**
- OIG Report on NPS Employees Misusing Contracts
 - E&E News Mike Doyle
 - Any comment on this from OIG?
 - **Sent to Bureau**
- Lawsuit in Federal Court by the State of North Dakota Against the MHA Nation
 - Law360, Andrew Westney
 - This is Andrew Westney with Law360, working on a story on deadline this

afternoon about the above filing yesterday in D.C. federal court (case no. 1:20-cv-01918). Please let me know if a representative for the DOI/BIA would be available to comment on the filing or if there is an official statement/release available.

- **Sent to Bureau**

- Red Cliffs National Conservation Area LWCF

- E&E News, Scott Streater

- Does BLM have any comment on the allegations in the press release below my contact information? Bureau of Land Management's Plan for a Four-Lane Highway in Utah National Conservation Area Would Improperly Use Lands Acquired Through the Land and Water Conservation Fund

- **Sent to Bureau**

OP-ED

- Remembering Flight 93

- U.S. Secretary of the Interior David L. Bernhardt

- Target Publication: Pennsylvania Paper

- Target Date: September 11, 2020

- No Offshore Drilling around Florida and the Southern Atlantic

- U.S. Secretary of the Interior David L. Bernhardt

- Target Publication: Orlando Sentinel

- Target Date: September 10, 2020

ROLLOUT

- N/A

NEWSWORTHY/SUBSTANTIAL GRANTS

- N/A

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Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Swanson, Conner D](#)
Subject: Interior Daily Communications Report September 8, 2020
Date: Tuesday, September 8, 2020 10:36:27 PM
Attachments: [Interior Daily Communications Report 9.8.20.docx](#)
[image001.png](#)

Interior Daily Communications Report

September 8, 2020

BOOKINGS/INTERVIEWS

• National TV:

- September 9th, 2020
 - Outlet: Eric Bolling Show
 - Topic: Protecting America's Monuments
 - Time: 2:30 p.m. EDT
- September 9th, 2020
 - Outlet: Newsmax
 - Topic: President Trump's visit to Florida; Protecting America's Monuments
 - Time: 7:15 p.m. EDT

• Local TV: N/A

• Radio: N/A

• National or Local Print: N/A

• Press Briefing Call: N/A

SECRETARY EVENTS AND TRAVEL

- Secretary Bernhardt will travel to the flight 93 memorial in Shanksville, PA to observe 9/11. Multiple press engagements are planned.

PRESS INQUIRIES

- Drilling Moratorium Around Florida and Southern Atlantic
 - E&E News, Heather Richards; Politico, Ben Lefebvre; NBC, Kayla Tausche; New York Times, Lisa Friedman; Bloomberg, Jennifer Dlouhy; CW Roll Call,

Ben Hulac; Oil & Gas Journal, Alan Kovski;

- Playbook is reporting a potential announcement today from the Trump administration regarding the drilling moratorium in the Eastern Gulf of Mexico. On background, can I expect something today? I'm reporting on this potential announcement ahead of a Noon deadline. Does Interior have comment on the record regarding extension of the drilling moratorium in the eastern Gulf?

- **Did not Respond**

- Democrat Lawmakers Calling for More COVID-19 Protections for Oil and Gas Workers

- The Hill, Rachel Frazin

- Would you all like to comment on this [letter](#) expressing concern about possible coronavirus risks for oil and gas workers? Would the department be open to any of the suggestions these groups posit?

- **Sent to Bureau**

- OMB Memo on Diversity Training

- E&E News, Kelsey Brugger

- I am following up on this OMB memo about diversity training. And I have a few questions: Currently what is the training for Interior employees? Is it required? Is it consistent across the department? What changes do you have planned to comply with the memo?

- **Did not Respond**

- United Nations Looking into Human Rights on ANWR

- KTUU, Grant Robinson

- I'm following up on a letter sent that month from the United Nations Committee on Elimination of Racial Discrimination regarding the plans to open oil and gas leases in the Arctic National Wildlife Refuge. I've attached a copy of the letter below. Is anyone with the DOI available to an interview today, or can you provide comment speaking to the department's response to the claims in the letter?

- **Responded**

- Jordan Cove

- ProPublica, Lee van der Voo

- I'm a reporter at work on an article about the Jordan Cove facility for

ProPublica and Underscore Media Collaboration. I'd like to understand why the facility is a priority project for the administration and would like to connect with someone who might explain.

- **Responded**

- Democrat Letter on Inappropriate Use of NPS Site for Political Gain
 - The Hill, Rebecca Beitsch
 - Reached out to NPS too but let me know if you'd like to comment.

- **Responded**

- 9th Circuit Dismissal of Case
 - Law360, Hailey Konnath
 - My name is Hailey Konnath, and I'm a reporter at Law360. I'm working on a story about the Ninth Circuit's decision today affirming dismissal of a case against the Department of the Interior. The case is Jamul Action Committee et al. v. Tracie Stevens et al., case number 17-16655, in the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit panel found that the Kumeyaay Indians are indeed a federally recognized tribe. Does the department have any comment on the decision? My deadline is unfortunately this evening, but I can always update the story later if needed.

- **Sent to Bureau**

OP-ED

- Remembering Flight 93
 - U.S. Secretary of the Interior David L. Bernhardt
 - Target Publication: Pennsylvania Paper
 - Target Date: September 11, 2020
- No Offshore Drilling around Florida and the Southern Atlantic
 - U.S. Secretary of the Interior David L. Bernhardt
 - Target Publication: Orlando Sentinel
 - Target Date: September 9, 2020

ROLLOUT

- N/A

NEWSWORTHY/SUBSTANTIAL GRANTS

N/A

Conner Swanson
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior
Direct #: (202) 208-5205
Cell #: (202) 340-6295



From: [Swanson, Conner D](#)
To: [Brittany M. EOP/WHO](#); [Daravi, Roma S. EOP/WHO](#); [Deere, Judd P. EOP/WHO](#); [Horstman, John H. EOP/WHO](#); [Hurley, Carolina L. EOP/WHO](#); [Jennifer Kelly](#); [Kasey Lovett](#); [Mallory Blount](#); [Nance, Claire Y. EOP/WHO](#); [O'Malley, Erin A. EOP/WHO](#); [Peter Hoffman](#); [Smith, Steven M. EOP/WHO](#); [Symonds, Tori O. EOP/WHO](#)
Cc: [Clark, Jeffrey B](#); [Goldey, Benjamin H](#); [Goodwin, Nicholas R](#); [Swanson, Conner D](#)
Subject: Interior Daily Communications Report September 10, 2020
Date: Thursday, September 10, 2020 6:32:12 PM
Attachments: [Interior Daily Communications Report 9.10.20.docx](#)
[image001.png](#)

Interior Daily Communications Report

September 10, 2020

BOOKINGS/INTERVIEWS

- **National TV:** N/A
- **Local TV:** N/A
- **Radio:** N/A
- **National or Local Print:**
 - September 10th, 2020
 - Outlet: Johnstown Tribune-Democrat, Editorial Board
 - Topic: Flight 93 Memorial; Protecting America's Monuments; Hunt Fish Rule; Great American Outdoors Act; Importance of the outdoor recreation economy; Deregulation efforts
 - Time: 1:15 p.m. EDT
- **Press Briefing Call:** N/A

SECRETARY EVENTS AND TRAVEL

- Secretary Bernhardt will travel to the flight 93 memorial in Shanksville, PA to observe 9/11. Multiple press engagements are planned.

PRESS INQUIRIES

- 15 States' Lawsuit Over ANWR Plan
 - Fox News, Andrew O'Reilly; Bloomberg, Bobby Magill
 - Hoping to get a comment from in response to the lawsuits recently filed against the administration over plans to open oil and gas development in the Arctic National Wildlife Refuge. Working on a tight deadline, so any comment would be appreciated.

- **Responded**

- COVID-19 Royalty Relief

- Casper Star-Tribune, Camille Erickson

- I'm writing to ask if you might have an update on the royalty relief and lease suspension program, instituted to provide some relief to oil and gas operators during the COVID-19 pandemic. May I ask if there are any updates on the "COVID-19 exception?" Is it still being considered for pending or incoming applications from operators, or is there an end date? Any additional information or comment you're able to provide is greatly appreciated.

- **Sent to Bureau**

- California Wildfire, August Complex Fire

- NBC News, Dennis Romero

- I'm working on a story for NBCNews.com about California having a new largest wildfire in history. The August Complex Fire is on federal land (Mendocino National Forest). I'm wondering if, after President Donald Trump's remarks that the state of California is responsible for its large fires because it hasn't been cleaning its "floors" and "forests," the department wants to weigh in on this latest development.

- **Sent to USDA**

- Presidential Transition Team

- E&E News, Kevin Bogardus

- I'm working on a story about agency transition directors at energy and environmental agencies, including the Department of the Interior. Agency transition directors are senior career officials designated by their agencies to help coordinate their agencies' transition with the White House, eligible presidential candidates' transition teams and if there will be a change in administration, the president-elect's transition team. I had a few questions about this, which are: -- Scott de la Vega is DOI's agency transition director, according to a list of members of the Agency Transition Directors Council on the General Services Administration's website (please see <https://www.gsa.gov/governmentwide-initiatives/presidential-transition-directory/agency-transition-directors-council-atdc>). De la Vega is an associate solicitor for general law who was the designated agency ethics official at DOI, according to his LinkedIn profile (please see <https://www.linkedin.com/in/scott-de-la-vega-400208a/>). Do you have any

more information on De la Vega? Do you have a biography for De la Vega that you can share with me?-- The head of each agency is required to have a succession plan for each senior non-career position in the agency in place no later than Sept. 15, 2020 (please see page 2 of <https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-33.pdf>). Is DOI working on this succession plan? Or has DOI already finished this succession plan and if so, can you share it with me? -- Agencies are required to prepare and finalize briefing materials no later than Nov. 1, 2020 (please see page 2 of <https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-33.pdf>). Is DOI working on these briefing materials? Or has DOI already finished these briefing materials and if so, can you share it with me?

- **Responded**

OP-ED

- Remembering Flight 93
 - U.S. Secretary of the Interior David L. Bernhardt
 - Publication: Pittsburgh Post-Gazette
 - Target Date: September 11, 2020
- No Offshore Drilling around Florida and the Southern Atlantic
 - U.S. Secretary of the Interior David L. Bernhardt
 - Publication: Orlando Sentinel
 - Run Date: September 10, 2020
 - Link: <https://www.orlandosentinel.com/opinion/guest-commentary/os-op-trump-offshore-leasing-drilling-moratorium-20200910-2agq2upfibgajlqb2i4ugh7fim-story.html>

ROLLOUT

- N/A

NEWSWORTHY/SUBSTANTIAL GRANTS

- N/A

Conner Swanson
Deputy Press Secretary
Office of the Secretary

U.S. Department of the Interior

Direct #: (202) 208-5205

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From: [Nevils, Joseph](#)
To: [Cason, James E](#); [Renkes, Gregg D](#); [OS \(Margaret_Everson@ios.doi.gov\)](#); [Willens, Todd D](#); [Lawkowski, Gary M](#); [MacGregor, Katharine S](#); [Tahsuda, John](#); [Monson, Lesia](#); [Wackowski, Stephen M](#); [Taylor, Sara M](#); [Weaver, Kiel P](#); [Vassar, Lori Y](#); [Delaplaine, Bruce](#); [DiPaolo, Nancy K](#); [Barkin, Pamela](#); [Salotti, Christopher](#); [Rojewski, Cole J](#); [Playforth, Taylor G](#); [Galloway, Duane](#); [Vander Voort, Faith C](#); [Hall, Amanda L](#); [Thiele, Aaron J](#); [Cosby, Bryan C](#); [Howarth, Robert G](#); [Modrich, Jennifer A](#); [Flanagan, Denise A](#); [Mills, Katie E](#); [Cameron, Scott J](#); [Freeman, Michael T](#); [Moss, Adrienne](#); [Brown, Ryan D](#); [TAYLOR, TIFFANY](#); [Lockwood-Shabat, Eugene](#); [Murray, David P](#); [Paslawski, Christopher S](#); [Buckner, Shawn M](#); [Simon, Benjamin M](#); [Smith, Hilary A](#); [Capers, Melvin N](#); [Milli, Shirley J](#); [Hansen, Timothy J](#); [Lesansee, Eldred E](#); [Appel, Elizabeth K](#); [Grounds, Katherin](#); [Myers, Richard G](#); [Freihage, Jason E](#); [Carroll, Quinton U](#); [Sweeney, Tara M](#); [Cruz, Mark A](#); [Foster, Maureen D](#); [Fink, Wendy R](#); [Gustavson, Angela](#); [Jones, Lisa M](#); [Kodis, Martin](#); [Helfrich, Devin B](#); [Hausman, Alyssa B](#); [Joseph, Jennifer A](#); [Kuckro, Melissa](#); [Laudner, Charles A](#); [Gamble, Sarah](#); [Moran, Jill C](#); [Hammond, Casey B](#); [Royal, Pamela R](#); [Macdonald, Cara Lee](#); [Holmes, William E](#); [Gins, Meagan A](#); [Conklin, Caralee S](#); [Moran, Jill C](#); [Ralston, Jill A](#); [Kaster, Amanda E](#); [Caminiti, Mariagrazia](#); [Relat, Hubbel R](#); [Zerzan, Gregory P](#); [Murphy, Timothy E](#); [Brown, Laura B](#); [de la Vega, Scott A](#); [Williams, Lawrence D](#); [Brown, Lamont S](#); [Shepard, Eric N](#); [Moody, Aaron G](#); [Cooper, Renee D](#)
Cc: [Quinn, Matthew J](#); [Nevils, Joseph](#)
Subject: LEGISLATIVE REFERRAL: (DUE 11/12/20 @ 5 PM) S. 4889 - INTERIOR (BLM) Proposed Testimony 11/18/20 Re: Alaska Native Claims Settlement Act Fulfillment Act
Date: Wednesday, November 11, 2020 2:54:00 PM
Attachments: [BLM Draft Testimony S. 4889 ANCSA Fulfillment Act \(DOI circulation\).docx](#)
[S. 4889 FLO20740 ANCSA Fulfillment Murkowski.pdf](#)

DEADLINE: THURSDAY, NOVEMBER 12, 2020 @ 5 PM

**DEPARTMENT OF THE INTERIOR
LEGISLATIVE COUNSEL REFERRAL**

Date: November 11, 2020
To: Legislative Liaison
From: Matt Quinn (208-3146)
Contact: Joe Nevils (208-4580)

Subject: S. 4889 - INTERIOR (BLM) Proposed Testimony 11/18/20
Re: Alaska Native Claims Settlement Act Fulfillment Act
Note to Reviewers:

OCL circulated an early draft of S. 4889 on November 6, 2020.
Also attached is a copy of the bill text.

Please send agency comments or respond with a "no comment" to [Matthew Quinn@ios.doi.gov](mailto:Matthew.Quinn@ios.doi.gov) and [Joseph Nevils@ios.doi.gov](mailto:Joseph.Nevils@ios.doi.gov) by the deadline above.

Attachment(s): 2

Joseph Nevils

Correspondence Control Specialist
Legislative Assistant
Office of Congressional and
Legislative Affairs
Office: 202-208-4580

**Statement of
Michael Nedd
Deputy Director, Operations
Bureau of Land Management
U.S. Department of the Interior**

**Senate Committee on Energy & Natural Resources
Subcommittee on Public Lands, Forests, & Mining
S. 4889, Alaska Native Claims Settlement Act Fulfillment Act
November 18, 2020**

Thank you for the opportunity to present the views of the Department of the Interior (Department) on S. 4889, the Alaska Native Claims Settlement Act Fulfillment Act. S. 4889 amends the Alaska Native Claims Settlement Act (ANCSA) of 1971 concerning various Alaska Native issues, including certain land conveyances to Alaska Native communities, reversion of lands to Village Corporations, and authorization for five Native communities in Southeast Alaska to organize as Urban Corporations.

The Department supports this legislation and looks forward to working with the sponsors and the Committee on some technical modifications.

The Department defers to the U.S. Department of Agriculture (USDA) on the parts of Section 7 that pertain to the National Forest System.

Background

ANCSA settled aboriginal land claims in Alaska and entitled Alaska Native communities to select and receive title to 46 million acres of Federal land. The Act established a corporate structure for Native land ownership in Alaska under which Alaska Natives would become shareholders in one of over 200 private, land-owning Alaska Native Village, Group, Urban, and Reserve Corporations and/or one of 12 private, for-profit, land-owning Regional Corporations. Most Alaska Natives are enrolled in two corporations; the corporation representing the community where they lived in 1971 and a Regional Corporation. Each Regional Corporation encompasses a specific geographic area and is associated with Alaska Natives who had traditionally lived in the area. For each Corporation, whether Village or Regional, ANCSA provided at least two potential acreage entitlements through which it could select and receive ownership of Federal lands. For Alaska Natives who were non-residents of the state at the time the Act was signed into law, ANCSA authorized a non-landowning 13th Regional Corporation.

As the Secretary of the Interior's designated survey and land transfer agent, the Bureau of Land Management (BLM) is the Federal agency working to survey and convey to Alaska Native Corporations title to the 46 million acres selected. The BLM's Alaska Land Transfer program administers the transfer of lands to individual Alaska Natives under the Alaska Native Allotment Act (1906 Act); implements the 46 million-acre transfer to Alaska Native communities under ANCSA; and is also responsible for conveying 104.5 million acres to the State of Alaska under

the Alaska Statehood Act. When the survey and conveyance work under the Alaska Native Allotment Act, the Alaska Statehood Act, and ANCSA is completed, over 150 million acres, approximately 42 percent of the land area in Alaska, will have been transferred from Federal to state and private ownership.

S. 4889

Following is a review of the provisions of S.4889 of interest to the Department of the Interior.

Sec. 4. Canyon Village

Section 4 of the bill would direct the Secretary to convey the surface estate in selected lands to Kian Tr'ee Corporation for the Native village of Canyon Village. The section also directs the Secretary to convey the subsurface rights for the selected lands to Doyon, Limited, an Alaska Native regional corporation or, at Doyon's choice, alternative subsurface estate, to fulfill ANCSA entitlements. The Department supports this section.

Sec. 5. Kaktovik Inupiat Corporation

Section 5 requires the Secretary of the Interior to make conveyances of the surface estate in selected lands to Kaktovik Inupiat Corporation and the subsurface to Arctic Slope Regional Corporation. The Department supports this section for its potential to move toward equitable resolution of complex, longstanding issues.

Sec. 6. Reversion of Municipal Trust Lands to Village Corporations

Under Section 6, Village Corporations would no longer be required to convey any land in trust to the State of Alaska for the establishment of a Municipal Corporation. Any land that was previously conveyed in trust by a Village Corporation to the State of Alaska for establishment of a Municipal Corporation that has not yet been created by the date of enactment of this bill would revert back to the Village Corporation. The Department supports this section and would like to work with the sponsors and the Committee on minor technical modifications.

Sec. 7. Recognition and Compensation of Unrecognized Native Communities in Southeast Alaska

This section would amend ANCSA to authorize the five Southeast Alaska Native communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell to organize as Urban Corporations, entitling each, upon incorporation, to receive surface estate land (approximately 23,040 acres) in southeastern Alaska. The Department supports this section and would like to work with the sponsors and the Committee on minor technical modifications.

Conclusion

Thank you for the opportunity to testify on S.4889. The Department is proud to support the efforts of the sponsors to bring resolution to these issues facing Alaska Native communities.

116TH CONGRESS
2D SESSION

S. _____

To amend the Alaska Native Claims Settlement Act to increase the dividend exclusion, to exclude certain payments to Alaska Native elders for determining eligibility for certain programs, to provide that Village Corporations shall not be required to convey land in trust to the State of Alaska for the establishment of Municipal Corporations, and to provide for the recognition of certain Alaska Native communities and the settlement of certain claims under that Act, to require the Secretary of the Interior to convey certain interests in land in the State of Alaska, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Alaska Native Claims Settlement Act to increase the dividend exclusion, to exclude certain payments to Alaska Native elders for determining eligibility for certain programs, to provide that Village Corporations shall not be required to convey land in trust to the State of Alaska for the establishment of Municipal Corporations, and to provide for the recognition of certain Alaska Native communities and the settlement of certain claims under that Act, to require the Secretary of the Interior to convey certain interests in land in the State of Alaska, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alaska Native Claims
5 Settlement Act Fulfillment Act of 2020”.

6 **SEC. 2. DIVIDEND EXCLUSION INCREASE.**

7 Section 29(c)(A) of the Alaska Native Claims Settle-
8 ment Act (43 U.S.C. 1626(c)(A)) is amended by striking
9 “exceed \$2,000 per individual per annum;” and inserting
10 the following: “exceed—

11 “(i) for any calendar year preceding 2020,
12 \$2,000 per individual per annum; and

13 “(ii) for calendar year 2020 and all subse-
14 quent calendar years, \$5,000 per individual per
15 annum, to be adjusted for inflation in calendar
16 year 2025, and every 5 years thereafter, by in-
17 creasing the amount provided under this sub-
18 paragraph for the preceding year by the per-
19 centage increase in the Consumer Price Index
20 for All Urban Consumers, as published by the
21 Bureau of Labor Statistics, during the pre-
22 ceding 5-year period;”.

23 **SEC. 3. ELIGIBILITY FOR CERTAIN PROGRAMS.**

24 Section 29(c) of the Alaska Native Claims Settlement
25 Act (43 U.S.C. 1626(c)) is amended—

1 (1) in subparagraph (D) following the undesig-
2 nated matter following paragraph (3), by striking
3 “and” at the end;

4 (2) in subparagraph (E) following the undesig-
5 nated matter following paragraph (3), by striking
6 the period at the end and inserting “; and”; and

7 (3) by adding at the end the following:

8 “(F) an amount distributed or benefit pro-
9 vided by a Settlement Trust to a Native or de-
10 scendant of a Native who is 65 years of age or
11 older.”.

12 **SEC. 4. CANYON VILLAGE.**

13 (a) CONVEYANCE.—Notwithstanding section
14 2653.3(c) of title 43, Code of Federal Regulations (or suc-
15 cessor regulations), or the withdrawal made by section
16 303(2)(A) of the Alaska National Interest Lands Con-
17 servation Act (Public Law 96–487; 94 Stat. 2390), the
18 Secretary of the Interior (referred to in this section as
19 the “Secretary”) shall convey to Kian Tr’ee Corporation,
20 for the Native Village of Canyon Village, the surface estate
21 in the land selected by the Kian Tr’ee Corporation pursu-
22 ant to section 14(h)(2) of the Alaska Native Claims Settle-
23 ment Act (43 U.S.C. 1613(h)(2)).

24 (b) LIMITATION.—The conveyance under subsection
25 (a) shall not exceed 6,400 acres.

1 (c) SUBSURFACE ESTATE.—

2 (1) IN GENERAL.—Unless Doyon, Limited,
3 elects to receive conveyance under paragraph (2),
4 the Secretary shall convey to Doyon, Limited, the
5 subsurface estate in the land conveyed under sub-
6 section (a).

7 (2) ALTERNATE SELECTION.—At the option of
8 Doyon, Limited, in lieu of accepting the conveyance
9 under paragraph (1)—

10 (A) Doyon, Limited, may receive a convey-
11 ance from existing selections on land withdrawn
12 pursuant to section 11(a)(3) of the Alaska Na-
13 tive Claims Settlement Act (43 U.S.C.
14 1610(a)(3)) that is equal in acreage to the sub-
15 surface that would otherwise be conveyed under
16 paragraph (1);

17 (B) Doyon, Limited, shall notify the Sec-
18 retary (acting through the Alaska State Office
19 of the Bureau of Land Management) of the
20 preference of Doyon, Limited, not later than 90
21 days after the date of enactment of this Act;
22 and

23 (C) the Secretary shall convey to Doyon,
24 Limited, the subsurface estate selected under
25 subparagraph (A).

1 **SEC. 5. KAKTOVIK INUPIAT CORPORATION.**

2 In order to fulfill the legal and moral obligation of
3 the United States to convey certain land to the Alaska
4 Native Corporations for the community of Kaktovik, Alas-
5 ka, in fulfillment of aboriginal land claims and to clarify
6 land ownership patterns within the Coastal Plain of the
7 Arctic National Wildlife Refuge, notwithstanding section
8 1302(h)(2) of the Alaska National Interest Lands Con-
9 servation Act (16 U.S.C. 3192(h)(2)), the Secretary of the
10 Interior shall convey—

11 (1) to the Kaktovik Inupiat Corporation the
12 surface estate of the land described in paragraph 1
13 of Public Land Order 6959 (58 Fed. Reg. 14323),
14 to the extent necessary to fulfill the entitlement of
15 the Corporation under section 12 of the Alaska Na-
16 tive Claims Settlement Act (43 U.S.C. 1611) in ac-
17 cordance with the terms and conditions of the
18 Agreement between the Department of the Interior,
19 the United States Fish and Wildlife Service, the Bu-
20 reau of Land Management, and the Kaktovik
21 Inupiat Corporation, effective January 22, 1993;
22 and

23 (2) to the Arctic Slope Regional Corporation
24 the remaining subsurface estate to which the Cor-
25 poration is entitled pursuant to the Agreement be-

1 tween the Arctic Slope Regional Corporation and the
2 United States of America dated August 9, 1983.

3 **SEC. 6. REVERSION OF CERTAIN LAND CONVEYED IN**
4 **TRUST TO STATE OF ALASKA.**

5 Section 14(c) of the Alaska Native Claims Settlement
6 Act (43 U.S.C. 1613(c)) is amended—

7 (1) by redesignating paragraphs (1) through
8 (5) as subparagraphs (A) through (E), respectively,
9 and indenting appropriately;

10 (2) in the matter preceding subparagraph (A)
11 (as so redesignated), by striking “(c) Each patent”
12 and inserting the following:

13 “(c) CONVEYANCE OF CERTAIN LAND BY VILLAGE
14 CORPORATION.—

15 “(1) IN GENERAL.—Each patent”;

16 (3) in paragraph (1) (as so designated), in the
17 undesigned matter following subparagraph (E) (as
18 so redesignated), in the first sentence—

19 (A) by striking “section 14(c) of this Act”
20 and inserting “this subsection”; and

21 (B) by striking “There is authorized” and
22 inserting the following:

23 “(2) TECHNICAL ASSISTANCE.—

24 “(A) IN GENERAL.—There are author-
25 ized”;

1 (4) in paragraph (2)(A) (as so redesignated), in
2 the second sentence, by striking “The Secretary”
3 and inserting the following:

4 “(B) FORM OF FUNDING.—The Sec-
5 retary”; and

6 (5) in paragraph (1) (as so designated)—

7 (A) in each of subparagraphs (A) and (B)
8 (as so redesignated)—

9 (i) by striking “the” the first place it
10 appears and inserting “The”; and

11 (ii) by striking the semicolon at the
12 end and inserting a period;

13 (B) in subparagraph (D) (as so redesign-
14 ated), by striking “the” the first place it ap-
15 pears and inserting “The”;

16 (C) by striking “existed as of” in subpara-
17 graph (D) (as so redesignated) and all that fol-
18 lows through “for” in subparagraph (E) (as so
19 redesignated) and inserting the following: “ex-
20 isted as of December 18, 1971.

21 “(E) For”; and

22 (D) in subparagraph (C) (as so redesign-
23 ated)—

24 (i) by striking the semicolon at the
25 end and inserting a period;

1 (ii) by striking “in trust: *Provided*
2 *however*, That the word” and all that fol-
3 lows through “sentence,” and inserting the
4 following: “in trust.

5 “(II) DEFINITION OF SALE.—

6 For purposes of subclause (I), the
7 term ‘sale’”;

8 (iii) by striking “one thousand two
9 hundred and eighty acres: *Provided further*,
10 That any net” and inserting the following:
11 “1,280 acres.

12 “(iii) NET REVENUES.—

13 “(I) IN GENERAL.—Any net”;

14 (iv) by striking “community needs:
15 *Provided*, That the” and inserting the fol-
16 lowing: “community needs.

17 “(ii) MINIMUM ACREAGE.—The”;

18 (v) by striking “(C) the Village Cor-
19 poration” and inserting the following:

20 “(C) CONVEYANCE TO MUNICIPAL COR-
21 PORATION OR STATE IN TRUST.—

22 “(i) IN GENERAL.—The Village Cor-
23 poration”; and

24 (vi) by adding at the end the fol-
25 lowing:

1 “(iv) CASES IN WHICH CONVEYANCE
2 SHALL NOT BE REQUIRED.—

3 “(I) IN GENERAL.—Notwith-
4 standing any other provision of this
5 subparagraph, if a Village Corpora-
6 tion, prior to the date of enactment of
7 the Alaska Native Claims Settlement
8 Act Fulfillment Act of 2020, conveyed
9 to the State in trust all or a portion
10 of the acreage of land required to be
11 conveyed under this subparagraph for
12 the establishment of a Municipal Cor-
13 poration in the future, and a Munic-
14 ipal Corporation has not been estab-
15 lished as of that date of enactment,
16 on formal resolution by the Village
17 Corporation and the residents of the
18 Native village requesting dissolution
19 of the trust, the trust shall be dis-
20 solved and title to the land shall re-
21 vert to the Village Corporation, sub-
22 ject to subclause (III).

23 “(II) ADDITIONAL LAND.—Not-
24 withstanding any other provision of
25 this subparagraph, as of the date of

1 enactment of the Alaska Native
2 Claims Settlement Act Fulfillment Act
3 of 2020, a Village Corporation shall
4 not be required to convey any addi-
5 tional land in trust under this sub-
6 paragraph for the establishment of a
7 Municipal Corporation in the future.

8 “(III) REQUIREMENTS.—In ac-
9 cordance with subsection (g)—

10 “(aa) the reversion of land
11 to a Village Corporation pursuant
12 to subelause (I) shall be subject
13 to—

14 “(AA) valid existing
15 rights, including valid exist-
16 ing rights created by the ap-
17 plicable trust; and

18 “(BB) any existing
19 easements, rights-of-way
20 necessary for public roadway
21 access, or rights-of-way for
22 access of holders of valid ex-
23 isting rights; and

24 “(bb) the Village Corpora-
25 tion shall assume the obligations

1 of the applicable trust with re-
2 spect to any lease or other use
3 agreement applicable to the land
4 on reversion of the land to the
5 Village Corporation pursuant to
6 subelause (I).”.

7 **SEC. 7. RECOGNITION AND COMPENSATION OF UNRECOG-**
8 **NIZED NATIVE COMMUNITIES IN SOUTHEAST**
9 **ALASKA.**

10 (a) PURPOSE.—The purpose of this section is to re-
11 dress the omission of the southeastern Alaska commu-
12 nities of Haines, Ketchikan, Petersburg, Tenakee, and
13 Wrangell from eligibility under the Alaska Native Claims
14 Settlement Act (43 U.S.C. 1601 et seq.) by authorizing
15 the Alaska Natives enrolled in those communities—

16 (1) to form Urban Corporations for the commu-
17 nities of Haines, Ketchikan, Petersburg, Tenakee,
18 and Wrangell under the Alaska Native Claims Set-
19 tlement Act (43 U.S.C. 1601 et seq.); and

20 (2) to receive certain settlement land pursuant
21 to that Act.

22 (b) ESTABLISHMENT OF ADDITIONAL NATIVE COR-
23 PORATIONS.—Section 16 of the Alaska Native Claims Set-
24 tlement Act (43 U.S.C. 1615) is amended by adding at
25 the end the following:

1 “(e) NATIVE VILLAGES OF HAINES, KETCHIKAN, PE-
2 TERSBUrg, TENAKEE, AND WRANGELL, ALASKA.—

3 “(1) IN GENERAL.—The Native residents of
4 each of the Native Villages of Haines, Ketchikan,
5 Petersburg, Tenakee, and Wrangell, Alaska, may or-
6 ganize as Urban Corporations.

7 “(2) EFFECT ON ENTITLEMENT TO LAND.—
8 Nothing in this subsection affects any entitlement to
9 land of any Native Corporation established before
10 the date of enactment of this subsection pursuant to
11 this Act or any other provision of law.”.

12 (c) SHAREHOLDER ELIGIBILITY.—Section 8 of the
13 Alaska Native Claims Settlement Act (43 U.S.C. 1607)
14 is amended by adding at the end the following:

15 “(d) NATIVE VILLAGES OF HAINES, KETCHIKAN,
16 PETERSBURG, TENAKEE, AND WRANGELL.—

17 “(1) IN GENERAL.—The Secretary shall enroll
18 to each of the Urban Corporations for Haines,
19 Ketchikan, Petersburg, Tenakee, or Wrangell those
20 individual Natives who enrolled under this Act to the
21 Native Villages of Haines, Ketchikan, Petersburg,
22 Tenakee, or Wrangell, respectively.

23 “(2) NUMBER OF SHARES.—Each Native who
24 is enrolled to an Urban Corporation for Haines,
25 Ketchikan, Petersburg, Tenakee, or Wrangell pursu-

1 ant to paragraph (1) and who was enrolled as a
2 shareholder of the Regional Corporation for South-
3 east Alaska shall receive 100 shares of Settlement
4 Common Stock in the respective Urban Corporation.

5 “(3) NATIVES RECEIVING SHARES THROUGH IN-
6 HERITANCE.—If a Native received shares of stock in
7 the Regional Corporation for Southeast Alaska
8 through inheritance from a decedent Native who
9 originally enrolled to the Native Village of Haines,
10 Ketchikan, Petersburg, Tenakee, or Wrangell and
11 the decedent Native was not a shareholder in a Vil-
12 lage Corporation or Urban Corporation, the Native
13 shall receive the identical number of shares of Settle-
14 ment Common Stock in the Urban Corporation for
15 Haines, Ketchikan, Petersburg, Tenakee, or
16 Wrangell as the number of shares inherited by that
17 Native from the decedent Native who would have
18 been eligible to be enrolled to the respective Urban
19 Corporation.

20 “(4) EFFECT ON ENTITLEMENT TO LAND.—
21 Nothing in this subsection affects entitlement to
22 land of any Regional Corporation pursuant to sec-
23 tion 12(b) or 14(h)(8).”.

1 (d) DISTRIBUTION RIGHTS.—Section 7 of the Alaska
2 Native Claims Settlement Act (43 U.S.C. 1606) is amend-
3 ed—

4 (1) in subsection (j)—

5 (A) in the third sentence, by striking “In
6 the case” and inserting the following:

7 “(3) THIRTEENTH REGIONAL CORPORATION.—
8 In the case”;

9 (B) in the second sentence, by striking
10 “Not less” and inserting the following:

11 “(2) MINIMUM ALLOCATION.—Not less”;

12 (C) by striking “(j) During” and inserting
13 the following:

14 “(j) DISTRIBUTION OF CORPORATE FUNDS AND
15 OTHER NET INCOME.—

16 “(1) IN GENERAL.—During”; and

17 (D) by adding at the end the following:

18 “(4) NATIVE VILLAGES OF HAINES, KETCH-
19 IKAN, PETERSBURG, TENAKEE, AND WRANGELL.—
20 Native members of the Native Villages of Haines,
21 Ketchikan, Petersburg, Tenakee, and Wrangell who
22 become shareholders in an Urban Corporation for
23 such a Native Village shall continue to be eligible to
24 receive distributions under this subsection as at-

1 large shareholders of the Regional Corporation for
2 Southeast Alaska.”; and

3 (2) by adding at the end the following:

4 “(s) EFFECT OF AMENDATORY ACT.—The Alaska
5 Native Claims Settlement Act Fulfillment Act of 2020 and
6 the amendments made by that Act shall not affect—

7 “(1) the ratio for determination of revenue dis-
8 tribution among Native Corporations under this sec-
9 tion; or

10 “(2) the settlement agreement among Regional
11 Corporations or Village Corporations or other provi-
12 sions of subsection (i) or (j).”.

13 (e) COMPENSATION.—The Alaska Native Claims Set-
14 tlement Act (43 U.S.C. 1601 et seq.) is amended by add-
15 ing at the end the following:

16 **“SEC. 43. URBAN CORPORATIONS FOR HAINES, KETCHIKAN,
17 PETERSBURG, TENAKEE, AND WRANGELL.**

18 “(a) DEFINITION OF URBAN CORPORATION.—In this
19 section, the term ‘Urban Corporation’ means each of the
20 Urban Corporations for Haines, Ketchikan, Petersburg,
21 Tenakee, and Wrangell.

22 “(b) CONVEYANCES OF LAND.—

23 “(1) AUTHORIZATION.—

24 “(A) CONVEYANCES TO URBAN CORPORA-
25 TIONS.—Subject to valid existing rights and

1 paragraphs (3), (4), (5), and (6), the Secretary
2 shall convey—

3 “(i) to the Urban Corporation for
4 Haines, the surface estate in 12 parcels of
5 Federal land comprising approximately
6 23,040 acres, as generally depicted on the
7 maps entitled ‘Haines Selections’, num-
8 bered 1 and 2, and dated November 2020;

9 “(ii) to the Urban Corporation for
10 Ketchikan, the surface estate in 9 parcels
11 of Federal land comprising approximately
12 23,040 acres, as generally depicted on the
13 maps entitled ‘Ketchikan Selections’, num-
14 bered 1 through 4, and dated November
15 2020;

16 “(iii) to the Urban Corporation for
17 Petersburg, the surface estate in 11 par-
18 cels of Federal land comprising approxi-
19 mately 23,040 acres, as generally depicted
20 on the maps entitled ‘Petersburg Selec-
21 tions’, numbered 1 through 3, and dated
22 November 2020;

23 “(iv) to the Urban Corporation for
24 Tenakee, the surface estate in 13 parcels
25 of Federal land comprising approximately

1 23,040 acres, as generally depicted on the
2 maps entitled ‘Tenakee Selections’, num-
3 bered 1 through 3, and dated November
4 2020; and

5 “(v) to the Urban Corporation for
6 Wrangell, the surface estate in 13 parcels
7 of Federal land comprising approximately
8 23,040 acres, as generally depicted on the
9 maps entitled ‘Wrangell Selections’, num-
10 bered 1 through 5, and dated November
11 2020.

12 “(B) CONVEYANCES TO REGIONAL COR-
13 PORATION FOR SOUTHEAST ALASKA.—Subject
14 to valid existing rights, on the applicable date
15 on which the surface estate in land is conveyed
16 to an Urban Corporation under subparagraph
17 (A), the Secretary shall convey to the Regional
18 Corporation for Southeast Alaska the sub-
19 surface estate for that land.

20 “(C) CONGRESSIONAL INTENT.—It is the
21 intent of Congress that the Secretary convey
22 the surface estates described in subparagraph
23 (A) not later than the date that is 2 years after
24 the applicable date of incorporation under sec-
25 tion 16(e)(1) of an Urban Corporation.

1 “(2) WITHDRAWAL.—

2 “(A) IN GENERAL.—Subject to valid exist-
3 ing rights, the Federal land described in para-
4 graph (1) is withdrawn from all forms of—

5 “(i) entry, appropriation, or disposal
6 under the public land laws;

7 “(ii) location, entry, and patent under
8 the mining laws;

9 “(iii) disposition under all laws per-
10 taining to mineral and geothermal leasing
11 or mineral materials; and

12 “(iv) selection under Public Law 85-
13 508 (commonly known as the ‘Alaska
14 Statehood Act’) (48 U.S.C. note prec. 21).

15 “(B) TERMINATION.—The withdrawal
16 under subparagraph (A) shall remain in effect
17 until the date on which the Federal land is con-
18 veyed under paragraph (1).

19 “(3) TREATMENT OF LAND CONVEYED.—Ex-
20 cept as otherwise provided in this section, any land
21 conveyed to an Urban Corporation under paragraph
22 (1)(A) shall be—

23 “(A) considered to be land conveyed by the
24 Secretary under section 14(h)(3); and

1 “(B) subject to all laws (including regula-
2 tions) applicable to entitlements under section
3 14(h)(3), including section 907(d) of the Alaska
4 National Interest Lands Conservation Act (43
5 U.S.C. 1636(d)).

6 “(4) PUBLIC EASEMENTS.—

7 “(A) IN GENERAL.—The conveyance and
8 patents for the land under paragraph (1)(A)
9 shall be subject to the reservation of public
10 easements under section 17(b).

11 “(B) TERMINATION.—No public easement
12 reserved on land conveyed under paragraph
13 (1)(A) shall be terminated by the Secretary
14 without publication of notice of the proposed
15 termination in the Federal Register.

16 “(C) RESERVATION OF EASEMENTS.—In
17 the conveyance and patents for the land under
18 paragraph (1)(A), the Secretary shall reserve
19 the right of the Secretary to amend the convey-
20 ance and patents to include reservations of pub-
21 lic easements under section 17(b) until the com-
22 pletion of the easement reservation process.

23 “(5) HUNTING, FISHING, RECREATION, AND AC-
24 CESS.—

1 “(A) IN GENERAL.—Any land conveyed
2 under paragraph (1)(A), including access to the
3 land through roadways, trails, and forest roads,
4 shall remain open and available to subsistence
5 uses, noncommercial recreational hunting and
6 fishing, and other noncommercial recreational
7 uses by the public under applicable law—

8 “(i) without liability on the part of the
9 Urban Corporation, except for willful acts
10 of the Urban Corporation, to any user as
11 a result of the use; and

12 “(ii) subject to—

13 “(I) any reasonable restrictions
14 that may be imposed by the Urban
15 Corporation on the public use—

16 “(aa) to ensure public safe-
17 ty;

18 “(bb) to minimize conflicts
19 between recreational and com-
20 mercial uses;

21 “(cc) to protect cultural re-
22 sources;

23 “(dd) to conduct scientific
24 research; or

1 “(ee) to provide environ-
2 mental protection; and

3 “(II) the condition that the
4 Urban Corporation post on any appli-
5 cable property, in accordance with
6 State law, notices of the restrictions
7 on use.

8 “(B) EFFECT.—Access provided to any in-
9 dividual or entity under subparagraph (A) shall
10 not—

11 “(i) create an interest in any third
12 party in the land conveyed under para-
13 graph (1)(A); or

14 “(ii) provide standing to any third
15 party in any review of, or challenge to, any
16 determination by the Urban Corporation
17 with respect to the management or devel-
18 opment of the land conveyed under para-
19 graph (1)(A), except as against the Urban
20 Corporation for the management of public
21 access under subparagraph (A).

22 “(6) MISCELLANEOUS.—

23 “(A) SPECIAL USE AUTHORIZATIONS.—

1 “(i) IN GENERAL.—On the conveyance
2 of land to an Urban Corporation under
3 paragraph (1)(A)—

4 “(I) any guiding or outfitting
5 special use authorization issued by the
6 Forest Service for the use of the con-
7 veyed land shall terminate; and

8 “(II) as a condition of the con-
9 veyance and consistent with section
10 14(g), the Urban Corporation shall
11 issue the holder of the special use au-
12 thorization terminated under sub-
13 clause (I) an authorization to continue
14 the authorized use, subject to the
15 terms and conditions that were in the
16 special use authorization issued by the
17 Forest Service, for—

18 “(aa) the remainder of the
19 term of the authorization; and

20 “(bb) 1 additional consecu-
21 tive 10-year renewal period.

22 “(ii) NOTICE OF COMMERCIAL ACTIVI-
23 TIES.—The Urban Corporation, and any
24 holder of a guiding or outfitting authoriza-
25 tion under this subparagraph, shall have a

1 mutual obligation, subject to the guiding
2 or outfitting authorization, to inform the
3 other party of any commercial activities
4 prior to engaging in the activities on the
5 land conveyed to the Urban Corporation
6 under paragraph (1)(A).

7 “(iii) NEGOTIATION OF NEW
8 TERMS.—Nothing in this paragraph pre-
9 cludes the Urban Corporation and the
10 holder of a guiding or outfitting authoriza-
11 tion from negotiating a new mutually
12 agreeable guiding or outfitting authoriza-
13 tion.

14 “(iv) LIABILITY.—Neither the Urban
15 Corporation nor the United States shall
16 bear any liability, except for willful acts of
17 the Urban Corporation or the United
18 States, regarding the use and occupancy of
19 any land conveyed to the Urban Corpora-
20 tion under paragraph (1)(A), as provided
21 in any outfitting or guiding authorization
22 under this paragraph.

23 “(B) ROADS AND FACILITIES.—

24 “(i) IN GENERAL.—The Secretary of
25 Agriculture shall negotiate in good faith

1 with the Urban Corporation to develop a
2 binding agreement for—

3 “(I) the use of National Forest
4 System roads and related transpor-
5 tation facilities by the Urban Corpora-
6 tion; and

7 “(II) the use of the roads and re-
8 lated transportation facilities of the
9 Urban Corporation by the Forest
10 Service and designees of the Forest
11 Service.

12 “(ii) TERMS AND CONDITIONS.—The
13 binding agreement under clause (i)—

14 “(I) shall provide that the State
15 (including entities and designees of
16 the State) shall be authorized to use
17 the roads and related transportation
18 facilities of the Urban Corporation on
19 substantially similar terms as are pro-
20 vided by the Urban Corporation to the
21 Forest Service;

22 “(II) shall include restrictions on,
23 and fees for, the use of the National
24 Forest System roads and related
25 transportation facilities in existence as

1 of the date of enactment of this sec-
2 tion, as necessary, that are reasonable
3 and comparable to the restrictions
4 and fees imposed by the Forest Serv-
5 ice for the use of the roads and re-
6 lated transportation facilities; and

7 “(III) shall not restrict or limit
8 any access to the roads and related
9 transportation facilities of the Urban
10 Corporation or the Forest Service that
11 may be otherwise provided by valid ex-
12 isting rights and agreements in exist-
13 ence as of the date of enactment of
14 this section.

15 “(iii) INTENT OF CONGRESS.—It is
16 the intent of Congress that the agreement
17 under clause (i) shall be entered into as
18 soon as practicable after the date of enact-
19 ment of this section and in any case by not
20 later than 1 year after the date of incorpo-
21 ration of the Urban Corporation.

22 “(iv) CONTINUED ACCESS.—Begin-
23 ning on the date on which the land is con-
24 veyed to the Urban Corporation under
25 paragraph (1)(A) and ending on the effec-

1 tive date of a binding agreement entered
2 into under clause (i), the Urban Corpora-
3 tion shall provide and allow administrative
4 access to roads and related transportation
5 facilities on the land under substantially
6 similar terms as are provided by the For-
7 est Service as of the date of enactment of
8 this section.

9 “(C) EFFECT ON OTHER LAWS.—

10 “(i) IN GENERAL.—Nothing in this
11 section delays the duty of the Secretary to
12 convey land to—

13 “(I) the State under Public Law
14 85–508 (commonly known as the
15 ‘Alaska Statehood Act’) (48 U.S.C.
16 note prec. 21); or

17 “(II) a Native Corporation
18 under—

19 “(aa) this Act; or

20 “(bb) the Alaska Land
21 Transfer Acceleration Act (43
22 U.S.C. 1611 note; Public Law
23 108–452).

24 “(ii) STATEHOOD ENTITLEMENT.—

1 “(I) IN GENERAL.—Statehood se-
2 lections under Public Law 85–508
3 (commonly known as the ‘Alaska
4 Statehood Act’) (48 U.S.C. note prec.
5 21) are not displaced by the parcels of
6 land described in clauses (i) through
7 (v) of paragraph (1)(A).

8 “(II) BOUNDARY ADJUST-
9 MENTS.—In the event of a dispute be-
10 tween an area selected as a Statehood
11 selection and a parcel of land referred
12 to in subclause (I), the Secretary shall
13 work with the Urban Corporation and
14 the State in good faith to adjust the
15 boundary of the parcel to exclude any
16 area selected as a Statehood selection.

17 “(iii) CONVEYANCES.—The Secretary
18 shall promptly proceed with the conveyance
19 of all land necessary to fulfill the final en-
20 titlement of all Native Corporations in ac-
21 cordance with—

22 “(I) this Act; and

23 “(II) the Alaska Land Transfer
24 Acceleration Act (43 U.S.C. 1611
25 note; Public Law 108–452).

1 “(iv) FISH AND WILDLIFE.—Nothing
2 in this section enlarges or diminishes the
3 responsibility and authority of the State
4 with respect to the management of fish
5 and wildlife on public land in the State.

6 “(D) MAPS.—

7 “(i) AVAILABILITY.—Each map re-
8 ferred to in paragraph (1)(A) shall be
9 available in the appropriate offices of the
10 Secretary and the Secretary of Agriculture.

11 “(ii) CORRECTIONS.—The Secretary,
12 in consultation with the Secretary of Agri-
13 culture, may make any necessary correc-
14 tion to a clerical or typographical error in
15 a map referred to in paragraph (1)(A).

16 “(c) CONVEYANCE OF ROADS, TRAILS, LOG TRANS-
17 FER FACILITIES, LEASES, AND APPURTENANCES.—

18 “(1) IN GENERAL.—The Secretary, without
19 consideration or compensation, shall convey to each
20 Urban Corporation, by quitclaim deed or patent, all
21 right, title, and interest of the United States in all
22 roads, trails, log transfer facilities, leases, and ap-
23 purtenances on or related to the land conveyed to
24 the Urban Corporation under subsection (b)(1)(A).

1 “(2) CONDITIONS.—The conveyance under
2 paragraph (1) shall be subject to—

3 “(A) section 14(g); and

4 “(B) all valid existing rights, including any
5 reciprocal rights-of-way, easements, or agree-
6 ments for the use of the roads, trails, log trans-
7 fer facilities, leases, and appurtenances con-
8 veyed under paragraph (1).

9 “(3) CONTINUATION OF AGREEMENTS.—

10 “(A) IN GENERAL.—On or before the date
11 on which land is conveyed to an Urban Cor-
12 poration under subsection (b)(1)(A), the Sec-
13 retary shall provide to the Urban Corporation
14 notice of all reciprocal rights-of-way, easements,
15 and agreements for use of the roads, trails, log
16 transfer facilities, leases, and appurtenances on
17 or related to the land in existence as of the date
18 of enactment of this section.

19 “(B) REQUIREMENT.—In accordance with
20 section 14(g), any right-of-way, easement, or
21 agreement described in subparagraph (A) shall
22 continue unless the right-of-way, easement, or
23 agreement—

24 “(i) expires under its own terms; or

25 “(ii) is mutually renegotiated.

1 “(d) SETTLEMENT TRUST.—

2 “(1) IN GENERAL.—Each Urban Corporation
3 may establish a settlement trust in accordance with
4 section 39 for the purposes of promoting the health,
5 education, and welfare of the trust beneficiaries, and
6 preserving the Native heritage and culture, of the
7 community of Haines, Ketchikan, Petersburg,
8 Tenakee, or Wrangell, as applicable.

9 “(2) PROCEEDS AND INCOME.—The proceeds
10 and income from the principal of a trust established
11 under paragraph (1) shall—

12 “(A) first be applied to the support of
13 those enrollees, and the descendants of the en-
14 rollees, who are elders or minor children; and

15 “(3) thereafter to the support of all other en-
16 rollees.

17 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
18 is authorized to be appropriated to the Secretary
19 \$12,500,000, to be used by the Secretary to provide 5
20 grants in the amount of \$2,500,000 each, to be used only
21 for activities that support the implementation of this sec-
22 tion, including planning and development.”.

From: [Nevils, Joseph](#)
To: [Cason, James E](#); [Renkes, Gregg D](#); [OS \(Margaret_Everson@ios.doi.gov\)](#); [Willens, Todd D](#); [Lawkowski, Gary M](#); [MacGregor, Katharine S](#); [Tahsuda, John](#); [Monson, Lesia](#); [Wackowski, Stephen M](#); [Taylor, Sara M](#); [Weaver, Kiel P](#); [Vassar, Lori Y](#); [Delaplaine, Bruce](#); [DiPaolo, Nancy K](#); [Barkin, Pamela](#); [Rojewski, Cole J](#); [Salotti, Christopher](#); [Playforth, Taylor G](#); [Galloway, Duane](#); [Vander Voort, Faith C](#); [Hall, Amanda L](#); [Thiele, Aaron J](#); [Cosby, Bryan C](#); [Howarth, Robert G](#); [Modrich, Jennifer A](#); [Flanagan, Denise A](#); [Mills, Katie E](#); [Cameron, Scott J](#); [Freeman, Michael T](#); [Moss, Adrienne](#); [Brown, Ryan D](#); [TAYLOR, TIFFANY](#); [Lockwood-Shabat, Eugene](#); [Murray, David P](#); [Paslawski, Christopher S](#); [Buckner, Shawn M](#); [Simon, Benjamin M](#); [Smith, Hilary A](#); [Capers, Melvin N](#); [Milli, Shirley J](#); [Hansen, Timothy J](#); [Lesensee, Eldred E](#); [Appel, Elizabeth K](#); [Grounds, Katherin](#); [Myers, Richard G](#); [Freihage, Jason E](#); [Carroll, Quinton U](#); [Sweeney, Tara M](#); [Cruz, Mark A](#); [Foster, Maureen D](#); [Fink, Wendy R](#); [Gustavson, Angela](#); [Jones, Lisa M](#); [Kodis, Martin](#); [Helfrich, Devin B](#); [Hausman, Alyssa B](#); [Joseph, Jennifer A](#); [Kuckro, Melissa](#); [Laudner, Charles A](#); [Gamble, Sarah](#); [Moran, Jill C](#); [Hammond, Casey B](#); [Royal, Pamela R](#); [Macdonald, Cara Lee](#); [Holmes, William E](#); [Gins, Meagan A](#); [Conklin, Caralee S](#); [Moran, Jill C](#); [Ralston, Jill A](#); [Kaster, Amanda E](#); [Caminiti, Mariagrazia](#); [Relat, Hubbel R](#); [Zerzan, Gregory P](#); [Murphy, Timothy E](#); [Brown, Laura B](#); [de la Vega, Scott A](#); [Williams, Lawrence D](#); [Brown, Lamont S](#); [Shepard, Eric N](#); [Cooper, Renee D](#); [Moody, Aaron G](#)
Cc: [Quinn, Matthew J](#); [Nevils, Joseph](#)
Subject: LEGISLATIVE REFERRAL: (DUE 11/17/20 @ 12 PM) S. 4889 - AGRICULTURE Testimony 11/18/20 Re: Alaska Native Claims Settlement Act Fulfillment Act
Date: Monday, November 16, 2020 4:06:38 PM
Attachments: [S4889_SENativeCommunities_forOMB.docx](#)
[S_4889_FLO20740_ANCSA_Fulfillment_Murkowski.pdf](#)

DEADLINE: TUESDAY, NOVEMBER 17, 2020 @ 12 PM

**DEPARTMENT OF THE INTERIOR
LEGISLATIVE COUNSEL REFERRAL**

Date: November 16, 2020
To: Legislative Liaison
From: Matt Quinn (208-3146)
Contact: Joe Nevils (208-4580)

Subject: S. 4889 - AGRICULTURE Testimony 11/18/20
Re: Alaska Native Claims Settlement Act Fulfillment Act

Note to Reviewers:

Please find attached the USDA/FS testimony on S. 4889, the Alaska Native Claims Settlement Act Fulfillment Act, for an 11/18 hearing before the SENR s/c on Public Lands, Forests, & Mining.

The bill text is attached for your reference.

Provide your clearance/edits/comments by the deadline above.

Please send agency comments or respond with a "no comment" to [Matthew Quinn@ios.doi.gov](mailto:Matthew.Quinn@ios.doi.gov) and [Joseph Nevils@ios.doi.gov](mailto:Joseph.Nevils@ios.doi.gov) by the deadline above.

Attachment(s): 2

Joseph Nevils

Correspondence Control Specialist
Legislative Assistant
Office of Congressional and
Legislative Affairs
Office: 202-208-4580

Statement of Chris French
Deputy Chief, National Forest System
U.S. Forest Service, United States Department of Agriculture
Before the
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests and Mining
Concerning

S. 4889 – ALASKA NATIVE CLAIMS SETTLEMENT ACT FULFILLMENT ACT OF 2020’’

November 18, 2020

Thank you for the opportunity to present the U.S. Department of Agriculture’s views on S.4889, Alaska Native Claims Settlement Act Fulfillment Act of 2020. USDA recognizes the special relationship that Alaska Natives have to the lands of southeast Alaska which are the traditional homelands of the Tlingit, Haida, and Tsimshian people. We also acknowledge the important role that the resources we steward within the Tongass National Forest play in the customary and traditional use as well as contribute to the economic health of the region’s communities.

This testimony addresses the effect of section 7, Recognition and Compensation of Unrecognized Native Communities in Southeast Alaska, on the Forest Service management of the Tongass National Forest. We defer to the Department of Interior for its views on the remainder of the bill.

Section 7 would amend the Alaska Native Claims Settlement Act of 1971 (ANCSA) to authorize Alaska Natives enrolled in the Southeast Alaska communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell to form urban corporations. The legislation authorizes the conveyance, to each corporation, of 23,040 acres of surface estate selected from areas in the Tongass National Forest. Sec. 7 also conveys the subsurface estate of these parcels to the Sealaska Regional Corporation.

Background

The Alaska Native Claims Settlement Act effected a final settlement of the aboriginal claims in Alaska through payment of \$962.5 million and conveyances of more than 44 million acres of Federal land. There was a distinction made in ANCSA between the villages in the southeast and those located elsewhere. Prior to the passage of ANCSA, Alaska Natives in the southeast received payments from the United States pursuant to court cases in the 1950s and late 1960s, for the taking of their aboriginal lands. Because Alaska Natives in the Sealaska region benefitted from an additional cash settlement under ANCSA, the eligible communities received less acreage than their counterparts elsewhere in Alaska.

Congress named the villages in the southeast that were to be recognized in ANCSA. The communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell – the five communities addressed in S.4889 – were not among those listed.

Alaska Natives living in the five communities applied to receive benefits under ANCSA and were subsequently determined to be ineligible. Three of the five appealed their status and were denied. Notwithstanding the determination of ineligibility of some communities for corporate status under ANCSA at the time, Alaska Natives in these five communities were enrolled as at-large shareholders in the Sealaska Corporation. The enrolled members of the five communities comprise more than 20 percent of the enrolled membership of the Sealaska Corporation.

Analysis and Effect on Forest Service Management of the Tongass National Forest

S.4889, section 7 identifies approximately 115,201 acres of National Forest System lands selected in 56 named parcels, including some that are split into distinct parts or include adjacent islands. The parcels range in size from 38 to 9,106 acres and are located across 7 Forest Service Ranger Districts. Although the total acreage proposed for transfer to new urban corporations is a small portion of the National Forest System lands within southeast Alaska, due to the high value of these lands for forest management activities and public use the Forest Service anticipates that the selections could impact the implementation and viability of the 2016 Forest Plan broadly across program areas. In my testimony today, I will focus on our initial analysis and the anticipated effects on the timber and recreation programs.

USDA anticipates the proposed conveyance will affect delivery of the Tongass National Forest timber program. Based on an initial review of the parcels, the proposed selection acreage will decrease the Tongass National Forest land base suitable for timber by nearly 37,000 acres, or 10 percent. This includes approximately 22,500 acres of old growth timber and 14,400 acres of young-growth timber. The selections include nearly 9,000 acres that are subject to the 2020 Alaska Roadless Rule direction to modify the timber land suitability and become available for timber harvesting. These 9,000 acres may be considered a nearly 50 percent addition to the estimated 18,650 acres that were projected to be harvested in roadless areas under the Alaska Roadless Rule. Also, the selections include about 40,500 acres of land designated by the Forest Plan as Old Growth Habitat, over 21,200 acres of land designated as Scenic Viewshed, and some 2,850 acres designated as Semi-Remote Recreation.

The proposed selections would impact three projects currently in planning – Central Tongass Project, South Revilla Integrated Resource Project, and the Twin Mountain II Timber Sale. The highest impact would be to the Central Tongass Project; approximately 17 percent of harvest acres in this project are proposed for selection. Certain selected parcels bisect portions of the Central Tongass project area which could make accessing harvest units and other resources more challenging. The proposed selections include approximately 5.2 percent and 2.5 percent of the harvest acres in South Revilla and Twin Mountain II Timber Sale respectively. While not large percentages of the overall projects, the inclusion of selections within the three project areas is likely to impact the Forest Service's ability to complete a timely review under the National Environmental Policy Act, issue decisions on schedule, and offer timber in fiscal years 2021 and 2022.

Additionally, USDA anticipates the proposed conveyance of the lands will affect the Tongass National Forest's delivery of its recreation program. Based on an initial review of the mapped selections, the Forest Service has identified that the following are located within the boundaries of the parcels: 13 developed recreation sites (3 camping sites, 7 public use cabins, 1 picnic site, 1 shelter, 1 trailhead), 3.5 miles of hiking trail, 26.5 miles of designated Off Highway Vehicle trails, 90.9 miles of open roads, and an estimated 12 marine access facilities. The agency's initial review also identified that outfitter/guide activity is authorized under special use permits within or adjacent to more than half of the selected parcels.

Conclusion

USDA looks forward to working with sponsor of the bill to consider technical changes to address the legislation's impact on the Tongass National Forest's program of work. Thank you for the opportunity to offer USDA's comments on this legislation.

Thank you for the opportunity to testify on this bill, and I welcome any questions.

From: [Hawbecker, Karen X](#)
To: [ASLM Report Recipients](#)
Subject: Monthly Solicitor's Office Ongoing Minerals-Related Litigation Report for September 2020
Date: Sunday, October 18, 2020 11:39:04 PM
Attachments: [ASLM Report 2020.09 \(September\) \(1\).pdf](#)

The Division of Mineral Resources, in coordination with Regional and Field Offices in the Solicitor's Office, prepares this report for the Assistant Secretary, Land and Minerals Management, about ongoing litigation related to BLM (minerals), BOEM, BSEE and OSMRE. I have attached for your reference the monthly report for the month of September 2020. New updates are in bold.

Please note that this report is subject to attorney-client privilege. Please do not forward this report. If there are other people in your office who should appropriately receive this report, please let me know and I will add them to the mailing list. If you would rather not receive this monthly report, please let me know. Thank you.

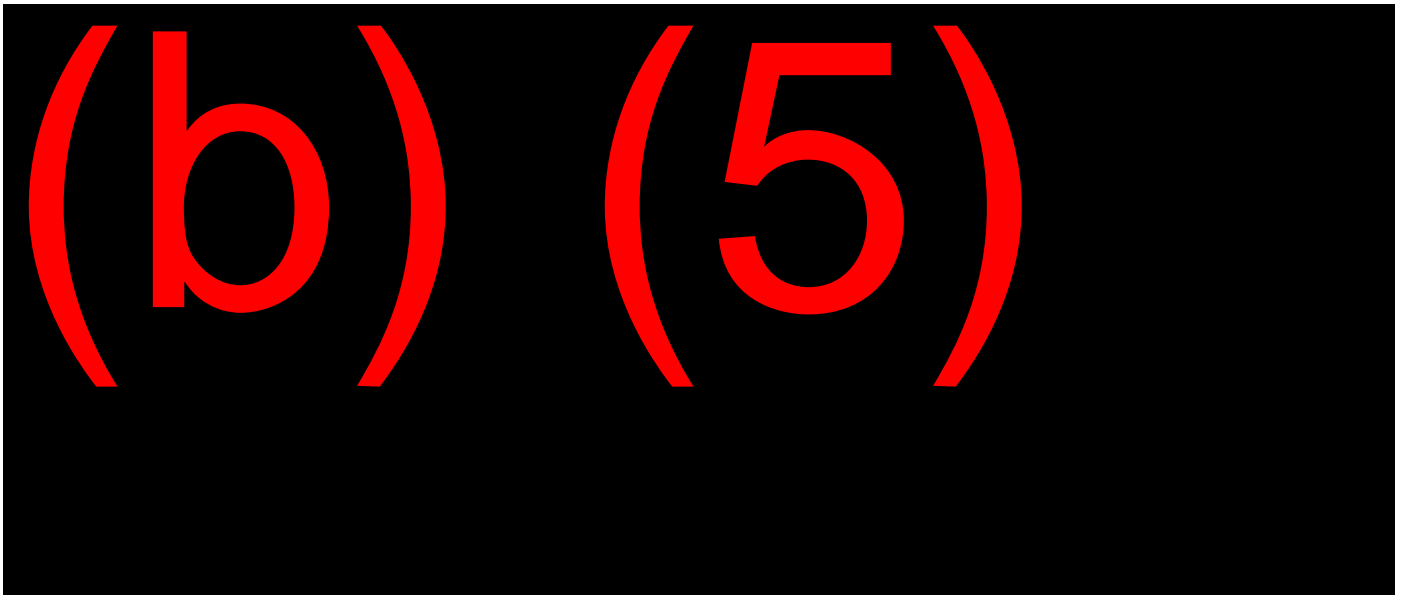
Karen Hawbecker
Associate Solicitor
Division of Mineral Resources
Office of the Solicitor
U.S. Department of the Interior
1849 C Street N.W. MS 5359
Washington, D.C. 20240

Office: (202) 208-4146 (this number is currently forwarded to my cell phone)
karen.hawbecker@sol.doi.gov

September 2020
Division of Mineral Resources
And Multiple Regional and Field Office
Litigation Report to the Assistant Secretary,
Land and Minerals Management

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From: [Hawbecker, Karen X](#)
To: [ASLM Report Recipients](#)
Subject: Monthly Solicitor's Office Ongoing Minerals-Related Litigation Report for August 2020
Date: Monday, September 14, 2020 12:19:05 PM
Attachments: [ASLM Report 2020.08 \(August\).pdf](#)

The Division of Mineral Resources, in coordination with Regional and Field Offices in the Solicitor's Office, prepares this report for the Assistant Secretary, Land and Minerals Management, about ongoing litigation related to BLM (minerals), BOEM, BSEE and OSMRE. I have attached for your reference the monthly report for the month of August 2020. New updates are in bold.

Please note that this report is subject to attorney-client privilege. Please do not forward this report. If there are other people in your office who should appropriately receive this report, please let me know and I will add them to the mailing list. If you would rather not receive this monthly report, please let me know. Thank you.

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August 2020
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B. Bankruptcy Litigation	64
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(b) (5)

From: [Hawbecker, Karen X](#)
To: [ASLM Report Recipients](#)
Subject: Monthly Solicitor's Office Ongoing Minerals-Related Litigation Report for October 2020
Date: Thursday, November 12, 2020 6:12:14 PM
Attachments: [ASLM Report 2020.10 \(October\).pdf](#)

The Division of Mineral Resources, in coordination with Regional and Field Offices in the Solicitor's Office, prepares this report for the Assistant Secretary, Land and Minerals Management, about ongoing litigation related to BLM (minerals), BOEM, BSEE and OSMRE. I have attached for your reference the monthly report for the month of October 2020. New updates are in bold.

Please note that this report is subject to attorney-client privilege. Please do not forward this report. If there are other people in your office who should appropriately receive this report, please let me know and I will add them to the mailing list. If you would rather not receive this monthly report, please let me know. Thank you.

Karen Hawbecker
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October 2020
Division of Mineral Resources
And Multiple Regional and Field Office
Litigation Report to the Assistant Secretary,
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C. Other Judicial Litigation	67
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(b) (5)

From: Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>
Subject: [EXTERNAL] Fwd: FYI: GOV ANWR Video Statement
To: "Turner, Jeff W (GOV)" <jeff.turner@alaska.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Swint, Zachariah D. EOP/WHO" <(b) (6)>
Sent: Mon, 17 Aug 2020 21:08:57 -0400 (Tue, 18 Aug 2020 01:08:57 GMT)

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Thank you! Great day.

Kip Knudson
Director, State/Federal Affairs
Alaska Governor Michael Dunleavy
907-382-0219

From: McDaniel, Austin J (GOV) <austin.mcdaniel@alaska.gov>
Sent: Monday, August 17, 2020 9:07:01 PM
To: Ochoa, Dottie M (GOV) <dottie.ochoa@alaska.gov>; Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>; Mary Vought <mary@voughtstrategies.com>
Subject: FYI: GOV ANWR Video Statement

In case you would like to flag for any of the federal agencies or WH. The Governor just recorded a video statement on the ANWR 1002 announcement today.

<https://www.facebook.com/GovDunleavy/posts/622032668740078>

or

<https://twitter.com/GovDunleavy/status/1295526085401092096>

Let me know if you have any questions.

Austin McDaniel

Deputy Communications Director - Digital
Office of Governor Mike Dunleavy

Anchorage: 907.269.3034
Mobile: 907.227.7982
austin.mcdaniel@alaska.gov

From: Matthew Rexford <nvkaktovik@gmail.com>

Subject: [EXTERNAL] Letter from President of the Native Village of Kaktovik

To: "(b) (6)" <(b) (6)>

CC: "registry@ohchr.org" <registry@ohchr.org> "Bernhardt, David L" <dwbernhardt@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Imm, Teresa VOTAI" <Teresa.Imm@inupiatvoice.org>

Sent: Thu, 22 Oct 2020 20:51:03 -0400 (Fri, 23 Oct 2020 00:51:03 GMT)

Attachment 1: UN ANWR NVK Letter 10-22-2020.docx

Attachment 2: BILLS-116hr1146ih.pdf

Attachment 3: Matthew Rexford - Full Written Statement Submittal.pdf

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Mr. Bremberg;

Please find attached to this email message a scanned signed copy of a letter from the President of the Native Village of Kaktovik dated October 22, 2020 along with two attachments.

Sincerely,

Matthew Rexford

Tribal Administrator

NATIVE VILLAGE OF KAKTOVIK

P.O. Box 52

Kaktovik, AK 99747

Phone: (907) 640-2042 or 2043

Fax: (907) 640-2044



Native Village of Kaktovik

P.O. Box 52

Kaktovik, AK 99747

Phone # (907) 640-2042 or 2043

Fax # (907) 640-2044

E-mail: nvkaktovik@gmail.com

REFERENCE: CERD/EWUAP/101st Session/2020/USA/JP/ks

October 22, 2020

Mr. Andrew Bremberg
United States Mission
11, Route de Pregny
Case Postale 2354
1211 Geneva 2
Switzerland

Via email: (b) (6)

Excellency,

My name is Edward Rexford, Sr. I am Kaktovikmiut and live in the community of Kaktovik, where I am President of the Native Village of Kaktovik, the federally-recognized tribe for our community. My people, the Iñupiat people, have occupied the North Slope of Alaska for tens of thousands of years. I have recently had the opportunity to review the letter written by the Chair of the Committee on the Elimination of Racial Discrimination outlining concerns over planned oil and gas development in the Coastal Plain of the Arctic National Wildlife Refuge. The letter details alleged infringements the oil and gas activity would have on the Gwich'in peoples, whose homeland is over two hundred miles and one mountain range to the south of us. The letter does not make one single reference to the Iñupiat people of Kaktovik. The Kaktovikmiut are the real inhabitants of the Coastal Plain and it is our homeland. I am outraged that rather than ameliorate racial discrimination, the United Nations committee has exacerbated it.

The United Nations Declaration on the Rights of Indigenous Peoples makes clear that self-determination is a fundamental right of indigenous peoples. It is this concept that has led my community to pursue development of our homelands to provide long-term economic benefits for our people. Let me be clear: Native Village of Kaktovik, the only federally-recognized Tribe within the Arctic National Wildlife Refuge, **supports** oil and gas development in the Coastal Plain. We feel strongly that development in this area can be done safely and responsibly, as has been done throughout the North Slope of Alaska for decades. The United Nations actions now fly in the face of these principles and make a mockery of the generations long fight of indigenous peoples to achieve equal status in human rights – to the Kaktovikmiut, Chairperson Li's letter threatens the very sustainability of our community, our culture, and our economy.

The people of Kaktovik are an "inconvenient truth" in that we are indigenous people *and* support the pursuit of economic development in our homelands. As such, the wishes of my people have long been left out of the conversation by those who would oppose any development in the 1002 Coastal Plain.

That said, our erasure by this planet's overseeing body, the United Nations, is unprecedented and incredibly alarming. Certainly, such deletion of the Iñupiat infringes on *OUR* human rights as indigenous peoples! Again, Kaktovik is the only community within the bounds of the Arctic National Wildlife Refuge – simple research by the committee on a map would have shown this to be true. We demand to be consulted and included in all decisions made regarding our traditional lands, *especially* as they relate to racial discrimination.


The Gwich'in have become incredibly vocal in establishing themselves and trying to overtake our homelands and call them their own. This has been a difficult issue for us because we do not have the funding power that the Gwich'in have accumulated by becoming the mouthpiece of the environmental non-governmental organizations. We have little resources and support, yet we need to be the mouse that roared in this instance. Attached to this letter is Testimony to the United States Congress on House Resources Bill 1146 on March 26, 2019. This is an example of our continued defense against the Gwich'in attempts to claim occupancy of our homeland. H. R. 1146 was titled "Arctic Cultural and Coastal Plain Protection Act" it was characterized as human rights legislation and it is appalling that our own U. S. Congress tried to eliminate us through legislation. We are an inconvenience to those who do not support our rights to develop our lands to ensure our economic freedom. We are angry that time and time again we must identify who we are as indigenous people to those who want to look the other way. We do not have the resources, the millions of dollars required to launch a counter-campaign, we have pursued development through our own grassroots efforts unlike our neighbors to the south.

Robust and thorough analysis on each of the points outlined in Chairperson Li's letter has already been completed and compiled into a document released by the Bureau of Land Management earlier this year. The Coastal Plain Oil and Gas Leasing Program was developed with intense consultation by the United States Government with both Iñupiat and Gwich'in peoples, both of whom acted as Cooperating Agencies on the project. Measures to protect cultural sacred sites, to ensure positive interactions between workers and indigenous communities, a thorough climate change analysis, and to address social justice are *all* included in the document and I would encourage the Committee to review it as part of their engagement on this issue. The United Nations is now being used merely as a tool to delay any progress on this project.

Your Excellency, the United Nations review undermines the wishes of those of us, the Kaktovikmiut, that live within the Arctic National Wildlife Refuge and negates years of work by local stakeholders and the federal government to ensure a sustainable economy – *while at the same time protecting our environment and wildlife* – for the people and communities in our region. I hope that this letter will help you to understand both sides of this issue; we are fighting for the basic needs of future generations of Arctic Iñupiat, from education and cultural sustainability to housing and utilities. Modern amenities that are commonplace in modern America are relatively new to the North Slope of Alaska. Nobody understands better the balance needed to sustain our cultural and subsistence way of life along with desire for long term economic sustainability for our community. Articles 3, 21, 26, and 32 of the United Nations Declaration on the Rights of Indigenous Peoples support our right to improve the quality of lives for our people, and it is our priority as the Native Village of Kaktovik. We are ready to take on the responsibility of ensuring that we have safe oil and gas developments on our lands. We are confident that this can be achieved with the highest integrity and while maintaining the health of our local wildlife populations.

I ask that your response to the Committee on the Elimination of Racial Discrimination include the actual people who live in the Coastal Plain on a daily basis, the people of Kaktovik. The Kaktovikmiut have engaged in conversations on these exact issues many times over the years from Congressional Hearings to opinion editorials and there is a wealth of information available on the wishes of our people, our community of Kaktovik, and our relationship to our traditional lands in the Arctic National Wildlife Refuge. Attached to this letter is our most recent Testimony to the United States Congress on House Resources Bill 1146 on March 26, 2019. This is an example of our continued defense against the Gwich'in attempts to claim occupancy of our homeland. H. R. 1146 was titled "Arctic Cultural and Coastal Plain Protection Act" it was characterized as human rights legislation and it is appalling that our own U. S. Congress tried to eliminate us through legislation. We are an inconvenience to those who do not support our rights to develop our lands to ensure our economic freedom. For further clarification of our response to the Chairman's letter, do not hesitate to call me at (b) (6)

Quyanaq (Thank You),



Edward Rexford, Sr.
President, Native Village of Kaktovik

Cc: Yanduan Li, Chair – Committee on the Elimination of Racial Discrimination
Email: registry@ohchr.org
Secretary Bernhardt, United States Secretary of Interior
Email: dwbarnhardt@ios.doi.gov
Gregg Renkes, United States Secretary of Interior
Email: gregg_renkes@ios.doi.gov
Teresa Imm, Voice of the Arctic Inupiat
Email: Teresa.Imm@inupiatvoice.org

116TH CONGRESS
1ST SESSION

H. R. 1146

To amend Public Law 115–97 (commonly known as the Tax Cuts and Jobs Act) to repeal the Arctic National Wildlife Refuge oil and gas program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2019

Mr. HUFFMAN (for himself, Mr. FITZPATRICK, Mr. AGUILAR, Ms. BARRAGÁN, Ms. BASS, Mr. BEYER, Mr. BLUMENAUER, Ms. BONAMICI, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BROWN of Maryland, Ms. BROWNLEY of California, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARTWRIGHT, Mr. CASTEN of Illinois, Ms. CASTOR of Florida, Ms. JUDY CHU of California, Mr. CICILLINE, Ms. CLARKE of New York, Mr. CLAY, Mr. COHEN, Mr. WELCH, Mr. CROW, Mr. DEFazio, Ms. DEGETTE, Mrs. DEMINGS, Mr. DESAULNIER, Mr. DEUTCH, Mrs. DINGELL, Mr. MICHAEL F. DOYLE of Pennsylvania, Ms. ESHOO, Mr. ESPAILLAT, Mr. GALLEGRO, Mr. GARAMENDI, Mr. GOMEZ, Ms. HAALAND, Mr. HASTINGS, Ms. HILL of California, Mr. HIGGINS of Louisiana, Mr. HIMES, Ms. JAYAPAL, Mr. KENNEDY, Mr. KILDEE, Mr. KILMER, Mr. KRISHNAMOORTHY, Mrs. LAWRENCE, Ms. LEE of California, Mr. LEVIN of California, Mr. TED LIEU of California, Mr. LIPINSKI, Ms. LOFGREN, Mr. LOWENTHAL, Mr. LUJÁN, Mr. LYNCH, Mr. SEAN PATRICK MALONEY of New York, Ms. MATSUI, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCGOVERN, Mr. MCNERNEY, Ms. MENG, Mr. MORELLE, Mr. MOULTON, Ms. MUCARSEL-POWELL, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEGUSE, Ms. NORTON, Ms. OMAR, Mr. PANETTA, Mr. PETERS, Ms. PINGREE, Mr. POCAN, Mr. QUIGLEY, Mr. RASKIN, Ms. ROYBAL-ALLARD, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SERRANO, Ms. SHALALA, Mr. SIRES, Mr. SMITH of Washington, Mr. SOTO, Ms. SPEIER, Mr. SUOZZI, Mr. TONKO, Mr. VAN DREW, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Ms. WATERS, Ms. WILSON of Florida, Mr. MALINOWSKI, Mr. ROUDA, Mr. RYAN, Mr. CONNOLLY, Mrs. TRAHAN, Mrs. MURPHY, Mr. KHANNA, Mr. PERLMUTTER, Mr. TRONE, and Mr. CUNNINGHAM) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend Public Law 115–97 (commonly known as the Tax Cuts and Jobs Act) to repeal the Arctic National Wildlife Refuge oil and gas program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Arctic Cultural and
5 Coastal Plain Protection Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Americans cherish the continued existence
9 of expansive, unspoiled wilderness ecosystems and
10 wildlife found on their public lands and feel a strong
11 moral responsibility to protect this wilderness herit-
12 age as an enduring resource to bequeath undis-
13 turbed to future generations of Americans.

14 (2) It is widely believed by ecologists, wildlife
15 scientists, public land specialists, and other experts
16 that the wilderness ecosystem centered around and
17 dependent upon the Arctic coastal plain of the Arctic
18 National Wildlife Refuge, Alaska, represents the
19 very epitome of a primeval wilderness ecosystem and
20 constitutes the greatest wilderness area and diversity
21 of wildlife habitats of its kind in the United States.

1 (3) President Dwight D. Eisenhower initiated
2 protection of the wilderness values of the Arctic
3 coastal plain in 1960 when he set aside 8,900,000
4 acres establishing the Arctic National Wildlife Range
5 expressly “for the purpose of preserving unique wild-
6 life, wilderness and recreational values”.

7 (4) When the Arctic National Wildlife Refuge
8 was established in 1980 by paragraph (2) of section
9 303 of the Alaska National Interest Lands Con-
10 servation Act (Public Law 96–487; 94 Stat. 90; 23
11 16 U.S.C. 668dd note), subparagraph (B) recog-
12 nized the following four additional purposes of the
13 Arctic National Wildlife Refuge:

14 (A) “To conserve fish and wildlife popu-
15 lations and habitats in their natural diversity
16 including the Porcupine caribou herd”.

17 (B) “To fulfill the international treaty obli-
18 gations for the United States with respect to
19 fish and wildlife and their habitats”.

20 (C) “To provide . . . the opportunity for
21 continued subsistence use by local residents”.

22 (D) “To ensure . . . water quality and
23 quantity within the refuge”.

24 (5) A majority of Americans have supported
25 and continue to support preserving and protecting

1 the Arctic National Wildlife Refuge, including the
2 Arctic coastal plain, from any industrial development
3 and consider oil and gas exploration and develop-
4 ment in particular to be incompatible with the pur-
5 poses for which this incomparable wilderness eco-
6 system has been set aside.

7 (6) Canada has taken action to preserve those
8 portions of the wilderness ecosystem of the Arctic
9 that exist on its side of the international border and
10 provides strong legal protection for the habitat of
11 the Porcupine caribou herd that migrates annually
12 through both countries to calve on the Arctic coastal
13 plain.

14 (7) The Gwich'in people of eastern Alaska and
15 Northwestern Canada have relied on the Porcupine
16 caribou herd for millennia and caribou is a vital cul-
17 tural, spiritual, and nutritional resource for the
18 Gwich'in.

19 (8) The Arctic is being impacted by climate
20 change at unprecedented levels. Temperatures are
21 rising at twice the rate of the rest of the country,
22 and wildlife and habitat that depend on the Arctic
23 are being detrimentally impacted.

24 (9) Title II, section 20001 of Public Law 115-
25 97 (commonly known as the Tax Cuts and Jobs Act)

1 would allow an oil and gas program on the Coastal
2 Plain. Oil and gas activities are not compatible with
3 the protection of this national treasure.

4 (10) Repeal of section 20001 would best protect
5 the unspoiled ecosystem of the Coastal Plain, the
6 human rights of the Gwich'in, and the integrity of
7 the National Wildlife Refuge System.

8 **SEC. 3. STATEMENT OF POLICY.**

9 The Congress hereby declares that it is the policy of
10 the United States—

11 (1) to honor the decades of bipartisan efforts
12 that have increasingly protected the great wilderness
13 ecosystem of the Arctic coastal plain;

14 (2) to sustain this natural treasure for the cur-
15 rent generation of Americans;

16 (3) to honor and respect the human rights of
17 the Gwich'in; and

18 (4) to do everything possible to protect and pre-
19 serve this magnificent natural ecosystem so that it
20 may be bequeathed in its unspoiled natural condition
21 to future generations of Americans.

1 **SEC. 4. REPEAL OF ARCTIC NATIONAL WILDLIFE REFUGE**

2 **OIL AND GAS PROGRAM.**

3 Section 20001 of Public Law 115–97 is hereby re-

4 pealed.



Hearing on H.R. 1146
“Arctic Cultural and Coastal Plain Protection
Act”

Full Written Statement of Matthew Rexford
Native Village of Kaktovik
Tribal Administrator

Before the
United States House Committee on Natural Resources
Subcommittee on Energy and Mineral Resources

March 26, 2019



My name is Matthew Rexford. I am here today as Tribal Administrator of the Native Village of Kaktovik, a federally recognized tribe. I am here to tell you that I exist! We exist! The 200 plus residents of Kaktovik, my uncle Fenton sitting next to me, we all exist! Collectively, we are the Kaktovikmiut, residents of the only village within the so-called 1002 Area, and the only community within the Arctic National Wildlife Refuge. Your legislation erases our 11,000 years of existence on our land and follows a predictable pattern for the federal government. We thought you had learned from past mistakes. We thought we were fortunate in Alaska to hold on to our lands because we hadn't ceded them through treaty or hostile occupation, but here we are. It is 2019 and you have eliminated us.

You speak about human rights. Certainly, it is our human right to at least be acknowledged in any legislation that with the sweep of a pen would undo the self-determination and opportunity that my uncle and other leaders in Kaktovik, people who are now elders, have worked tirelessly to secure.

My community does exist, on the Northeastern coast of Alaska along the shores of the Beaufort Sea. In the past, our tribe travelled freely over 23 million acres of land. Now, we are severely restricted in our travel into what you call ANWR. In the summer months, we are only permitted to travel up river corridors and drainages, forbidden to use modern modes of transportation like all-terrain vehicles that indigenous peoples across North America have adopted to facilitate travel across vast swaths of lands that are their homelands and birthright. I myself have travelled to almost every part of our traditional lands, visiting relatives in Canada by boat, snow machining to important hunting and campsites throughout the Coastal Plain and even beyond the foothills of the Brooks Range into the greater Refuge. Your bill gives the false perception that these lands are a "wilderness," when they are not and never have been. I follow in the footsteps of my ancestors who have traversed these lands for thousands of years. The entire Coastal Plain of this Refuge has been continuously inhabited and used by the Iñupiaq. It was never "wild" until we became a part of America. Tribal members from the Native Village of Kaktovik have proven our existence in many historical documents should you care to do more research.

You are concerned about the caribou. Here is what the Kaktovikmiut know to be true. The Porcupine Caribou Herd's migration changes every year. In the last 10-15 years, we have seen their migration change to be in the far southeastern portion of the Coastal Plain and more into Canada. The scientific data collected by both federal and state scientists supports our Traditional Knowledge in this. According to the data presented in the Fish and Wildlife Service's Arctic Refuge CCP released in 2015, the entire Coastal Plain makes up a mere 17% of the entire Porcupine calving area.

You are concerned about the polar bears. So are we. When Polar Bears were listed as a threatened species, the USA was mandated to gather scientific data on the bears to study the health of the population in Alaska. The Fish and Wildlife Service conducted an unprecedented and highly invasive study of the entire polar bear population in Alaska.

The study took place at sensitive times of the year for polar bear, as they were first emerging from their dens and then again, when they were looking for their dens. In Kaktovik, we saw bears with collars so tight their fur had rubbed off and their necks gangrened. I believe that the continued invasive scientific studies of the Fish and Wildlife Service, through their contractors, their authorized bear harassers, are causing more harm to the polar bear than almost anything else they face.

You are concerned about the Arctic culture. Studies show that the North Slope region has the highest per capita harvest of subsistence food in Alaska. We have the greatest stake in protecting our traditional ways of life. We have been working diligently with the BLM, through their NEPA analysis and our role as a Cooperating Agency, to identify those places. Our local government keeps a robust inventory of traditional land use sites, cultural sites, campsites, and burial grounds. North Slope standards The North Slope Borough Iñupiat Heritage, Language, and Culture Department has continuously updated their robust inventory of traditional land use sites, cultural sites, campsites, and burial grounds; those places have been and will continue to be protected. These are standards on the North Slope.

You are concerned about climate change; so are we. We are on the front lines of climate change. We are experiencing longer ice-free seasons, melting permafrost, and more coastal erosion, among other things. We bear this burden though we, as indigenous people with a heavy reliance on subsistence, contribute minimally to emissions. Travelling 4,500 miles from Kaktovik to Washington to prove our existence and advocate for my people is certainly one of the larger emissions that I produce all year. The draft EIS for leasing in the Coastal Plain concludes that ANWR development would increase global emissions by an average of 44 thousand metric tons per year. To put this into perspective, the 53 Representatives from California, in total, produce over 200,000 metric tons of CO₂ in travel between Washington DC and the State of California every year, orders of magnitude greater than the total emissions from developing ANWR. And that's assuming that we ever even get to the development stage, which is years in the future! We are only asking for a chance to see what gifts God has bestowed upon our land. The same chance that the Gwich'in people asked for two decades ago. I can't help but think that if they had found oil in their lands, we would not be having this conversation today.

Perhaps the Representatives from California would prefer to travel on oil imported from foreign countries with less strict environmental standards, but we would like a piece of the pie. You consume. The average American consumes. And yet you ask us to bear the burden of mitigation so that you don't have to. It's easy for you to take ANWR off the table. It checks a lot of boxes for your constituents, to be sure: it checks the environmental box, it gives the illusion of supporting Indigenous peoples, cherished wilderness – check. It certainly checks the public perception box that environmental corporations and the outdoor industry have spent so much money to create.

If you are concerned about the balance we have been working to cultivate on the North Slope between protecting our environment, wildlife, and subsistence while our economy relies heavily on responsible resource development; you should ask the experts – **us**. The Kaktovikmiut know these lands and the wildlife that rely on them better than any scientist, agency, hunting guide, eco-tourist, or lawmaker ever can. We heard the same concerns 50 years ago when oil discoveries were made in Prudhoe. We were told the caribou would be decimated, our lands ruined, our subsistence and culture wiped out. As it happens, none of this came to fruition. In fact, the population of the Central Arctic Herd, which calves near Prudhoe Bay, marked a 14-fold increase from when development began in Prudhoe to their peak population in 2008. Our communities on the North Slope have developed a dual economic system in which a modern cash economy and traditional subsistence are interwoven and interdependent, and through which our culture adapts and perpetuates itself. In the Arctic, even science is political.

We will NOT become conservation refugees. We do NOT approve of your efforts to turn our homeland into one giant national park, which would literally guarantee us a fate with no economy, no jobs, reduced subsistence, and no hope for the future of our people. We, as Iñupiat people, have every right to pursue economic, social, and cultural self-determination. The laws of the U.S. should support Indigenous populations, not interfere with these basic rights. Quyanaq for this opportunity to testify.

NOTES

Rationale for 200,000 metric tons

It is 2,442 miles as the crow flies from Washington DC to San Francisco. According to the Emission Inventory Guidebook, a Boeing 737 aircraft produces 11 metric tons of CO₂ for a 575 mile flight; about a quarter of the total distance to California. One Representative from California traveling one way produces almost 50 tons of CO₂. The Congressional Management Foundation states that the typical House member returns to their district 40 or more times a year. 100 tons of CO₂ round trip X 40 trips per year X 53 California Representatives = about 212,000 metric tons of CO₂ per year.

Caribou

Caribou inhabit the 1002 Area and are an important subsistence resource for the Iñupiat people and our Gwich'in neighbors in both Canada and Alaska. Potential impacts of leasing on caribou are well analyzed. While the Coastal Plain is an important area for the Porcupine Caribou Herd (PCH), it is important to consider the following:

- (1) the Gwich'in and Kaktovikmiut harvest both the Central Arctic Herd (CAH) and PCH;
- (2) (2) the coastal plain is a small portion of the PCH total calving area;

- (3) (4) the PCH interacts with development in their migratory range outside of the coastal plain; and
- (4) Caribou are resilient to industry areas.

First, the PCH is an important resource to both Iñupiat and Gwich'in, however according to the 2010 Harvest Management Plan for the Porcupine Caribou Herd in Canada, "Alaska makes up about 15 percent of the total reported harvest of the Porcupine Caribou herd..."¹ It should be noted that the PCH are primarily harvested by indigenous and non-indigenous peoples of Canada. Instead, in addition to the PCH, both people of Kaktovik² and the Gwich'in of Arctic Village and Venetie³ harvest from the Central Arctic Herd (CAH) which calve in Prudhoe Bay area and the PCH. This is in part due to the fact that "[T]here is a lot of mixing between the Teshekpuk, Central Arctic, and Porcupine herds."⁴ The mixing of the herds is an important detail that showcases the intersectionality of the herds that may lead to members of the PCH calving in industrialized areas and members of other herds being harvested by both the Iñupiat and Gwich'in. It should be noted that although the PCH is an important resource for both the Gwich'in and Iñupiat people, it is not the only herd that is harvested by Alaska Natives in and around ANWR.

Second, the PCH are versatile in their calving and migration patterns across Northern Alaska and Northwest Canada. Within the past twenty years there was a decade when the PCH did not even calve in the Coastal Plain, and in recent years when the PCH did use the Coastal Plain for calving, it did not use the Coastal Plain exclusively. From the 2015 Arctic National Wildlife Refuge Comprehensive Conservation Plan (CCP), "Between 2002 and 2009, no estimates of abundance were available. During this period, caribou left the coastal plain and the northern foothills of the Arctic Refuge earlier and did not form large post-calving aggregation..."⁵ And again, "In 7 of 11 years during 2004-2014, calving occurred on the coastal plain, primarily in the Yukon between the Alaska-Canada border and the Babbage River. In the other 4 years, calving occurred both in Alaska and Canada, and **some** calving occurred in the 1002 area during 3 of those years"⁶ [Emphasis added]. The PCH do not reliably calve in the coastal plain each year and that the entire coastal plain is a very small portion of their entire calving region. For perspective, data in the Fish and Wildlife CCP shows that the entire coastal plain makes up a mere 16.8% of the entire PCH calving area. In other words, roughly 83 % of the PCH calving habitat is entirely outside of the coastal plain.

¹ Harvest Management Plan for the Porcupine Caribou Herd in Canada March 2010 Page 33.

² ADF&G Porcupine Caribou Bulletin Summer 2017

"...because the Porcupine caribou] herd does not have a set migratory route they follow every year, the community cannot always rely on them for food. Although community members harvest Porcupine caribou when they are available, they relied much more heavily on the Central Arctic herd in recent years."

³ Arctic National Wildlife Refuge Revised Comprehensive Conservation Plan. USFWS. January 2015. Page 4-105

⁴ ADF&G Porcupine Caribou Bulletin Summer 2017

⁵ Arctic National Wildlife Refuge Revised Comprehensive Conservation Plan. USFWS. January 2015. Page 4-99

⁶ Species Management Report: Caribou Management Report. ADF&G, Division of Wildlife Conservation. June 2014. Page 15-8.

Third, it is important to consider that the PCH has been exposed to development and infrastructure during their migration. In the course of their migration, the PCH travel through Canada's oil rich Mackenzie River Basin and Eagle Plain Basin and cross the Dempster Highway⁷. In fact, as the Harvest Management Plan for the Porcupine Caribou Herd in Canada details, the Dempster Highway is an important area for hunters and subsistence users to harvest from the PCH.⁸ The Dalton Highway is also within the range of the PCH. It should be noted that while development in the Coastal Plain would be new, because of the exposure to development throughout its migration, the PCH may be more habituated to infrastructure and development which could lessen the degree at which caribou are impacted from the oil and gas leasing program. As the EIS for the nearby Point Thomson development reported:

“Studies of interactions between caribou and traffic within the North Slope oil fields have occurred in oil field areas that are closed to hunting and show that caribou, including cows with calves, become tolerant of traffic disturbances during the course of each summer season (Haskell et al. 2006, Haskell and Ballard 2008)” (Page 5-286).

Fourth, it is important to highlight that despite concerns over the decimation of the caribou population, caribou do continue to inhabit areas where industry is present. From the ANWR Leasing Program DEIS ANILCA 810 Analysis: “Caribou could still forage within the total footprint of a Central Processing Facility and its associated satellite well pads, for example.”⁹ The Central Arctic Herd (CAH) which frequent the Coastal Plain and ANWR calve in Prudhoe Bay area, one of the most prolific onshore oil and gas developments in the U.S. Both the PCH and CAH also experience a degree of “mixing”¹⁰, in other words, it is likely that members of the PCH may calve and migrate through Prudhoe Bay with the CAH and vice versa. Despite the presence of oil and gas infrastructure and development, the populations of all three herds are at higher levels than when development first began.

Public Health

The Journal of the American Medical Association published a study in 2017 comparing life longevity in United States counties from 1980 to 2014 titled “Inequalities in Life Expectancy among US Counties 1980-2014: Temporal Trends and Key Drivers.”¹¹ The study concludes that life expectancy on the North Slope has increased by 13 years over

⁷ Species Management Report: Caribou Management Report. ADF&G, Division of Wildlife Conservation. June 2014.

⁸ Harvest Management Plan for the Porcupine Caribou Herd in Canada March 2010 Page 28

⁹ ANWR EIS, Appendix E: ANILCA 810 Analysis. Page E-6.

¹⁰ Porcupine Caribou Summer News. Available at:

http://www.adfg.alaska.gov/static/home/library/pdfs/wildlife/porcupine_caribou_news/porcupine_caribou_news_summer_2017.pdf

¹¹ Dwyer-Lindgren L, Bertozzi-Villa A, Stubbs RW, et al. Inequalities in life expectancy among US counties 1980 to 2014. JAMA Intern Med. Doi: 10.1001/jamainternmed.2017.0918. Published online May 8, 2017

the 34 years analyzed. The factors identified as having the most impact on the variation in life expectancy between geographic regions were poverty rate, high school graduation, unemployment, and access to health care. Production began in Prudhoe Bay in 1977 and provided the North Slope Borough with the economic base to provide jobs, education, and health care to our region, which has drastically increased our life expectancy over a relatively short amount of time.

The Alaska Department of Health and Social Services has identified poverty as a critical health concern, as it is associated with: food insecurity, inadequate and unhealthy housing, low levels of educational attainment, unemployment, poor access to health care, reduced lifespan, and increased mortality. Health conditions and risk factors associated with poverty include disability status, poor general health, poor mental health, cardiovascular disease, diabetes, chronic lung disease, asthma, obesity, binge drinking, and cigarette smoking.¹²

Arctic Culture

We have the greatest stake in protecting our resources. According to the Baseline Community Health Analysis Report, the North Slope Borough has among the highest per capita harvests of subsistence food in Alaska¹³. Data from the 2003 census shows that virtually all Iñupiat households reported relying on subsistence resources to some extent. Further, studies show income opportunities in Northern Alaska do not appear to substantially affect participation in subsistence activities, and residents state that they would prefer to participate in a combination of wage-based and traditional subsistence activities¹⁴. Even household heads with full-time employment relied heavily on traditional food sources¹⁵. What exists in the communities on the North Slope is a dual economic system in which a modern cash economy and traditional subsistence are interwoven and interdependent, and through which our culture adapts and perpetuates itself.

In fact, in many cases, income and employment levels *support* subsistence activities in our communities. People continue to hunt and fish, but aluminum boats, outboards, all-terrain vehicles now help blend these pursuits with wage work. These things cost money and require income and employment to support them.

Oil & Gas in Gwich'in Lands

It is important not to mistakenly view the Gwich'in culture as "anti-development," when in fact Gwich'in communities have also pursued resource development interests in their

¹² Alaska Department of Health and Social Services: Income and Poverty

¹³ Wolfe, R.J.: "Subsistence Food Harvests in Rural Alaska, and Food Safety Issues," Paper pre-sented to the Institute of Medicine, National Academies of Sciences Committee on Environmental Justice, Spokane, Washington, August 13, 1996. Accessed online at <http://www.subsistence.adfg.state.ak.us/download/food962.pdf>.

¹⁴ Poppel, B., J. Kruse, G. Duhaime, and L. Abryutina. 2007. Survey of Living Conditions in the Arctic (SLiCA) www.arcticlivingconditions.org

¹⁵ Baseline Community Health Analysis Report. North Slope Borough Department of Health and Social Services, July 2012.

own lands. In the 1980's the village of Venetie sought to lease all of their lands to oil and gas companies to spur economic development and jobs for their people. In the Senate Congressional Record for March 8, 2000, a letter from the Native Village of Venetie "giving formal notice of intention to offer lands for competitive oil and gas lease. This request for proposals involves any or all of the lands and waters of the Venetie Indian Reservation....which aggregates 1.8 million acres..."¹⁶ Exxon completed seismic in the 1980's and drilled core samples in the Yukon Flats Basin¹⁷. More recently, Doyon Limited, according to their oil and gas "Acquisition Opportunity" flyer¹⁸, completed 52 square miles of 3D seismic in the Stevens Village sub-basin of the Yukon Flats in 2013 and is actively seeking lessee's to explore "prospectivity" of its entire 1.48 million acres of "underexplored but highly prospective oil/gas bearing sub-basins" surrounding the Gwich'in villages of Fort Yukon, Stevens Village, Beaver, Birch Creek, and Chalkyitsik.

In Canada, development has occurred in the Eagle Plains and current projects for the Peel Plateau watershed are in the planning process. Both areas lie within the Porcupine Caribou herd's winter range. In May 2018, the Vuntut Gwitchin Government published their Oil and Gas Engagement Policy outlining a policy to "establish a respectful, transparent, and meaningful framework to guide the engagements of the Vuntut Gwitchin Government in relation to Oil and Gas Activities and Oil and Gas Dispositions in a manner that supports and upholds the objective of Sustainable Development." The document further defines Sustainable Development as "beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent." We agree with their policies and would like the opportunity to explore the same opportunities on our own lands.

Polar Bears

While the Southern Beaufort Stock (SBS) of polar bears do utilize the 1002 Area, their habitat expands beyond the coastal plain and the "species is widely distributed at low densities..."¹⁹ The SBS stock of polar bears have a large range from Point Hope to south of Banks Island and east of the Ballie Islands, Canada.²⁰ The same stock of polar bears utilizing the coastal plain also move through the areas of industry activity seasonally, this suggests that industry activities in the geographical area will have relatively few interactions with polar bears.²¹ Further, SBS polar bears do not use the coastal plain exclusively as the SBS spends the majority of the year near the coast,

¹⁶ Congressional Record – Senate, March 8, 2000 pg. 2242

¹⁷ Yukon Flats Basin, Alaska: Reservoir Characterization Study. State of Alaska Department of Natural Resources, Division of Geological & Geophysical Surveys 2006. Accessed online: http://dggs.alaska.gov/webpubs/dggs/ri/text/ri2006_001.pdf

¹⁸ Acquisition Opportunity – Yukon Flats Basin Central Alaska. <http://doyonoil.com/Content/pdfs/YukonFlats.pdf>

¹⁹ NPRA IAP EIS pg 346

²⁰ Alaska Marine Mammal Stock Assessments. National Oceanic and Atmospheric Administration, National Marine Fisheries Service. 2017.

²¹ FWS ITR FR 52304

moving further offshore in the summer to the pack ice²² and also frequent industrial areas like Pt Thomson, Badami, Prudhoe Bay, Kuparuk, Alpine, and developed areas east in Canada.

As distinguished in the NPRA IAP EIS, polar bears do have a certain degree of fidelity to their denning areas but there is a significant alteration in specific denning sites. Studies show that 46 dens have been documented in the coastal plain over a 40 year period. Fish and Wildlife Service (FWS) conducted a Forward Looking Infrared Radar (FLIR) survey in the Coastal Plain in the winter of 2018. The preliminary results, according to FWS, were that FWS detected five dens. Of that total, one had been abandoned prior to use, two were confirmed polar bears dens, and two were fox dens. These results provide clear insight into how polar bears are using the Coastal Plain for denning, and gives a degree of confidence on the efficacy of FLIR Surveys as they were successful in identifying even fox dens.

Through Traditional Knowledge, we understand that polar bears and terrestrial mammals like caribou are inherently mobile and their use of their habitat can vary widely. Through the robust mitigation measures established by the North Slope Borough, Fish and Wildlife Service, and the Bureau of Land Management, impacts to polar bears have been negligible from resource development activities for decades. The FWS Incidental Take Regulation have successfully minimized impacts to polar bears from oil and gas activities on and offshore:

“Since 1993, the documented impacts of incidental take by Industry activity in the Beaufort Sea ITR region affected only small numbers of bears, were primarily short-term changes to behavior, and had no long-term impacts on individuals and no impacts on the SBS polar bear population, or the global population.”

While the FWS Beaufort Sea ITR do not include the 1002 Area, the monitoring and permitting encompasses a much larger geographic area, manages the same stock of polar bears, and oversees a larger industry footprint than what is allowed under the 2,000 acre limit set by Congress.

Potential for Local Energy

Future leasing and subsequent activities could benefit the local community of Kaktovik directly. Specifically, local energy development is a potential outcome of prospective leasing and development. In Utqiagvik, the discovery of natural gas resource near the community led to natural gas being available and affordable to its residents, despite being uneconomical for industry to pursue. The community of Nuiqsut also benefits from natural gas as an outcome of development at Alpine. As seen with Nuiqsut and Utqiagvik, local natural gas can significantly offset high fuel costs and is a meaningful, long term benefit to the local people and environment.

Land Issues

²² The Use of Sea Ice Habitat by Female Polar Bears in the Beaufort Sea. OCS Study, U.S. Geological Survey, Alaska Science Center, Anchorage, AK. 2004.

Since ANILCA, the Kaktovikmiut have been limited in their access to their Native allotments, traditional subsistence areas, campsites, and generally throughout the Coastal Plain and greater ANWR. Residents of Kaktovik are restricted to traverse the 1002 Area only in the winter time and cannot utilize All-Terrain Vehicles (ATVs) to access their allotments within or outside of the 1002 Area. These limitations are culturally insensitive and go against the nomadic lifestyle of the Kaktovikmiut. Ironically, potential roads to facilitate development may dramatically increase the local people's access to the Coastal Plain and help create throughways subsistence users can use year-round.

The prolific resource discovered in the 1002 Area is in a region that has demonstrated environmental stewardship, cultural preservation and growth, and a vibrant oil and gas industry can and do co-exist. The precedent setting efforts by Alaska Natives, industry, and agencies to reduce the environmental footprint of development, promote technical advancements, and install mitigation measures to protect wildlife, subsistence, and the environment have changed the nature and scope of resource development on the North Slope and the world. Although the 1002 Area has been off limits to resource development activities since the 1980s, development occurs adjacent to the Coastal Plain in both Alaska and in nearby Canada. The Point Thomson facility is mere miles away from the 1002 Area.

History of Development

Alaska Natives have worked tirelessly to shape development in our region and the same tools we have put in place in Prudhoe Bay, Alpine, Kuparuk, Point Thomson, and offshore will be incorporated into any future activity in the 1002 Area. We emphasize this long history to showcase not only the pivotal role Alaska Natives have played in setting the standards for responsible development in our region, but to stress that resource development activities in the 1002 Area will not occur haphazardly, but will be the outcome of decades of diligence to reduce the environmental footprint, preserve our Iñupiat culture, and to secure a benefit in local development for the local people. While to some, development in the Arctic may be a novel concept, it is not to the people who live here.

Carefully designed mitigation measures by Alaska Natives, industry, and the NSB, which are incorporated into resource development in our region can be credited for the negligible impact that development has had on our environment and traditional ways of life. Through the use of science and Traditional Knowledge, best practices have been implemented to reduce or avoid impacts such as: adequate pipeline height to not impede migrating caribou; sufficient distance between pipeline and road to avoid deterring crossing caribou; specifications on road height and slope; thoughtful design on road placement to avoid funneling migrating caribou; aircraft altitude guidelines; time-of-day closures; and other restrictions on operations. These safeguards have worked to protect caribou across the North Slope and we are confident that through coordination with the people of Kaktovik, these mechanisms can be successfully applied to oil and gas programs the coastal plain.

March 20, 2019

Congressman Jared Huffman
1527 Longworth House Office Building
Washington, DC 20515

RE: H.R. 1146 – Arctic Cultural and Coastal Plain Protection Act

Representative Huffman,

Voice of the Arctic Iñupiat (VOICE) strongly opposes H.R. 1146 amending Public Law 115-97 to repeal the Arctic National Wildlife Refuge (ANWR) oil and gas leasing program. Beyond the fact that your bill would repeal an opportunity that the Iñupiat people have fought for decades to achieve, we are struck by the lack of knowledge displayed in this legislation, which completely ignores the existence of the Iñupiat people, and especially the people of Kaktovik. The Native Village of Kaktovik is a federally recognized tribe and the Kaktovikmiut have occupied the Coastal Plain for at least 11,000 years.

The Coastal Plain is home to more than just caribou and none of the Coastal Plain is wilderness. It is not a place without people; it never has been – it has been continuously occupied by the Iñupiat people and our ancestors for millennia, and we find it insulting that you fail to acknowledge this history. Currently, the Coastal Plain is the home of a community of over 200 people. People who live, hunt, fish, raise their families, and hope for a secure economic future for their children. People who walk in the footsteps of their ancestors all over the land that Congress, without our permission, designated as the 1002 Area of the Arctic National Wildlife Refuge. People that you have completely disregarded because they generally do not agree with you. In light of this, Congressman, your concern about human rights seems a bit pale.

When we, Indigenous peoples, use terms like self-determination, sovereignty, economic equality, cultural survival, and traditional lands, they are more than just buzzwords. These are objectives that have long been denied us and for which we have had to fight for generations. It is not for you to ignore those ideas, nor the people fighting for them, in favor of those who are more aligned with your political agenda. To us, this issue goes beyond politics to the very sustainability of our communities, culture, and economy.

The Arctic Cultural and Coastal Plain Protection Act undermines the wishes of those of us living closest to ANWR and negates years of work by local stakeholders toward ensuring a sustainable economy for the people and communities of our region. We hope this letter might help you better understand the realities of life in the Arctic. H.R. 1146 preaches a “moral responsibility to protect this wilderness heritage as an enduring resource to bequeath undisturbed to future generations of Americans”, but fails to acknowledge the basic needs of future generations of Arctic Iñupiat. Our regional

government, the North Slope Borough (NSB), is responsible for more territory than any other local government in the nation. The NSB receives over 96% of its revenue from property taxes levied on industry infrastructure on the North Slope, which enables them to provide services that were never accessible before in the Arctic. The Borough School District provides vocational and academic education for people of all ages; NSB health clinics provide modern medical services to residents in even the smallest and most remote of villages. The Municipal Services Department operates water, sewage, and electric utilities, plows roads and runways, and maintains landfills. Other NSB departments provide housing, police and fire protection, search and rescue, and other critical services to our communities. Altogether, the NSB is the single largest local employer on the North Slope, employing over 63% of the workforce. These benefits of modern American civilization, common in the rest of the nation, have been built on the foundation of the North Slope oil industry.

It is hypocritical of you, Congressman, to stifle the efforts of Kaktovik to secure jobs, a local economy, and income for their community while your state makes billions of dollars off the development of its own oil and gas resources. If you are concerned about the impacts of resource development, we suggest that you focus on your own state of California, which despite its green image, produces the dirtiest crude in America and has some of the largest refineries on the West Coast, which in addition to refining much cleaner Alaska North Slope Crude, also imports and refines oil from foreign countries like Saudi Arabia and Angola. The message this bill sends is that you prioritize the leisure whims of your California constituents above the needs of the Native people of Kaktovik.

H.R. 1146 cites climate change as one of the main drivers of the bill. In reality, climate change – and the world’s response to it – add additional layers to existing burdens that we, the Arctic’s Indigenous people, are facing. We agree that climate change has deeply affected our traditional Iñupiat ways of life. We do not agree that the solution to that problem is to create more wilderness that hinders our ability to provide for our people and respond to the impacts that we are facing. It is unfair for you to ask that we, as Indigenous peoples, carry the burden of climate change *and* the burden of mitigation so that you can fly back and forth to your home district with an easy conscience.

Even with the services our local government provides, many of the people in the Arctic live in conditions that fall below acceptable standards of living, despite being citizens of one of the richest countries in the world. We are concerned and puzzled, then, by your focus on protecting eco-tourism and this idea of pristine, unspoiled wilderness – at the expense of an economy to sustain our children – that rich elites across America “cherish.” While we are certainly used to this harmful narrative by now, it does not seem in line with your democratic values. For our part, we do not see any contradiction between developing our resources and *at the same time* protecting our environment and wildlife. These are not diverging priorities but an integral piece to balance in the Arctic.

The bill as introduced further ignores the historical and cultural trauma that is a part of this land and the Kaktovikmiut who inhabit it. The people of Kaktovik, in recent memory, have suffered through three forced relocations at the hands of the American military. Then, in 1980, the federal government took 23 million acres of land – without consent, consultation, nor a treaty between parties – and gave the people of Kaktovik back 92,000 acres of land immediately surrounding their village. A mere fraction of their traditional and ancestral lands. The “deal” was that this land was locked up, the Kaktovikmiut were unable to access Native allotments, cultural sites, and subsistence areas in the newly expanded Refuge in the summer months. No, they now live with extreme restrictions on how they can use their own lands as a result of the changes made by the federal government in how the land is designated, lands that the IŅupiat people have been stewards over for thousands of years. Do you consider these human rights violations, Representative Huffman? We hope, at the very least, that this does not diminish “the integrity of the National Wildlife Refuge System,” which in itself operates on the mistaken Western idea that Indigenous peoples are incompetent at managing their own lands.

The views of the IŅupiat who call ANWR home are frequently ignored, and your bill reinforces the perception that the wishes of people who live in and around the Coastal Plain are less important than those who live hundreds and thousands of miles away. Mr. Huffman, you do not have to tell the IŅupiat people, who have lived on this land for generations, the importance of our homelands – we see it, we know it, we depend on it, we are a part of it. We have something very important in common, that often gets lost in this debate – this false dichotomy of “for” vs. “against”, republican vs. democrat, economy vs. environment – we all share a commitment to protecting this land and we would welcome the opportunity to work collaboratively with you and the Gwich’in people, to whom we have extended many invitations for discussion, to protect this balance between responsible development and environmental protections that is integral to our way of life and the long-term sustainability of our culture.

The IŅupiat people have existed, and even flourished, in one of the most severe climates in the world for generations. We understand the balance needed to sustain our way of life and our communities; this priority is currently dependent on successful and safe oil and gas developments. We are confident that the health of the Porcupine Caribou Herd can be maintained given our success in maintaining the health of three other caribou herds that migrate within our region. We respectfully request that you remove your bill from consideration and come visit our communities to better understand the needs of our people and our communities. We would welcome the opportunity.

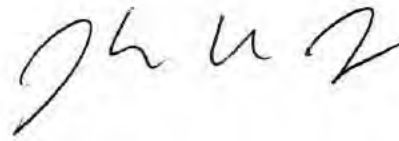
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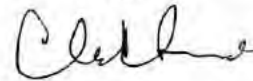
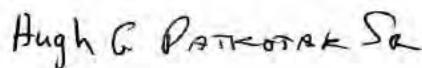
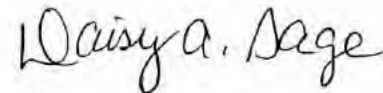
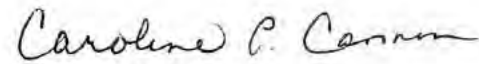
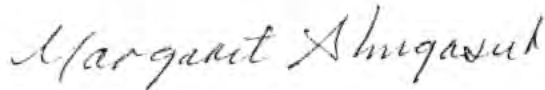
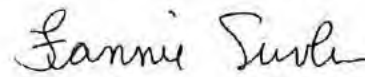
Sayers Tuzroyluk,
President, Voice of the Arctic IŅupiat



Rex A. Rock Sr.
Chairman



John Hopson Jr.
Vice Chairman



Voice of the Arctic Iñupiat (VOICE) is a 501(c)4 nonprofit organization established to provide direct input from the Iñupiat people in matters of Arctic policy. VOICE's membership includes 20 of the 28 entities from across Arctic Alaska including tribal councils, municipal governments, Alaska Native corporations, Alaska village corporations, educational institutions and other regional entities.

CC:

Senator Lisa Murkowski
Rep. Brian Fitzpatrick
Rep. Karen Bass
Rep. Suzanne Bonamici
Rep. Julia Brownley
Rep. Matt Cartwright
Rep. Judy Chu
Rep. Lacy Clay
Rep. Jason Crow
Rep. Val Demings
Rep. Debbie Dingell
Rep. Adriano Espaillat
Rep. Jimmy Gomez
Rep. Katie Hill
Rep. Pramila Jayapal
Rep. Derek Kilmer
Rep. Barbara Lee
Rep. Daniel Lipinski
Rep. Ben Luján
Rep. Doris Matsui
Rep. James McGovern
Rep. Joseph Morelle
Rep. Jerrold Nadler
Rep. Eleanor Norton
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Rep. Kevin Hern
Rep. Doug Lamborn
Rep. Robert Wittman

Senator Dan Sullivan
Rep. Pete Aguilar
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Representative Don Young
Rep. Nanette Barragán
Rep. Earl Blumenauer
Rep. Anthony Brown
Rep. Tony Cárdenas
Rep. Kathy Castor
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Rep. Adam Smith
Rep. Thomas Suozzi
Rep. Nydia Velázquez
Rep. Maxine Waters
Rep. Harley Rouda
Rep. Lori Trahan
Rep. Ed Perlmutter
Rep. Raúl Grijalva
Rep. Steven Horsford
Rep. Michael San Nicolas
Rep. Liz Cheney
Rep. Russ Fulcher
Rep. Garret Graves
Rep. Mike Johnson
Rep. Bruce Westerman

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Subject: ANWR Coastal Plain Lease Sale Call for Nominations

To: "Cardinale, Richard" <Richard_Cardinale@ios.doi.gov> "Patnaik, Bivan R" <bivan_patnaik@ios.doi.gov>
"Willens, Todd D" <todd_willens@ios.doi.gov>

Sent: Fri, 06 Nov 2020 10:55:41 -0500 (Fri, 06 Nov 2020 15:55:41 GMT)

Bivan, Todd has verbally cleared the Call For Nominations federal register notice and the Secretary has signed the delegation memo. I'll bring the package to you so that BLM can get it sent to OFR. Thanks, Gregg

Gregg D. Renkes

Deputy Chief of Staff/Senior Counselor

Office of the Secretary

U.S. Department of the Interior

(202) 208-4043 (O)

(202) 774-4833 (C)

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From: Willens, Todd D <todd_willens@ios.doi.gov>

Subject: ANWR

To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>

Sent: Tue, 11 Aug 2020 20:14:18 -0400 (Wed, 12 Aug 2020 00:14:18 GMT)

We are going to push ANWR release to Monday. You can do embargoed interviews Friday, but the launch will be held to Monday. We need to have the weekday hours to manage and respond. I understand that this will require staff to adjust travel and other planning. Please make adjustments accordingly. We can talk at 9 am tmrw about specifics.

Todd D. Willens

Chief of Staff

U.S. Department of the Interior

202-208-3437 - office

202-706-9041 - mobile

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: Fatal Flaw Review: Secretary Bernhardt Signs Decision to Implement the Coastal Plain Oil and Gas Leasing Program in Alaska
To: "Willens, Todd D" <todd_willens@ios.doi.gov> "MacGregor, Katharine S" <katharine_macgregor@ios.doi.gov> "Bernhardt, David L" <dwbernhardt@ios.doi.gov> "Lawkowski, Gary M" <gary_lawkowski@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Jorjani, Daniel H" <daniel.jorjani@sol.doi.gov> "Zerzan, Gregory P" <gregory.zerzan@sol.doi.gov> "Williams, Timothy G" <timothy_williams@ios.doi.gov> "Rojewski, Cole J" <cole_rojewski@ios.doi.gov>
CC:"Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov> "Swanson, Conner D" <conner_swanson@ios.doi.gov>
Sent: Fri, 14 Aug 2020 19:05:17 -0400 (Fri, 14 Aug 2020 23:05:17 GMT)

Close hold. This is going Monday AM. I'm waiting on a quote from Sullivan. Any edits, please let us know.

Thanks,

—

Secretary Bernhardt Signs Decision to Implement the Coastal Plain Oil and Gas Leasing Program in Alaska
Major step in carrying out mandate from the 2017 Tax Cuts and Jobs Act supporting energy security, job creation and economic growth for future generations

WASHINGTON — Today, Secretary of the Interior David L. Bernhardt signed a Record of Decision approving a program to carry out the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge (ANWR) in Alaska. The leasing program is required by law in the Tax Cuts and Jobs Act of 2017 (Public Law 115-97), which was passed by Congress and signed into law by President Trump on December 22, 2017. The decision determines where and under what terms and conditions leasing will occur in the 1.56 million-acre coastal plain within the 19.3 million-acre ANWR pursuant to Congress's program.

"Congress directed us to hold lease sales in the ANWR coastal plain, and we have taken a significant step in meeting our obligations by determining where and under what conditions the oil and gas development program will occur," **stated Secretary Bernhardt**. "Our program meets the legal mandate that coastal plain leaseholders get the necessary rights-of-way, easements and land areas for production and support facilities they need to find and develop these important Arctic oil and gas resources."

The energy potential of the ANWR coastal plain was finally unlocked after 30 years of gridlock when President Trump signed the Tax Cuts and Jobs Act into law, finally settling the question of whether the leasing, exploration and development of oil and gas will occur on about 8 percent of the refuge that lies with an oil and gas province of national significance. The legislation was unique because it didn't just allow for an oil and gas development program, it requires one that delivers energy to the nation and revenue to the treasury.

The Act changes the purposes of ANWR management to include oil and gas development in a small but potentially energy rich area along the Arctic coast, directing the Secretary to carry out an aggressive competitive energy development program that could keep oil flowing in the nation's energy artery, the 800 mile Trans-Alaska Pipeline, decades from now.

"Today's announcement marks a milestone in Alaska's forty-year journey to responsibly develop our State and our Nation's new energy frontier - the 1002 Area. The Record of Decision is a definitive step in the right direction to developing this area's energy potential - between 4.3 and 11.8 billion barrels of technically recoverable oil reserves," **said Alaska Governor Michael J. Dunleavy**. "In 2017, the U.S. Congress, under the leadership of Senators Murkowski and Sullivan and Congressman Young, authorized the leasing of lands in the 1002 Area, recognizing the critical role that Alaska plays in our Nation's energy independence. I would like to thank Interior Secretary Bernhardt and the U.S. Department of the Interior for their hard work and fulfilling their commitment to work with and consult with Alaskans on this important development. Alaska plays a critical role in our Nation's energy security. The vision of Secretary Bernhardt and President Donald J. Trump will lead to the responsible development of Alaska's abundant resources, create new jobs, support economic growth and prosperity, and most importantly, retain well into the future Alaska's critical role in our Nation's energy policy."

“This is a capstone moment in our decades-long push to allow for the responsible development of a small part of Alaska’s 1002 Area. I appreciate the significant work of Secretary Bernhardt and his team to get us to this point. I’m confident the ROD has been developed carefully and comprehensively and look forward to the lease sales mandated by law,” **said Senator Lisa Murkowski**. “New opportunity in the 1002 Area is needed both now, as Alaskans navigate incredibly challenging times, and well into the future as we seek a lasting economic foundation for our state. Through this program, we will build on our already-strong record of an increasingly minimal footprint for responsible resource development.”

“Today is a great day, not only for the State of Alaska, but also for American energy independence. I have long fought to realize the original promise of ANILCA, which designated the 10-02 area of ANWR's Coastal Plain for responsible oil exploration. In Alaska, we have proven that protecting the environment, honoring our history, and developing our natural resources can go hand-in-hand. The ROD released today is a crucial milestone in our efforts to make the 1002 Area's vast oil reserves available for development. Thousands of Alaskans are employed in our oil industry, and their livelihoods depend on the good-paying jobs created by our state's reserves. Today, we are one step closer to securing a bright future for these Alaskans and their families. I want to thank President Trump, Secretary Bernhardt, and the countless others at the Department of the Interior for the important work they have done. As we approach the day where the first drilling rigs arrive and crude starts flowing, I will continue working with great excitement to ensure that Alaska is front and center as we blaze the trail toward American energy dominance,” said **Congressman Don Young**.

The Tax Cuts and Jobs Act of 2017 directs the Secretary of the Interior, acting through the Bureau of Land Management (BLM), to conduct at least two area-wide leasing sales, not less than 400,000 acres each, within the coastal plain oil and gas program area of ANWR. The lease sales must be held within seven years with the first lease sale taking place before December 22, 2021 and the second lease sale before December 22, 2024. The Act also requires the Secretary to make land available for production and support facilities, and to grant rights-of-way and easements necessary for successful development of the oil and gas resources.

Today’s decision makes the approximately 1,563,500 acres, or the entire coastal plain program area, available for oil and gas leasing, and consequently for potential future exploration, development and transportation. While providing these opportunities, the program adopted in the Record of Decision also provides protections for surface resources and other uses, including subsistence use, through a comprehensive package of lease stipulations and required operating procedures that will apply to future oil and gas activities.

Congress opened 8 percent of ANWR for oil and gas development, leaving 92 percent of the 19.3-million-acre refuge off-limits to energy development by law, including 8 million acres in the Mollie Beattie Wilderness included in the National Wilderness Preservation System. Including oil and gas development on the coastal plain as a purpose of the refuge, Congress struck a balance between access to national important energy resources and the permanent preservation of vast areas of wilderness.

Under the approved plan, a majority of the coastal plain oil and gas program area will be subject to no surface occupancy restrictions (359,400 acres) and operational timing limitations (585,400 acres) to protect habitat and wildlife. All permitted activities will incorporate required operating procedures and stipulated restrictions based on the best science and technology to ensure that energy development does not come at the expense of the environment.

The Bureau of Land Management received almost two million public comments, each of which were considered in developing an environmentally responsible plan for Congress’s oil and gas program. More than 70 specialists contributed their expertise to the analysis, working more than 30,000 hours to ensure the plan was thorough and robust.

View the ROD on the [Coastal Plain project page](#).

###

Nicholas Goodwin
Communications Director
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Matthew Rexford <matthew.rexford@gmail.com>

Subject: [EXTERNAL] Letter from the President of Kaktovik Inupiat Corporation

To: "(b) (6)" <(b) (6)>

CC: "registry@ohchr.org" <registry@ohchr.org> "Bernhardt, David L" <dwbernhardt@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Imm, Teresa VOTAI" <Teresa.Imm@inupiatvoice.org>

Sent: Thu, 22 Oct 2020 20:58:37 -0400 (Fri, 23 Oct 2020 00:58:37 GMT)

Attachment 1: UN ANWR KIC Letter 10-22-2020.docx

Attachment 2: Testimony - ASRC - Glenn (w. figure).pdf

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Mr. Bremberg:

Please find attached to this email message a scanned signed copy of a letter dated October 22, 2020 with one attachment.

Sincerely,

Matthew Rexford - President
Kaktovik Inupiat Corporation
P.O. Box 73
Kaktovik, Alaska 99747
Office Phone: (907) 640-6120
Fax: (907) 640-6217



REFERENCE: CERD/EWUAP/101st Session/2020/USA/JP/ks

October 22, 2020

Mr. Andrew Bremberg
United States Mission
11, Route de Pregny
Case Postale 2354
1211 Geneva 2
Switzerland

Via email: (b) (6)

Dear Sir,

Recently, you received a letter from the United Nations' Committee on the Elimination of Racial Discrimination regarding potential development of oil and gas resources in the Coastal Plain of the Arctic National Wildlife Refuge – the "1002 Area." As the President of the local landowner – Kaktovik Inupiat Corporation – that owns 92,000 acres of surface land in the Coastal Plain along with Arctic Slope Regional Corporation who owns the mineral estate beneath our surface, I would like to weigh in on this discussion and correct some false and misleading statements that were raised.

To understand the complexity of this issue, it is important to understand the complex history of indigenous land claims in northern Alaska. Kaktovik Inupiat Corporation (KIC) is an Alaska Native Corporation (ANC) created by Congress in 1971 with the passing of the Alaska Native Claims Settlement Act (ANCSA). As you may know, ANC's were designed by Congress as a way of settling aboriginal land title after oil was discovered on the North Slope – at the time, unresolved land rights were a barrier to development. ANC's were established to empower Alaska Natives self-determination and ability to use their lands and natural resources to provide for their shareholders, the Alaska Native tribal members in their respective regions. KIC represents the shareholders of Kaktovik, Alaska and endeavors to improve their quality of life.

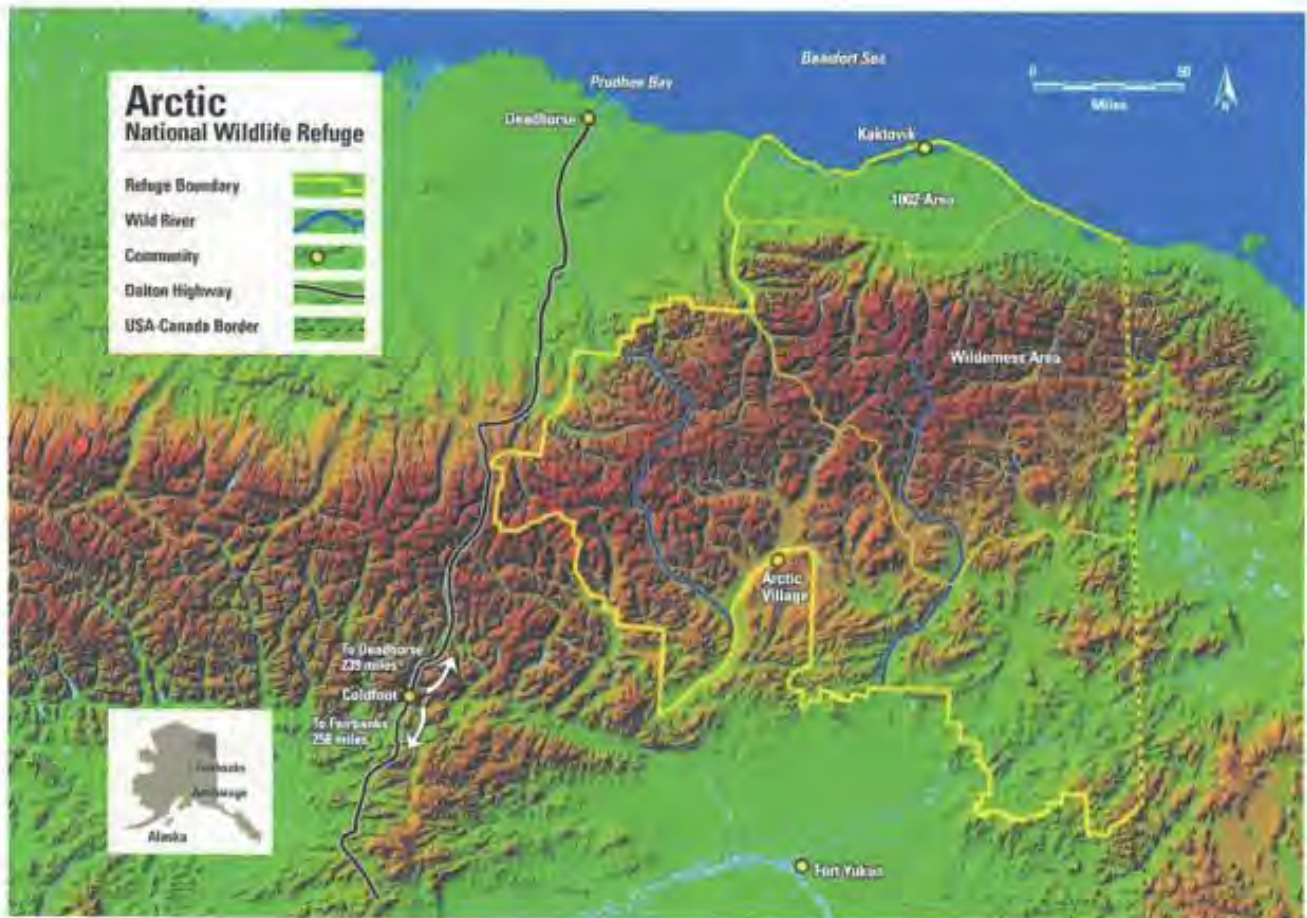
While ANCSA gave the Kaktovikmiut the rights to develop the surface of our traditional lands, the Alaska National Interest Lands Conservation Act (ANILCA) effectively made that right impossible. ANILCA vastly expanded federal lands in my region to the behemoth it is today and created what is now known as "ANWR" – the Arctic National Wildlife Refuge – that surrounds our village and KIC lands. We are literally an island in a National Wildlife Refuge and

frozen in time. Stipulations around the Refuge mean that we cannot build roads to our lands, we cannot travel over the tundra in the summer months with motorized vehicles (even for subsistence purposes), we cannot develop our lands as ANCSA intended.

In December 2017, our United States Congress passed the Tax Cuts and Jobs Act with a provision that repealed section 1003 of ANILCA and opened the Coastal Plain of ANWR to safe and responsible resource development. We understand that some people were unhappy with that decision, however Kaktovik is the only community within the Arctic National Wildlife Refuge, the Coastal Plain is our traditional homelands that our people have occupied for over 11,000 years, and KIC is the only private landowner. Our wishes must be prioritized over well-funded and well-amplified groups that live elsewhere but are committed to making sure my people are “conservation refugees.”

As Iñupiat, we have never sought to prevent other people from developing their lands as they see fit. While on one hand, the Gwich'in people seek to prevent self-determination and economic freedom on our lands, with the other, they have sought to develop and drill for oil and natural gas resources on their own lands to lower the cost of living and improve their quality of life. *Now by not extending us the same opportunities is real racial discrimination.* Our people have not objected to their rights to development.

Your Excellency, it is shameful to see the United Nations pick and choose whether they acknowledge the human rights or even existence of indigenous peoples. Please understand that the Coastal Plain of ANWR is not a wilderness area, it is the ancestral lands of my people and has been utilized continuously for many thousands of years. The recently released Environmental Impact Statement prepared by the United States Bureau of Land Management (BLM) is a strong document, and the BLM has taken seriously their obligation to consult with indigenous peoples inside the Program Area and even indigenous peoples hundreds of miles away. KIC asks that you please encourage the Chairperson and Committee review this document, which addresses all points of concern raised in their letter. I have included the map below to illustrate the traditional land use and ancestral areas of Alaska Native peoples, the red dot in the upper right corner of the map is my home. I would like to point out on this map that the gray area on the map represents the Iñupiat language area and the brown represents the Gwich'in language areas of Alaska. The boundary between the two languages is drawn approximately 50 to 75 miles south of Kaktovik along the continental divide. Our language boundaries also represent the traditional use between our indigenous peoples and was the main influence for the ANCSA



Attached to this letter is recent Testimony by Mr. Richard Glenn, Executive Vice President of the Arctic Slope Regional Corporation to the United States Congress on House Resources Bill 1146 on March 26, 2019. In his testimony he speaks on behalf of our respective corporations on what was initially intended by Congress through ANCSA to allow us our individual economic freedoms. This is another example of our continued defense against the Gwich'in attempts to claim occupancy of our homeland.

I appreciate your attention on this matter. We hope that your response to the United Nations Committee provides a more balanced understanding of the history of this area, acknowledges Kaktovikmiut occupation of these lands since time before memory, and prioritizes our right to self-determination as outlined in the United Nations Declaration of Rights of Indigenous Peoples.

Respectfully,

Matthew Rexford, President
Kaktovik Iñupiat Corporation
+1 (907) 640-1517

Cc: Yanduan Li, Chair – Committee on the Elimination of Racial Discrimination
Email: registry@ohchr.org
Secretary Bernhardt, United States Secretary of Interior
Email: dwbernhardt@ios.doi.gov
Gregg Renkes, United States Secretary of Interior
Email: gregg_renkes@ios.doi.gov
Teresa Imm, Voice of the Arctic Inupiat
Email: Teresa.Imm@inupiatvoice.org



Testimony of

Richard Glenn
Executive Vice-President
Arctic Slope Regional Corporation

Before the

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
OF THE COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

On

**H.R. 1146 (Rep. Huffman) "Arctic Cultural and Coastal Plain
Protection Act".**
1324 Longworth House Office Building, Washington D.C.

March 26, 2019

My name is Richard Glenn and I am a resident of Alaska. I am a tribal member of the Native Village of Barrow and the like Matthew and Fenton, a tribal member of the Iñupiat Community of the Arctic Slope. I've lived, hunted and explored across our entire North Slope. I am a geologist by training and currently serve as a Vice President for Arctic Slope Regional Corporation (ASRC), which is headquartered on Alaska's Arctic Slope.

ASRC is one of twelve land-owning Alaska Native regional corporations created by Congress in 1971. The three of us Iñupiat people presenting to you today are all shareholders of ASRC. ASRC owns approximately five million acres of land on the Arctic Slope, including the subsurface rights to 92,000 acres on the Coastal Plain of ANWR. ASRC and the Kaktovik Iñupiat Corporation, the Alaska Native village corporation for the people of Kaktovik, own the 92,000 acres.

This hearing is being held to review a piece of legislation that deems to protect the "Arctic Culture" of the Coastal Plain. While we, the people of the Arctic Slope, and the only residents that reside in the 1002 of ANWR and the entire Coastal Plain of the US Arctic, were not consulted on this legislation. We are here today to provide an insight to the "Arctic Culture" this resolution claims to protect.

Our region includes the villages of Point Hope, Point Lay, Wainwright, Atkasuk, Utqiagvik, Nuiqsut, Kaktovik, and Anaktuvuk Pass. Arctic Slope village residents have always depended on subsistence resources from the land, rivers and ocean.

Running water, reliable power, local education, improved health care – things that most people take for granted, can be furnished in our region, but only if there is a tax base for our local government, the North Slope Borough.

Resource development, initially centered around Prudhoe Bay and now in progress for more than fifty years, is that tax base. It is the nature of oil fields that production declines with time and new fields are developed. The 1002 Area of ANWR, which includes our land – land that our people have lived on for thousands of years – is now the focus of exploration to offset decades of decline.



Wildlife surveys show that the Central Arctic Caribou herd, which calves in the vicinity of Prudhoe Bay and ongoing development today, migrates southward over the Brooks Range and into the Arctic Village area, where the Gwich'in people live. The caribou are hunted there by the Gwich'in people, and that is okay.

Caribou are in general indifferent to oil and gas infrastructure. I myself have successfully hunted caribou, in summer and winter months, in and around producing fields as well as in the open tundra. Canadian Gwich'in people hunt the Porcupine Caribou herd with the assistance of a gravel highway which goes through the migration route. The health of a caribou herd is most affected by its own naturally occurring swings in population, a process that is well documented.

While on the subject of wildlife, there is some discussion of risk to polar bears due to seismic exploration on Coastal Plain of the 1002 Area. The topography of the 1002 Area is kind of like that of the Great Plains – with flat lands, undulating slopes, and gentle foothills. Pregnant female polar bears den in snowdrifts that are adjacent to steep coastal bluffs or large pressure ridges on the sea ice. I have seen polar bear dens on coastal bluffs when traveling by snow machine. And I have crossed many seismic line trails by snow machine as well. There is zero chance that a surveyed seismic line will be located on top of denning polar bears. The seismic line will conform to the gentle rolling topography and only cross features like bluffs and rivers only where the topography allows. Much of the Coastal Plain is windswept so that you can see the tops of grasses, willows and other plants where there are no snowdrifts. If there is no snow, there is no seismic line, and if there is snow, the seismic line will be located on gentle topography where denning would be impossible.

The 1002 Area itself is no stranger to infrastructure. Beginning in 1947 and continuing to this very day, the US and Canadian military set up defense stations all across the Arctic. I have brought a figure with me that shows the distribution of these facilities and ask that it be accepted into the record. At its peak, there was a station every 50 miles or so that consisted of aircraft runways, tank farms, camp facilities, and radar and communications towers – covering thousands of acres. In these facilities were dozens to hundreds of men at a time.



These radar and communications facilities crossed the 1002 Area of ANWR. Over the years with the advent of satellite communications many intermediate communication stations were abandoned and de-mobilized. This itself was an intensive effort putting workers and equipment once again into the area that some deem as pristine. To this very day there is an operating Long Range Radar station located right in the village of Kaktovik. And you can see the footprints of the other stations in the 1002 Area in satellite imagery. With all those runways, radars, and towers, and people in transit, from the 1940's through today, the Gwich'in people and our people continued to hunt caribou.

Frequently, in the national discourse, our region is pitted against some of the Gwich'in people who live south of ANWR because we advocate for the development of our own lands. Congressman Huffman, you have introduced legislation that speaks about the human rights of the Gwich'in. What about the human rights of the Iñupiat? We, too, respect the rights of the Gwich'in. I believe we have more in common than most people understand. Our people behaved as indigenous neighbors throughout mankind. We traded, traveled and even made wars at one time or another where our boundaries met.

We have this in common as well, we fought side by side with the Gwich'in for the claims of aboriginal title to lands. Like the Gwich'in, we found some fault with the Alaska Native Claims Settlement Act. Our region – the Arctic Slope region – was the only region to vote against it. Yet it passed Congress and we have since abided by its terms. Congress created these Alaska Native corporations, and conveyed to them the last vestige of lands that once covered almost all of Alaska-lands claimed by aboriginal title. In the Arctic Slope we received legal title to less than 10 percent of that which we claimed by aboriginal title. With lands ceded to them by Congress, the Gwich'in leased their lands for oil and gas exploration in the 1980's, seeking no input from us to the north. That's okay; they exercised their rights, and today we seek to exercise ours.

Your legislation fails even to recognize the existence of Kaktovikmiut – the only people who live within ANWR, never mind their rights as Americans. Your bill fails to recognize our region, our people, and to recognize the 1002 Area as our homeland.



We are not here to debate sacredness of land. All land is sacred. What we contest is that the people nearest to this issue, the people who live within ANWR, are not being given proportionate consideration, in fact any consideration, in this bill. When you occupy someone's house, you do not give more attention to the neighbors down the street than you do to the residents themselves. As Members, do you give more attention to the voters who live 150 miles south of your district than you do to your own constituents?

We have been yelled at in hearings, and belittled by Members of Congress for operating the Alaska Native corporations which you, the United States Congress, created. We are shamed for exploring, developing and producing resources in our own region. The same resources which allowed all of us to fly by jet and attend today's hearing. The same resources that jet you to and from your districts.

You have the heard voices of the Kaktovikmiut in front of you. Their voices are full of wisdom, sincerity and self-determination. I hope they aren't overlooked. We stand with them.

The fact is that quality of life has improved dramatically in our region, thanks in large part to resource development. A study published in the Journal of the American Medical Association Internal Medicine titled "Inequalities in Life Expectancy Among US Counties 1980-2014 Temporal Trends and Key Drivers" examined the life expectancy in all US counties. The average life expectancy of people living in the North Slope Borough over this 34 year interval increased by 8-13 years. No other area in the United States experienced a higher increase in life expectancy. The factors explaining this increase: declining poverty, increasing high school graduation, and increasing employment opportunities, and improved access to health care. The very things that have been fostered in our region due to oil and gas development.

On the Arctic Slope, the facts of our life are that development and wildlife populations coexist; and development and our people also coexist. The survival of our region and the development of our communities today depend on continued development. Industry has explored in our region and we have been there at their side every step of the way. This our freedom. This is what allows us to hunt and then have a warm house to come home to.



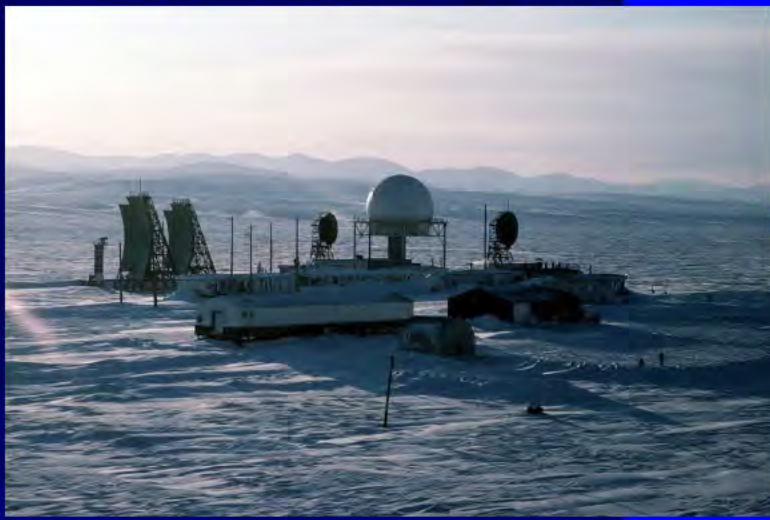
I encourage you to work with and listen to the village of Kaktovik and the North Slope Borough. ANWR, especially the 1002 Area, is the ancestral and continuing homeland of the Iñupiat people. In trying to listen to the will of the American people regarding ANWR, extra attention should be given to Alaskans, especially those in Kaktovik and the North Slope Borough.

ASRC understands that there is a public lands/public comment aspect to all of the ANWR, and that the American people have a role to play in its management. We understand it is easy to be angry about the impacts of climate change. We are on the front lines and live it every day. But it's harder to reconcile the fact that you are still consuming oil, and we are your fellow Americans who can provide that oil and a responsible way that benefits our people until you stop consuming. When the day comes and we have to change our economies, we will hold hands with the rest of the world and do so.

Until then, closing Arctic development will damage the viability of Arctic communities without altering the global climate at all. Our "Arctic Culture" needs no protection, rather the continued freedom of economic self determination to provide for our people – is what needs protection.



Distant Early Warning



North Warning System



White Alice Stations



From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: Final press release - needs sullivan quote
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
Sent: Sun, 16 Aug 2020 16:55:17 -0400 (Sun, 16 Aug 2020 20:55:17 GMT)
Attachment 1: EMBARGOED - Coastal Plain ANWR ROD Press Release.docx

Nicholas Goodwin
Communications Director
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: FOR REVIEW: Final Release - Please load and send a test tonight
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
CC: "Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov> "Swanson, Conner D" <conner_swanson@ios.doi.gov>
Sent: Sun, 16 Aug 2020 23:36:45 -0400 (Mon, 17 Aug 2020 03:36:45 GMT)
Attachment 1: EMBARGOED - Coastal Plain ANWR ROD Press Release-edit.docx

Gregg,

Per our convo, see the attached updated release. I tracked the changes. Let use know if you're good with this.

Thanks!

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Goodwin, Nicholas R
Sent: Sunday, August 16, 2020 5:02 PM
To: Swanson, Conner D <conner_swanson@ios.doi.gov>
Cc: Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>
Subject: Final Release - Please load and send a test tonight

Thanks,

From: Small, Jeffrey D <jeffrey_small@ios.doi.gov>
Subject: Fw: ANWR Comms for Monday
To: "Knudson, Kip C (GOV)" <kip.knudson@Alaska.gov>
CC: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
Sent: Wed, 12 Aug 2020 09:40:21 -0400 (Wed, 12 Aug 2020 13:40:21 GMT)
Attachment 1: DRAFT - Coastal Plain ROD Press Release.docx

Hi Kip,

Good speaking with you yesterday. Sounds like the ANWR ROD is going Monday now. Attached is the draft release which is embargoed until released by BLM.

The draft release already includes a quote from the Governor. Let us know if you all have any updates to the quotes but if we don't here back we will assume it is good to go as is.

Sincerely,

Jeff Small
Senior Advisor to the Secretary
U.S. Department of the Interior
Intergovernmental Affairs/External Affairs/Communications
1849 C Street NW
Office 6217
Washington D.C. 20240
202-208-6649 (direct)
202-344-5532 (work cell)
jeffrey_small@ios.doi.gov

Note: Every email and text I send or receive is subject to public release under the Freedom of Information Act.

From: Moody, Aaron G <Aaron.Moody@sol.doi.gov>
Subject: RE: [EXTERNAL] FW: Lease sale and seismic actions-Gwich'in Steering Committee v. Bernhardt, Case No. 3:20-cv-204-SLG
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Jorjani, Daniel H" <daniel.jorjani@sol.doi.gov> "Zerzan, Gregory P" <gregory.zerzan@sol.doi.gov>
Sent: Wed, 18 Nov 2020 22:46:16 -0500 (Thu, 19 Nov 2020 03:46:16 GMT)
Attachment 1: WILDLIFE-#346840-v2-ANWR-GWICH_IN_BROOK_RESPONSES+MG+PT_CLEAN+srd.docx

Draft responses attached. Happy to chat.

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Wednesday, November 18, 2020 3:24 PM
To: Moody, Aaron G <Aaron.Moody@sol.doi.gov>; Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>
Subject: RE: [EXTERNAL] FW: Lease sale and seismic actions-Gwich'in Steering Committee v. Bernhardt, Case No. 3:20-cv-204-SLG

10-4

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: Moody, Aaron G <Aaron.Moody@sol.doi.gov>
Sent: Wednesday, November 18, 2020 2:31 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>
Subject: RE: [EXTERNAL] FW: Lease sale and seismic actions-Gwich'in Steering Committee v. Bernhardt, Case No. 3:20-cv-204-SLG

Just spoke to DOJ. We're writing up a proposed response and will circulate this afternoon. (As to actual timelines, we basically said that no decisions had been made and that we couldn't commit to anything, except possibly that we'd wait until the close of the 30 day nominations period to put out a notice of sale).

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Wednesday, November 18, 2020 8:14 AM
To: Moody, Aaron G <Aaron.Moody@sol.doi.gov>; Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>
Subject: RE: [EXTERNAL] FW: Lease sale and seismic actions-Gwich'in Steering Committee v. Bernhardt, Case No. 3:20-cv-204-SLG

Thank you. I want to be involved in the formulation and approval of any responses before they go to DOJ. On your call, it seems important not to speculate about timelines that have not been determined or speak to anticipated timelines for internal deliberative processes that are still underway.

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: Moody, Aaron G <Aaron.Moody@sol.doi.gov>
Sent: Wednesday, November 18, 2020 8:02 AM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>
Subject: FW: [EXTERNAL] FW: Lease sale and seismic actions-Gwich'in Steering Committee v. Bernhardt, Case No. 3:20-cv-204-SLG

See below for a suite of questions from P's counsel re: Coastal Plain. We'll chat with DOJ and run any proposed responses by you.

From: Turcke, Paul (ENRD) <Paul.Turcke@usdoj.gov>
Sent: Tuesday, November 17, 2020 9:10 PM
To: Moody, Aaron G <Aaron.Moody@sol.doi.gov>; Deam, Seth R <seth.deam@sol.doi.gov>; Gieryic, Michael S <Mike.Gieryic@sol.doi.gov>
Cc: Brown, Mark (ENRD) <Mark.Brown@usdoj.gov>
Subject: [EXTERNAL] FW: Lease sale and seismic actions-Gwich'in Steering Committee v. Bernhardt, Case No. 3:20-cv-204-SLG

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

FYI, just received from Plaintiffs' counsel in the Gwich'in case. (b) (5)

Paul A. Turcke, Trial Attorney
Natural Resources Section

Environment and Natural Resources Division
United States Department of Justice
202-353-1389 (desk)
202-532-5994 (mobile)
paul.turcke@usdoj.gov

From: Brook Brisson <bbrisson@trustees.org>
Sent: Tuesday, November 17, 2020 9:02 PM
To: Turcke, Paul (ENRD) <PTurcke@ENRD.USDOJ.GOV>; Brown, Mark (ENRD) <MBrown@ENRD.USDOJ.GOV>
Cc: Suzanne Bostrom <sbostrom@trustees.org>; Bridget Psarianos <bpsarianos@trustees.org>;
karimah.schoenhut@sierraclub.org
Subject: Lease sale and seismic actions-Gwich'in Steering Committee v. Bernhardt, Case No. 3:20-cv-204-SLG

Paul and Mark,

Thank you for the notice of the call for nominations you filed on Monday. Our clients are deeply concerned to see DOI take steps to hold a lease sale under the challenged Leasing Program ROD and are considering all legal options should this administration continue to move forward with a lease sale. It is in all parties' interest to have a clear understanding of the processes and transparency on the timelines for all future actions the agencies may take. To ensure that we have necessary information to make litigation decisions and timely coordinate with you should motions become necessary, we ask for information on and notice of the following:

- Will your clients move forward to hold a lease sale? If so, on what date will the lease sale take place?
- Will your clients publish the notice of lease sale prior to or after the conclusion of the 30 day comment period on the call for nominations?
- If your clients decide to move forward with a notice of lease sale, will you advise us as soon as that decision is made?
- If your clients submit the notice of lease sale package to the Federal Register for publication, will you advise us as soon as that submission is made, including the expected timeline for publication?

Additionally, both BLM and FWS are considering a seismic permit application from KIC to conduct seismic this winter on the Coastal Plain. Such actions are also of considerable concern to our clients given the harm that seismic activities will have. We understand that the agencies will be relying on the analysis and measures adopted in the challenged Leasing Program ROD in their decision making as well. We believe that transparency around timing and decision making for these processes is in everyone's interest too. To that end, we ask for the following information and notice:

- What are the current processes and timelines anticipated for BLM's seismic permit and FWS's IHA?
- Will the scope of activities authorized under the BLM seismic permit change depending on whether leases are issued to the applicants, or to any other parties, as a result of the first lease sale?
- Will your clients provide notice of any submission of the package for a public comment period on the seismic permit and the IHA to the Federal Register, including the expected timeline for publication?
- Will your clients agree to provide notice that the final IHA has been issued to the applicant and a copy of the final IHA to plaintiffs at the time it is issued to the applicant?
- Will your clients agree to provide notice that the BLM seismic permit has been issued to the applicant and provide a copy of the BLM seismic permit at the time it is issued to the applicant?
- Will BLM provide advance notice to plaintiffs prior to issuing any "notice to proceed" to the applicants?

We appreciate your immediate attention to these questions and requests. Please do not hesitate to contact me if you have questions.

Thanks,

Brook

Brook Brisson (she/her/hers)

Senior Staff Attorney

Trustees for Alaska

1026 W. 4th Ave., Suite 201

Anchorage, Alaska 99501

(907) 433-2012 (direct)

bbrisson@trustees.org / www.trustees.org

cid:image001.png@01D3EC3A.983450A0



We use the law to protect and defend Alaska's lands, waters, wildlife, and people.

We recognize that we live and work within the traditional lands of the Indigenous Peoples of Alaska, and that our offices are located on the traditional territories of the Dena'ina Peoples. We acknowledge the place-based knowledge of these peoples, and are grateful for their ancestral and current stewardship of these lands.

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Paul and Mark,

Thank you for the notice of the call for nominations you filed on Monday. Our clients are deeply concerned to see DOI take steps to hold a lease sale under the challenged Leasing Program ROD and are considering all legal options should this administration continue to move forward with a lease sale. It is in all parties' interest to have a clear understanding of the processes and transparency on the timelines for all future actions the agencies may take. To ensure that we have necessary information to make litigation decisions and timely coordinate with you should motions become necessary, we ask for information on and notice of the following:

- Will your clients move forward to hold a lease sale? If so, on what date will the lease sale take place?

We are advised that BLM intends to comply with the statutory deadline of December 22, 2021. BLM has not made further decisions on timing, is currently awaiting results from the call for nominations, and will make any further determinations based upon information received from that process.

- Will your clients publish the notice of lease sale prior to or after the conclusion of the 30 day comment period on the call for nominations?

We are advised that BLM intends to publish any notice of lease sale after the conclusion of the 30-day comment period on the call for nominations.

- If your clients decide to move forward with a notice of lease sale, will you advise us as soon as that decision is made?

We intend to provide notice of any lease sale (which will be confirmed through a Notice of Filing with the Court) shortly after any notice of lease sale is transmitted to the Office of the Federal Register.

- If your clients submit the notice of lease sale package to the Federal Register for publication, will you advise us as soon as that submission is made, including the expected timeline for publication?

We intend to provide notice of any lease sale (which will be confirmed through a Notice of Filing with the Court) shortly after any notice of lease sale is transmitted to the Office of the Federal Register. If a projected publication date is provided by the Office of the Federal Register, we will include that information.

Additionally, both BLM and FWS are considering a seismic permit application from KIC to conduct seismic this winter on the Coastal Plain. Such actions are also of considerable concern to our clients given the harm that seismic activities will have. We understand that the agencies will be relying on the analysis and measures adopted in the challenged Leasing Program ROD in their decision making as well. We believe that transparency around timing and decision making for these processes is in everyone's interest too. To that end, we ask for the following information and notice:

- What are the current processes and timelines anticipated for BLM's seismic permit and FWS's IHA?

The seismic permit and IHA applications are under review by BLM and FWS, respectively, who are processing the applications in accordance with standard procedures. The schedules for completing these reviews are subject to change as needed.

- Will the scope of activities authorized under the BLM seismic permit change depending on whether leases are issued to the applicants, or to any other parties, as a result of the first lease sale?

BLM does not control the scope of proposed activities in a seismic permit application; that is up to the applicant. However, we are advised that, due to the timing of seismic activities currently proposed, it seems unlikely that the applicant would seek to change the scope of activities as a result of the first lease sale.

- Will your clients provide notice of any submission of the package for a public comment period on the seismic permit and the IHA to the Federal Register, including the expected timeline for publication?

We intend to provide notice concerning any notices of availability of the IHA and any EA and draft FONSI that are transmitted to the Office of the Federal Register.

- Will your clients agree to provide notice that the final IHA has been issued to the applicant and a copy of the final IHA to plaintiffs at the time it is issued to the applicant?

We intend to provide notice that any final IHA concerning the proposed seismic activities has been issued to the applicant and a copy of the final IHA.

- Will your clients agree to provide notice that the BLM seismic permit has been issued to the applicant and provide a copy of the BLM seismic permit at the time it is issued to the applicant?

We intend to provide notice that the BLM seismic permit has been issued to the applicant and a copy of the final permit.

- Will BLM provide advance notice to plaintiffs prior to issuing any "notice to proceed" to the applicants?

We intend to provide notice, to the extent that BLM issues any "notice to proceed" to the applicants, shortly after the decision is made to do so.

We appreciate your immediate attention to these questions and requests. Please do not hesitate to contact me if you have questions.

Thanks,

Brook

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Re: [EXTERNAL] Fwd: FYI: GOV ANWR Video Statement
To: "Knudson, Kip C (GOV)" <kip.knudson@Alaska.gov> "Turner, Jeff W (GOV)" <jeff.turner@alaska.gov> "Swint, Zachariah D. EOP/WHO" <(b) (6)>
Sent: Tue, 18 Aug 2020 00:11:58 -0400 (Tue, 18 Aug 2020 04:11:58 GMT)



Gregg Renkes
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (o)
(202) 774-4833 (c)

From: Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>
Sent: Monday, August 17, 2020 9:08:57 PM
To: Turner, Jeff W (GOV) <jeff.turner@alaska.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Swint, Zachariah D. EOP/WHO <(b) (6)>
Subject: [EXTERNAL] Fwd: FYI: GOV ANWR Video Statement

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Thank you! Great day.

Kip Knudson
Director, State/Federal Affairs
Alaska Governor Michael Dunleavy
907-382-0219

From: McDaniel, Austin J (GOV) <austin.mcdaniel@alaska.gov>
Sent: Monday, August 17, 2020 9:07:01 PM
To: Ochoa, Dottie M (GOV) <dottie.ochoa@alaska.gov>; Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>; Mary Vought <mary@voughtstrategies.com>
Subject: FYI: GOV ANWR Video Statement

In case you would like to flag for any of the federal agencies or WH. The Governor just recorded a video statement on the ANWR 1002 announcement today.

<https://www.facebook.com/GovDunleavy/posts/622032668740078>

or

<https://twitter.com/GovDunleavy/status/1295526085401092096>

Let me know if you have any questions.

Austin McDaniel

Deputy Communications Director - Digital
Office of Governor Mike Dunleavy

Anchorage: 907.269.3034

Mobile: 907.227.7982

austin.mcdaniel@alaska.gov

From: Imm, Teresa VOTAI <Teresa.Imm@inupiatvoice.org>
Subject: [EXTERNAL] Re: 070-20 Situation of Gwich'in Indigenous Peoples
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Teresa Imm" <Teresa-Imm@outlook.com>
Sent: Thu, 29 Oct 2020 11:58:09 -0400 (Thu, 29 Oct 2020 15:58:09 GMT)
Attachment 1: UN ANWR City-1.pdf
Attachment 2: Voice-of-the-Arctic-Inupiat-Letter-to-Ambassador-Bremberg-ANWR-10.28.2020.pdf

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Mr. Renkes,

Thank you for the document. We have seen this one and it's what we were responding to. I was wondering if you have seen a copy of the original request to the UN regarding racial discrimination. Attached are the letters sent from the City of Kaktovik and the Voice of the Arctic Iñupiat responding to the request from the Chair of Elimination of Racial Discrimination to the Ambassador. Please let me know if you have any questions.

Teresa Imm
Policy Support
Voice of the Arctic Iñupiat
+1 (907) 519-5057

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Thursday, October 29, 2020 4:43 AM
To: Teresa Imm <Teresa-Imm@outlook.com>; Imm, Teresa VOTAI <Teresa.Imm@inupiatvoice.org>
Subject: 070-20 Situation of Gwich'in Indigenous Peoples

[External Email]

FYI

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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SENSITIVE BUT UNCLASSIFIED

October 15, 2020

Mr. Andrew Bremberg
United States Mission
11, Route de Pregny
Case Postale 2354
1211 Geneva 2
Switzerland

Via email: (b) (6)

Honorable Ambassador Bremberg,

The City of Kaktovik recently learned – through third party colleagues and not the United Nations itself – that oil and gas leasing in the Arctic National Wildlife Refuge (ANWR) is under review by the UN Committee on the Elimination of Racial Discrimination. As the Mayor of the City of Kaktovik, I must express my outrage that a body which, in its Declaration on the Rights of Indigenous Peoples mentions the importance of consultation *nine times*, has neglected to take its own advice to engage with our community.

My community has been fighting for the opportunity to develop on the lands that surround us for decades. We follow in the footsteps of prior generations to secure our right to self-determination, sovereignty over our own lands and resources, and economic equality. We don't expect others to understand our choices, but we do expect respect and an equal opportunity to express our intention.

I hope that you understand that to the people of Kaktovik, this issue is at the center of our survival as a community. The letter alleges infringements on the human rights of the Gwich'in peoples but fails to acknowledge the basic needs of future generations of Arctic Iñupiat. Our regional government, the North Slope Borough (NSB), is responsible for more territory than any other local government in the nation. The NSB receives over 96% of its revenue from property taxes levied on industry infrastructure on the North Slope, which enables them to provide services that were never accessible before in the Arctic. The Borough School District provides vocational and academic education for people of all ages; NSB health clinics provide modern medical services to residents in even the smallest and most remote of villages. The Municipal Services Department operates water, sewage, and electric utilities, plows roads and runways, and maintains landfills. Other NSB departments provide housing, police and fire protection, search and rescue, and other critical services to my community. We do not take these things for granted because, unlike most Americans, we know what it is like to go without them. Even today, in many rural communities throughout Alaska, these basic services are still lacking, and many people fall below acceptable standards of living, despite being citizens of one of the richest countries in the world.

Studies show that in the four decades since development began on the North Slope, the life expectancy in our region increased by 13 years due to the improvements in public health, education, and sanitary services. Our region is *only* able to provide these services through the taxes levied on industry infrastructure in our region. For our part, we do not see any contradiction between developing our resources and *at the same time* protecting our environment and wildlife. These are not diverging priorities, but an integral piece to balance in the Arctic.

The letter itself acknowledges that “domestic remedies available to indigenous peoples do not provide a legal basis for addressing the underlying cause of structural discrimination.” This is because this project has gone through the rigid and exhaustive consultation process set forth by the National Environmental Policy Act, including multiple rounds of consultation and public engagement. There is absolutely no precedent nor truth to the hypotheticals brought forth in the letter and the complaint is akin to a child throwing a tantrum when things don’t go their way and has very real consequences for my community and the people that I represent.

The views of the Iñupiat who call ANWR home are frequently ignored, and the UN Committee Chairperson's letter reinforces the perception that the wishes of people who live in and around the Coastal Plain are less important than those who live hundreds and thousands of miles away. The Iñupiat people have existed, and even flourished, in one of the most severe climates in the world for generations. We understand the balance needed to sustain our way of life and our community; this priority is currently dependent on safe and successful oil and gas developments. We are confident that the points raised by Chairperson Li have been satisfactorily addressed in the Oil and Gas Leasing document produced by the Bureau of Land Management that is the result of several years of research, data, and consultation with both Iñupiat and Gwich'in peoples. I respectfully request that you do all in your power to make our voices heard to the Committee and actively dissuade them from using their power to benefit one indigenous group over another. Thank you for your time and consideration.

Sincerely,



Amanda Kaleak
Mayor, City of Kaktovik

Cc: Yanduan Li, Chair - Committee on the Elimination of Racial Discrimination
Email: registry@ohchr.org
Secretary Bernhardt, United States Secretary of Interior
Email: dwbarnhardt@ios.doi.gov
Gregg Renkes, United States Secretary of Interior
Email: gregg_renkes@ios.doi.gov

October 28, 2020

Mr. Andrew Bremberg
United States Mission
11, Route de Pregny
Case Postale 2354
1211 Geneva 2
Switzerland

Sent via email: (b) (6) .

REFERENCE: CERD/EWUAP/101st_Session/2020/USA/JP/ks

Ambassador,

My name is Sayers Tuzroyluk, Sr. and I am President of Voice of the Arctic Iñupiat (VOICE). I write today in support of the Kaktovikmiut, the people of Kaktovik, the leaders of whom you have certainly heard from in response to the inquiry into racial discrimination against the Gwich'in peoples currently being conducted by the United Nations Committee on the Elimination of Racial Discrimination. The United Nations Declaration on the Rights of Indigenous Peoples guarantees the Kaktovikmiut may pursue self-determination and economic freedoms. The work of this Committee is in direct opposition to that Declaration.

VOICE is a 501(c)4 non-profit corporation whose twenty-four members include representatives from Alaska's North Slope tribal councils, municipal governments, Alaska Native Corporations, our regional health non-profit, and the tribal college from the North Slope of Alaska. Together, we represent the broad leadership of our region and work to promote and engage in issues critical to our peoples and communities. Our goal as an organization is to provide a unified voice on the issues that would affect our cultural and economic sustainability. We operate on the strong belief that our collective voice should be heard over those who would speak on our behalf about how we live in and manage our homelands. It seems that the need for an organization such as ours is unfortunately becoming more necessary and not less.

In August of 2017, VOICE's member organizations voted unanimously to pass a resolution supporting the pursuit of environmentally responsible and culturally sensitive oil and gas development in the Arctic National Wildlife Refuge. Five members of VOICE – Kaktovik Iñupiat Corporation (KIC), Native Village of Kaktovik (NVK), City of Kaktovik, Arctic Slope Regional Corporation (ASRC), and the North Slope Borough (NSB) – have particular interest in the oil and gas

Arctic Slope Native Association City of Anaktuvuk Pass City of Point Hope Native Village of Atkasuk Olgoonik Corporation
Arctic Slope Regional Corporation City of Atkasuk City of Wainwright Native Village of Point Lay Tikigaq Corporation
Atkasuk Corporation City of Utqiagvik Iñupiat College North Slope Borough Ukpeaġvik Iñupiat Corporation
Native Village of Kaktovik Kaktovik Iñupiat Corporation Nunamiut Corporation Native Village of Point Hope Wainwright Tribal Council
Iñupiat Community of the Arctic Slope Native Village of Barrow North Slope Borough School District City of Kaktovik

leasing program on the Coastal Plain; both NVK and KIC have passed resolutions to support the opening of the 1002 area to oil and gas leasing. The Native Village of Kaktovik represents local stakeholders as the only community to lie within the bounds of the 1002 area, and KIC and ASRC are landowners of the surface and subsurface, respectively, of 92,000 acres of the coastal plain. As an Alaska Native Corporation, ASRC distributes dividends to shareholders whom are Alaska Native tribal members. For some shareholders, these dividends represent a significant portion of their annual income, and are a saving grace in years with low subsistence harvest. ASRC also distributes 70% of its revenue from development of their lands to the 12 other regional corporations – since the passage of ANCSA, this has amounted to a distribution of over \$1 billion dollars, buoying indigenous peoples across the state. ASRC shareholder dividends and distributions to other Alaska Native Corporations are generated almost entirely from oil and gas development on ASRC lands. Our region is unique in that our local regional government, the North Slope Borough, carries out public services that are normally a function of the state or federal government. The NSB exceeds every other local government in the scale and scope of these services, even as the largest Borough in the nation covering a land mass the size of Pennsylvania. In addition to sanitary, heating, roads, and maintenance services, the NSB operates its own search and rescue operations, funds our school district, and is the only local government in the nation with its own Wildlife Department that is actively researching and protecting our subsistence resources. These things can only be sustained through a long-term tax base for the NSB, currently over 96% of which comes from the taxation of industry infrastructure in our region. Our comments here are the direct result of many discussions with our members and the community of Kaktovik as a whole.

In regard to Chairperson Li's letter, we are collectively outraged and concerned that – beyond the fact that the outcome of such an unwarranted inquiry could jeopardize an opportunity that the Iñupiat people have fought for decades to achieve – we are struck by the lack of knowledge displayed by the Committee, which completely ignores the existence of the Iñupiat people, and especially the people of Kaktovik. The area in consideration is a part of the Arctic National Wildlife Refuge – often called the 1002 area or Coastal Plain – that has been continuously occupied by the Kaktovikmiut and their ancestors for millennia, and it is extremely insulting that the Committee failed to acknowledge this history. Currently, the Coastal Plain is the home of a community of over 200 people. People who live, hunt, fish, raise their families, and hope for a secure economic future for their children.

Mr. Ambassador, as you know, our region and the State of Alaska are economically dependent on the safe and successful extraction of oil and gas across our traditional lands. We do not need to be told by a Committee of the United Nations that these activities must be closely monitored; we recognize that natural resource development can only be allowed to occur when the preservation of our way of life, our food security, and our subsistence culture are the highest priorities. Our present day leadership and leaders of the past have worked tirelessly since the

discovery of hydrocarbons at Prudhoe Bay to install safeguards to create and preserve this balance of our culture and way of life while facilitating the vibrant activity in our region to local, state, and national benefit. The decades-long success of these efforts is a testament to the close consultation, collaboration, and engagement among federal agencies, industry partners, and the local people.

It is our hope that moving forward you will work to center the people of Kaktovik, which have the most at stake and have the greatest breadth of expertise on the environment, landscape, wildlife, migratory patterns, and cultural resources. Before all else, the Coastal Plain is the home of the Kaktovikmiut, and Kaktovik has made the judgement that measured oil and gas development within their region can benefit their community. As your work with the Committee in their inquiry process, we hope that you will consider and respect their perspective.

Taikuu,



Sayers Tuzroyluk, Sr.
President, Voice of the Arctic Iñupiat

CC: Yanduan Li, Chair – Committee on the Elimination of Racial Discrimination
Email: registry@ohchr.org

Secretary Bernhardt, United States Secretary of Interior
Email: dwbernhardt@ios.doi.gov

Gregg Renkes, United States Secretary of Interior
Email: gregg_renkes@ios.doi.gov

From: Taylor, Sara M <sara_taylor@ios.doi.gov>
Subject: Re: [EXTERNAL] Looking for help getting leasing shapefiles
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Dove, William" <William_Dove@fws.gov>
CC: "Monson, Lesia" <Lesia_Monson@ios.doi.gov> "Padgett, Chad B" <cpadgett@blm.gov>
Sent: Tue, 17 Nov 2020 15:27:46 -0500 (Tue, 17 Nov 2020 20:27:46 GMT)

This is great information, Gregg, thank you!

Billy, would you like me to connect you with Craig for the lay-up, or work on a response we can send him directly? Steve would usually bring Gil in on crafting emails to Craig, and others as befit the request. I am happy to get us all on an email chain to discuss, just let me know.

Sara

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Tuesday, November 17, 2020 11:09:36 AM
To: Taylor, Sara M <sara_taylor@ios.doi.gov>; Dove, William <William_Dove@fws.gov>
Cc: Monson, Lesia <Lesia_Monson@ios.doi.gov>; Padgett, Chad B <cpadgett@blm.gov>
Subject: RE: [EXTERNAL] Looking for help getting leasing shapefiles

Sara, The only tract map information available is the tract map published with the call for nominations. No other data or maps are available to share. With regard to the leasing process, while the program is to be carried out similar to the process outlined in the NPR-A regs, it is not to be carried out identical to the NPR-A regs and there are no regs covering the ANWR CP leasing program. Therefore, at this point it is best for you not to provide any prospective information regarding the ANWR CP leasing process. Thanks for running this by me. Gregg

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: Taylor, Sara M <sara_taylor@ios.doi.gov>
Sent: Tuesday, November 17, 2020 2:22 PM
To: Dove, William <William_Dove@fws.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Cc: Monson, Lesia <Lesia_Monson@ios.doi.gov>
Subject: Fwd: [EXTERNAL] Looking for help getting leasing shapefiles

See below - I am not sure the requested shape files exist yet, as no tracts have been nominated or selected for leasing. I can check in with local BLM folks on when these materials may be available and their share-ability, and can type up a paragraph on steps remaining in the regulatory process (43 CFR 3131). Let me know how you'd like to proceed.

From: Machtans, Craig (EC) <craig.machtans@canada.ca>
Sent: Tuesday, November 17, 2020 9:24 AM
To: Taylor, Sara M
Cc: Mike Sutor
Subject: [EXTERNAL] Looking for help getting leasing shapefiles

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Hi Sara –

I hope you've been well since we last met here in Whitehorse. I'm reaching out on behalf of the Canadian IPCB members and the technical committee (chaired by Mike Sutor now) regarding the leasing process in ANWR.

We wondered if you could connect us or provide directly the GIS shapefiles of the nomination polygons for leases in the 1002 lands? Normally I'd have asked Steve to help of course, but since he's left I have not connected with the new co-chair based out of D.C.

Let me know if you can help us get the data files!

Cheers,
Craig

Craig Machtans

Manager, Northern Region, Canadian Wildlife Service
Environment and Climate Change Canada / Government of Canada (Whitehorse)
craig.machtans@canada.ca / Teleworking: 867-336-8242

Gestionnaire, Région du Nord, Service canadien de la faune
Environnement et Changement climatique Canada / Gouvernement du Canada (Whitehorse)
craig.machtans@canada.ca / Télétravail: 867-336-8242

From: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Re: [EXTERNAL] Note on upcoming ANWR story from WaPo
To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
CC: "Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov>
Sent: Tue, 18 Aug 2020 22:05:27 -0400 (Wed, 19 Aug 2020 02:05:27 GMT)

Thanks.

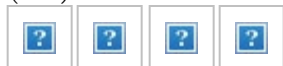
Get [Outlook for iOS](#)

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Tuesday, August 18, 2020 8:33:11 PM
To: Swanson, Conner D <conner_swanson@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Cc: Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>
Subject: RE: [EXTERNAL] Note on upcoming ANWR story from WaPo

I'm fine with this.

The Coastal Plain Oil and Gas Leasing Program environmental review involved more than 70 employees from across federal and state agencies that contributed their expertise to this analysis, working more than 30,000 labor hours. Nearly two million public comments were received that informed the final decision.

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Swanson, Conner D <conner_swanson@ios.doi.gov>
Sent: Tuesday, August 18, 2020 8:25 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Cc: Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>
Subject: FW: [EXTERNAL] Note on upcoming ANWR story from WaPo

See the one question:

One question: Did Sec. Bernhardt personally work on the record of decision?

Proposed:

- The Coastal Plain Oil and Gas Leasing Program environmental review involved more than 70 employees from across federal and state agencies that contributed their expertise to this analysis, working more than 30,000 labor hours. Nearly two million public comments were received that informed the final decision.

Conner Swanson
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior
Cell #: (202) 340-6295

From: Grandoni, Dino <Dino.Grandoni@washpost.com>
Sent: Tuesday, August 18, 2020 4:53 PM
To: Interior Press <interior_press@ios.doi.gov>
Subject: [EXTERNAL] Note on upcoming ANWR story from WaPo

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Hi all,

Hope you're all well. I'm emailing to let you know that I plan to write a story about the prospect of the Interior Department completing a lease sale in the Arctic National Wildlife Refuge before the end of President Trump's current term in office.

I will rely much on what Sec. Bernhardt told reporters Monday, but just wanted to give your office a heads-up. Let me know if you have an update on when a call for nomination may be issued.

One question: Did Sec. Bernhardt personally work on the record of decision?

All the best,
Dino

Dino Grandoni
716-818-0825
The Washington Post
Energy and environmental policy reporter
Author of the Energy 202 newsletter

Subscribe here → wapo.st/energy202 ←

From: Small, Jeffrey D <jeffrey_small@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: ANWR Comms for Monday
To: "Knudson, Kip C (GOV)" <kip.knudson@Alaska.gov>
CC: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Turner, Jeff W (GOV)" <jeff.turner@alaska.gov>
Sent: Wed, 12 Aug 2020 15:30:26 -0400 (Wed, 12 Aug 2020 19:30:26 GMT)
Great. Thanks Kip and Jeff!

Sincerely,

Jeff Small
Senior Advisor to the Secretary
U.S. Department of the Interior
Intergovernmental Affairs/External Affairs/Communications
1849 C Street NW
Office 6217
Washington D.C. 20240
202-208-6649 (direct)
202-344-5532 (work cell)
jeffrey_small@ios.doi.gov

Note: Every email and text I send or receive is subject to public release under the Freedom of Information Act.

From: Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>
Sent: Wednesday, August 12, 2020 2:15 PM
To: Small, Jeffrey D <jeffrey_small@ios.doi.gov>
Cc: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Turner, Jeff W (GOV) <jeff.turner@alaska.gov>
Subject: [EXTERNAL] Re: ANWR Comms for Monday

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All good to go from our perspective.

Kip Knudson
Director, State/Federal Affairs
Alaska Governor Michael Dunleavy
907-382-0219

From: Small, Jeffrey D <jeffrey_small@ios.doi.gov>
Sent: Wednesday, August 12, 2020 9:40:21 AM
To: Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>
Cc: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Fw: ANWR Comms for Monday

Hi Kip,

Good speaking with you yesterday. Sounds like the ANWR ROD is going Monday now. Attached is the draft release

which is embargoed until released by BLM.

The draft release already includes a quote from the Governor. Let us know if you all have any updates to the quotes but if we don't here back we will assume it is good to go as is.

Sincerely,

Jeff Small
Senior Advisor to the Secretary
U.S. Department of the Interior
Intergovernmental Affairs/External Affairs/Communications
1849 C Street NW
Office 6217
Washington D.C. 20240
202-208-6649 (direct)
202-344-5532 (work cell)
jeffrey_small@ios.doi.gov

Note: Every email and text I send or receive is subject to public release under the Freedom of Information Act.

From: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Re: [EXTERNAL] UN discrimination committee looking into ANWR drilling
To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov> "Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov>
"Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
Sent: Wed, 02 Sep 2020 15:52:14 -0400 (Wed, 02 Sep 2020 19:52:14 GMT)

Thank you.

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
202-340-6295

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Wednesday, September 2, 2020 3:43:15 PM
To: Swanson, Conner D <conner_swanson@ios.doi.gov>; Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Re: [EXTERNAL] UN discrimination committee looking into ANWR drilling

Made edits to the original email below.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Swanson, Conner D <conner_swanson@ios.doi.gov>
Sent: Wednesday, September 2, 2020 3:37 PM
To: Goodwin, Nicholas R; Goldey, Benjamin H; Renkes, Gregg D
Subject: FW: [EXTERNAL] UN discrimination committee looking into ANWR drilling

Proposed Response. Worked on with Gregg.

“This is a clearly misinformed letter, as there is no mention of the native people who actually inhabit the Coastal Plain and live near the proposed development area. The Inupiat people of the Arctic and residents of the village of Kaktovik, the only village inside the refuge boundaries, support responsible development of the Coastal Plain. Development of these important energy resources will provide the Inupiat communities who live there with jobs and keep the lights on for future generations, providing the basic infrastructure and opportunity such as schools, roads, stores, community centers, running water and basic sanitation systems.

The input of native communities was received and valuable to the extensive development of this plan. There were more than 25 Government-to-Government and Alaska Native Claims Settlement Act (ANCSA) Corporation consultations conducted during this process, including meetings with the Gwich'in community and their leaders.

(b) (5)



Background

The Department is committed to the wellbeing of Native peoples across the U.S. One example of this was the established by President Trump of the Operation Lady Justice Task Force in November of 2019, with the mandate to “*enhance the operation of the criminal justice system and address the concerns of American Indian and Alaska Native communities regarding missing and murdered people*”.

Conner Swanson
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior
Cell #: (202) 340-6295

From: Rachel Frazin <rfrazin@thehill.com>
Sent: Wednesday, September 2, 2020 2:13 PM
To: Interior Press <interior_press@ios.doi.gov>; Press, BLM <BLM_Press@blm.gov>
Subject: [EXTERNAL] UN discrimination committee looking into ANWR drilling

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Hi everyone,

Do you all want to comment on this letter from the [United Nations](#) saying it's looking into the treatment of the Gwich'in people in regards to the ANWR drilling plan?

If you could get back to me by 3:30 that would be great!

Best,
Rachel Frazin
Energy and Environment Reporter, The Hill
561-212-2815

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: [EXTERNAL] With some edits Press statement re ROD as of 4:15 8.16.20
To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov>
Sent: Sun, 16 Aug 2020 17:12:15 -0400 (Sun, 16 Aug 2020 21:12:15 GMT)
Attachment 1: EMBARGOED - Coastal Plain ANWR ROD Press Release +GR.docx

Nick, I added the quote and made a couple tweaks. See attached. Gregg

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Sunday, August 16, 2020 4:58 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: FW: [EXTERNAL] With some edits Press statement re ROD as of 4:15 8.16.20

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Playforth, Taylor G <taylor_playforth@ios.doi.gov>
Sent: Sunday, August 16, 2020 4:58 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Fwd: [EXTERNAL] With some edits Press statement re ROD as of 4:15 8.16.20

Apologies for the delay, they just sent the final quote for Senator Sullivan, below.

Thanks,

From: Coyne, Amanda (Sullivan) <Amanda_Coyne@sullivan.senate.gov>
Sent: Sunday, August 16, 2020 4:16:48 PM
To: Playforth, Taylor G <taylor_playforth@ios.doi.gov>
Subject: [EXTERNAL] With some edits Press statement re ROD as of 4:15 8.16.20

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> "We've made historic progress this past month for Alaskan jobs and our economy," said Senator Dan Sullivan (R-Alaska). "First, we had a record of decision for the Ambler Road project, then a final Environmental Impact Statement for the Willow project in the National Petroleum Reserve-Alaska, and now the record of decision for responsible resource development on the Coastal Plain of the Arctic National Wildlife Refuge. This is what happens when the executive branch and Congress work together to create opportunities for Alaskans, not shut us down. I thank all Alaskans who have worked for more than 40 years for

responsible resource development in the 1002 area of the Coastal Plain. I particularly applaud the tireless advocacy of the many Alaska Natives—who call the area home—and who know firsthand how responsible oil production can provide enormous economic and social benefits while having minimal impact on the environment. Finally, I appreciate all of the hard work and diligence of Secretary Bernhardt and the Department of the Interior to produce this record of decision—bringing us that much closer to unleashing America’s energy potential, filling up the Trans Alaska Pipeline, boosting our economy, and providing good jobs for Alaskans, all while protecting the Coastal Plain’s ecosystem.”

From: Playforth, Taylor G <taylor_playforth@ios.doi.gov>
Sent: Sunday, August 16, 2020 2:03 PM
To: Coyne, Amanda (Sullivan) <Amanda_Coyne@sullivan.senate.gov>
Cc: Anderson, Mike (Sullivan) <Mike_Anderson@sullivan.senate.gov>; Soukup, Michael (Sullivan) <michael_soukup@sullivan.senate.gov>
Subject: Re: [EXTERNAL] Press statement re ROD

Circling back as we’re planning to release in the morning and still need to get our final release including quotes cleared by the Department’s Ethics Office. Any chance we can get a quote this afternoon?

From: Coyne, Amanda (Sullivan) <Amanda_Coyne@sullivan.senate.gov>
Sent: Friday, August 14, 2020 4:47:27 PM
To: Playforth, Taylor G <taylor_playforth@ios.doi.gov>
Cc: Anderson, Mike (Sullivan) <Mike_Anderson@sullivan.senate.gov>; Soukup, Michael (Sullivan) <michael_soukup@sullivan.senate.gov>
Subject: RE: [EXTERNAL] Press statement re ROD

Thank you! Sorry about the delay. Will work on it and definitely get you something over the weekend.

From: Playforth, Taylor G <taylor_playforth@ios.doi.gov>
Sent: Friday, August 14, 2020 4:46 PM
To: Coyne, Amanda (Sullivan) <Amanda_Coyne@sullivan.senate.gov>
Cc: Anderson, Mike (Sullivan) <Mike_Anderson@sullivan.senate.gov>; Soukup, Michael (Sullivan) <michael_soukup@sullivan.senate.gov>
Subject: Re: [EXTERNAL] Press statement re ROD

Our comms folks are pinging me on this because they have to run the final release by ethics and we’re planning to go live Monday morning.

I’ll be checking my email over the weekend if you’re able to get something approved.

Thanks,

From: Coyne, Amanda (Sullivan) <Amanda_Coyne@sullivan.senate.gov>
Sent: Friday, August 14, 2020 12:09:26 PM
To: Playforth, Taylor G <taylor_playforth@ios.doi.gov>
Cc: Anderson, Mike (Sullivan) <Mike_Anderson@sullivan.senate.gov>; Soukup, Michael (Sullivan) <michael_soukup@sullivan.senate.gov>
Subject: RE: [EXTERNAL] Press statement re ROD

We will. I'll try to get one approved today. Thank you!

-----Original Message-----

From: Playforth, Taylor G <taylor_playforth@ios.doi.gov>

Sent: Friday, August 14, 2020 11:59 AM

To: Coyne, Amanda (Sullivan) <Amanda_Coyne@sullivan.senate.gov>

Cc: Anderson, Mike (Sullivan) <Mike_Anderson@sullivan.senate.gov>; Soukup, Michael (Sullivan) <michael_soukup@sullivan.senate.gov>

Subject: RE: [EXTERNAL] Press statement re ROD

See EMBARGOED/DRAFT Press Release attached. The release is embargoed until 9:45 am Monday morning.

Just let us know if you would like to include a quote.

Thanks,

-----Original Message-----

From: Playforth, Taylor G

Sent: Thursday, August 13, 2020 3:36 PM

To: Coyne, Amanda (Sullivan) <Amanda_Coyne@sullivan.senate.gov>

Cc: Anderson, Mike (Sullivan) <Mike_Anderson@sullivan.senate.gov>; Soukup, Michael (Sullivan) <michael_soukup@sullivan.senate.gov>

Subject: RE: [EXTERNAL] Press statement re ROD

Circling back to see if you all have a quote for the release?

-----Original Message-----

From: Coyne, Amanda (Sullivan) <Amanda_Coyne@sullivan.senate.gov>

Sent: Wednesday, August 12, 2020 3:10 PM

To: Playforth, Taylor G <taylor_playforth@ios.doi.gov>

Cc: Anderson, Mike (Sullivan) <Mike_Anderson@sullivan.senate.gov>; Soukup, Michael (Sullivan) <michael_soukup@sullivan.senate.gov>

Subject: [EXTERNAL] Press statement re ROD

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Hey Taylor. I'll be the contact for Senator Sullivan's statement on the forthcoming ROD.

Can you send me a draft when you have it? Also, can you let me know about timing? Thanks so much.

Amanda Coyne
907-350-5059

Sent from my iPhone

From: Eisenman, Theresa M <theresa_eisenman@ios.doi.gov>
Subject: RE: For approval -- if-asked responses for BLM AK seismic application
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
CC:"Swanson, Conner D" <conner_swanson@ios.doi.gov> "Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov>
"Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov> "Lawkowski, Gary M" <gary_lawkowski@ios.doi.gov>
Sent: Fri, 23 Oct 2020 17:39:20 -0400 (Fri, 23 Oct 2020 21:39:20 GMT)

Thank you for the edits and the fast turnaround. Have a great weekend.

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Friday, October 23, 2020 5:37 PM
To: Eisenman, Theresa M <theresa_eisenman@ios.doi.gov>
Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>; Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>; Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>
Subject: Re: For approval -- if-asked responses for BLM AK seismic application

This is fine. I made a couple of changes at the underlined sections. For some reason "square miles" keeps popping up. We should only discuss this in terms of "acres". All of our descriptive information regarding ANWR and the Coastal Plain is in terms of "acres".

Gregg D. Renkes
Office of the Secretary
202-208-4043 (O)
202-774-4833 (C)

From: Eisenman, Theresa M <theresa_eisenman@ios.doi.gov>
Sent: Friday, October 23, 2020 5:09 PM
To: Renkes, Gregg D
Cc: Swanson, Conner D; Goldey, Benjamin H; Goodwin, Nicholas R; Lawkowski, Gary M
Subject: FW: For approval -- if-asked responses for BLM AK seismic application

Greg, please see below Q/A for your approval.

From: Sharpe, Alyse N <asharpe@blm.gov>
Sent: Friday, October 23, 2020 3:17 PM
To: Interior Press <interior_press@ios.doi.gov>
Cc: Kaster, Amanda E <amanda_kaster@ios.doi.gov>; Dermody, Matthew D <matthew_dermody@ios.doi.gov>; Krauss, Jeff <JKrauss@blm.gov>
Subject: For approval -- if-asked responses for BLM AK seismic application

Hi Interior Press,

Below are a series of if-asked statements that BLM Alaska has developed regarding today's posting of the seismic application. No news release is going out on this. However, we are anticipating media on this. These have been reviewed by SOL. Can you please review as well and let us know if we are cleared to use these statements?

Q: Why didn't the BLM issue a press release?

A: The oil and gas leasing program for the Coastal Plain is being conducted in a manner similar to the National Petroleum Reserve in Alaska, as was directed in Section 20001 of Pub. L. 115–97, the 2017 Tax Cuts and Jobs Act. Seismic applications in the NPR-A are processed through environmental assessments and posted directly on ePlanning. Any interested public can review proposed activities at- <https://eplanning.blm.gov/eplanning-ui/home>.

Q1: How soon can seismic activities occur?

A1: Prior to any authorizations, the BLM must conduct an environmental review of the action being proposed. In this case, the proponent applied for a seismic exploration permit which was determined to be complete on Oct. 16, 2020 and posted to the NEPA register on Oct. 23, 2020. The public can comment now on the proposed action and we plan to allow an additional opportunity to comment on the preliminary Environmental Assessment before making a decision. A decision record will document the decision regarding the action for which the Environmental Assessment was completed.

Q7: How can you conduct seismic without a lease?

A7: Seismic work is a form of geophysical exploration that can be conducted both before and after an area is leased. Before an area is leased, the seismic information is gathered and sold to inform future lease holders of areas that may have good oil and gas potential before they lease. After an area is leased, seismic work, as well as exploration wells and other testing, is typical to inform future development plans.

Q9: Will the results be publicly available?

Q9: No. The data from a seismic survey is owned by the applicant. When the information is shared with BLM, it is held as confidential.

Q10: Wasn't seismic exploration analyzed as part of the Leasing EIS?

A10: While the Leasing EIS considered the impacts of seismic activities, each seismic application will require its own environmental review. The Leasing EIS is programmatic in nature whereas the permit application is project specific. This application does not involve a lease. Seismic work can be conducted both before and after an area is leased. Before an area is leased, the seismic information is gathered and sold to inform future lease holders of areas that may have good oil and gas potential before they lease. After an area is leased, seismic work, as well as exploration wells and other testing, is typical to inform future development plans.

Q13: What happened to the first application to conduct seismic in the Coastal Plain?

A13: It was withdrawn by the applicant. The previous application included seismic exploration of the entire Coastal Plain (1.6 million acres) for a two-year program. This required multiple authorizations by Federal and State agencies and required changes to the submitted plan of operations in order to facilitate other agency authorizations. The current application is for approximately 850 square miles (can we use acres instead of square miles to be consistent with our description of the 1.6 million acre CP), is located on private Alaska Native Corporation lands and adjoining federal lands and is of shorter duration than the previous one.

Q14: What about the lawsuits pending on the Coastal Plain Leasing Program?

A14: Current litigation does not prohibit BLM from processing this application.

Q15: Why aren't you holding any public meetings for this project?

A 15: We received more than one million comments on the Leasing EIS, many of which were related to seismic exploration, and comments on the previous application for seismic exploration which identified more than 130 issues to consider. It is not expected that any additional public meetings would provide any new or relevant information to consider in the development of this EA. The public can provide comments on our NEPA register until Nov. 6, 2020 and again when the Draft EA is released.

Alyse Sharpe

Branch Chief of Public Affairs

Bureau of Land Management | Headquarters

Field location: BLM Utah State Office | Salt Lake City, Utah

asharpe@blm.gov | 385-386-2768

From: Eisenman, Theresa M <theresa_eisenman@ios.doi.gov>
Subject: RE: FOR REVIEW: Yereth Rosen with Arctic Today re: ANWR and NPR-A questions
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov>
"Swanson, Conner D" <conner_swanson@ios.doi.gov> "Goldey, Benjamin H" <benjamin_goldey@ios.doi.gov>
CC:"Lawkowski, Gary M" <gary_lawkowski@ios.doi.gov>
Sent: Thu, 12 Nov 2020 14:13:24 -0500 (Thu, 12 Nov 2020 19:13:24 GMT)

Got it. Thanks.

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Thursday, November 12, 2020 2:13 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Eisenman, Theresa M <theresa_eisenman@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>; Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>
Cc: Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>
Subject: Re: FOR REVIEW: Yereth Rosen with Arctic Today re: ANWR and NPR-A questions

We should not say that we will have a ROD by the end of the year. We very well may not. NMFS and FWS ESA reviews are not yet complete.

Gregg D. Renkes
Office of the Secretary
202-208-4043 (O)
202-774-4833 (C)

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Thursday, November 12, 2020 11:13:24 AM
To: Eisenman, Theresa M <theresa_eisenman@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>; Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>
Cc: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>
Subject: RE: FOR REVIEW: Yereth Rosen with Arctic Today re: ANWR and NPR-A questions

The other responses look good to me, but adding Gregg and Gary to review and see if they are comfortable projecting the NPR-A ROD will come out before the year end:

-- On NPR-A, is a record of decision coming for the new integrated activity plan?

A Record of Decision is forthcoming and I anticipate will be issued before the end of the year.

I'm fine just saying that we'll share the ROD when it's announced. We really don't need to tell them one way or the other.

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Eisenman, Theresa M <theresa_eisenman@ios.doi.gov>

Sent: Thursday, November 12, 2020 9:49 AM

To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>; Goldey, Benjamin H <benjamin_goldhey@ios.doi.gov>

Subject: FW: FOR REVIEW: Yereth Rosen with Arctic Today re: ANWR and NPR-A questions

Anyone we should follow up with on this one?

From: Packer, Richard L <rpacker@blm.gov> **On Behalf Of** Press, BLM

Sent: Tuesday, November 10, 2020 12:03 PM

To: Interior Press <interior_press@ios.doi.gov>

Cc: Tollefson, Christopher J <ctollefson@blm.gov>; Sharpe, Alyse N <asharpe@blm.gov>; Crandall, Megan <mcrandal@blm.gov>; Ellis-Wouters, Lesli J <lellis@blm.gov>

Subject: Re: FOR REVIEW: Yereth Rosen with Arctic Today re: ANWR and NPR-A questions

Checking back on this.

Thanks!

- Richard Packer

From: Packer, Richard L on behalf of Press, BLM <BLM_Press@blm.gov>

Sent: Monday, November 9, 2020 1:46 PM

To: Interior Press <interior_press@ios.doi.gov>

Cc: Tollefson, Christopher J <ctollefson@blm.gov>; Sharpe, Alyse N <asharpe@blm.gov>; Crandall, Megan <mcrandal@blm.gov>

Subject: FOR REVIEW: Yereth Rosen with Arctic Today re: ANWR and NPR-A questions

Team,

Please see draft responses below for approval.

Thanks!

- Richard Packer

From: Ellis-Wouters, Lesli J <lellis@blm.gov>

Sent: Monday, November 9, 2020 12:24 PM

To: Press, BLM <BLM_Press@blm.gov>

Cc: Tausch, Eric C <etausch@blm.gov>

Subject: Fw: [EXTERNAL] ANWR and NPR-A questions

For approval.

-- How close is the BLM getting to authorizing seismic surveys in the 1002 Area? InsideClimate News reported that the Interior Department is demanding a very accelerated positive response from the Fish and Wildlife Service on the incidental harassment authorizations for polar bears. I know that's FWS, not BLM, but can you comment?

We are currently reviewing the more than 55,000 comments received during the public scoping of the application for seismic exploration. The next step is developing an Environmental Assessment and Finding of No New Significant Impacts which will be posted on our BLM NEPA register for public review before a decision is made.

-- What is the timeline now for an ANWR lease sale>

The 2017 Tax Cuts and Jobs Act requires a lease sale before December 2021 and we are still within that time frame.

-- On NPR-A, is a record of decision coming for the new integrated activity plan?

A Record of Decision is forthcoming and I anticipate will be issued before the end of the year.

-- Will there be a 2020 lease sale in NPR-A, and if so, will it be under the existing IAP or the new IAP?

Timing of required notices in the Federal Register precludes a lease sale in the NPR-A for 2020. The next lease sale will adhere to whichever Integrated Activity Plan is in effect.

Lesli J. Ellis-Wouters

Communications Director

Bureau of Land Management, Alaska

Interior Region 11

(907) 271-4418

cell (907) 331-8763

From: Yereth Rosen <yereth@arctictoday.com>

Sent: Monday, November 9, 2020 10:02 AM

To: Ellis-Wouters, Lesli J <lellis@blm.gov>

Subject: [EXTERNAL] ANWR and NPR-A questions

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi Lesli. A few questions about oil development on the North Slope in light of the election results:

-- How close is the BLM getting to authorizing seismic surveys in the 1002 Area? InsideClimate News reported that the Interior Department is demanding a very accelerated positive response from the Fish and Wildlife Service on the incidental harassment authorizations for polar bears. I know that's FWS, not BLM, but can you comment?

-- What is the timeline now for an ANWR lease sale>

-- On NPR-A, is a record of decision coming for the new integrated activity plan?

-- Will there be a 2020 lease sale in NPR-A, and if so, will it be under the existing IAP or the new IAP?

Thanks.

--

Yereth Rosen
(907) 229-9242

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: RE: Goodwin, Nicholas R shared "ANWR TPs" with you.
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
Sent: Fri, 14 Aug 2020 13:22:36 -0400 (Fri, 14 Aug 2020 17:22:36 GMT)

I dropped off a copy for him.

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249




From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Friday, August 14, 2020 12:43 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: RE: Goodwin, Nicholas R shared "ANWR TPs" with you.

Here you go.

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Friday, August 14, 2020 10:14 AM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Goodwin, Nicholas R shared "ANWR TPs" with you.

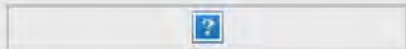
Here's the document that Goodwin, Nicholas R shared with you.

 This link only works for the direct recipients of this message.



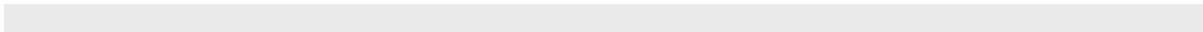
[ANWR TPs](#)

Open



Sender will be notified when you open this link for the first time.

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Microsoft Corporation, One Microsoft Way, Redmond, WA 98052



From: Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>
Subject: [EXTERNAL] Re: ANWR Comms for Monday
To: "Small, Jeffrey D" <jeffrey_small@ios.doi.gov>
CC: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Turner, Jeff W (GOV)" <jeff.turner@alaska.gov>
Sent: Wed, 12 Aug 2020 14:15:56 -0400 (Wed, 12 Aug 2020 18:15:56 GMT)

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

All good to go from our perspective.

Kip Knudson
Director, State/Federal Affairs
Alaska Governor Michael Dunleavy
907-382-0219

From: Small, Jeffrey D <jeffrey_small@ios.doi.gov>
Sent: Wednesday, August 12, 2020 9:40:21 AM
To: Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>
Cc: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Fw: ANWR Comms for Monday

Hi Kip,

Good speaking with you yesterday. Sounds like the ANWR ROD is going Monday now. Attached is the draft release which is embargoed until released by BLM.

The draft release already includes a quote from the Governor. Let us know if you all have any updates to the quotes but if we don't here back we will assume it is good to go as is.

Sincerely,
Jeff Small
Senior Advisor to the Secretary
U.S. Department of the Interior
Intergovernmental Affairs/External Affairs/Communications
1849 C Street NW
Office 6217
Washington D.C. 20240
202-208-6649 (direct)
202-344-5532 (work cell)
jeffrey_small@ios.doi.gov

Note: Every email and text I send or receive is subject to public release under the Freedom of Information Act.

From: Marie, Marc G <marc.marie@sol.doi.gov>

Subject: Re: leases

To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Moody, Aaron G" <Aaron.Moody@sol.doi.gov> "Gieryic, Michael S" <Mike.Gieryic@sol.doi.gov>

Sent: Thu, 20 Aug 2020 10:30:51 -0400 (Thu, 20 Aug 2020 14:30:51 GMT)

Attachment 1: Draft Coastal Plain Lease Form 08.06.20 SOL-MG6Aug2020 agm +GR +agm +SOM-MG17Aug v2 mgm.doc

ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK PRODUCT

I've added one comment for consideration.

Marc Marie

Acting Deputy Solicitor for Land Resources

Department of the Interior

202-302-9803 (Work Cell)

From: Moody, Aaron G <Aaron.Moody@sol.doi.gov>

Sent: Tuesday, August 18, 2020 1:39 PM

To: Marie, Marc G <marc.marie@sol.doi.gov>

Subject: FW: leases

FYI. I can give you the highlights of this in our discussion.

From: Moody, Aaron G

Sent: Tuesday, August 18, 2020 1:39 PM

To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Cc: Gieryic, Michael S <Mike.Gieryic@sol.doi.gov>

Subject: leases

ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK PRODUCT

Hi Gregg-

Here are some additional thoughts from me and Mike (highlighted in green). I think a next step would be a discussion including the three of us, and, if we want, maybe Chad and Kevin from BLM (especially on the lease term question). I'm happy to set that up.

-Aaron

Aaron G. Moody

Associate Solicitor

Division of Land Resources

Office of the Solicitor

U.S. Department of the Interior

202-208-3495 (o)

202-309-6928 (c)

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From: Downes, David R <David_Downes@ios.doi.gov>
Subject: RE: more information regarding UN inquiry re ANWR
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
CC: "Taylor, Sara M" <sara_taylor@ios.doi.gov>
Sent: Mon, 26 Oct 2020 09:36:09 -0400 (Mon, 26 Oct 2020 13:36:09 GMT)

Thanks, Gregg.

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Saturday, October 24, 2020 3:33 PM
To: Downes, David R <David_Downes@ios.doi.gov>
Cc: Taylor, Sara M <sara_taylor@ios.doi.gov>
Subject: more information regarding UN inquiry re ANWR

David, See attached. Gregg

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: New web pages for RE: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR
To: "Padgett, Chad B" <cpadgett@blm.gov>
Sent: Mon, 17 Aug 2020 14:00:38 -0400 (Mon, 17 Aug 2020 18:00:38 GMT)

Make sure they are appropriate for what you want to accomplish. I don't have a clear idea about where these are published but they seemed repetitive and didn't get our the info out about the unique nature of the CP opportunity.

From: Padgett, Chad B <cpadgett@blm.gov>
Sent: Monday, August 17, 2020 1:59 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: New web pages for RE: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

Thanks. We will make the changes and get it posted. Appreciate the quick turnaround!

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Monday, August 17, 2020 9:54 AM
To: Padgett, Chad B <cpadgett@blm.gov>; Wackowski, Stephen M <stephen_wackowski@ios.doi.gov>
Subject: RE: New web pages for RE: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

Chad, See my edits below in red. Gregg

From: Padgett, Chad B <cpadgett@blm.gov>
Sent: Monday, August 17, 2020 12:52 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Wackowski, Stephen M <stephen_wackowski@ios.doi.gov>
Subject: FW: New web pages for RE: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

Hi Gregg,
Is this okay to post on our BLM website.

From: Pendergast, Kevin J <kpendergast@blm.gov>
Sent: Monday, August 17, 2020 8:41 AM
To: Tausch, Eric C <etausch@blm.gov>
Cc: Padgett, Chad B <cpadgett@blm.gov>; Ellis-Wouters, Lesli J <lellis@blm.gov>
Subject: RE: New web pages for RE: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

Thanks Eric. I am going off memory here, but I don't see my edits reflected. Please double check.

Kevin J. Pendergast PE, CPG

Deputy State Director, Resources
BLM Alaska
907.271.4413 (O)
907.302.0847 (C)

From: Tausch, Eric C <etausch@blm.gov>
Sent: Monday, August 17, 2020 8:37 AM
To: Pendergast, Kevin J <kpendergast@blm.gov>

Cc: Padgett, Chad B <cpadgett@blm.gov>; Ellis-Wouters, Lesli J <lellis@blm.gov>

Subject: New web pages for RE: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

Kevin,

Following are the final three pages that would publish

BLM ALASKA OIL & GAS

The BLM administers the Federal onshore oil and gas leasing program in Alaska, as well as issues permits for geophysical exploration, permits to drill oil and gas wells, and authorizations to construct pads and install production facilities.

Oil and gas leasing on Alaska's Federal lands is concentrated in three regions: the [Cook Inlet Region](#) on both sides of the Cook Inlet, and along Alaska's North Slope the [National Petroleum Reserve in Alaska](#) (NPR-A) and the Arctic National Wildlife Refuge (ANWR) Coastal Plain .

Oil companies pay annual lease rentals and royalties on oil and gas production to the Office of Natural Resource Revenue. ~~The primary term of leases is 10 years. The term is extended with production.~~ The State of Alaska receives 90% of rents and royalties from its oil and gas leases in the Cook Inlet Region, and the State receives 50% of the bonus bids, rents, and royalties from both the NPR-A and Coastal Plain.

COOK INLET: Exploration and production in the Cook Inlet Region began in the 1950s and continues to contribute to Alaska's economic and energy needs. Natural gas produced from this region is a vital resource for communities as Anchorage and southcentral Alaska. All gas-fired electric plants in Southcentral rely on Cook Inlet as their fuel source.

NPR-A: Exploration in the NPR-A has three distinct exploration periods; the first two were government-led efforts from 1945-1952 and 1975-1981 and resulted in several discoveries but no sustainable production. The third period of exploration followed the 1999-2010 lease sales in the NPR-A. This exploration period has resulted in several discoveries.

COASTAL PLAIN: The BLM will conduct its first lease sale in the ANWR Coastal Plain by December 2021, offering at least 400,000 acres of high-potential hydrocarbon lands for bid as required by the [2017 Tax Act](#) (Public Law 115-97). The act directs the BLM to conduct two such sales by 2024 to be managed similar to the administration of lease sales under the [Naval Petroleum Reserves Production Act of 1976](#) (including regulations).

Leasing is pursuant to the Record of Decision for the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (EIS). Any future permitted/authorized activities may require a separate detailed environmental analysis.

COASTAL PLAIN OF THE ARCTIC NATIONAL WILDLIFE REFUGE

The **1,563,500 acre ANWR oil and gas program area referred to as the "Coastal Plain"** is located along the Coast of the approximately 19.3 million-acre Arctic National Wildlife Refuge (ANWR) on Alaska's North

Slope. It is located in the northwestern portion of the refuge immediately adjacent to the Beaufort Sea (Arctic Ocean) located to the north.

The Coastal Plain oil and gas program will be carried out pursuant to the [Tax Act](#) (Public Law 115-97, Dec. 22, 2017). The act directs the BLM to conduct two lease sales by 2024 and requires that all necessary rights-of-way and easements for exploration, development, production, or transportation be issued and that surface acres of Federal land be authorized to be covered by production and support facilities. The Act sets the royalty rate for leases at 16.67 percent.

The required lease sales will be held pursuant to a *Record of Decision for the [Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement \(EIS\)](#)*, with the first sale to be held prior to December 22, 2021.

ALASKA OIL AND GAS LEASE SALES

[National Petroleum Reserve in Alaska \(NPR-A\)](#)

BLM manages 22.1 million acres of surface (and subsurface) estate plus the subsurface mineral rights to an additional 650,000 acres in the ~23 million-acre NPR-A.

The BLM conducts annual oil and gas lease sales in the NPR-A. In May 1999, the BLM held its first NPR-A lease sale since 1984, offering nearly 3.9 million acres within the Northeast Planning Area. Since 1999, the BLM has held lease sales in both the Northwest (NW) and Northeast (NE) Planning Areas. A February 2013 [Record of Decision](#) opened tracts for leasing in the southern NPR-A, and tracts in the far west were created after a 2014 deferral expired.

A [new NPR-A Integrated Activity Plan](#) will better balance protection of the environment, wildlife, subsistence uses, local concerns and oil and gas opportunities offered in future lease sales.

Coastal Plain of the Arctic National Wildlife Refuge

The 1,563,500 acre Coastal Plain is highly prospective for oil and gas resources, estimated to contain between 4.25 and 11.8 billion barrels of technically recoverable oil. The entire oil program area will be made available to oil and gas leasing subject to applicable lease stipulations and required operating procedures.

The BLM's first lease sale in the Coastal Plain ~~of the Arctic National Wildlife Refuge~~ will occur prior to December 22, 2021 and will offer at least 400,000 acres of high-potential hydrocarbon lands for bid as required by the [2017 Tax Act](#) (Public Law 115-97). The act directs the BLM to conduct two such sales by 2024 to be managed similar to the administration of lease sales under the [Naval Petroleum Reserves Production Act of 1976](#) (including regulations).

Leasing is pursuant to a *Record of Decision for the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (EIS)*, and any future permitted/authorized activities may require a separate detailed environmental analysis.

View current and recent oil and gas lease sale notices and results below.

Best,
Eric

From: Pendergast, Kevin J <kpendergast@blm.gov>
Sent: Monday, August 17, 2020 8:30 AM
To: Ellis-Wouters, Lesli J <lellis@blm.gov>; Padgett, Chad B <cpadgett@blm.gov>
Cc: Tausch, Eric C <etausch@blm.gov>
Subject: RE: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

Stand by; Chad checking with DC. Can I see the final please?

Kevin J. Pendergast PE, CPG

Deputy State Director, Resources
BLM Alaska
907.271.4413 (O)
907.302.0847 (C)

From: Ellis-Wouters, Lesli J <lellis@blm.gov>
Sent: Monday, August 17, 2020 8:09 AM
To: Pendergast, Kevin J <kpendergast@blm.gov>; Padgett, Chad B <cpadgett@blm.gov>
Cc: Tausch, Eric C <etausch@blm.gov>
Subject: Fw: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

Kevin/Chad,
Should we make the Coastal Plain O&G website live?

Lesli J. Ellis-Wouters

Communications Director
Bureau of Land Management, Alaska
Interior Region 11
(907) 271-4418
cell (907) 331-8763

From: Tausch, Eric C <etausch@blm.gov>
Sent: Monday, August 17, 2020 8:06 AM
To: Ellis-Wouters, Lesli J <lellis@blm.gov>
Subject: RE: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

Yes. Time to make the pages live?

From: Ellis-Wouters, Lesli J <lellis@blm.gov>
Sent: Monday, August 17, 2020 6:57 AM
To: Tausch, Eric C <etausch@blm.gov>
Cc: Rathbun, Vanessa <vrathbun@blm.gov>
Subject: Fw: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

Eric,
Can you share the DOI release on our spotlight?

Vanessa,
We need to share whatever is being posted by DOI and BLM HQ.
<https://www.doi.gov/pressreleases/trump-administration-outlines-comprehensive-strategy-tackle-120-billion-problem>



[Trump Administration Outlines Comprehensive Strategy to Tackle \\$120 Billion Problem | U.S. Department of the Interior - doi.gov](https://www.doi.gov/pressreleases/trump-administration-outlines-comprehensive-strategy-tackle-120-billion-problem)

Date: Thursday, August 13, 2020 Contact: Interior_Press@ios.doi.gov
WASHINGTON – Today, the Trump Administration released a draft strategic plan for combating an estimated \$120 billion problem— invasive species. The Administration has taken significant actions to more effectively manage invasive species, which impact water supplies, impair hunting and fishing opportunities, interfere with ...
www.doi.gov

Lesli J. Ellis-Wouters
Communications Director
Bureau of Land Management, Alaska
Interior Region 11
(907) 271-4418
cell (907) 331-8763

From: Tollefson, Christopher J <ctollefson@blm.gov>
Sent: Monday, August 17, 2020 6:53 AM
To: Black, Meredith C <mcblack@blm.gov>
Cc: Ellis-Wouters, Lesli J <lellis@blm.gov>; Sharpe, Alyse N <asharpe@blm.gov>; Cossel, Benjamin M <bcossel@blm.gov>; Berumen, Krista L <kberumen@blm.gov>; Wilkinson, Patrick <P2Wilkin@blm.gov>; Krauss, Jeff <JKrauss@blm.gov>
Subject: Urgent - for posting/distribution ASAP - DOI Coastal Plain NR

The attached news release is now live on DOI's site.

Meredith, can you please post in the spotlight and send to our media list? Krista and Ben, please amplify DOI's social

media on this. We will send media inquiries to Interior Press.

Thanks,
Chris

Chris Tollefson – Chief of Public Affairs

Bureau of Land Management – 20 M Street, SE, Washington, D.C. 20003

(202) 912-7410 (W) (202) 379-6905 (M) www.blm.gov



From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: questions
To: "Moody, Aaron G" <Aaron.Moody@sol.doi.gov>
CC: "Deam, Seth R" <seth.deam@sol.doi.gov>
Sent: Fri, 20 Nov 2020 10:24:44 -0500 (Fri, 20 Nov 2020 15:24:44 GMT)

Aaron, This is good to go by us. Gregg

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: Moody, Aaron G <Aaron.Moody@sol.doi.gov>
Sent: Thursday, November 19, 2020 1:20 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Cc: Deam, Seth R <seth.deam@sol.doi.gov>
Subject: questions

Revised version attached....

-Aaron

Aaron G. Moody
Associate Solicitor
Division of Land Resources
Office of the Solicitor
U.S. Department of the Interior
202-208-3495 (o)
202-309-6928 (c)

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From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: Script - ANWR
To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov>
Sent: Sun, 16 Aug 2020 16:53:27 -0400 (Sun, 16 Aug 2020 20:53:27 GMT)
Attachment 1: ANWR Coastal Plain Secretary Bernhardt Script + GR.docx

Here you go.

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Sunday, August 16, 2020 4:30 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: Script - ANWR

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Goodwin, Nicholas R
Sent: Sunday, August 16, 2020 4:30 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Script - ANWR

Gregg,

Please take a quick look before I send to DB.

Thanks,

Nicholas Goodwin
Communications Director
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: Re: Script for Tomorrow's ANWR Call
To: "Bernhardt, David L" <dwbernhardt@ios.doi.gov>
CC: "Willens, Todd D" <todd_willens@ios.doi.gov> "Swanson, Conner D" <conner_swanson@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
Sent: Sun, 16 Aug 2020 18:18:48 -0400 (Sun, 16 Aug 2020 22:18:48 GMT)

9:30 in your conference room. I messaged Sam. She just added it to your calendar.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Bernhardt, David L <dwbernhardt@ios.doi.gov>
Sent: Sunday, August 16, 2020 5:09:39 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Cc: Willens, Todd D <todd_willens@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Re: Script for Tomorrow's ANWR Call

I'll use this. What time is the call

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From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Sunday, August 16, 2020 5:59:06 PM
To: Bernhardt, David L <dwbernhardt@ios.doi.gov>
Cc: Willens, Todd D <todd_willens@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: Script for Tomorrow's ANWR Call

Thanks Gregg.

—

Sir – Can you send us what you drafted? These sections of the script are very important to highlight in negating press questions:

The U.S. Geological Survey considers the ANWR Coastal Plain to be the largest conventional onshore prospect in North America. President Trump's ANWR oil and gas program could create thousands of new jobs and generate tens of billions of dollars in new revenues, all the while emboldening our national security by furthering American energy independence. Material, services and infrastructure needed for oil production in the Coastal Plain will create high-paying jobs nationwide, from building oil tankers in Louisiana to constructing steel used to build pipelines in Pennsylvania. If oil is found, the Coastal Plain development and production required by the law could begin in about 8 to 10 years and deliver economic and national security benefits for 50 years or more.

The positive, local economic impact would be significant and is recognized by the Inupiat people of the Arctic and residents of the village of Kaktovik, nestled in and surrounded by the ANWR Coastal Plain, who support development. Development of these important energy resources will provide the Inupiat

communities who live there with jobs and keep the lights on for future generations – providing the basic infrastructure and opportunity so many of us take for granted – schools, roads, stores, community centers, running water, and basic sanitation systems. These are the people who find cultural and life-giving sustenance from the whale, walrus, seal, polar bear and caribou. They know that their reliance on the Arctic's natural bounty can coexist with responsible energy development as has been demonstrated for the past forty years on the Alaska North Slope.

It goes without saying but is important to note that leases offered will be subject to stipulations and required operating procedures based on extensive experience with Arctic oil and gas development and robust analysis in the environmental review process. All activities will be in compliance with the Endangered Species Act and the Marine Mammal Protection Act. They are also designed to protect subsistence harvest opportunities, wildlife and the environment. The environmental impact statement conducted for his ROD underwent a significant two-year analysis costing early \$4 million and provides an appropriate regulatory balance between the development of critical energy resources of national importance and continued local conservation and use of fish, wildlife and other natural resources, including protections for caribou calving areas. There are timing limitations encompassing the Porcupine Caribou Herd's primary calving area which suspend major construction activities for a month each year during the calving period (May 20-June 20).

These regulatory measures were developed with extensive public comment and expert advice. There are areas subject to no surface occupancy (NSO) near waterways, specifically along the coast and streams in order to minimize impacts to floodplain and riparian areas; fish habitat; cultural and paleontological resources; and impacts on subsistence use areas and activities.

All in all, the environmental review involved more than 70 employees from across federal and state agencies including contracted personnel and 30,000 hours of work. Nearly two million public comments were received that informed the final decision.

historical contexts

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Sunday, August 16, 2020 5:26 PM
To: Bernhardt, David L <dwbernhardt@ios.doi.gov>; Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Cc: Willens, Todd D <todd_willens@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: RE: Script for Tomorrow's ANWR Call

I have added the attachment I last cleared for Nick.

From: Bernhardt, David L <dwbernhardt@ios.doi.gov>

Sent: Sunday, August 16, 2020 5:23 PM

To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>

Cc: Willens, Todd D <todd_willens@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>

Subject: Re: Script for Tomorrow's ANWR Call

There's no attachment. But, I wrote out my remarks this afternoon.

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From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>

Sent: Sunday, August 16, 2020 4:58:16 PM

To: Bernhardt, David L <dwbarnhardt@ios.doi.gov>

Cc: Willens, Todd D <todd_willens@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>

Subject: Script for Tomorrow's ANWR Call

Sir—

Here's the script for tomorrow's press call. Gregg has reviewed and concurred. It's 95% the language from your op ed. Please read this as we will use the audio recording for other press purposes.

Questions – please let me know.

Thanks,

Nicholas Goodwin
Communications Director
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Gieryic, Michael S <Mike.Gieryic@sol.doi.gov>
Subject: Re: Two More ANWR Coastal Plain Oil and Gas Leasing Program Lawsuits
To: "MacGregor, Katharine S" <katharine_macgregor@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
"Cason, James E" <james_cason@ios.doi.gov> "Bockmier, John M" <john_bockmier@ios.doi.gov> "Hammond, Casey B" <casey_hammond@ios.doi.gov> "Wallace, George R" <george_wallace@ios.doi.gov> "Dermody, Matthew D" <matthew_dermody@ios.doi.gov> "Pendley, William P" <wpendley@blm.gov> "Skipwith, Aurelia" <aurelia_skipwith@ios.doi.gov> "Nedd, Michael D" <mnedd@blm.gov> "Benedetto, Kathleen M" <kbenedetto@blm.gov> "Kaster, Amanda E" <akaster@blm.gov> "Padgett, Chad B" <cpadgett@blm.gov> "Siekaniec, Greg E" <greg_siekaniec@fws.gov> "Murphy, Ted A" <t75murph@blm.gov> "Pendergast, Kevin J" <kpendergast@blm.gov> "Jones, Nichelle (Shelly) W" <njones@blm.gov> "Svejnoha, Wayne" <wsvejnoh@blm.gov> "Brumbaugh, Robert" <rbrumbau@blm.gov> "Kendall, Gina" <gkendall@blm.gov> "Sweet, Serena E" <ssweet@blm.gov> "Hayes, Miriam (Nicole) N" <mnhayes@blm.gov> "Lord, Satrina R" <slord@blm.gov> "Ellis-Wouters, Lesli J" <lellis@blm.gov> "Tausch, Eric C" <etausch@blm.gov>
CC:"Jorjani, Daniel H" <daniel.jorjani@sol.doi.gov> "Zerzan, Gregory P" <gregory.zerzan@sol.doi.gov> "Noble, Michaela E" <michaela.noble@sol.doi.gov> "Marie, Marc G" <marc.marie@sol.doi.gov> "Moody, Aaron G" <Aaron.Moody@sol.doi.gov> "O'Scannlain, Kevin S" <kevin.oscannlain@sol.doi.gov> "Hawbecker, Karen X" <KAREN.HAWBECKER@sol.doi.gov> "Budd-Falen, Karen J" <karen.budd-falen@sol.doi.gov> "Romanik, Peg A" <PEG.ROMANIK@sol.doi.gov> "Deam, Seth R" <seth.deam@sol.doi.gov> "Lord, Kenneth M" <Ken.Lord@sol.doi.gov> "Collier, Briana W" <briana.collier@sol.doi.gov> "Mellinger, Larry P" <Larry.Mellinger@sol.doi.gov> "Dorman, Wendy S" <WENDY.DORMAN@sol.doi.gov> "Dimauro, Danielle N" <danielle.dimauro@sol.doi.gov> "Bernhardi, Leah B" <Leah.Bernhardi@sol.doi.gov> "Routhier, Michael P" <michael.routhier@sol.doi.gov>
Sent: Thu, 10 Sep 2020 00:10:25 -0400 (Thu, 10 Sep 2020 04:10:25 GMT)
Attachment 1: Complaint - NVVTG v Bernhardt 9Sep2020.pdf
Attachment 2: Complaint - State of Washington v Bernhardt 9Sep2020.pdf
FYI -

On Wednesday two additional complaints (attached) were filed in U.S. District Court for the District of Alaska, challenging the Department's August 17th Record of Decision (ROD) adopting an oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge. There are now four such lawsuits pending.

Native Village of Venetie Tribal Government v. Bernhardt (filed by the Native American Rights Fund on behalf of three Alaska Native - Gwich'in tribes), names Secretary Bernhardt, the Department of the Interior, BLM, and USFWS as defendants, and alleges violations of the APA, NEPA, ANILCA, National Wildlife Refuge System Administration Act, National Historic Preservation Act, and the Tax Cuts and Jobs Act, but not the ESA.

State of Washington v. Bernhardt (filed by the Attorney Generals of the State of Washington and Commonwealth of Massachusetts on behalf of fifteen states), names Secretary Bernhardt, the Department of the Interior, and BLM (but not USFWS) as defendants, and alleges violations of the APA, NEPA, ANILCA, National Wildlife Refuge System Administration Act, and the Tax Cuts and Jobs Act, but not the ESA.

The complaints seek various relief including setting aside the Final EIS, ANILCA Section 810 Subsistence Evaluation, NHPA Section 106 Programmatic Agreement, and Secretary Bernhardt's ROD, and an injunction against any lease sale or other action implementing the ROD.

Mike Gieryic
Attorney-Adviser

Office of the Regional Solicitor
U.S. Department of the Interior
4230 University Drive, Suite 300
Anchorage, AK 99508
Phone: (907) 271-1420
mike.gieryic@sol.doi.gov

From: Gieryic, Michael S

Sent: Monday, August 24, 2020 7:56 PM

To: MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Cason, James E <james_cason@ios.doi.gov>; Bockmier, John M <john_bockmier@ios.doi.gov>; Wackowski, Stephen M <stephen_wackowski@ios.doi.gov>; Hammond, Casey B <casey_hammond@ios.doi.gov>; Dermody, Matthew D <matthew_dermody@ios.doi.gov>; Pendley, William P <wpendley@blm.gov>; Nedd, Michael D <mnedd@blm.gov>; Benedetto, Kathleen M <kbenedetto@blm.gov>; Kaster, Amanda E <akaster@blm.gov>; Padgett, Chad B <cpadgett@blm.gov>; Murphy, Ted A <t75murph@blm.gov>; Pendergast, Kevin J <kpendergast@blm.gov>; Jones, Nichelle (Shelly) W <njones@blm.gov>; Svejnoha, Wayne <wsvejnoh@blm.gov>; Brumbaugh, Robert <rbrumbau@blm.gov>; Kendall, Gina <gkendall@blm.gov>; Sweet, Serena E <ssweet@blm.gov>; Hayes, Miriam (Nicole) N <mnhayes@blm.gov>; Lord, Satrina R <slord@blm.gov>; Ellis-Wouters, Lesli J <lellis@blm.gov>; Tausch, Eric C <etausch@blm.gov>; Siekaniec, Greg E <greg_siekaniec@fws.gov>

Cc: Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>; Noble, Michaela E <michaela.noble@sol.doi.gov>; Marie, Marc G <marc.marie@sol.doi.gov>; Moody, Aaron G <Aaron.Moody@sol.doi.gov>; O'Scannlain, Kevin S <kevin.oscannlain@sol.doi.gov>; Hawbecker, Karen X <KAREN.HAWBECKER@sol.doi.gov>; Budd-Falen, Karen J <karen.budd-falen@sol.doi.gov>; Romanik, Peg A <PEG.ROMANIK@sol.doi.gov>; Deam, Seth R <seth.deam@sol.doi.gov>; Lord, Kenneth M <Ken.Lord@sol.doi.gov>; Collier, Briana W <briana.collier@sol.doi.gov>; Mellinger, Larry P <Larry.Mellinger@sol.doi.gov>; Dorman, Wendy S <WENDY.DORMAN@sol.doi.gov>; Dimauro, Danielle N <danielle.dimauro@sol.doi.gov>; Bernhardt, Leah B <Leah.Bernhardt@sol.doi.gov>

Subject: ANWR Coastal Plain Oil and Gas Leasing Program Lawsuits

FYI -

Today a Native organization and two groups of environmental plaintiffs filed two separate complaints in U.S. District Court for the District of Alaska, challenging the Department's August 17th Record of Decision (ROD) adopting an oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge, as required by Section 20001 of the Tax Cuts and Jobs Act of 2017.

The first lawsuit, *Gwich'in Steering Committee et al. v. Bernhardt et al.* (filed by Trustees for Alaska on behalf of thirteen plaintiffs), names Secretary Bernhardt, the Department of the Interior, BLM, and USFWS as defendants, alleging violations of the APA, NEPA, ESA, ANILCA, National Wildlife Refuge System Administration Act, Wilderness Act, and the Tax Cuts and Jobs Act.

The second lawsuit, *National Audubon Society et al. v. Bernhardt et al.* (filed by NRDC and EarthJustice on behalf of four plaintiffs), names Secretary Bernhardt, BLM, and USFWS as defendants, alleging violations of the APA, NEPA, ESA, and the National Wildlife Refuge System Administration Act.

The complaints seek various relief including setting aside the Final EIS, ANILCA Section 810 Subsistence Evaluation,

USFWS Biological Opinion, and Secretary Bernhardt's ROD, and an injunction against any lease sale or other action implementing the ROD.

The attached unofficial complaints (without docket numbers) are from the plaintiffs' websites. I have not yet been able to download the filed complaints from Pacer, however I wanted to get this note out ASAP given that news outlets are already carrying stories of the lawsuits. I will send the docketed complaints on Tuesday.

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Matthew N. Newman (AK Bar No. 1305023)
Wesley James Furlong (AK Bar No. 1611108)
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NATIVE AMERICAN RIGHTS FUND
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*Lead Counsel for Plaintiffs Native Village of Venetie
Tribal Government, Arctic Village Council, and
Venetie Village Council*

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*Co-Counsel for Plaintiffs Native Village of Venetie
Tribal Government, Arctic Village Council, and
Venetie Village Council*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

NATIVE VILLAGE OF VENETIE
TRIBAL GOVERNMENT; ARCTIC
VILLAGE COUNCIL; and VENETIE
VILLAGE COUNCIL,

Plaintiffs,

v.

DAVID L. BERNHARDT, in his official
capacity as Secretary of the United States
Department of the Interior; UNITED
STATES DEPARTMENT OF THE
INTERIOR; UNITED STATES BUREAU
OF LAND MANAGEMENT; and
UNITED STATES FISH AND WILDLIFE
SERVICE,

Defendants.

Case No. 3:20-cv-00223-JMK

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**Alaska National Interest Lands
Conservation Act §§ 303, 304, Pub.
L. 96-487, and 16 U.S.C. §§ 3101-
3233; National Wildlife Refuge
System Administration Act, 16
U.S.C. §§ 668dd-668ee; Tax Cuts
and Jobs Act § 20001, Pub. L. 115-
97; National Historic Preservation
Act, 54 U.S.C. §§ 306108-307108;
National Environmental Protection
Act, 42 U.S.C. §§ 4321-4370j;
Administrative Procedure Act, 5
U.S.C. §§ 701-706**

I. NATURE OF THE CASE

1. Gwich'in people comprise an Indigenous Nation living in villages across the northern United States and Canada. Within Alaska, Gwich'in live in nine communities along or near the migratory route of the Porcupine Caribou Herd.

2. Gwich'in have considered themselves "Caribou People" for millennia. Caribou provide much more than physical sustenance to Gwich'in communities. Caribou

Native Village of Venetie Tribal Government v. Bernhardt

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Case No. 3:20-cv-00223-JMK
Case 3:20-cv-00223-HRH Document 1 Filed 09/09/20 Page 2 of 79

are entwined in Gwich'in stories, songs, worldview, spirituality, and traditions. Caribou are fundamental to their very existence.

3. To Gwich'in, the Coastal Plain of the Arctic National Wildlife Refuge is Izhik Gwats'an Gwandaii Goodlit, the "Sacred Place Where Life Begins," because it is the place where the Porcupine Caribou Herd migrates each year to calve and raise their young.

4. For decades, Gwich'in have served as leaders in the effort to protect the Coastal Plain from the harmful effects of potential oil and gas drilling.

5. The Coastal Plain is also world-renowned for its extraordinary biological richness. In addition to caribou, migratory birds flock to the Coastal Plain in huge numbers. Many species of mammals, fish, and other wildlife thrive in and around its wild rivers, streams, lakes, tundra, and lagoons.

6. For all these reasons, the Coastal Plain was off-limits to oil and gas development for many decades. That all changed in 2017. Through a rider tucked into tax legislation, Congress authorized an oil and gas leasing program within the most intact and majestic landscape remaining in the United States. Since then, Defendants have conducted hurried and deeply flawed reviews of the program's impacts on subsistence, historic properties, and the environment. These reviews and the decisions flowing from them violate multiple federal laws and regulations.

7. One of the most egregious errors is Defendants' determination that the impacts of allowing large-scale oil and gas development across the entire Coastal Plain would have no significant impact on Neets'ąjį Gwich'in communities of Venetie and

Arctic Village. As a result, Defendants failed to conduct a full analysis of subsistence impacts with respect to these communities, as required by law.

8. Another major error is Defendants' refusal to recognize and take into account the program's adverse effects on the Sacred Place Where Life Begins, an historic property of traditional religious and cultural significance to Plaintiffs, as required by law. Defendants omitted the most important historic property from their review.

9. Similar omissions, erroneous assumptions, and incomplete analyses pervade Defendants' reviews and render their decisions unlawful.

10. Plaintiffs assert claims under the Alaska National Interest Lands Conservation Act ("ANILCA") §§ 303, 304, Pub. L. No. 96-487, 94 Stat. 2371 (1980), 16 U.S.C. §§ 3101-3233, and implementing regulations; National Wildlife Refuge System Administration Act ("Refuge Act"), 16 U.S.C. §§ 668dd-668ee, and implementing regulations; Tax Cuts and Jobs Act of 2017 ("Tax Act") § 20001, Pub. L. No. 115-97, 131 Stat. 2054 (2017); National Historic Preservation Act ("NHPA"), 54 U.S.C. §§ 300101-307108, and implementing regulations; National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370j, and implementing regulations; and the standards for agency decision-making in the Administrative Procedure Act ("APA"). 5 U.S.C. §§ 701-706.

11. Plaintiffs challenge the Record of Decision ("ROD") issued by Defendants on August 17, 2020, approving an oil and gas leasing program ("Leasing Program") on the Coastal Plain of the Arctic National Wildlife Refuge ("Arctic Refuge"), as well as the associated Final Environmental Impact Statement ("EIS") and ANILCA § 810 Final

Evaluation published on September 20, 2019. Plaintiffs also challenge Defendants' implementation of the NHPA § 106 process and the Programmatic Agreement ("PA") that became effective October 4, 2019.

12. Plaintiffs seek declaratory, injunctive, mandamus, vacatur, and other and further relief.

II. JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (civil action against United States), 28 U.S.C. § 1361 (action to compel mandatory duty), and 28 U.S.C. § 1362 (federal question raised by Tribes).

14. This Court has personal jurisdiction over Defendants and their sovereign immunity is waived pursuant to 5 U.S.C. §§ 701–706 and 28 U.S.C. §§ 1346, 1361 because Defendants are federal agencies, officers, and employees of the United States acting in their official capacities.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiffs reside within the District of Alaska, Defendants maintain offices within the District of Alaska, a substantial part of the events or omissions giving rise to the claims occurred within the District of Alaska, and the Arctic Refuge is situated within the District of Alaska.

16. Judicial review is authorized pursuant to 5 U.S.C. §§ 701–706 because Defendants' actions, findings, conclusions, decisions, and failures to act in connection with their approval and issuance of the Final EIS, ROD, ANILCA § 810 Final

Evaluation, and NHPA § 106 PA are final agency actions that have adversely affected and aggrieved Plaintiffs.

17. Declaratory, injunctive, mandamus, vacatur, and other and further relief are authorized pursuant to 5 U.S.C. §§ 701–706 and 28 U.S.C. §§ 1361, 2201–2202.

III. PARTIES

A. Plaintiffs

18. Plaintiff NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT is a federally recognized Indian Tribe,¹ and it is the Tribal governmental entity responsible for managing the 1.8 million acres of land surrounding Arctic Village and Venetie, which they own in fee simple and as tenants in common. Native Village of Venetie Tribal Government engaged in government-to-government consultation with Defendants and submitted extensive comments relating to the Leasing Program. Native Village of Venetie Tribal Government also served as a cooperating agency in Defendants’ environmental review and decision-making process, as well as a consulting party in Defendants’ NHPA § 106 review for the Leasing Program. Throughout these efforts, Native Village of Venetie Tribal Government consistently maintained that the proposed oil and gas leasing program would cause harm to migratory wildlife that rely on the Coastal Plain of the Arctic Refuge, and that such a program would cause harm to the Tribe and its members.

¹ See 85 Fed. Reg. 5,462, 5,467 (Jan. 30, 2020).

19. Plaintiff ARCTIC VILLAGE COUNCIL is a federally recognized Indian Tribe and the Tribal government of the community of Arctic Village.² Arctic Village is situated on the southern side of the Arctic Refuge, along the east fork of the Chandalar River and about 100 miles north of Fort Yukon, Alaska. Arctic Village Council engaged in government-to-government consultation with Defendants and submitted extensive comments relating to the Leasing Program. Arctic Village Council also served as a cooperating agency in Defendants' environmental review and decision-making process, as well as a consulting party in Defendants' NHPA § 106 review for the Leasing Program. Throughout these efforts, Arctic Village Council consistently maintained that the proposed oil and gas leasing program would cause harm to the migratory wildlife that rely on the Coastal Plain of the Arctic Refuge, and that such a program would cause harm to the Tribe and its members.

20. Plaintiff VENETIE VILLAGE COUNCIL is a federally recognized Indian Tribe and the Tribal government of the community of Venetie.³ Venetie is located south of the Arctic Refuge, on the north side of the Chandalar River and about forty-five miles northwest of Fort Yukon, Alaska. Venetie Village Council engaged in government-to-government consultation with Defendants and submitted extensive comments relating to the Leasing Program. Venetie Village Council also served as a cooperating agency in Defendants' environmental review and decision-making process, as well as a consulting

² Arctic Village Council is federally recognized as "Arctic Village." *See* 85 Fed. Reg. at 5,466.

³ Venetie Village Council is federally recognized as "Village of Venetie." *See id.* at 5,467.

party in Defendants' NHPA § 106 review for the Leasing Program. Throughout these efforts, Venetie Village Council consistently maintained that the proposed oil and gas leasing program would cause harm to migratory wildlife that rely on the Coastal Plain of the Arctic Refuge, and that such a program would cause harm to the Tribe and its members.

21. The members of the three Plaintiff Tribes described above are Neets'ąıı Gwich'in and, to a lesser extent, Gwich'yaa and Dihaii Gwich'in. These are subsets of the larger Gwich'in Nation, whose territory extends from the northeastern Interior of Alaska to the Yukon and Northwest Territories in Canada. Historically, Gwich'in people in northeastern Alaska lived a highly nomadic life. They used seasonal camps and semi-permanent settlements, such as Arctic Village and Venetie, for hunting, fishing, and other subsistence activities, and they traded with Inupiat Eskimos on the Arctic coast. Under the stewardship of Plaintiffs and other Tribes over many centuries, the Coastal Plain has remained an intact ecosystem which continues to support vibrant and productive subsistence ways of life beyond the borders of the Coastal Plain.

22. Gwich'in communities have become more settled in recent decades. The Venetie Indian Reservation was established in 1943, and the first school was built in 1959. When Congress enacted the Alaska Native Claims Settlement Act ("ANCSA") in 1971, Arctic Village and Venetie opted for fee title to the 1.8 million acres of land in the former reservation, and they have rejected both municipal government and ANCSA corporation structures. Today, Arctic Village and Venetie each serve as a home base for their residents to maintain their robust traditional culture and subsistence lifeways. They

rely heavily on caribou, birds, and other subsistence resources throughout the surrounding region, including wildlife that breeds, forages, inhabits, and migrates to and from the Coastal Plain of the Arctic Refuge.

23. Gwich'in people view their relationship to their aboriginal homelands and the wild resources found therein more broadly than federal agencies and other Western observers. While the resources that rely on the Coastal Plain certainly serve as a primary source of food, the Tribal members' relationship to the land and wildlife is also critically important for maintaining their Native language and dialects, cultural heritage and identity, community and family cohesion, spiritual and religious beliefs and ceremonies, transmission of knowledge and customs to children, connections with ancestors, intergenerational equity, and a whole host of other aspects of Gwich'in society.

24. The way of life of Plaintiffs' Tribal members and that of their communities depend on the Porcupine Caribou Herd, migratory waterfowl, and other wildlife that rely on the Coastal Plain of the Arctic Refuge. These wild resources are essential for subsistence and for maintaining sharing networks, kinship ties, and other social, cultural, physical, spiritual, and religious aspects of their identity and well-being. Many individual Tribal members testified at one or more of the public hearings relating to the Leasing Program, and they have been personally affected by the Defendants' decision to approve the Leasing Program.

25. With respect to the agency actions, findings, and conclusions challenged in this Complaint, Plaintiffs and their members have standing and they have exhausted administrative remedies.

26. Defendants' inadequate consultation and reviews in violation of ANILCA, the Refuge Act, the Tax Act, NHPA, NEPA, and the standards for agency decision-making in the APA have adversely affected and aggrieved Plaintiffs and their members by interfering with their ability to meaningfully participate in and influence governmental decision-making processes relating to the Leasing Program and denying them a meaningful opportunity to exercise the statutory rights they possess under these statutes and regulatory schemes.

27. Defendants' unlawful decisions approving and issuing the Final EIS, ANILCA § 810 Final Evaluation, and NHPA §106 PA and failing to carry out meaningful and legally sufficient subsistence, historic property, and environmental review processes have adversely affected and aggrieved Plaintiffs and their members by failing to adequately consider impacts and implement protections for subsistence, historic properties, and wildlife and their habitat.

28. Defendants' violations of ANILCA, the Refuge Act, the Tax Act, NHPA, NEPA, and the standards for agency decision-making in the APA have resulted in an unlawful decision in the ROD approving the Leasing Program on the Coastal Plain without adequate protections for Tribal interests, and this unlawful decision has adversely affected and aggrieved Plaintiffs and their members.

B. Defendants

29. Defendant DAVID L. BERNHARDT is sued in his official capacity as Secretary of the United States Department of the Interior ("DOI"). Defendant Bernhardt has responsibility for overseeing the activities and decisions of DOI, the United States

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Bureau of Land Management (“BLM”), United States Fish and Wildlife Service (“FWS”), and other DOI sub-agencies.

30. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the department of the executive branch of the federal government responsible for overseeing the activities and decisions of BLM, FWS, and other sub-agencies. The mission of DOI is to conserve and manage the Nation’s natural resources and cultural heritage for the benefit of the American people, provide scientific and other information about natural resources and natural hazards to address societal challenges and create opportunities for the American people, and honor the Nation’s trust responsibilities and special commitments to American Indians, Alaska Natives, and affiliated island communities to help them prosper.

31. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT is a federal agency within DOI entrusted with the administration of the public lands. The mission of BLM is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

32. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is a federal agency entrusted with managing the National Wildlife Refuge System, a diverse network of lands and waters dedicated to conserving America’s rich fish and wildlife heritage, including the Arctic Refuge. The mission of FWS is to assist in the development and application of an environmental stewardship ethic for our society, based on ecological principles, scientific knowledge of fish and wildlife, and a sense of moral responsibility; guide the conservation, development, and management of the Nation’s fish

and wildlife resources; and administer a national program to provide the public opportunities to understand, appreciate, and wisely use fish and wildlife resources.

IV. FACTS

A. Gwich'in People and the Coastal Plain of the Arctic National Wildlife Refuge

33. The Arctic Refuge is a breathtaking, resplendent landscape—one of very few remaining in the world—and it lies at the heart of the traditional way of life for the Gwich'in people.

34. The Coastal Plain region of the Arctic Refuge stretches southward from barrier islands in the Beaufort Sea to the foothills of the Brooks Range. It is an area of rolling hills, small lakes, and braided rivers dominated by tundra vegetation.

35. The Coastal Plain serves as the calving grounds for the Porcupine Caribou Herd, which migrates there in the summer to give birth, raise their young, seek relief from insects, avoid predators, and forage on high quality food.

36. Gwich'in people enjoy a close and lasting relationship with these caribou, which pass through and near Gwich'in lands and communities on their annual migration. Caribou are the main source of subsistence harvests as well as a spiritual and cultural treasure for the nine Gwich'in communities along or near the migration route in Alaska: Arctic Village, Beaver, Birch Creek, Canyon Village, Chalkyitsik, Circle, Eagle Village, Fort Yukon, and Venetie.

37. Gwich'in have maintained their culture, identity, and integrity as traditional Indigenous inhabitants of the area, with sacred relationships to the land and caribou, for thousands of years. Their culture relies upon and honors the caribou and the ancestral

homelands that have provided for them. For them, the Coastal Plain is Iizhik Gwats'an Gwandaii Goodlit, the Sacred Place Where Life Begins.

38. The Sacred Place Where Life Begins is an historic property to which Plaintiffs ascribe traditional religious and cultural significance. Plaintiffs repeatedly provided information to BLM that the Sacred Place Where Life Begins is an historic property of traditional religious and cultural significance, a traditional cultural property ("TCP"), and a cultural landscape that must be taken into account in the NHPA § 106 process.

39. In addition to caribou, the Coastal Plain is also home to many migratory bird species that are important for sustaining Gwich'in people's traditional subsistence culture and way of life. A profusion of vegetation and insect life on the Coastal Plain in the spring, summer, and fall attracts tens of thousands of geese and other birds each year as part of their annual migrations across six continents. Tribal members hunt these migratory geese and gather their eggs, and both activities are important for social cohesion and for the transmission of language and cultural values from one generation to the next.

B. Procedural History

40. From 2018 to 2019, Defendants conducted an environmental review pursuant to NEPA for the Leasing Program. Defendants also conducted ANILCA § 810 and NHPA § 106 reviews concurrently with the NEPA review.

41. Defendant BLM served as the lead agency in preparing the EIS and conducting the ANILCA § 810 and NHPA § 106 reviews, under the supervision of

Defendant DOI. Cooperating agencies in BLM's NEPA review included FWS, the United States Environmental Protection Agency, State of Alaska, North Slope Borough, Native Village of Kaktovik, and Plaintiffs.

42. Defendants published a Notice of Intent to prepare an EIS for the Leasing Program on April 20, 2018, and they carried out a formal scoping period from May through July 2018. 83 Fed. Reg. 17,562 (Apr. 20, 2018). The Notice of Availability of the Draft EIS was published on December 28, 2018, and public comments were accepted until March 13, 2019. 83 Fed. Reg. 67,337 (Dec. 28, 2018). In February 2019, Defendants held public meetings at various locations in Alaska and Washington, DC.

43. Plaintiffs participated extensively in the agency review processes, including without limitation scoping, Draft EIS review, ANILCA § 810 evaluation, and the NHPA § 106 process. Plaintiffs' leaders and members gave testimony at public meetings, submitted written comments, participated in government-to-government consultations, and served as cooperating agencies and consulting parties.

44. Defendants published the Final EIS and ANILCA § 810 Final Evaluation on September 20, 2019, 84 Fed. Reg. 50,472 (Sept. 25, 2019), executed the NHPA § 106 PA, which became effective on October 4, 2019, and issued the ROD approving the Leasing Program on August 17, 2020. 85 Fed. Reg. 51,754 (Aug. 21, 2020).

45. On a separate track, in the spring of 2018, SAExploration, Inc., submitted a detailed application to Defendants seeking authorization to conduct large-scale and intensive pre-leasing seismic survey activities throughout the Coastal Plain. In the summer of 2018, Defendants initiated a separate NEPA review for these activities.

Although the results of pre-leasing seismic surveying are intended to inform the Leasing Program, Defendants excluded these proposed activities and analysis of their impacts from the environmental review for the Leasing Program. When the Final EIS for the Leasing Program was published in September 2019, the pre-leasing seismic NEPA review process remained in the early stages of scoping and had been “paused,” according to Defendants’ website. As such, the final information and analyses from the pre-leasing seismic NEPA review were not available and could not be incorporated into or relied on in the Final EIS.

C. ANILCA § 810 Process

46. Defendants acknowledged the “importance of the program area to caribou—particularly the [Porcupine Caribou Herd] and [Central Arctic Herd]”—and that twenty-two Alaskan communities engage in subsistence use of these caribou. ANILCA § 810 Final Evaluation, FEIS appx. E, at E-3.

47. Defendants conducted a Tier 1 evaluation under ANILCA § 810 with respect to only four communities: the two Neets’ąjį Gwich’in communities of Arctic Village and Venetie and the two Inupiat communities of Kaktovik and Nuiqsut.

48. Defendants thus included only two of the nine Gwich’in communities in Alaska in its ANILCA § 810 evaluation.

49. Defendants’ rationale for limiting the Tier 1 evaluation to only four communities was that these were the “closest to the program area and have subsistence uses in or near the program area or rely heavily on resources that use the program area.”

Id.

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50. Defendants thus applied an erroneously high threshold at the outset of the Tier 1 evaluation based on close proximity and “heav[y]” subsistence use.

51. On the basis of that threshold, Defendants excluded seven Gwich’in communities despite their acknowledgment that those communities also engaged in subsistence use of the caribou that would be affected by the Leasing Program.

52. Defendants’ Tier 1 evaluation is flawed and inadequate in many ways.

53. Defendants failed to properly evaluate the effect of the proposed Leasing Program on subsistence uses and needs for many reasons, including without limitation Defendants’: (a) utilization of an overly narrow definition of subsistence; (b) imposition of unduly restrictive thresholds, such as whether a resource comprised the “majority” of wild foods consumed by residents; (c) exclusion of culturally important resources, such as migratory birds, and culturally important practices, such as bartering and sharing; (d) flawed and inadequate analysis of caribou impacts, including without limitation major data gaps, erroneous facts and reasoning concerning displacement distance and calving habitat, and overreliance on mitigation measures not shown to be effective; (e) failure to adequately identify which lands are needed for subsistence purposes; (f) flawed and inadequate analysis of cumulative impacts, including without limitation (i) lack of a meaningful analysis of climate change; (ii) overreliance on unproven mitigation; (iii) failure to meaningfully evaluate the impacts of oil and gas activities on caribou and migratory bird abundance; (iv) failure to meaningfully evaluate the impacts of oil and gas activities on caribou and migratory bird availability and access for subsistence communities; (iv) failure to meaningfully evaluate the impacts of transportation on

caribou and migratory bird abundance; and (v) failure to meaningfully evaluate the impacts of transportation on caribou availability and access for subsistence communities; and (g) failure to meaningfully consider and take into account the comments and traditional knowledge provided by Plaintiffs, other Tribes, and their members.

54. Defendants failed to adequately consider the availability of other lands for the Leasing Program that would have lesser impacts on subsistence.

55. Defendants failed to adequately consider other alternatives to the Leasing Program that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes, including without limitation: (a) phased-leasing of only 400,000 acres of the highest hydrocarbon areas; (b) allowing less than 2,000 acres of surface development; (c) prohibiting seismic exploration on areas of the Coastal Plain not offered for lease; (d) not offering certain lands for leasing, such as caribou calving and post-calving areas; and (e) more protective lease stipulations and required operating procedures to protect caribou, migratory birds, subsistence, and other Coastal Plain resources, uses, and values.

56. Defendants failed to conduct a meaningful analysis of abundance, availability, and access for all subsistence communities and all subsistence resources.

57. Defendants applied an overly high threshold to determine whether to proceed with a Tier 2 analysis.

58. With respect to Arctic Village and Venetie, as well as Nuiqsut, Defendants found that the Leasing Program would not significantly restrict subsistence uses and, as

such, did not conduct Tier 2 analyses, hold any formal subsistence hearings, or make any formal findings pursuant to ANILCA § 810(a)(3) in connection with these communities.

59. With respect to Kaktovik, Defendants found that the Leasing Program may significantly restrict subsistence uses and thus conducted a Tier 2 analysis relating to Kaktovik. Defendants held a formal subsistence hearing in Kaktovik on February 5, 2019, and included formal findings relating to Kaktovik pursuant to ANILCA § 810(a)(3) in their Final Evaluation.

60. Defendants' Tier 2 evaluation and determinations are flawed and inadequate in many ways.

61. Defendants' determination that the Leasing Program's significant restriction of subsistence use is necessary, consistent with sound management principles for the utilization of public lands, is erroneous for many reasons, including without limitation: (a) Defendants' improper exclusion of numerous subsistence communities, including without limitation Arctic Village, Venetie, and the seven other Gwich'in subsistence communities that Defendants have acknowledged are reliant on the caribou that will be affected by the Leasing Program; (b) the many flaws and inadequacies of the Tier 1 evaluation described above; (c) Defendants' overreliance on unproven mitigation; (d) Defendants' failure to adequately consider the availability of other lands with lesser impacts on subsistence; (e) Defendants' failure to consider alternatives that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes, such as the examples described above; and (f) Defendants' erroneous interpretations and applications of the Tax Act described below.

62. Defendants' determination that the Leasing Program will involve the minimal amount of public lands necessary to accomplish its purposes is erroneous for many reasons, including without limitation: (a) Defendants' improper exclusion of numerous subsistence communities, including without limitation Arctic Village, Venetie, and the seven other Gwich'in subsistence communities that Defendants have acknowledged are reliant on the caribou that will be affected by the Leasing Program; (b) the many flaws and inadequacies of the Tier 1 evaluation described above; (c) Defendants' overreliance on unproven mitigation; (d) Defendants' failure to adequately consider the availability of other lands with lesser impacts on subsistence; (e) Defendants' failure to consider alternatives that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes, such as the examples described above; and (f) Defendants' erroneous interpretations and applications of the Tax Act described below.

63. Defendants' determination that reasonable steps will be taken to minimize adverse effects upon subsistence uses and resources resulting from the Leasing Program is erroneous for many reasons, including without limitation: (a) Defendants' improper exclusion of numerous subsistence communities, including without limitation Arctic Village, Venetie, and the seven other Gwich'in subsistence communities that Defendants have acknowledged are reliant on the caribou that will be affected by the Leasing Program; (b) the many flaws and inadequacies of the Tier 1 evaluation described above; (c) Defendants' overreliance on unproven mitigation; (d) Defendants' failure to adequately consider the availability of other lands with lesser impacts on subsistence; (e)

Defendants' failure to consider alternatives that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes, such as the examples described above; and (f) Defendants' erroneous interpretations and applications of the Tax Act described below.

64. The problems with Defendants' ANILCA § 810 evaluation are compounded by their reliance on the information in the Final EIS. Defendants' faulty NEPA review (described below) undermined the ANILCA § 810 evaluation in numerous ways, including without limitation Defendants': (a) erroneous interpretations and applications of the Tax Act; (b) a development scenario based on erroneous assumptions later rejected by Defendants; (c) exclusion of pre-leasing seismic surveying activities; (d) utilization of low oil production estimates and associated development levels; (e) consideration of only development-maximizing action alternatives; (f) failure to conduct or take into account NHPA § 106 consultation concerning broad historic properties; (g) failure to take into account comments and traditional knowledge provided by Tribes and their members; and (h) deeply flawed and inadequate analyses of direct and indirect effects, cumulative impacts, and mitigation measures.

D. NHPA § 106 Process

65. During meetings and through comments, Plaintiffs repeatedly urged Defendants to initiate the NHPA § 106 process early enough in the development of the Leasing Program that it would inform the development, evaluation, and selection of Leasing Program, or development scenario, alternatives. Defendants failed to do so.

66. Defendants published their Notice of Intent to prepare an EIS in April 2018. During scoping thereafter, Defendants held a three-day workshop to develop and evaluate Leasing Program alternatives in July 2018. A preliminary Draft EIS containing the alternatives that had already been selected for evaluation was shared with cooperating agencies in early August 2018.

67. By this time, Defendants had not held a single NHPA § 106 consultation or meeting with Plaintiffs and all consulting parties. The first NHPA § 106 meeting took place in late October 2018. The purpose of the October 2018 meeting was simply to inform consulting parties of Defendants' timeline for developing a PA; nothing substantive was discussed.

68. When the Draft EIS was released to the public in late December 2018, Defendants had not held a single NHPA § 106 consultation with Plaintiffs. On Plaintiffs' information and belief, Defendants had not engaged in substantive discussions with any consulting parties concerning the NHPA § 106 process, historic properties within the Leasing Program's area of potential effects ("APE"), potential adverse effects of the Leasing Program on historic properties, possible alterations or modifications to avoid, minimize, or mitigate those effects, the PA, or other aspects of the NHPA § 106 process.

69. Defendants' failure to initiate the NHPA § 106 process early enough meant that neither the process nor the historic properties it is meant to protect informed Defendants' development, evaluation, and selection of the alternatives that were evaluated in the NEPA process or the final alternative that was selected by Defendants in the ROD.

70. None of the action alternatives evaluated by Defendants, including the alternative selected in the ROD, considered alternatives or modifications to the Leasing Program what would avoid, minimize, or mitigate adverse effects to historic properties, including cultural landscapes and TCPs, specifically, the Sacred Place Where Life Begins. Instead, all of the action alternatives evaluated by Defendants, including the alternative selected in the ROD, maximize industrial oil and gas development without taking into account the Leasing Program's effects on historic properties, including without limitation the following. Each action alternative: (a) allows seismic surveying to occur throughout the entire program area, including areas closed to leasing; (b) allows leasing in the majority or entirety of the program area; (c) allows for surface development on at least 2,000 acres; (d) fails to exclude key lands from leasing, such as caribou calving and post-calving areas; and (e) is subject to mitigation measures which have not been developed in consultation with Plaintiffs and other consulting parties in the NHPA § 106 process, analyzed or shown to be effective, and are broadly subject to waivers, exemptions, and modifications.

71. The belated NHPA § 106 "process" undertaken by Defendants was woefully and legally deficient in numerous ways. The following are a few examples.

72. Defendants failed to engage in adequate and meaningful NHPA § 106 consultations. The interactions Defendants had with Plaintiffs were *pro forma* and failed to take their concerns, comments, and traditional knowledge about historic properties and potential adverse effects into account in any meaningful way. On information and belief, Defendants' interactions with other consulting parties were similarly inadequate.

73. For example, Defendants planned to conduct interviews in Arctic Village and Venetie in December 2018 and January 2019 as part of their effort to identify historic properties and evaluate their eligibility for inclusion in the National Register of Historic Places (“National Register”). These consultations were cancelled. Defendants eventually conducted interviews in Venetie and Fairbanks in April 2019, but Defendants never conducted interviews in Arctic Village. Defendants never engaged in consultation with Plaintiffs to identify and evaluate the National Register-eligibility of historic properties potentially affected by the Leasing Program. Instead, Plaintiffs were forced to conduct interviews on their own and provide the transcripts to Defendants along with information about the National Register-eligibility of such properties. Defendants thus failed to make a reasonable and good faith effort to identify historic properties potentially affected by the Leasing Program, to fulfill their statutory obligation to comply with NHPA § 106 requirements, and to bear full legal and financial responsibility for such compliance. *See* 36 C.F.R. §§ 800.2(a), 800.4(b)(1).

74. Defendants never engaged in NHPA § 106 consultations with Plaintiffs to apply the adverse effects criteria, *see id.* § 800.5(a), and develop alternatives and modifications to the Leasing Program to avoid, minimize, or mitigate adverse effects. *Id.* § 800.6(a). On information and belief, Defendants failed to meaningfully and adequately consult with other consulting parties as well.

75. In March 2019, Defendants provided Plaintiffs and other consulting parties with a draft PA and held a meeting the next day to discuss it, despite none of the consulting parties, including Plaintiffs, having had sufficient time to review it. In June

2019, Defendants provided Plaintiffs and other consulting parties with a second draft of the PA. In July 2019, Defendants held a meeting with Plaintiffs and other consulting parties, but instead of discussing the second draft PA, Defendants merely indicated they would review the consulting parties' written comments on the second draft and declined to engage in substantive discussions. In sum, Defendants accepted written comments from Plaintiffs and, on information and belief, other consulting parties concerning the PA but never engaged in meaningful consultations with them about it.

76. As a result of Defendants' superficial approach to consultation, they failed to give Plaintiffs special consideration, recognizing their special expertise in identifying and evaluating historic properties and adverse effects, and the government-to-government relationship, as required in the NHPA § 106 process. On information and belief, Defendants likewise failed to give special consideration to other Tribal consulting parties as well.

77. Defendants failed to adequately consult with Plaintiffs at specific steps in the NHPA § 106 process, including but not limited to: (a) information-gathering; (b) identification and evaluation of the National Register-eligibility of historic properties potentially affected by the Leasing Program; (c) assessment of the Leasing Program's effects on historic properties; (d) resolution of adverse effects by developing and evaluating alternatives and modifications to the Leasing program that avoid, minimize, and mitigate adverse effects; (e) and development and implementation of the PA. On information and belief, Defendants' failures extend to other consulting parties as well.

78. Defendants also improperly limited the scope of the NHPA § 106 process to small, localized historic properties and refused to consider larger historic properties, such as TCPs and cultural landscapes, including the Sacred Place Where Life Begins. Plaintiffs emphasized the deep traditional religious and cultural significance to them of the Sacred Place Where Life Begins, submitted extensive documentation of its significance, integrity, and contributing resources, and repeatedly urged Defendants to take into account this historic property in their NHPA § 106 evaluation. Defendants declined to do so, deferring identification and evaluation, assessment of effects, and resolution of adverse effects through the development of avoidance, minimization, and mitigation plans until later stages of oil and gas development, *i.e.*, post-leasing, when applications for permits to drill (“APD”) are submitted.

79. Defendants took the position that they were not required to carry out these steps prior to the APD stage because approval of the Leasing Program would not authorize ground-disturbing activities. This position is based on unlawfully narrow interpretations of Defendants’ NHPA § 106 obligations and the adverse effects federal agencies must consider. Adverse effects that must be considered include without limitation direct, indirect, reasonably foreseeable, and cumulative effects, as well as effects not involving physical alterations. *See* 36 C.F.R. § 800.5(a)(1).

80. Defendants’ position is also erroneous because the scope of subsequent reviews will be limited to the specific sub-areas being permitted. Only at the leasing stage is it possible to consider the adverse effects of the entire Leasing Program on landscape-level historic properties, such as the Sacred Place Where Life Begins, as well

as avoidance, minimization, and mitigation measures for the entire Leasing Program that reduce such effects.

81. As a result of their unlawfully narrow scope, Defendants failed to properly identify and evaluate the National Register-eligibility of landscape-level historic properties, including the Sacred Place Where Life Begins, failed to assess the effects of the Leasing Program on such properties, and failed to develop and consider alternatives or modifications to the Leasing Program that would avoid, minimize, or mitigate such adverse effects.

82. Defendants also failed to engage the public in the NHPA § 106 process. Defendants never provided the public with information about the undertaking and its effects on historic properties. Further, Defendants never provided the public with notice or an opportunity to comment on the NHPA § 106 process, including without limitation key steps such as the identification and evaluation of historic properties, assessment of effects, resolution of adverse effects through the development and evaluation of alternatives and modifications to the Leasing Program that avoid, minimize, and mitigate adverse effects, and development and implementation of the PA.

83. Additionally, the NHPA § 106 process was not completed before the issuance of the Draft EIS or by the end of the public comment period for the NEPA review. As a result, during the NEPA review process, the public was not informed about and did not have a meaningful opportunity to comment on numerous issues relating to the NHPA § 106 process, including but not limited to key steps such as the identification and evaluation of historic properties, assessment of effects, resolution of adverse effects

through the development and evaluation of alternatives and modifications to the Leasing Program that avoid, minimize, and mitigate adverse effects, and development and implementation of the PA.

84. The Final PA was signed by BLM and the Alaska State Historic Preservation Officer (“SHPO”) on September 20 and 23, 2019, respectively. The Notice of Availability for the Final EIS was published a few days later on September 25, 2019. The Final PA was then signed by FWS on September 30, 2019. The Final PA when into effect when it was signed by the Advisory Council on Historic Preservation (“ACHP”) on October 4, 2019.

85. Despite the close timing of the finalization of these NEPA and NHPA § 106 documents, the PA was not included as an appendix to the Final EIS or otherwise made available to the public. Defendants did not inform Plaintiffs that the Final PA was executed until March 11, 2020.

E. NEPA REVIEW PROCESS

86. The reasonably foreseeable development (“RFD”) scenario serves as the basis for the entire Leasing Program EIS, including without limitation its action alternatives and its evaluation of direct and indirect impacts, cumulative impacts, and mitigation measures. The RFD and the Leasing Program EIS are fundamentally flawed in numerous ways, including without limitation the following.

87. Defendants relied on unduly low oil production estimates ranging from about 2.4 billion barrels of oil (“BBO”) for Alternatives D1 and D2 to roughly 2.7 BBO for Alternative C and 3.0 BBO for Alternative B. Defendants have erroneously

characterized these oil production estimates as “optimistic high-production” levels used to “minimize the chance that the resultant impact analysis will understate potential impacts.” Final EIS, at B-3. Truly high-end estimates, however, would be approximately 10.0 BBO or greater, and the corresponding extent of oil and gas facilities and operations evaluated in the action alternatives would be approximately triple what is described in the Final EIS. Defendants’ use of unduly low oil production estimates resulted in an understatement of impacts in the Final EIS.

88. Defendants improperly excluded pre-leasing seismic surveying activities from the NEPA review for the Leasing Program, rather than considering these closely interrelated activities as part of the same NEPA review process. As a result, Defendants failed to acknowledge and properly evaluate the combined impacts of these activities, and this led to an understatement of impacts in the Final EIS.

89. None of the action alternatives in the Final EIS maximize protection for subsistence, wildlife, habitat, ecosystems, historic properties, cultural landscapes, TCPs, and/or public health. Instead, all of the action alternatives in the Final EIS maximize industrial oil and gas development in multiple ways, including but not limited to the following. Each action alternative: (a) allows seismic surveying to occur throughout the entire program area, including areas closed to leasing; (b) allows leasing in the majority or entirety of the program area; (c) allows for surface development on at least 2,000 acres; (d) fails to exclude key lands from leasing, such as caribou calving and post-calving areas; and (e) is subject to mitigation measures which have not been analyzed or shown to be effective and are broadly subject to waivers, exemptions, and modifications.

90. Due to the flawed ANILCA § 810 process described above, the action alternatives in the Final EIS reflect inadequate Tier 1 analyses for too few subsistence communities and do not reflect any Tier 2 formal subsistence hearings or findings relating to Arctic Village, Venetie, or any other Gwich'in subsistence community. As a consequence, Defendants failed to adequately consider which areas not to offer for leasing to reduce impacts on subsistence, and the alternatives do not include sufficient features designed to reduce impacts on subsistence. Similarly, due to the delayed, deferred, and inadequate NHPA § 106 process described above, the action alternatives in the Final EIS do not reflect the required consultations and evaluations with respect to historic properties, including cultural landscapes and TCPs, and do not include features designed to reduce adverse effects on them.

91. The analyses of direct and indirect effects, cumulative impacts, and mitigation measures in the Final EIS are flawed and inadequate in numerous ways, including without limitation the following:

a. Subsistence, Sociocultural Systems, and Environmental Justice.

With respect to subsistence, sociocultural systems, and environmental justice, the flaws and inadequacies in the Final EIS include without limitation: (i) inadequate baseline data and other data gaps; (ii) erroneous assumptions; (iii) reliance on unduly low oil production estimates and associated development levels; (iv) reliance on erroneous interpretations of the Tax Act; (v) failure to analyze the impacts of pre-leasing seismic activities; (vi) reliance on a flawed and inadequate ANILCA § 810 process; (vii) reliance on a deferred, delayed, and inadequate NHPA § 106 process; (viii) inadequate

demographic information, harvest data, and subsistence use maps for Arctic Village, Venetie, and other communities; (ix) excessive focus on overall quantity of food consumption and harvest with inadequate attention to culturally important subsistence practices, such as egg-gathering, and inadequate attention to lower quantity but essential subsistence activities in time periods and locations with limited resources; (x) inadequate attention to the timing of harvesting; (xi) erroneous assumption that Kaktovik and Nuiqsut are the only communities that could be precluded from subsistence use in the program area; (xii) inadequate analysis of seismic activities and water withdrawals on subsistence resources; (xiii) reliance on other flawed and inadequate analyses in the Final EIS, such as those relating to caribou, waterfowl, soils, and vegetation (described below); (xiv) overly generalized and non-quantified analysis; (xv) failure to take into account traditional knowledge; (xvi) failure to meaningfully address climate change; (xvii) cursory and inadequate cumulative impact analysis; (xviii) failure to analyze the efficacy of reclamation and other mitigation measures; (xix) and overall understatement of impacts.

b. Public Health. With respect to public health, the flaws and inadequacies in the Final EIS include without limitation: (i) inadequate baseline data and other data gaps; (ii) erroneous assumptions; (iii) reliance on unduly low oil production estimates and associated development levels; (iv) reliance on erroneous interpretations of the Tax Act; (v) failure to analyze the impacts of pre-leasing seismic activities; (vi) inadequate analyses of public health impacts on Arctic Village, Venetie, and other communities; (vii) deferral of a Health Impact Analysis and other evaluations until later

stages of oil and gas development; (viii) reliance on an inadequate ANILCA § 810 process; (ix) inadequate and inaccurate data regarding subsistence resources, subsistence activities, and wild food consumption; (x) reliance on other flawed and inadequate analyses in the Final EIS, such as those relating to subsistence, sociocultural systems, environmental justice, caribou, and waterfowl (described above and below); (xi) failure to take into account traditional knowledge; (xii) failure to meaningfully address climate change; (xiii) cursory and inadequate cumulative impact analysis that excludes Arctic Village and Venetie and other communities; (xiv) failure to analyze the efficacy of mitigation measures; and (xv) overall understatement of impacts.

c. Cultural Resources. With respect to cultural resources, the flaws and inadequacies in the Final EIS include without limitation: (i) inadequate baseline data and other data gaps; (ii) erroneous assumptions; (iii) reliance on unduly low oil production estimates and associated development levels; (iv) reliance on erroneous interpretations of the Tax Act; (v) failure to analyze the impacts of pre-leasing seismic activities; (vi) failure to follow guidelines concerning ethnographic studies; (vii) reliance on a delayed, deferred, and inadequate NHPA § 106 process; (viii) reliance on an inadequate ANILCA § 810 process; (ix) failure to consider psychosocial and other impacts of the Leasing Program approval decision itself; (x) failure to take into account traditional knowledge; (xi) failure to meaningfully address climate change; (xii) cursory and inadequate cumulative impact analysis that fails to address colonialism, trauma, and other historical impacts; (xiii) failure to analyze the efficacy of mitigation measures; and (xiv) overall understatement of impacts.

d. Caribou. With respect to caribou, the flaws and inadequacies in the Final EIS include without limitation: (i) inadequate baseline data and other data gaps; (ii) erroneous assumptions; (iii) reliance on unduly low oil production estimates and associated development levels; (iv) reliance on erroneous interpretations of the Tax Act; (v) failure to analyze the impacts of pre-leasing seismic activities; (vi) unreasonable 40% threshold for important calving habitat; (vii) inadequate analysis of forage habitat and vegetation types; (viii) failure to explain how acreages affected by development are significant for caribou; (ix) failure to adequately analyze impacts on post-calving grounds; (x) improper assumption that the Porcupine Caribou Herd will react in a manner similar to other herds and excessive reliance on data from other herds; (xi) failure to discuss general decline in caribou herds across the Arctic; (xii) inadequate analysis of seismic activities and water withdrawals; (xiii) overly generalized and non-quantified analysis; (xiv) failure to take into account traditional knowledge; (xv) failure to meaningfully address climate change; (xvi) cursory and inadequate cumulative impact analysis; (xvii) failure to analyze the efficacy of reclamation and other mitigation measures; and (xviii) overall understatement of impacts.

e. Migratory Waterfowl. With respect to migratory waterfowl, the flaws and inadequacies in the Final EIS include without limitation: (i) inadequate baseline data and other data gaps; (ii) erroneous assumptions; (iii) reliance on unduly low oil production estimates and associated development levels; (iv) reliance on erroneous interpretations of the Tax Act; (v) failure to analyze the impacts of pre-leasing seismic activities; (vi) inadequate analysis of seismic activities and water withdrawals; (vii)

overly generalized and non-quantified analysis; (viii) failure to take into account traditional knowledge; (ix) failure to meaningfully address climate change; (x) cursory and inadequate cumulative impact analysis; (xi) failure to analyze the efficacy of reclamation and other mitigation measures; and (xii) overall understatement of impacts.

f. Vegetation, Tundra, and Wetlands. With respect to vegetation, tundra, and wetlands, the flaws and inadequacies in the Final EIS include without limitation: (i) inadequate baseline data and other data gaps; (ii) erroneous assumptions; (iii) reliance on unduly low oil production estimates and associated development levels; (iv) reliance on erroneous interpretations of the Tax Act; (v) failure to analyze the impacts of pre-leasing seismic activities; (vi) lack of meaningful analysis of habitat value of vegetation, tundra, and wetlands and the impacts of their degradation on caribou, waterfowl, and other wildlife; (vii) deferral of meaningful analysis until later stages of oil and gas development; (viii) overreliance on non-comparable data from the Prudhoe Bay region and other areas; (ix) inadequate analysis of seismic activities and water withdrawals; (x) overly generalized and non-quantified analysis; (xi) limitation of scope of impacts to the program area; (xii) failure to take into account traditional knowledge; (xiii) failure to meaningfully address climate change; (xiv) cursory and inadequate cumulative impact analysis; (xv) failure to analyze the efficacy of reclamation and other mitigation measures; and (xvi) overall understatement of impacts.

g. Soils, Permafrost, Sand, and Gravel. With respect to soils, permafrost, sand, and gravel, the flaws and inadequacies in the Final EIS include without limitation: (i) inadequate baseline data and other data gaps; (ii) erroneous assumptions;

(iii) reliance on unduly low oil production estimates and associated development levels; (iv) reliance on erroneous interpretations of the Tax Act; (v) failure to analyze the impacts of pre-leasing seismic activities; (vi) deferred consideration of gravel supply plans, reclamation plans, and site-specific analysis based on them until later stages of oil and gas development; (vii) inadequate analysis of seismic activities and water withdrawals; (viii) inadequate evaluation of climate change; (ix) failure to account for unique characteristics of the Coastal Plain; (x) overly generalized and non-quantified analysis; (xi) limitation of scope of impacts to the program area; (xii) failure to take into account traditional knowledge; (xiii) failure to meaningfully address climate change; (xiv) cursory and inadequate cumulative impact analysis; (xv) failure to analyze the efficacy of reclamation and other mitigation measures; and (xvi) overall understatement of impacts.

92. In an effort to address the many flaws, inadequacies, and gaps in the Final EIS, Defendants improperly relied on, purported to tier to, and/or attempted to incorporate by reference, with little or no accompanying summary or explanation, numerous other documents, including but not limited to non-NEPA documents, non-federal documents, future or incomplete NEPA reviews, and NEPA reviews concerning unrelated projects and activities.

F. FINAL DECISION APPROVING THE LEASING PROGRAM

93. In the ROD, Defendants have selected and approved Alternative B, which allows oil and gas development across virtually the entire Coastal Plain and is the most

damaging and destructive of the action alternatives presented in the Final EIS for the Leasing Program.

94. Defendants' rationale for this decision is that including the entire Coastal Plain in the Leasing Program will ensure that it is making available the highest hydrocarbon potential areas for lease and maximizing flexibility to ensure that these areas will be developed. Defendants also contend there is too much uncertainty for them to reasonably foresee which areas have the highest potential until after exploration drilling occurs.

95. Defendants' assertions appear inconsistent with the maps in the Final EIS identifying specific areas of "high," "medium," and "low" hydrocarbon potential. *See* FEIS, appx. A, maps 3-6 to 3-9 and 3-59. The Final EIS also discusses areas with hydrocarbon potential, including their acreage, oil and gas recovery potential, and other characteristics in Appendix B in connection with the RFD scenario and in various other places in the Final EIS text and associated tables and figures. *See, e.g.,* FEIS, at ES-4; 3-50 to 3-51, tbls. 3-11, 3-12, 3-13, and 3-14; and appx. B, at B-3 to B-9, tbls. B-1, B-2, and map B-1. Defendants presumably have access to additional information concerning the oil and gas resources of the Coastal Plain in the Administrative Record, through the studies required under ANILCA, and through ongoing interactions with the oil and gas industry.

96. All of the lease stipulations and required operating procedures that Defendants rely on to support their claims that they are adequately protecting subsistence,

wildlife, habitat, ecosystems, historic properties, cultural resources, and public health are unproven and subject to waivers, exceptions, and modifications.

97. Defendants have failed to include meaningful protections for subsistence, wildlife, habitat, ecosystems, historic properties, cultural resources, and public health.

98. Defendants have failed to make a determination that the Leasing Program is a compatible use of the Arctic Refuge or that the Leasing Program fulfills the purposes of the Refuge. Instead, Defendants merely indicate that they took the other Refuge purposes into account and that there will be some adverse impacts on those purposes.

99. The RFD and EIS were developed based on erroneous and unlawful interpretations of the Tax Act's 2,000-acre provision, including without limitation the understanding that this provision imposes a minimum acreage requirement (*i.e.*, prohibits any action alternative that provides for surface development covering less than 2,000 acres) and that it applies on a rolling rather than cumulative basis (*i.e.*, allows for multiple successive 2,000-acre areas of surface development).

100. In the ROD, Defendants abandoned these interpretations and set forth several new legal interpretations of the Tax Act, which are likewise erroneous and unlawful, including without limitation the following: (a) the "up to 2,000 surface acres" language is not an upper limit on a range of surface acres that Defendants may allow but part of a mandate that they must authorize production and support facilities covering the entire 2,000 surface acres; (b) facilities counting toward the 2,000 acres must be both "production" *and* "support facilities"; (c) other facilities assumed to count toward the 2,000 acres in the RFD and EIS, such as airstrips, roads, pads, gravel pits and stockpiles,

and barge landing and storage facilities, may or may not be counted toward the 2,000 acres by future decision-makers; and (d) rights-of-way and easements are not subject to the 2,000-acre limitation.

101. The ROD asserts that Defendants' last-minute changes in interpretation do not affect the validity of the EIS because the assumptions underlying its analysis of environmental impacts were conservative and designed to overstate the impacts.

102. The ROD does not acknowledge the potential that, because there are now many facilities ineligible to be counted toward the 2,000 acres and many others that potentially will not be counted toward the 2,000 acres by future decision-makers, the acreage associated with surface development could far exceed 2,000 acres and, as a result, the EIS may actually understate environmental impacts or otherwise inaccurately characterize impacts.

103. The potential for expansive surface impacts beyond the 2,000 acres assumed in the EIS is compounded by Defendants' erroneous interpretations that they are subject to stringent mandates and have little or no discretion with respect to the 2,000 acres of surface development and the authorization of rights-of-way and easements for exploration, development, production, and transportation facilities related to the Leasing Program.

V. STATUTORY FRAMEWORK

A. Alaska National Interest Lands Conservation Act

104. The Coastal Plain and surrounding areas were federally protected in 1960 through an order issued by the Secretary of the Interior. Pub. Land Order 2214 (Dec. 6,

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1960), 25 Fed. Reg. 12,598 (Dec. 8, 1960). This Order established the Arctic National Wildlife Range “for the purpose of preserving unique wildlife, wilderness and recreational values.”

105. Congress formally renamed the Arctic National Wildlife Range the Arctic National Wildlife Refuge through the enactment of ANILCA in 1980. Pub. L. No. 96-487, 94 Stat. 2371 (1980). Through ANILCA, Congress added four purposes for the land now included within the Arctic Refuge, emphasizing the conservation and subsistence objectives of ANILCA. These purposes are: “(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd . . . , polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide . . . the opportunity for continued subsistence uses by local residents; and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.” *Id.* § 303(2)(B).

106. More generally, Congress’s intent in establishing conservation system units under ANILCA was to “provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska and the Nation, including those species dependent on vast relatively undeveloped areas; to preserve in their natural state extensive unaltered arctic tundra, boreal forest, and coastal rainforest

ecosystems; to protect the resources related to subsistence needs; [and] to protect and preserve historic and archeological sites, rivers, and lands.” 16 U.S.C. § 3101(b).

107. Congress further intended for fish and wildlife within ANILCA conservation system units to be managed “in accordance with recognized scientific principles and the purposes for which each conservation system unit is established, designated, or expanded.” *Id.* § 3101(c); *see id.* § 3112(1).

108. Congress also intended for conservation system units established under ANILCA to “provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.” *Id.* § 3101(c); *see id.* § 3112(1). Congress found that the “continuation of the opportunity for subsistence uses . . . is essential to Native physical, economic, traditional, and cultural existence.” *Id.* § 3111(1).

109. Congress further found that the “situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses.” *Id.* § 3111(2). Congress therefore declared it to be federal policy that the “utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands.” *Id.* § 3112(1).

110. Under ANILCA, the term “subsistence” is defined broadly to mean “the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible

byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.” *Id.* § 3113.

111. Subsistence extends beyond a “sufficient food supply” and includes “customary and traditional practices which ANILCA was designed to protect.” *Alaska Wilderness Rec’n & Tourism Ass’n v. Morrison*, 67 F.3d 723, 731 (9th Cir. 1995).

112. To achieve these conservation and subsistence objectives, ANILCA establishes both procedural and substantive requirements. Congress explained that the “national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life . . . require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.” 16 U.S.C. § 3111(5).

113. The ANILCA § 810 process takes place in two phases. Under the first step, commonly known as “Tier 1,” the agency must consider: (a) the “effect” of the proposed “use, occupancy, or disposition” on “subsistence uses and needs”; (b) the “availability of other lands for the purposes sought to be achieved”; and (c) “other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” 16 U.S.C. § 3120(a). In conducting the Tier 1 evaluation, the agency must consider cumulative impacts, along with direct and indirect impacts. *See City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990).

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114. If, after completing the Tier 1 evaluation, the agency determines that the proposed activity “may significantly restrict subsistence uses,” the agency must proceed to Tier 2. *Kunaknana v. Clark*, 742 F.2d 1145, 1151 (9th Cir. 1984). The Tier 2 threshold is “quite low.” *Sierra Club v. Penfold*, 664 F. Supp. 1299, 1307 (D. Alaska 1987), *aff’d* 857 F.2d 1307 (9th Cir. 1988). Only a “threat of significant restriction” is required, and such a restriction “need not be likely.” *Hanlon v. Barton*, 740 F. Supp. 1446, 1448 (D. Alaska 1988).

115. In Tier 2, the agency must provide notice, hold hearings, and make a series of detailed findings and determinations demonstrating compliance with ANILCA’s substantive standards. The agency is prohibited from authorizing the proposed activity unless and until it: (a) “gives notice to the appropriate State agency and the appropriate local committees and regional councils”; (b) “gives notice of, and holds, a hearing in the vicinity of the area involved; and” (c) “determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.” 16 U.S.C. § 3120(a).

116. Section 810 thus “provides that actions which would significantly restrict subsistence uses can only be undertaken if they are necessary and if the adverse effects are minimized.” *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 554 (1987).

117. When the Secretary of the Interior is required to prepare an EIS under NEPA, they or their designee “shall provide the notice and hearing and include the findings required by subsection (a) of this section as part of such environmental impact statement.” 16 U.S.C. § 3120(b).

118. Only after a federal agency has complied with ANILCA’s requirements regarding subsistence is it authorized to “manage or dispose of public lands” under its jurisdiction for other lawful uses or purposes. *Id.*

119. Furthermore, the Arctic Refuge and other refuges “shall be administered by the Secretary . . . in accordance with the laws governing the administration of units of the National Wildlife Refuge System, and this Act.” Pub. L. No. 96-487, § 304(a).

B. National Wildlife Refuge System Administration Act

120. The Refuge Act governs the administration of the National Wildlife Refuge System, including the Arctic Refuge. *See* 16 U.S.C. § 668dd.

121. The mission of the National Wildlife Refuge System is to “administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” *Id.* § 668(d)(a)(2).

122. In administering the National Wildlife Refuge System, the Secretary of the Interior must comply with statutory management standards, including but not limited to obligations to “provide for the conservation of fish, wildlife, and plants, and their habitats within the System;” “ensure that the biological integrity, diversity, and environmental

health of the System are maintained;” and manage the System in a manner that “contribute[s] to the conservation of the ecosystems of the United States.” *Id.* § 668dd(a)(4).

123. Each refuge “shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established.” *Id.* § 668dd(a)(3)(A).

124. The Secretary of the Interior also “shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use.” *Id.* § 668dd(d)(3(A)(i).

125. A use is “compatible” if it will not “materially interfere with or detract from the fulfillment of the mission of the [National Wildlife Refuge] System or the purposes of the refuge.” *Id.* § 668ee(1).

126. Compatibility determinations must be in writing and based on the Secretary’s “sound professional judgment.” 50 C.F.R. § 25.12.

127. “Sound professional judgment” means a decision “that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of [the Refuge] Act and other applicable laws.” 16 U.S.C. § 668ee(3).

C. Tax Act

128. For more than forty years, the State of Alaska and others sought authorization for exploration and development activities in the Coastal Plain of the Arctic Refuge, but they faced strong opposition from the local Alaska Native communities, as

well as the general public. Through ANILCA, Congress expressly prohibited such development. 16 U.S.C. § 3143.

129. In 2017, a provision inserted into the Tax Act added an “oil and gas leasing program on the Coastal Plain” as a new purpose of the Arctic Refuge and opened the Coastal Plain to oil and gas leasing and development. Tax Act § 20001(b)(2)(B)(v). This provision, however, did not modify the other purposes of the Arctic Refuge, and it did not waive, eliminate, or alter any of the procedural requirements and substantive standards applicable to the Arctic Refuge or its Coastal Plain under ANILCA, the Refuge Act, NHPA, NEPA, and other statutes. *See id.* § 20001.

130. The Tax Act requires DOI, acting through BLM, to hold two lease sales within four and seven years of the law’s enactment. Each lease sale must offer at least 400,000 acres of land on the Coastal Plain and must include the areas within the Coastal Plain that have the “highest potential for the discovery of hydrocarbons.” *Id.* § 20001(c)(1). The Tax Act limited surface development associated with such leasing to a maximum of 2,000 acres for oil and gas production and support facilities. *See id.* § 20001(c)(3).

D. National Historic Preservation Act

131. When Congress enacted the NHPA in 1966, it found and declared that the “historical and cultural foundation of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American People.” Pub. L. No. 89-665, (b), 80 Stat. 915, 915 (1966).

132. The NHPA seeks to “foster the conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations.” 54 U.S.C. § 300101(1). The NHPA includes a “series of measures designed to encourage preservation of sites and structures of historic, architectural, or cultural significance.” *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 787 (9th Cir. 2006) (internal citation omitted).

133. To achieve this “productive harmony” between “our modern society and our historic property,” Congress enacted § 106 of the NHPA.

134. Section 106 provides:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent federal agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the [ACHP] a reasonable opportunity to comment with regard to the undertaking.

54 U.S.C. § 306108.

135. Additionally, the NHPA provides: “In carrying out its responsibilities under section 306108 of this title, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property described in subsection (a).” *Id.* § 302706(b).

136. Subsection (a) provides: “Property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.” *Id.* § 302706(a).

137. Congress has delegated to the ACHP the exclusive authority to “promulgate regulations as it considered necessary to govern the implementation of section 306108 of this title in its entirety.” *Id.* § 304108(a).

138. The ACHP has promulgated these regulations at 36 C.F.R. Part 800. These regulations are binding on all federal agencies. *See Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep’t Interior*, 608 F.3d 592, 607 (9th Cir. 2010) (citations omitted).

139. The ACHP’s “regulations establish a four-step process” by which federal agencies must fulfill their NHPA § 106 obligations. *Presidio Historical Ass’n v. Presidio Trust*, No. C12-00522, 2013 WL 2435089, at *4 (N.D. Cal. June 3, 2013); *see* 36 C.F.R. §§ 800.3-800.6.

140. The goal of the NHPA § 106 process is to “identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.” 36 C.F.R. § 800.1(a).

141. “The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings.” *Id.* The NHPA § 106 process is a “‘stop, look, and listen’ provision that requires each federal agency to consider the effects of its programs” on historic properties. *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999) (citation omitted).

142. Initiation. The first step of the NHPA § 106 process requires federal agencies to “determine whether the proposed Federal action is an undertaking . . . and, if so, whether it is the type of activity that has the potential to cause adverse effects on historic properties.” 36 C.F.R. § 800.3(a).

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143. An undertaking is any “project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of the Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.” *Id.* § 800.16(y); 54 U.S.C. § 300320.

144. An historic property is “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register.” 36 C.F.R. § 800.16(l)(1); 54 U.S.C. § 300308.

145. Eligible for inclusion means “both properties formally determined as such in accordance with [36 C.F.R. Part 63] and all other properties that meet the National Register criteria.” 36 C.F.R. § 800.16(l)(2); *see id.* § 60.4 (National Register criteria).

146. Historic properties “include[] properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that meet the National Register criteria.” *Id.* § 800.16(l)(1); 54 U.S.C. § 302706(a).

147. Properties of traditional religious and cultural importance are often referred to as TCPs or cultural landscapes.

148. A TCP is a property “eligible for inclusion in the National Register because of its association with cultural practices and beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continued cultural identity of the community.” Patricia L. Parker & Thomas F. King, *National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties* 1 (rev. ed. 1998).

149. A cultural landscape is a property encompassing a “geographic area including both cultural and natural resources and wildlife or domestic animals therein, associated with an historic event, activity, or person exhibiting other cultural or aesthetic values.” Charles A. Birnbaum, *Preservation Briefs: Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes* 1 (1994).

150. Both TCPs and cultural landscapes are among the historic properties that must be considered by federal agencies during the NHPA § 106 process. *See Muckleshoot Indian Tribe*, 177 F.3d at 807; ACHP, *Information Paper on Cultural Landscapes: Understanding and Interpreting Indigenous Places and Landscapes* 1 (Oct. 11, 2016).

151. The NHPA § 106 process must be initiated early enough in the undertaking’s planning process that it can inform the development, evaluation, and selection of alternatives that avoid, minimize, or mitigate adverse effects on historic properties. *See* 36 C.F.R. §§ 800.1(c); 800.6(a); 800.8(a)(2).

152. During the first step, federal agencies must identify “consulting parties,” including “any Indian tribes . . . that may attach religious and cultural significance to historic properties in the [undertaking’s] area of potential effects” and initiate the consultation process. *Id.* § 800.3(f)(2).

153. Identification and Evaluation. Step two requires federal agencies to determine the undertaking’s APE, *id.* § 800.4(a)(1), and “take the steps necessary to identify historic properties” within the APE. *Id.* § 800.4(b).

154. APE means the “geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties,” and it is “influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” *Id.* § 800.16(d).

155. Agencies must “make a reasonable and good faith effort to carry out appropriate identification efforts.” *Id.* § 800.4(b)(1). Such efforts “may include background research, consultation, oral history interviews, sample field investigation, and field survey.” *Id.*

156. In addition to identifying historic properties previously listed on, or determined eligible for inclusion on, the National Register, agencies must “apply the National Register criteria . . . to properties identified within the [APE] that have not been previously evaluated for National Register eligibility.” *Id.* § 800.4(c)(1).

157. In applying the National Register criteria, agencies must “acknowledge that Indian tribes . . . possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.” *Id.*

158. Assessment. Step three requires federal agencies to “apply the criteria of adverse effect to historic properties within the [APE].” *Id.* § 800.5(a). This means agencies must “assess the effects of the undertaking” on historic properties within the APE and “determine whether the effect will be adverse.” *Mont. Wilderness Ass’n v. Connell*, 725 F.3d 988, 1005 (9th Cir. 2013) (internal quotation omitted).

159. An undertaking causes adverse effects if it “may alter, directly or indirectly, any of the characteristics of the historic property that qualify the property for inclusion in

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the National Register in any manner that would diminish the integrity of the property's location, setting, materials, workmanship, feeling, or association.” 36 C.F.R. § 800.5(a)(1).

160. Adverse effects do not need to physically alter an historic property to be direct. Direct “refers to the causality, and not the physicality, of the effect.” Memo. from ACHP Office of Gen. Counsel to ACHP Staff, *Recent Court Decision Regarding the Meaning of “Direct” in Sections 106 and 110(f) of the National Historic Preservation Act 2* (June 7, 2019). Accordingly, “if the effect comes from the undertaking at the same time and place with no intervening cause, it is ‘direct’ regardless of its specific type (e.g., whether it is visual, physical, auditory, etc.).” *Id.*; see *Nat’l Parks Conservation Ass’n v. Semonite*, 916 F.3d 1075, 1088 (D.C. Cir. 2019).

161. “Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” 36 C.F.R. § 800.5(a)(1).

162. Examples of adverse effects include without limitation:

- a. “Physical destruction of or damage to all or part of the property,” *id.* § 800.5(a)(2)(i);
- b. “Change of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance,” *id.* § 800.5(a)(2)(iv);

c. “Introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features,” *id.* § 800.5(a)(v); and

d. “Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property’s historic significance,” *id.* § 800.5(a)(2)(vii).

163. Resolution. Step four requires federal agencies to “develop and evaluate modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.” *Id.* § 800.6(a).

164. Agency commitments to avoidance, minimization, and mitigation may be documented through a memorandum of agreement (“MOA”). *See id.* § 800.6(b). The execution and implementation of the MOA “evidences the agency official’s compliance with section 106” and governs NHPA § 106 compliance for the undertaking moving forward. *Id.* § 800.6(c).

165. A PA, instead of an MOA, may be developed “for dealing with the potential adverse effects of complex projects or multiple undertakings,” such as long-term or phased undertakings. *Id.* § 800.14(b)(3). A PA controls NHPA § 106 compliance for the undertaking as it is implemented and supersedes the procedures established at 36 C.F.R. Part 800.

166. Consultation. Consultation is the most important aspect of the NHPA § 106 process. The accommodation of historic preservation concerns with the needs of federal undertakings occurs “*through consultation*.” *Id.* § 800.1(a) (emphasis added)).

167. In carrying out their NHPA § 106 obligations, federal agencies are required to “consult with any Indian tribe . . . that attaches religious and cultural significance to historic properties that may be affected by the undertaking.” *Id.* § 800.2(c)(2)(ii); 54 U.S.C. § 302706(b).

168. Consultation is the “process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process.” 36 C.F.R. § 800.16(f).

169. The statutory obligation to consult with Tribes requires federal agencies to grant Tribes “*special consideration* in the course of the agency’s fulfillment of its consultation obligations.” *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dept. Interior*, 755 F. Supp. 2d 1104, 1109 (S.D. Cal. 2010) (emphasis in original).

170. Consultation with Tribes is “not an empty formality,” *id.* at 1108, and cannot be satisfied by “mere *pro forma* recitals,” “professions of good intent,” and “solicitations to consult.” *Id.* at 1118. Instead, consultation “should be conducted in a sensitive manner respectful of tribal sovereignty,” 36 C.F.R. § 800.2(c)(2)(ii)(B); it “must recognize the government-to-government relationship,” *id.* § 800.2(c)(2)(ii)(C); and it should be “conducted in a manner sensitive to the concerns and needs of the Indian tribe.” *Id.*

171. Consultation “should commence early in the planning process” and must ensure that Tribes are provided a “reasonable opportunity to identify [their] concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate

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[their] views on such properties, and participate in the resolution of adverse effects.” *Id.* § 800.2(c)(2)(ii)(A).

172. Federal agencies must consult with Tribes at specific points in the NHPA § 106 process about specific determinations, including without limitation the following.

a. Identification. In determining and documenting the APE, federal agencies must “gather information from any Indian tribe . . . to assist in identifying properties . . . which may be of religious and cultural significance to them and may be eligible for the National Register,” *id.* § 800.4(a)(4). Federal agencies must “take the steps necessary to identify historic properties within the [APE]” “in consultation with . . . any Indian tribe . . . that might attach religious and cultural significance to properties within the [APE].” *Id.* § 800.4(b).

b. Evaluation. Federal agencies must apply the National Register criteria to previously unidentified or unevaluated historic properties “[i]n consultation with . . . any Indian tribe . . . that attaches religious and cultural significance to identified properties.” *Id.* § 800.4(c)(1). In applying the National Register criteria, federal agencies must “acknowledge that Indian tribes . . . possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.” *Id.*

c. Assessment. Federal agencies must apply the criteria of adverse effect to historic properties within the APE “[i]n consultation with . . . any Indian tribe . . . that attaches religious and cultural significance to identified historic properties.” *Id.* § 800.5(a).

d. Resolution. Federal agencies “shall consult with . . . Indian tribes . . . to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.” *Id.* § 800.6(a).

173. Public Participation. ACHP regulations recognize that the “views of the public are essential to informed Federal decisionmaking” concerning historic properties. *Id.* § 800.2(d)(1). Accordingly, federal agencies “shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties . . . and the relationship of the Federal involvement to the undertaking.” *Id.*

174. Federal agencies must “provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.” *Id.* § 800.2(d)(2); see *Winnemem Wintu Tribe v. U.S. Dep’t Interior*, No. CIV. 2:09-cv-01072-FCD EFB, 2009 WL 10693214, at *7 (E.D. Cal. Sept. 15, 2009); *Mont. Wilderness Ass’n v. Fry*, 310 F. Supp. 2d 1127, 1151 (D. Mont. 2004).

175. The obligation to involve the public applies at every step of the NHPA § 106 process, including without limitation the following.

a. Initiation. During the first step, federal agencies “shall plan for involving the public in the section 106 process[and] . . . identify the appropriate points for seeking public input and for notifying the public of proposed actions.” *Id.* § 800.3(e).

b. Identification and Evaluation. During the second step, federal agencies must make “available for public inspection prior to approving the undertaking”

documentation that no historic properties are present within the APE or that the undertaking will not affect historic properties present within the APE.” *Id.* § 800.4(d)(1).

c. Assessment. During the third step, federal agencies “shall consider any views concerning [adverse] effects that have been provided by . . . the public.” *Id.* § 800.5(a).

d. Resolution. During the fourth step, federal agencies “shall make information available to the public,” “provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking,” and “use appropriate mechanisms . . . to ensure that the public’s views are considered.” *Id.* § 800.6(a)(4).

E. National Environmental Policy Act

176. NEPA requires federal agencies to prepare an EIS before approving any “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Regulations promulgated by the Council of Environmental Quality (“CEQ”) to implement NEPA are set forth at 40 C.F.R. §§ 1500–1508, and they are binding on all federal agencies.⁴ *See* 40 C.F.R. § 1500.3. Federal agencies “shall integrate the NEPA process with other planning at the earliest possible time.” *Id.* § 1501.2; *accord* 36 C.F.R. § 800.8(a).

⁴ CEQ has recently revised its regulations implementing NEPA, and the changes take effect September 14, 2020. *See* 85 Fed. Reg. 43,304 (July 16, 2020). CEQ’s prior regulations govern Defendants’ decision-making in this matter. All references in this complaint are to the 1978 CEQ regulations as they existed prior to September 14, 2020.

177. An agency preparing an EIS “may not ‘segment’ its analysis so as to conceal the environmental significance of the project or projects.” *Hammond v. Norton*, 370 F. Supp. 2d 226, 244 (D.D.C. 2005) (internal quotation omitted). “Connected” actions should be considered together in the same EIS. 40 C.F.R. § 1508.25(a). Actions are connected if they: (a) “[a]utomatically trigger other actions which may require environmental impact statements;” (b) “[c]annot or will not proceed unless other actions are taken previously or simultaneously;” or (c) “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* § 1508.25(a)(1).

178. Courts apply an “independent utility” test to determine “whether multiple actions are so connected as to mandate consideration in a single EIS.” *Sierra Club v. U.S. Bureau Land Mgmt.*, 786 F.3d 1219, 1226 (9th Cir. 2015). Relevant factors include without limitation: (a) whether each project would have taken place without the other; (b) whether projects have been separated from each other to circumvent full NEPA review or downplay impacts; (c) whether each project was intended to stand alone; (d) whether one project would be irrational or unwise without another; and (e) whether a project will render a subsequent project a *fait accompli* or otherwise tie the agency’s hands.

179. NEPA requires federal agencies to take a “hard look” at the environmental consequences of their actions in an EIS. *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir. 2000). The effects that must be analyzed in the EIS include without limitation impacts on natural resources, ecosystems, cultural resources, social systems, and health. 40 C.F.R. § 1508.8(b); *see id.* § 1508.14. An EIS must:

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- a. “Rigorously explore and objectively evaluate all reasonable alternatives,” *id.* § 1502.14(a);
- b. Analyze the “environmental effects of alternatives including the proposed action,” *id.* § 1502.16(d);
- c. Analyze “[d]irect effects and their significance” and “[i]ndirect effects and their significance,” *id.* § 1502.16(a)–(b); *see id.* § 1508.8;
- d. Analyze the “cumulative impact” on the environment resulting from the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such other actions,” *id.* § 1508.7; *see id.* §§ 1502.16, 1508.8; and
- e. Analyze the “[m]eans to mitigate adverse environmental impacts,” *id.* § 1502.16(h); *see id.* §§ 1502.14(f), 1508.20.

180. An agency “[s]hall prepare supplements to either draft or final environmental impact statements if: (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” *Id.* § 1502.9(c)(1).

181. NEPA seeks to ensure the use of high-quality scientific information and mandates scientific integrity. *See id.* §§ 1500.1(b), 1502.24. In the absence of adequate baseline data, “there is simply no way to determine what effect the proposed [action] will have on the environment and, consequently, no way to comply with NEPA.” *Half Moon*

Bay Fisherman’s Mktg. Ass’n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988). Where

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“incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.” 40 C.F.R. § 1502.22(a).

182. Overall, the analysis in the EIS must provide a “clear basis for choice among options by the decisionmaker and the public.” *Id.* § 1502.14.

F. Administrative Procedure Act

183. Under the APA, the “reviewing court shall . . . compel agency action unlawfully withheld or unreasonably delayed . . . [and] hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “without observance of procedure required by law.” 5 U.S.C. § 706(1), (2)(A), (D).

184. An agency “must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (internal quotation omitted).

185. An agency action, finding, or conclusion is arbitrary and capricious if the agency has “relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Ctr. for*

Biological Diversity v. Zinke, 900 F.3d 1053,1067 (9th Cir. 2018) (internal quotation omitted).

186. A federal agency’s failure to consult with a Tribe during the NHPA § 106 process may be challenged under Section 706(1) of the APA as a failure to act. *See Grand Canyon Trust v. Williams*, 38 F. Supp. 3d 1073, 1083 (D. Ariz. 2014).

VI. FIRST CLAIM

Violations of the Refuge Act and ANILCA: Failure to Make a Compatibility Determination and Failure to Approve a Leasing Program Compatible with the Purposes of and Consistent with the Management Standards Applicable to the Arctic Refuge

187. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 186 above.

188. Under the Refuge Act, the Arctic Refuge and other refuges “shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established.” 16 U.S.C. § 668dd(a)(3)(A).

189. The Secretary of the Interior must “provide for the conservation of fish, wildlife, and plants, and their habitats within the System;” “ensure that the biological integrity, diversity, and environmental health of the System are maintained;” and manage the System in a manner that “contribute[s] to the conservation of the ecosystems of the United States.” *Id.* § 668dd(a)(4).

190. The mission of the National Wildlife Refuge System is to “administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the

United States for the benefit of present and future generations of Americans.” *Id.* § 668(d)(a)(2).

191. Under ANILCA, the Arctic Refuge and other refuges “shall be administered” by the Secretary of the Interior “in accordance with the laws governing the administration of units of the National Wildlife Refuge System and [ANILCA].” ANILCA § 304(a), Pub. L. No. 96-487, 94 Stat. 2371.

192. Conservation system units established under ANILCA, including the Arctic Refuge, are expected to be managed “in accordance with recognized scientific principles and the purposes for which each conservation system unit is established, designated, or expanded.” 16 U.S.C. § 3101(c); *see id.* § 3112(1).

193. The original and ANILCA purposes of the Arctic Refuge emphasize the conservation of wildlife, habitat, and ecosystems, the continuation of traditional subsistence-based ways of life, and the protection of historic properties. *See* PLO 2214 (Dec. 6, 1960); ANILCA § 303(2)(B), Pub. L. No. 96-487, 94 Stat. 2371; 16 U.S.C. §§ 3101, 3111, 3112.

194. Congress has also declared it to be federal policy that the “utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands.” 16 U.S.C. § 3112(1).

195. The Leasing Program is a new use of the Arctic Refuge that required a compatibility determination.

196. Defendants have failed to make a determination that the Leasing Program is compatible with the other purposes of the Arctic Refuge.

197. Defendants have approved an oil and gas leasing program for the Coastal Plain of the Arctic Refuge that maximizes industrial development opportunities and will cause grave harm to subsistence, wildlife, habitat, ecosystems, historic properties, cultural resources, and public health.

198. In doing so, Defendants failed to meaningfully consider and take into account relevant factors, including but not limited to the original Refuge purposes set forth in PLO 2214.

199. Defendants have failed to demonstrate that their proposed mitigation measures are sufficient to reduce adverse impacts to levels compatible with the purposes of and consistent with the management standards governing the Arctic Refuge.

200. To the extent Defendants have addressed compatibility with Refuge purposes or consistency with management standards, Defendants have failed to provide a rational explanation to support a compatibility determination, consistency with applicable management standards, or their decision to approve the Leasing Program.

201. Defendants' approval of the Leasing Program is an exercise of their authority to manage the Arctic Refuge, and it is subject to the requirements of the Refuge Act and ANILCA.

202. Defendants' approval of the Leasing Program is also a final agency action subject to the standards for federal agency decision-making in the APA. 5 U.S.C. § 706(2).

203. For the foregoing reasons and others, Defendants' decision to approve the Leasing Program despite its incompatibility with the purposes of the Arctic Refuge and

its inconsistency with applicable management standards violates ANILCA § 304(a), Pub. L. No. 96-487, 94 Stat. 2371, 16 U.S.C. § 3114, the Refuge Act, 16 U.S.C. § 668dd, and their implementing regulations, and it is arbitrary, capricious, an abuse of discretion, contrary to law, and without observance of the procedure required by law under the APA. 5 U.S.C. § 706(2).

VII. SECOND CLAIM

Violations of ANILCA § 810: Failure to Comply with Procedural and Substantive Requirements for Subsistence Evaluation and Protection

204. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 203 above.

205. ANILCA is meant to “enabl[e] rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.” 16 U.S.C. § 3111(5).

206. Federal agencies are prohibited from authorizing any “withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses” unless and until the relevant agency first completes the evaluations and makes the findings specified in ANILCA § 810. *Id.*

207. Under ANILCA § 810, federal agencies “shall evaluate the effect” of any proposed “use, occupancy, or disposition” of public lands on “subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public

lands needed for subsistence purposes.” *Id.* § 3120(a). If, after completing the Tier 1 evaluation, the agency determines that the proposed activity “may significantly restrict” subsistence uses, the agency must proceed to Tier 2. *Kunaknana*, 742 F.2d at 1151.

208. In Tier 2, the agency must provide notice, conduct hearings, and make a series of detailed findings and determinations demonstrating compliance with ANILCA’s substantive standards, including without limitation determinations that (a) the restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands; (b) the proposed activity will involve the minimal amount of public lands necessary; and (c) reasonable steps will be taken to minimize adverse impacts on subsistence uses. *See* 16 U.S.C. § 3120(a).

209. Only after a federal agency has complied with ANILCA’s requirements regarding subsistence is it authorized to “manage or dispose of public lands” under its jurisdiction for other lawful uses or purposes. *Id.* § 3120(d).

210. Defendants applied an erroneous and unlawful threshold at the outset of the Tier 1 evaluation based on close proximity and heavy subsistence use.

211. Defendants failed to conduct a Tier 1 evaluation for all nine Gwich’in subsistence communities they identified as relying on the caribou that will be affected by the Leasing Program.

212. Defendants prepared a deeply flawed and inadequate Tier 1 evaluation for only four subsistence communities: Arctic Village, Venetie, Kaktovik, and Nuiqsut.

213. Defendants only considered alternatives maximizing oil and gas development and failed to consider an adequate range of alternatives that would “reduce

or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” 16 U.S.C. § 3120(a).

214. Defendants failed to adequately evaluate the direct, indirect, and cumulative impacts of the Leasing Program on subsistence.

215. Defendants applied a standard higher than the applicable “may significantly restrict” subsistence uses standard in determining whether to proceed to Tier 2.

216. Defendants made an erroneous, unfounded, and unlawful determination that the Leasing Program would not significantly restrict subsistence uses with respect to Arctic Village, Venetie, and seven other Gwich’in subsistence communities.

217. Defendants failed to conduct any Tier 2 analysis, hold any formal subsistence hearings, or make any formal findings pursuant to ANILCA § 810(a)(3) in connection with Arctic Village, Venetie, and seven other Gwich’in subsistence communities.

218. Defendants’ approval of the Leasing Program is a federal authorization subject to ANILCA § 810 requirements. Defendants’ approval of the Leasing Program is also a final agency action subject to the standards for federal agency decision-making in the APA. 5 U.S.C. § 706(2).

219. For the foregoing reasons and others, Defendants’ approval of the Leasing Program without having conducted a valid ANILCA § 810 process violates ANILCA and its implementing regulations, and it is arbitrary, capricious, an abuse of discretion, contrary to law, and without observance of the procedure required by law under the APA. 5 U.S.C. § 706(2).

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VIII. THIRD CLAIM

Violations of NHPA § 106: Failure to Comply with Procedural and Substantive Requirements for Historic Property Evaluation and Protection

220. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 219 above.

221. Before expending any federal funds on or issuing any license for a proposed “undertaking,” NHPA § 106 provides that federal agencies “shall take into account the effect of the undertaking on any historic property” and “shall afford” the ACHP a “reasonable opportunity to comment with regard to the undertaking.” 54 U.S.C. § 306108.

222. ACHP regulations establish a four-step process for complying with NHPA § 106: (1) initiation; (2) identification and evaluation; (3) assessment; and (4) resolution. *See* 36 C.F.R. §§ 800.3–800.6.

223. In carrying out their NHPA § 106 obligations, federal agencies “shall consult with any Indian tribe . . . that attaches religious and cultural significance to historic property that may be affected by an undertaking.” *Id.* § 800.2(c)(2)(ii); 54 U.S.C. § 302706(b).

224. In the NHPA § 106 process, federal agencies must give Tribes special consideration, recognizing the government-to-government relationship and taking into account Tribes’ special expertise. *See* 36 C.F.R. § 800.2(c)(2)(ii)(A)–(C).

225. Federal agency consultation with Tribes “should commence early in the planning process,” and each Tribe must have a reasonable opportunity to “identify its

concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on such properties, and participate in the resolution of adverse effects.” *Id.* § 800.2(c)(2)(ii)(A).

226. Federal agencies must consult with Tribes at many points about specific determinations, including but not limited to information-gathering, identification and evaluation of historic properties, alternatives development, assessment of effects, development and consideration of alternatives and modifications to the undertaking that avoid, minimize, or mitigate adverse effects, and development and implementation of the MOA or PA. *See id.* §§ 800.3–800.6.

227. Federal agencies must also provide the public with information and documentation regarding the undertaking and adverse effects, and they must seek and consider the views of the public at many points throughout the NHPA § 106 process. *See id.* §§ 800.2–800.6, 800.11.

228. Defendants failed to initiate the NHPA § 106 process early enough in the development of the Leasing Program for it to inform the development, evaluation, and selection of Leasing Program alternatives evaluated in the NEPA process and the selection of the final Leasing Program alternative in the ROD. Defendants only considered alternatives maximizing oil and gas development and failed to develop and consider an adequate range of alternatives that would avoid, minimize, or mitigate adverse effects on historic properties. *See* 36 C.F.R. §§ 800.1(c); 800.6(a); 800.8(a)(2).

229. Defendants failed to engage in adequate and meaningful consultation with Plaintiffs and, on information and belief, other consulting parties in the NHPA § 106 process, including without limitation in identifying and evaluating historic properties for National Register-eligibility, assessing the Leasing Program's effects on historic properties, developing and evaluating alternatives and modifications to the Leasing Program that would avoid, minimize, or mitigate adverse effects on historic properties, and in developing the PA.

230. Defendants improperly limited the scope of the NHPA § 106 process by failing to take into account the Leasing Program's adverse effects on landscape-level historic properties of traditional religious and cultural significance to Plaintiffs and, on information and belief, other consulting parties, such as the Sacred Place Where Life Begins.

231. Defendants failed to engage the public in the NHPA § 106 process by failing to provide the public with adequate opportunities for participating, including without limitation opportunities to comment on the NHPA § 106 process, the identification and evaluation of historic properties, and the assessment and resolution of adverse effects.

232. The Leasing Program is an undertaking subject to NHPA § 106 requirements. Defendants' approval of the Leasing Program is a final agency action subject to the standards for federal agency decision-making in the APA. 5 U.S.C. § 706.

233. For the foregoing reasons and others, Defendants' approval of the Leasing Program without having conducted a valid NHPA § 106 process violates the NHPA and

its implementing regulations, and it is arbitrary, capricious, an abuse of discretion, contrary to law, and without observance of the procedure required by law under the APA. *Id.* § 706(2)(A), (C).

234. The Court must compel Defendants to engage in the adequate and meaningful consultation that they unlawfully withheld. *Id.* § 706(1).

IX. FOURTH CLAIM

Violations of the Tax Act: Failure to Properly Interpret and Implement Surface Development Limitation

235. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 234 above.

236. The Tax Act provides that the Secretary of the Interior “shall authorize up to 2,000 surface acres of Federal land on the Coastal Plain to be covered by production and support facilities (including airstrips and any areas covered by gravel berms or piers for support of pipelines) during the term of the leases under the oil and gas program under this section.” Pub. L. No. 115-97, § 20001(c)(3).

237. Defendants erroneously and unlawfully interpret this provision to mean that they cannot authorize surface development in an amount less than 2,000 acres in connection with the Leasing Program.

238. Defendants erroneously and unlawfully interpret this provision as mandating that facilities counting toward the 2,000 acres must be both “production” *and* “support facilities.”

239. Defendants erroneously and unlawfully interpret this provision as allowing them to exclude airstrips, roads, pads, gravel pits and stockpiles, barge landing and storage facilities, and other facilities from the 2,000 acres.

240. Defendants erroneously and unlawfully interpret this provision as excluding rights-of-way and easements from the 2,000-acre limitation.

241. These interpretations and others violate the plain meaning and intent of the 2,000-acre limitation in the Tax Act.

242. Defendants developed and approved the Leasing Program in reliance on these erroneous and unlawful statutory interpretations.

243. Defendants have rejected proposed alternatives on the basis of these erroneous and unlawful interpretations.

244. Defendants' erroneous and unlawful interpretations would allow surface infrastructure associated with the Leasing Program to cover more than 2,000 acres, in violation of the Tax Act.

245. Defendants' approval of the Leasing Program is a final agency action subject to the standards for federal agency decision-making in the APA. 5 U.S.C. § 706(2).

246. For the foregoing reasons and others, Defendants' approval of the Leasing Program in reliance on erroneous and unlawful legal interpretations violates the Tax Act § 20001(c)(3), and it is arbitrary, capricious, an abuse of discretion, contrary to law, and without observance of the procedure required by law under the APA. 5 U.S.C. § 706(2).

X. FIFTH CLAIM

Violations of NEPA

1. Improper Segmentation of the NEPA Review for the Leasing Program from the NEPA Review for Pre-Leasing Seismic Activities

247. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 246 above.

248. NEPA requires federal agencies to prepare an EIS before approving any “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

249. “Connected” actions should be considered together in the same EIS. 40 C.F.R. § 1508.25(a). It is mandatory for multiple actions to be considered together where one or more of them lack independent utility or if their separation reflects an intent to circumvent a full and meaningful NEPA review.

250. In spring 2018, SAExploration, Inc., submitted an application to Defendants seeking authorization for large-scale and intensive pre-leasing seismic survey activities throughout the Coastal Plain of the Arctic Refuge.

251. The results of such pre-leasing seismic surveying activities are intended to help inform the Leasing Program.

252. Defendants excluded pre-leasing seismic surveying activities from the NEPA review for the Leasing Program. Instead, Defendants initiated a separate NEPA review for these activities, and this process remained in the early stages of scoping at the time the Final EIS for the Leasing Program was issued. As such, the final information

and analyses from the pre-leasing seismic NEPA review were not available and could not be incorporated into or relied on in the Final EIS.

253. In the absence of the Leasing Program, the pre-leasing seismic surveying activities would have no independent utility.

254. Plaintiffs are informed and believe that the NEPA review for the pre-leasing seismic surveying activities and the NEPA review for the Leasing Program have been improperly separated from each other as a means to circumvent full environmental review and/or to downplay the combined impacts of the two actions.

255. The Leasing Program is a major federal action significantly affecting the quality of the human environment, and it is therefore subject to the requirements of NEPA and its implementing regulations.

256. Defendants' issuance of the Final EIS and their approval of the Leasing Program are each final agency actions subject to the standards for federal agency decision-making in the APA. 5 U.S.C. § 706(2).

257. For the foregoing reasons and others, Defendants' issuance of a Final EIS that excludes pre-leasing seismic surveying activities and their approval of the Leasing Program without having analyzed the impacts of pre-leasing seismic surveying activities constitute unlawful segmentation in violation of NEPA and its implementing regulations. These decisions are also arbitrary, capricious, an abuse of discretion, contrary to law, and without observance of the procedure required by law under the APA, 5 U.S.C. § 706(2).

2. Failure to Consider a Reasonable Range of Alternatives.

258. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 257 above.

259. An EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a).

260. The action alternatives in the Final EIS are very similar to each other and heavily weighted toward maximizing oil and gas development.

261. Each of the action alternatives: (a) allows seismic surveying to occur throughout the entire program area, including areas closed to leasing; (b) allows leasing in the majority or entirety of the program area; (c) allows for surface development on at least 2,000 acres; (d) fails to exclude key lands from leasing, such as caribou calving and post-calving areas; and (e) is subject to mitigation measures which have not been analyzed or shown to be effective and are broadly subject to waivers, exemptions, and modifications.

262. None of the action alternatives in the Final EIS maximize protection for subsistence, wildlife, habitat, ecosystems, historic properties, cultural landscapes, TCPs, and/or public health.

263. Due to the flawed ANILCA § 810 process, the action alternatives in the Final EIS reflect inadequate Tier 1 analyses and do not reflect any Tier 2 formal subsistence hearings or findings relating to Arctic Village, Venetie, or any other Gwich'in subsistence community. As a consequence, Defendants failed to adequately

consider which areas not to offer for leasing to reduce impacts on subsistence, and the alternatives do not include sufficient features designed to reduce impacts on subsistence.

264. Due to the delayed, deferred, and inadequate NHPA § 106 process, the action alternatives in the Final EIS do not reflect the required consultations and evaluations with respect to historic properties, including cultural landscapes such as the Sacred Place Where Life Begins, and do not include features designed to reduce adverse impacts on them.

265. Defendants' erroneous and unlawful interpretations of the Tax Act have skewed the alternatives toward maximizing industrial development by: (a) requiring all the action alternatives to provide for at least 2,000 acres of surface development; (b) mandating that facilities counting toward the 2,000 acres must be both "production" and "support facilities"; (c) allowing the exclusion of airstrips, roads, pads, gravel pits and stockpiles, barge landing and storage facilities, and other facilities from the 2,000 acres; and (d) excluding rights-of-way and easements from the 2,000-acre limitation.

266. The Leasing Program is a major federal action significantly affecting the quality of the human environment, and it is therefore subject to the requirements of NEPA and its implementing regulations.

267. Defendants' issuance of the Final EIS and their approval of the Leasing Program are each final agency actions subject to the standards for federal agency decision-making in the APA. 5 U.S.C. § 706(2).

268. For the foregoing reasons and others, Defendants' issuance of a Final EIS that fails to evaluate a reasonable range of alternatives and their approval of the Leasing

Program without having analyzed a reasonable range of alternatives violate NEPA and its implementing regulations. These decisions are also arbitrary, capricious, an abuse of discretion, contrary to law, and without observance of the procedure required by law under the APA. 5 U.S.C. § 706(2).

3. Failure to Properly Analyze Direct and Indirect Effects, Cumulative Impacts, and Mitigation Measures

269. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 268 above.

270. NEPA requires federal agencies to take a hard look at the environmental consequences of their actions.

271. An EIS must analyze the environmental effects of the alternatives, including without limitation direct and indirect effects, cumulative impact, and mitigation measures. *See* 40 C.F.R. §§ 1502.14, 1502.16, 1508.7, 1508.8, 1508.20.

272. The effects that must be analyzed in the EIS include without limitation impacts on natural resources, ecosystems, subsistence, cultural resources, social systems, and health. *See id.* §§ 1508.8, 1508.14.

273. NEPA seeks to ensure the use of high-quality scientific information and mandates scientific integrity. *See id.* §§ 1500.1(b), 1502.24.

274. Overall, the analysis in the EIS must provide a “clear basis for choice among options by the decisionmaker and the public.” *Id.* § 1502.14.

275. Throughout the Final EIS, Defendants’ evaluation of impacts was based on development scenarios utilizing unduly low oil production estimates ranging from about

2.4 BBO for Alternatives D1 and D2 to roughly 2.7 BBO for Alternative C and 3.0 BBO for Alternative B. Defendants have erroneously characterized these oil production estimates as “optimistic high-production” levels used to “minimize the chance that the resultant impact analysis will understate potential impacts.” Final EIS, at B-3. Truly high-end estimates, however, would be in the range of approximately 10.0 BBO or greater as supported by DOI analyses. The corresponding extent of oil and gas facilities and operations evaluated in the action alternatives would be approximately triple what is described in the Final EIS. Defendants’ use of unduly low oil production estimates thus resulted in an understatement of impacts in the Final EIS. Defendants also failed to properly develop and evaluate mitigation measures addressing the impacts associated with the full scope of potential oil and gas development.

276. Defendants’ belated, erroneous, and unlawful interpretations of the Tax Act are different from the assumptions underlying the RFD that the analysis of environmental consequences was based on, and this renders the Final EIS’s evaluation of direct, indirect, and cumulative impacts and mitigation measures inaccurate and inadequate as a basis for informed decision-making.

277. Defendants improperly excluded pre-leasing seismic surveying activities from the NEPA review for the Leasing Program, rather than considering these closely interrelated activities as part of the same NEPA review process. As a result, Defendants failed to acknowledge and properly evaluate the combined impacts of these activities, and this led to an understatement of impacts in the Final EIS. Defendants also failed to

properly develop and evaluate mitigation measures addressing the impacts associated with the full scope of leasing-related activities.

278. The analyses of direct and indirect effects, cumulative impacts, and mitigation measures relating to subsistence, sociocultural systems, environmental justice, public health, cultural resources, caribou, migratory waterfowl, vegetation, tundra, wetlands, soils, permafrost, sand, and gravel are flawed, inadequate, and unlawful in numerous ways, as described above.

279. In an effort to address the many flaws, inadequacies, and gaps in the Final EIS, Defendants improperly relied on, purported to tier to, and/or attempted to incorporate by reference, with little or no accompanying summary or explanation, numerous other documents, including but not limited to non-NEPA documents, non-federal documents, future or incomplete NEPA reviews, and NEPA reviews concerning unrelated projects and activities.

280. The Leasing Program is a major federal action significantly affecting the quality of the human environment, and it is therefore subject to the requirements of NEPA and its implementing regulations.

281. Defendants' issuance of the Final EIS and their approval of the Leasing Program are each final agency actions subject to the standards for federal agency decision-making in the APA. 5 U.S.C. § 706(2).

282. For the foregoing reasons and others, Defendants' issuance of the Final EIS and their approval of the Leasing Program without having properly analyzed direct and indirect effects, cumulative impacts, and mitigation measures violate NEPA and its

implementing regulations. These decisions are also arbitrary, capricious, an abuse of discretion, contrary to law, and without observance of the procedure required by law under the APA. 5 U.S.C. § 706(2).

4. Failure to Prepare a Supplemental EIS

283. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 282 above.

284. CEQ regulations implementing NEPA require federal agencies to prepare a supplemental EIS whenever the agency “makes substantial changes in the proposed action that are relevant to environmental concerns” or there are “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1).

285. Defendants’ abandonment of the rationale and key assumptions underlying the RFD and the entire analysis of environmental consequences in the EIS, together with their belated assertion of differing legal interpretations of the Tax Act, constitute “substantial changes in the proposed action that are relevant to environmental concerns” as well as “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”

286. Defendants were required to prepare a supplemental EIS, and their failure to do so violates 40 C.F.R. § 1502.9(c)(1).

287. The Leasing Program is a major federal action significantly affecting the quality of the human environment, and it is therefore subject to the requirements of NEPA and its implementing regulations.

288. Defendants' issuance of the Final EIS and their approval of the Leasing Program are each final agency actions subject to the standards for federal agency decision-making in the APA. 5 U.S.C. § 706(2).

289. For the foregoing reasons and others, Defendants' failure to prepare a supplemental EIS and their approval of the Leasing Program based on a faulty EIS that depends on legal assumptions no longer in effect without the benefit of a revised analysis of impacts in a supplemental EIS violate NEPA and its implementing regulations, and these decisions are also arbitrary, capricious, an abuse of discretion, contrary to law, and without observance of the procedure required by law under the APA. 5 U.S.C. § 706(2).

XI. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Enter a declaratory judgment that Defendants' actions, findings, conclusions, decisions, and failures to act pertaining to the Final EIS, ANILCA § 810 Final Evaluation, NHPA § 106 process, NHPA § 106 PA, and ROD approving the Leasing Program violate ANILCA, the Refuge Act, the Tax Act, NHPA, and NEPA, and that these actions, findings, conclusions, decisions, and failures to act are arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure as required by law;

B. Vacate and set aside the Final EIS, ANILCA § 810 Final Evaluation, NHPA § 106 PA, and ROD approving the Leasing Program, and any decisions to lease or actual leases;

C. Enter appropriate injunctive and mandamus relief;

D. Award Plaintiffs all reasonable attorney fees and costs as authorized by law, including without limitation the NHPA, 54 U.S.C. § 307105, and the Equal Access to Justice Act, 28 U.S.C. § 2412; and

E. Grant such other relief as this Court deems just and proper.

DATED: September 9, 2020

Respectfully submitted,

NATIVE AMERICAN RIGHTS FUND

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**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

STATE OF WASHINGTON,
COMMONWEALTH OF
MASSACHUSETTS, STATE OF
CALIFORNIA, STATE OF
CONNECTICUT, STATE OF
DELAWARE, STATE OF ILLINOIS,
STATE OF MAINE, STATE OF
MARYLAND, THE PEOPLE OF

Case No. 3:20-CV-00224-JMK

COMPL. FOR DECLARATORY AND
INJUNCTIVE RELIEF

1

State of Washington v. Bernhardt
Case No. 3:20-cv-00224-JMK

THE STATE OF MICHIGAN,
STATE OF MINNESOTA, STATE
OF NEW JERSEY, STATE OF NEW
YORK, STATE OF OREGON,
STATE OF RHODE ISLAND, and
STATE OF VERMONT,

Plaintiffs,

v.

DAVID BERNHARDT, in his official
capacity as Secretary of the Interior,
UNITED STATES DEPARTMENT
OF THE INTERIOR, and BUREAU
OF LAND MANAGEMENT,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Administrative Procedure Act, 5 U.S.C. §§ 701–06; Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487 §§ 303(2)(B), 304(a), (b), 94 Stat. 2371, 2390, 2393 (1980); National Environmental Policy Act, 42 U.S.C. §§ 4331, 4332; National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd–668ee; and Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97 tit. 2, § 20001, 131 Stat. 2054, 2235–37)

I. INTRODUCTION

1. The Secretary of the Interior, the Department of the Interior, and the Bureau of Land Management (BLM) (collectively Defendants) unlawfully authorized the Coastal Plain Oil and Gas Leasing Program (Leasing Program), opening the unspoiled Coastal Plain of the Arctic National Wildlife Refuge (Arctic Refuge) to expansive oil and gas exploration and development based on an inadequate environmental review and an unlawful Record of Decision. Defendants' actions violate the National Environmental Policy Act (NEPA), the National Wildlife Refuge System Administration Act (Refuge

Administration Act), the Alaska National Interest Lands Conservation Act (ANILCA), the Administrative Procedure Act (APA), and the Tax Cuts and Jobs Act of 2017 (Tax Act).

2. Our nation’s largest and wildest refuge, the Arctic Refuge is often referred to as “America’s Serengeti,” and the Coastal Plain serves as the Refuge’s center of vital wildlife activity.

3. The Coastal Plain is a 1.56 million-acre national treasure, unparalleled in its biological significance for hundreds of species, including caribou, threatened polar bears, and millions of birds that migrate to and from six continents and through all 50 states.

4. With the Arctic Ocean’s Beaufort Sea to the north and the Mollie Beattie Wilderness to the south, the Coastal Plain’s fragile ecosystem on the northeastern edge of the Arctic Refuge—an area sacred to the Gwich’in people—is particularly vulnerable to environmental stressors, including climate change, which has caused thinning sea ice and thawing of permafrost in the region.

5. In 1960, the Department of the Interior initially protected 8.9 million acres of the current Arctic Refuge, including the Coastal Plain. Twenty years later, recognizing the area’s unrivaled and inestimable conservation value and its importance to all Americans including future generations, Congress passed legislation to solidify and expand those protections by creating the 19-million acre Arctic Refuge and prohibiting oil and gas development and production there.

6. In 2017, however, Congress abruptly ended the nearly 40-year ban on oil and gas development on the Coastal Plain through provisions in the Tax Act that direct the Secretary of the Interior, through BLM, to develop and administer an oil and gas leasing program in the Coastal Plain with specific limitations on the scope of the program. Congress did not otherwise waive or alter the framework of laws protecting the Arctic Refuge or exempt Defendants from conducting a complete, careful, and robust environmental review.

7. Defendants' insufficient environmental review and Record of Decision that opens the entire Coastal Plain to oil and gas leasing and development are unlawful. Defendants' actions severely underestimate the avoidable and irreparable damage to vital habitat and pristine waters, imperil wildlife already struggling to thrive in a rapidly changing ecosystem, and increase greenhouse gas emissions at a time when our nation and the world drastically need to reduce emissions to mitigate the most extreme harms of climate change.

8. Specifically, through the Record of Decision and Final Environmental Impact Statement (FEIS), Defendants: (1) failed to determine that the authorized leasing program is compatible with the purposes of the Arctic Refuge and unlawfully prioritized oil and gas development over the Refuge's conservation purposes, in violation of the Refuge Administration Act, ANILCA, and the APA; (2) failed to consider a reasonable range of program alternatives including an alternative that serves the conservation

purposes of the Arctic Refuge, in violation of NEPA and the APA; (3) failed to take a hard look at impacts on greenhouse gas emissions and climate change, in violation of NEPA and the APA; (4) failed to take a hard look at impacts on migratory birds, in violation of NEPA and the APA; and (5) adopted an unlawful interpretation of the Tax Act contrary to Congress's restrictions on development in the Arctic Refuge, in violation of that Act and the APA.

9. Accordingly, Plaintiffs seek a declaration that the Defendants violated the Refuge Administration Act, ANILCA, the APA, NEPA, and the Tax Act; and request that the Court vacate and set aside the Record of Decision and the FEIS and enjoin any further Leasing Program activities.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States).

11. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and the Court may grant declaratory and injunctive relief, including vacatur of illegal agency actions, under 28 U.S.C. §§ 2201–02 and 5 U.S.C. §§ 705–06.

12. The United States has waived sovereign immunity for claims arising under the APA. 5 U.S.C. § 702.

13. Plaintiffs are each a “person” within the meaning of 5 U.S.C. § 551(2), authorized to bring suit under the APA to challenge unlawful final agency action. 5 U.S.C. § 702.

14. Defendants’ FEIS and Record of Decision are final agency actions subject to judicial review.

15. Plaintiffs have exhausted all available administrative remedies.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because the Arctic Refuge is located within this judicial district and a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred within this judicial district.

III. PARTIES

A. Plaintiffs

17. Plaintiffs the State of Washington, by and through Attorney General Robert W. Ferguson; the Commonwealth of Massachusetts, by and through Attorney General Maura Healey; the State of California by and through Attorney General Xavier Becerra; the State of Connecticut by and through Attorney General William Tong; the State of Delaware by and through Attorney General Kathleen Jennings; the State of Illinois by and through Attorney General Kwame Raoul; the State of Maine by and through Attorney General Aaron M. Frey; the State of Maryland by and through Attorney General Brian E. Frosh; the People of the State of Michigan by and through Attorney General Dana Nessel; the State of Minnesota by and through Attorney General Keith Ellison; the

State of New Jersey by and through Attorney General Gurbir Grewal; the State of New York by and through Attorney General Letitia James; the State of Oregon by and through Attorney General Ellen Rosenblum; the State of Rhode Island, by and through Attorney General Peter F. Neronha; and the State of Vermont by and through Attorney General Thomas J. Donovan Jr. (collectively “State Plaintiffs”) bring this action to challenge Defendants’ Record of Decision published on August 17, 2020, and the associated FEIS published on September 25, 2019.

18. Plaintiff STATE OF WASHINGTON is a sovereign entity and brings this action to protect its sovereign and proprietary rights over its natural resources, including approximately three million acres of trust lands, 2.6 million acres of aquatic lands, and thousands of birds. Washington has proprietary rights for wildlife, fish, shellfish, and tidelands. Wash. Const. art. XVII, § 1; Wash. Rev. Code § 77.04.012. Washington also has statutory responsibility to conserve, enhance, and properly utilize the State’s natural resources. Wash. Rev. Code §§ 77.110.030, 90.03.010, 90.58.020; *see also* Wash. Const. art. XVI, § 1. The Attorney General is the chief legal advisor to the State of Washington, and his powers and duties include acting in federal court on matters of public concern. This challenge is brought pursuant to the Attorney General’s statutory and common law authority to bring suit and obtain relief on behalf of Washington.

19. Washington is a member of the Pacific Flyway Council, an administrative body consisting of public wildlife agencies that, among other things, sets migratory bird

policy and regulations and contributes to migratory bird research for the major migratory route that extends from Alaska to South America. Snow geese, long-tailed ducks, black brant, red-throated loons, Pacific loons, western sandpipers, and golden plovers migrate along the Pacific Flyway from the Coastal Plain to Washington. Washington has designated long-tailed ducks as a Species of Greatest Conservation Need, given its declining population in the state, and has expended efforts and resources to manage its population. Washington also expends efforts and resources to manage its population of snow geese, which are one of the most abundant species on the Coastal Plain.

20. Washington has a significant economic interest in its wildlife. In 2011, bird and other wildlife watchers expended \$3.2 billion in Washington and generated an economic impact of about \$5.5 billion, with migratory bird watching being an essential component of that economic impact. Washington grows 45% of the nation's clams, oysters, and mussels. The state's shellfish industry contributed \$184 million to Washington's economy in 2010 and employed 2,710 workers.

21. Washington's five oil refineries were designed and constructed to refine Alaskan crude oil, which arrives to the state via vessel. Although production from the Alaska North Slope has decreased over the last decade, it continues to be the largest source of crude oil for Washington refineries. Washington reasonably expects to receive oil extracted from the Arctic Refuge and to bear the impact of the oil transiting via Washington waterways and tidelands, emitting pollutants into Washington air during the

refinery process, being distributed throughout and from the state as fuel, and contributing to the potential worker safety hazards associated with refinery operations.

22. By and through its chief legal officer, Attorney General Maura Healey, Plaintiff COMMONWEALTH OF MASSACHUSETTS brings this action on behalf of itself and its residents to protect the Commonwealth's sovereign and proprietary interest in the conservation and protection of its natural resources and the environment. *See* Mass. Const. amend. art. 97; Mass. Gen. Laws ch. 12, §§ 3 and 11D. Massachusetts has an interest in protecting migratory bird species and other wildlife in the Commonwealth from harm both within and outside of Massachusetts.

23. The Commonwealth has enacted and devotes significant resources to implementing numerous laws concerning the management, conservation, protection, restoration, and enhancement of the Commonwealth's wildlife resources, including migratory birds and other avifauna. *See, e.g.*, Mass. Gen. Laws ch. 131. As early as 1818, the Commonwealth recognized the public health, environmental, and economic benefits that certain migratory birds provided to Massachusetts and its citizens and became one of the first states in the country to protect them while they remained in the Commonwealth's territory. An Act to Prevent the Destruction of Certain Useful Birds at Unseasonable Times of the Year, 1817 Mass. Acts ch. 103.

24. Multiple migratory shorebird species stop to feed or rest in Massachusetts as they migrate to or from breeding grounds in the Coastal Plain, including the American

golden-plover, whimbrel, semipalmated sandpiper, and the blackpoll warbler.

Massachusetts has substantial economic interest in the protection of wildlife, including birds that migrate from the Coastal Plain through Massachusetts. The Commonwealth is home to world-class birding destinations, including Cape Cod and the Great Meadows National Wildlife Refuge. In 2011 alone, birdwatchers and other wildlife watchers spent nearly \$1.3 billion in Massachusetts, generating approximately \$2.3 billion in economic impact.

25. Plaintiff STATE OF CALIFORNIA brings this action by and through Attorney General Xavier Becerra. The Attorney General is the chief law enforcement officer of the state and has the authority to file civil actions in order to protect public rights and interests, including actions to protect the natural resources of the state. Cal. Const. art. V, § 13; Cal. Gov't Code §§ 12600–12. This challenge is brought in part pursuant to the Attorney General's independent authority to represent the people's interests in protecting the environment and natural resources of California from pollution, impairment, or destruction. Cal. Const. art. V, § 13; Cal. Gov't Code §§ 12511, 12600–12; *D'Amico v. Bd. of Med. Exam'rs*, 520 P.2d 10, 14–15 (Cal. Sup. Ct. 1974).

26. The State of California has a sovereign interest in its natural resources and is the sovereign and proprietary owner of all the state's fish and wildlife resources, including migratory birds, which are state property held in trust by the state for the benefit of the people of the state. *People v. Truckee Lumber Co.*, 48 P. 374, 374 (Cal.

Sup. Ct. 1897); *Nat'l Audubon Soc'y v. Superior Ct.*, 658 P.2d 709, 727 (Cal. Sup. Ct. 1983); Cal. Water Code § 102; Cal. Fish & Game Code §§ 711.7(a), 1802. California, like other Pacific coastal states, is a member of the Pacific Flyway Council. Migratory birds in particular support a burgeoning birdwatching and hunting industry, which is important to California's people and economy.

27. California thus has a significant interest in preventing harm to migratory birds, including those that breed on the Coastal Plain and winter in California or pass through the state during migration. These species include snow geese, semipalmated plover, ruddy turnstone, long-billed dowitcher, black-bellied plover, sanderling, and dunlin, among others.

28. California also has a sovereign interest in preventing adverse health and environmental impacts from fossil fuel development. In 2019, California refineries processed more than 73 million barrels of Alaska crude oil, accounting for 11.9% of the refineries' total production. Exposure to pollutants produced by these refineries—which include carbon monoxide, benzene, formaldehyde, and arsenic—can cause cancer, birth defects, and asthma, among other health impacts, especially in environmental justice communities that are disproportionately affected by industrial pollution. Refineries also produce high levels of greenhouse gases, thus further contributing to the climate harms caused by oil and gas extraction.

29. Plaintiff STATE OF CONNECTICUT brings this action by and through Attorney General William Tong. The Attorney General of Connecticut is generally authorized to have supervision over all legal matters in which the State of Connecticut is a party. He is also statutorily authorized to appear for the state “in all suits and other civil proceedings, except upon criminal recognizances and bail bonds, in which the state is a party or is interested . . . in any court or other tribunal, as the duties of his office require; and all such suits shall be conducted by him or under his direction.” Conn. Gen. Stat. § 3-125.

30. Pursuant to the Connecticut Endangered Species Act, Conn. Gen. Stat. § 26-303 *et seq.*, it is the position of the Connecticut General Assembly that those species of wildlife and plants that are endangered or threatened are of “ecological, scientific, educational, historical, economic, recreational and aesthetic value to the people of the state, and that the conservation, protection, and enhancement of such species and their habitats are of state-wide concern.” Conn. Gen. Stat. § 26-303. As a consequence, “the General Assembly [of Connecticut] declares it is a policy of the state to conserve, protect, restore, and enhance any endangered or threatened species and essential habitat.” *Id.* A large number of migratory bird species, including a number that are endangered or threatened, stop or overwinter in Connecticut during migration to and from the Coastal Plain. Whimbrels, horned grebes, American golden-plovers, tundra swans, semipalmated sandpipers, snow geese, and greater scaups are among the species that frequent the

Coastal Plain and have been documented to feed and rest in Connecticut while migrating further south.

31. Plaintiff STATE OF DELAWARE is a sovereign entity and brings this action on its own behalf and on behalf of its citizens and residents to protect its sovereign and proprietary rights. The Attorney General is the chief legal officer for the State of Delaware, whose powers include acting in federal court on matters of public concern. This challenge is brought pursuant to the Attorney General's independent constitutional, statutory, and common law authority to bring suit and obtain relief on behalf of Delaware.

32. Migratory bird species present in the Coastal Plain stop or overwinter in Delaware during migration, including tundra swans, snow geese, peregrine falcons, semipalmated sandpipers, American golden-plovers, and blackpoll warblers. Numerous locations in Delaware are key locations for migratory bird species, including Bombay Hook National Wildlife Refuge, Prime Hook National Wildlife Refuge, and an extensive state park system along Delaware's coastline and in the Delaware Bay and other inland water bodies. Horseshoe crab eggs in the Delaware Bay provide vital nutrition for migratory bird species including the semipalmated sandpiper and red knot.

33. Delaware has substantial economic interest in the protection of wildlife, including birds that migrate from the Coastal Plain. Data from 2011 indicates that at least 200,000 Delawareans identify as wildlife watchers and sought birds as part of their

wildlife viewing opportunities. In 2011, bird and other wildlife watching generated approximately \$170 million in revenue in Delaware. The fishing, tourism, and recreation sectors and coast-related activities contribute almost \$7 billion in economic production to the state, directly or indirectly support more than 60,000 jobs, and generate more than 10% of the state's total employment, taxes, and production value. Delaware has enacted and devotes significant resources to implementing laws concerning the management, conservation, protection, restoration, and enhancement of the state's protected lands and wildlife, including migratory birds. *See, e.g.*, Del. Code Ann. tit. 7 chs. 1, 2, 6, 7, 13, 45, 47, 66, 66A, 73, 75.

34. Plaintiff STATE OF ILLINOIS brings this action by and through Attorney General Kwame Raoul. The Attorney General is the chief legal officer of the State of Illinois, Ill. Const., art V, § 15, and “has the prerogative of conducting legal affairs for the State,” *Env't'l Prot. Agency v. Pollution Control Bd.*, 372 N.E.2d 50, 51 (Ill. Sup. Ct. 1977). He has common law authority to represent the People of the State of Illinois and “an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State.” *People v. NL Indus.*, 103 604 N.E.2d 349, 358 (Ill. Sup. Ct. 1992).

35. Illinois has an interest in protecting migratory birds and other wildlife from harm. The state lies on the Mississippi Flyway, where millions of birds migrate every year. Under the Illinois Wildlife Code, Illinois has “ownership of and title to all wild

birds . . . within the jurisdiction of the State.” 520 Ill. Comp. Stat. 5/2.1. Illinois protects numerous migratory bird species that nest in or migrate through the state. *Id.* at 5/2.2; *see also United Taxidermists Ass’n v. Ill. Dept. of Nat. Res.*, 436 Fed. Appx. 692, 695 (7th Cir. 2011). Furthermore, Illinois’ laws protect endangered species and their habitat. *E.g.*, 520 Ill. Comp. Stat. 10, 20.

36. Plaintiff STATE OF MAINE, a sovereign state, brings this action by and through Attorney General Aaron M. Frey. The Attorney General of Maine is a constitutional officer with the authority to represent the State of Maine in all matters and serves as its chief legal officer with general charge, supervision, and direction of the state’s legal business. Me. Const. art. IX, § 11; 5 M.R.S.A. §§ 191–205. The Attorney General’s powers and duties include acting on behalf of the state and the people of Maine in the federal courts on matters of public interest. The Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Maine residents as a matter of constitutional, statutory, and common law authority.

37. Maine has an interest in protecting its natural resources, its wildlife, and its economy from the direct and indirect impacts of the Leasing Program. There is a direct connection between Maine wildlife and the Arctic Refuge, as certain species of birds use both Maine and the Coastal Plain of the Arctic Refuge as habitat. Migratory bird species rest and feed in Maine during their migration to and from the Coastal Plain and some

species spend the winter in Maine. Radio telemetry has confirmed individual whimbrels, least terns, and semi-palmated sandpipers traveling between the Coastal Plain of the Arctic Refuge and Maine in their annual migration. These migratory birds feed in Maine's blueberry barrens and use Maine's tidal flats for feeding, resting, and nesting. Maine's coastline contains over 22,000 acres of tidal marshes, providing rich feeding grounds for migratory and over-wintering birds from the Coastal Plain of the Arctic Refuge. There are between 3,000 and 4,000 islands and ledges off the coast of Maine that also host nesting and feeding migrating birds.

38. Maine has a substantial economic interest in protecting these species, as Maine is a renowned birding destination. Birding by residents and tourists, especially along the scenic coast and on coastal islands, infuses a significant amount of money into Maine's economy. The opportunity to view species that spend a portion of their lives on the Coastal Plain of the Arctic Refuge draws birders to the Maine Coast.

39. Plaintiff STATE OF MARYLAND brings this action by and through its Attorney General, Brian E. Frosh. The Attorney General of Maryland is the state's chief legal officer with general charge, supervision, and direction of the state's legal business. Under the Constitution of Maryland, and as directed by the Maryland General Assembly, the Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); Md. Code Ann., State Gov't § 6-106.1.

40. Maryland’s Chesapeake Bay provides important wintering habitat for species like tundra swans, semipalmated sandpipers, black-bellied and American golden-plovers, long-tailed ducks, and snow geese that breed along the Coastal Plain. The arrival of these long-distance migrants each winter draws visitors to places like Sandy Point State Park, Deal Island Wildlife Management Area, Jug Bay Wetlands Sanctuary, and Blackwater National Wildlife Refuge. Maryland’s portion of the Chesapeake Bay is particularly important to tundra swans as roughly 30% of the entire eastern population winters within the state.

41. By and through Michigan State Attorney General Dana Nessel, Plaintiff PEOPLE OF THE STATE OF MICHIGAN bring this action to defend their sovereign and proprietary interests. Mich. Comp. Laws § 14.28. Conserving Michigan’s natural resources is of “paramount public concern.” Mich. Const. art. IV, § 52. The People of the State of Michigan seek to defend their interest in migratory birds that spend time in the Coastal Plain and Michigan. The people of the State of Michigan also seek to protect their interest against harm caused by climate change.

42. Michigan is located largely within the Mississippi Flyway and is also on the western edge of the Atlantic Flyway and the eastern edge of the Central Flyway. Because of this, and combined with Michigan’s substantial bird habitat along the Great Lakes, inland lakes, and wetlands, many migrating birds stopover in Michigan during different times of the year, including eastern tundra swans and four species of ducks that nest in

the Coastal Plain and make long-distance migrations that include stopovers in Michigan. Tundra swans are of particular interest to recreational birdwatchers in the state, and Michigan regulates hunting for all four duck species.

43. Additional shorebirds that breed in the Coastal Plain and migrate through Michigan include American golden-plover, semipalmated sandpiper, black-bellied plover, pectoral sandpiper, Stilt sandpiper, Baird's sandpiper, long-billed dowitcher, semipalmated plover, dunlin, and red-necked phalarope.

44. Michigan receives significant income from waterfowl hunters and recreational birdwatchers. In 2012, waterfowl hunters spent \$22.7 million on hunting trips in Michigan. In 2011, two million people observed birds in Michigan and 41% of those people took birdwatching trips. Wildlife watchers, approximately half a million of which specifically observe waterfowl, spent \$1.2 billion on wildlife watching in Michigan in 2011.

45. By and through its chief legal officer, Attorney General Keith Ellison, Plaintiff MINNESOTA brings this action on behalf of itself and its residents to protect Minnesota's interest in its natural resources and the environment. The Minnesota Legislature, "recognizing the profound impact of human activity on the interrelations of all components of the natural environment, . . . [has] declare[d] that it is the continuing policy of the state government . . . to use all practicable means and measures . . . to create and maintain conditions under which human beings and nature can exist in productive

harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people." Minn. Stat. § 116D.02. Minnesota has enacted and devotes significant resources to implementing numerous laws concerning the management, conservation, protection, restoration, and enhancement of its wildlife resources, including migratory birds and other avifauna. *See, e.g.*, Minn. Stat. ch. 97A.

46. Dozens of migratory bird species fly over Minnesota during migration to and from the Coastal Plain. Greater white-fronted geese, snow geese, tundra swans, American wigeons, northern pintails, and red-breasted mergansers are among the species that use the Coastal Plain as a critical breeding ground and are also found in Minnesota. Plaintiff Minnesota has substantial economic interest in the protection of wildlife, including birds that migrate from the Coastal Plain through Minnesota. In 2006, approximately 52,000 waterfowl hunters spent more than \$28 million on trip and equipment expenditures. The industry created 653 jobs and had a total economic impact of \$43 million. Healthy waterfowl-breeding grounds, including those in the Coastal Plain area, are critical to support this industry.

47. Plaintiff STATE OF NEW JERSEY is a sovereign state of the United States of America and brings this action on behalf of itself and as a trustee, guardian, and representative of the residents and citizens of New Jersey. The New Jersey Legislature has declared that New Jersey's lands and waters constitute a unique and delicately balanced resource and that these resources should be protected and preserved to promote

the health, safety and welfare of the people of the state. N.J. Stat. Ann. § 58:10-23.11a. New Jersey holds wildlife in trust for the benefit of its people. It is the policy of the state to manage all forms of wildlife to insure continued participation in the ecosystem. N.J. Stat. Ann. § 23:2A-2.

48. New Jersey beaches and wetlands provide vital resting grounds for shorebirds migrating to their summer breeding grounds in the Arctic. The Delaware Bay is a critical stop for at least six arctic-nesting shorebirds. The Nature Conservancy's South Cape May Meadows, Gandy's Beach Preserve, and Sunray Beach Preserve are examples of important habitats in the Delaware Bay ecosystem upon which migratory shorebirds depend to refuel and rest. Migratory shorebirds are an integral part of the state's ecosystem and are a world-renowned bird-watching phenomenon.

49. Plaintiff STATE OF NEW YORK is a sovereign state of the United States of America and brings this action on behalf of itself and as trustee, guardian, and representative of all residents and citizens of New York to protect their interests, and in furtherance of the state's sovereign and proprietary interests in the conservation and protection of the state's natural resources and the environment, and particular, in the protection of migratory bird species and other wildlife in the state from harm both within and outside of its borders.

50. New York owns all wildlife in the state. N.Y. Env'tl. Conserv. Law § 11-0105. This wildlife includes multiple bird species associated with the Coastal Plain,

which stop in New York on their migration routes. These include, among others, the semipalmated sandpiper, American golden-plover, whimbrel, and tundra swan. The semipalmated sandpiper, listed as a “Near Threatened Species” by the International Union for Conservation and Nature, has been observed at marshes and coastal areas of Long Island, while tundra swan populations have been observed in central and western parts of New York. From bird banding data, additional bird species such as the canvasback, greater scaup, and lesser scaup have been demonstrated to migrate from Alaska to New York.

51. The birdwatching industry is an important recreational activity and contributor to economic activity in New York, with many residents and visitors interested in catching glimpses of rare birds during their migration. According to the U.S. Fish and Wildlife Service, four million bird and wildlife watchers spent more than \$4 billion in New York, ranking New York first among all states for these types of expenditures. Over one million people took trips away from home to view wild birds in New York.

52. Plaintiff STATE OF OREGON brings this suit by and through Attorney General Ellen Rosenblum. The Oregon Attorney General is the chief legal officer of the State of Oregon. The Attorney General’s duties include acting in federal court on matters of public concern and upon request by any state officer when, in the discretion of the Attorney General, the action may be necessary or advisable to protect the interests of the state. Ore. Rev. Stat. § 180.060(1). The Oregon Department of Fish and Wildlife,

established as a state agency by the Oregon Legislature pursuant to Oregon Revised Statute section 496.080, has requested that the Attorney General bring this suit to protect Oregon's sovereign interest in preserving wildlife.

53. Plaintiff Oregon's interest in the Leasing Program's environmental impacts emanates in part from its sovereign and proprietary rights over its natural resources. Oregon owns over two million acres of land. In addition, under Oregon law, "Wildlife is the property of the state." Or. Rev. Stat. § 498.002. The Oregon Department of Fish and Wildlife manages wildlife to prevent serious depletion of any indigenous species and to provide recreational and aesthetic benefits for present and future generations of Oregonians. Or. Rev. Stat. § 496.012.

54. As Oregon is a Pacific coast state and part of the Pacific Flyway, migratory birds, many of which migrate between the Coastal Plain and Oregon, are a vital part of Oregon's landscape, history, and economy. For example, the Coastal Plain is one of the most important areas for black brant that winter in the Pacific Flyway. Marking of black brant has demonstrated that individual birds breeding in the Coastal Plain currently winter in Oregon's bays. Any land management which negatively impacts black brant on the Coast Plain is likely to have a negative impact to the overall population and to Oregon's wintering flock.

55. Plaintiff STATE OF RHODE ISLAND is a sovereign entity and brings this action to protect its sovereign and proprietary rights. The Attorney General is the chief

legal advisor to the State of Rhode Island, and his powers and duties include acting in federal court on matters of public concern. This challenge is brought pursuant to the Attorney General's statutory and common law authority to bring suit and obtain relief on behalf of the State of Rhode Island.

56. Rhode Island has sovereign and propriety interests in protecting its state resources through careful environmental review at both the state and federal levels. Rhode Island has a statutory responsibility to conserve, enhance, and properly utilize the State's natural resources. R.I. Gen. Laws § 10-20-1; *see also* R.I. Const. art. I, § 17.

57. Due to its coastal wetlands and woodlands, a high density of migratory bird species stop or overwinter in Rhode Island during migration to and from the Coastal Plain. Whimbrels, horned grebes, American golden-plovers, semipalmated sandpipers, and greater scaups are among the species that frequent the Coastal Plain and have been documented to feed and rest in Rhode Island while migrating further south. With 384 miles of shoreline and five national wildlife refuges in the state, Rhode Island is a popular birding destination. In 2011, 308,000 bird and wildlife watchers spent \$200 million in Rhode Island undertaking this activity.

58. Plaintiff STATE OF VERMONT is a sovereign state in the United States of America. The State of Vermont brings this action through Attorney General Thomas J. Donovan, Jr. The Attorney General is authorized to represent the state in civil suits

involving the state's interests, when, in his judgment, the interests of the state so require.
Vt. Stat. Ann. tit. 3 ch. 7.

59. Vermont has ownership, jurisdiction and control of all wildlife of the state as trustee for the state's citizens. Vt. Stat. Ann. tit. 10 § 4081(a)(1). Vermont has an interest in protecting wildlife, including birds that migrate through Vermont on their way to or from breeding grounds on the Coastal Plain, from harm both within and outside the state. Such migratory birds include the American golden-plover, snow bunting, and whimbrel. According to data for 2011, Vermont led the nation in the percentage of residents participating in bird watching (39%), and residents and visitors spent \$289 million on birdwatching and other wildlife viewing in the state.

B. Defendants

60. Defendant David Bernhardt is Secretary of the Interior (Interior) and is sued in his official capacity. Secretary Bernhardt is responsible for implementing and fulfilling the duties of Interior, including managing all aspects of the Leasing Program; managing implementation of the Refuge Administration Act, relevant portions of ANILCA, and Section 20001 of the Tax Act; and bears responsibility, in whole or in part, for the acts complained of in this Complaint. Secretary Bernhardt signed the challenged Record of Decision.

61. Defendant Interior is a federal agency and oversees BLM and bears responsibility, in whole or in part, for the acts complained of in this Complaint.

62. Defendant BLM is a federal agency within Interior that bears responsibility, in whole or in part, for the acts complained of in this Complaint. Defendant BLM issued the challenged Record of Decision and FEIS.

IV. BACKGROUND

A. Protection of the Arctic National Wildlife Refuge

63. The federal government first protected the area now known as the Arctic National Wildlife Refuge in 1960 when the Secretary of the Interior established the Arctic National Wildlife Range. Public Land Order 2214, at 1 (Dec. 6, 1960) (PLO 2214).

64. Congress solidified and expanded these protections by passing ANILCA in 1980, which created the Arctic Refuge by adding 9.16 million acres of land to the existing 8.9 million-acre Arctic National Wildlife Range. ANILCA § 303(2)(A).

65. The Coastal Plain, which was a part of the original Range, is the most biologically productive part of the Arctic Refuge. The unique terrain of the Coastal Plain is comprised of mostly water or wetland and, due to the area's undisturbed nature, its wetland function and structure remain intact.

66. Along with caribou, polar bears, and other wildlife, more than 156 migratory bird species depend on the Coastal Plain's unique ecosystem. Birds migrate from the Arctic Refuge, particularly from the Coastal Plain, to six continents and through all 50 states.

67. Because of its undisturbed and unique ecosystem, the Arctic Refuge and its Coastal Plain have long-served as an important resource for scientific research, such as the study of migratory birds, within the National Wildlife Refuge System (Refuge System).

68. The Arctic Refuge also plays an important role in the United States' satisfaction of its international treaty obligations, including treaty obligations related to the protection of migratory birds.

69. Management of the Arctic Refuge is governed by ANILCA and the Refuge Administration Act.

70. The Refuge Administration Act applies to all national wildlife refuges and directs the Secretary of the Interior "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." 16 U.S.C. § 668dd(a)(2).

71. The Refuge Administration Act directs the Secretary to, among other things:

(A) provide for the conservation of fish, wildlife, and plants and their habitats within the [Refuge] System;

(B) ensure that the biological integrity, diversity, and environmental health of the [Refuge] System are maintained for the benefit of present and future generations of Americans;

(C) plan and direct the continued growth of the [Refuge] System in a manner that is best designed to accomplish the mission of the [Refuge] System, to contribute to the conservation of the ecosystems of the United States, [and] to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats, . . .; [and]

(D) ensure that the mission of the [Refuge] System . . . and the purposes of each refuge are carried out

16 U.S.C. § 668dd(a)(4); *see also* 50 C.F.R. § 25.11(b).

72. Under the Refuge Administration Act, “each refuge shall be managed to fulfill the mission of the System as well as the specific purpose for which that refuge was established.” 16 U.S.C. § 668dd(a)(3)(A).

73. The “purposes of the refuge” include purposes “specified in or derived from” laws or public land orders that established, authorized, or expanded the refuge. 16 U.S.C. § 668ee(10).

74. ANILCA identifies four purposes for establishing the Arctic Refuge and guiding its management:

- (i) “to conserve fish and wildlife populations and habitats in their natural diversity,” including “snow geese, peregrine falcons, and other migratory birds”;
- (ii) “to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats”;
- (iii) to provide opportunities for continued subsistence use by local residents; and
- (iv) to ensure water quality and necessary water quantity within the refuge.

ANILCA § 303(2)(B).

75. These four ANILCA purposes add to the three original management purposes of the Arctic National Wildlife Range: to preserve “unique wildlife, wilderness, and recreational values.” PLO 2214. These three Range purposes “remain in force and effect” for the Coastal Plain. ANILCA § 305.

76. ANILCA contains special provisions concerning the Coastal Plain. ANILCA § 1002 (codified at 16 U.S.C. § 3142). Recognizing the potential interest in oil and gas exploration and development on the Coastal Plain, Section 1002 requires “a comprehensive and continuing inventory and assessment of the fish and wildlife

resources of the coastal plain,” including migratory birds, and directs Interior to study the potential impacts of oil and gas development on wildlife and habitats. ANILCA § 1002(a), (c).

77. By requiring such information, Congress sought to ensure that any oil and gas activity authorized within the Coastal Plain “avoid[] significant adverse effects on the fish and wildlife and other resources” of the region. *Id.* at § 1002(a).

78. Notwithstanding Section 1002, Section 1003 of ANILCA prohibited production of oil and gas from the Arctic Refuge and provided that “no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress.” *Id.* at § 1003 (codified at 16 U.S.C. § 3143).

B. Congressional Directive to Develop a Limited Oil and Gas Program on the Coastal Plain

79. In December 2017, President Trump signed into law the Tax Act. A rider to the Tax Act includes several provisions about the management of the Coastal Plain. First, the Tax Act amends ANILCA to include providing for a limited oil and gas program on the Coastal Plain. Tax Act § 20001. Second, the Tax Act excludes the Coastal Plain from ANILCA’s prohibition on oil and gas production. *Id.* § 20001(b)(1). Third, the Tax Act directs the Secretary of the Interior, through BLM, to “establish and administer a competitive program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.” *Id.* § 20001(b)(2).

80. The Tax Act places parameters on the leasing program, directing BLM to hold two lease sales offering 400,000 acres in each lease sale within four and seven years of the date of enactment and to limit surface development to 2,000 surface acres of federal land on the Coastal Plain. *Id.* § 20001(c).

81. The Tax Act does not otherwise alter the framework of protections for the Arctic Refuge. Rather, the legislative history accompanying the Tax Act demonstrates that Congress intended environmental protection to remain a priority of Coastal Plain management.

C. Fossil Fuels and Climate Change Impacts

82. Oil and gas production from the Coastal Plain, as contemplated by the Leasing Program, will contribute to greenhouse gas emissions that cause climate change.

83. In a 2018 report, the Intergovernmental Panel on Climate Change (IPCC), an international scientific body of the United Nations, emphasized that climate change already is causing devastating impacts, including more frequent and extreme severe weather events, rising sea levels, and diminishing Arctic sea ice. Fossil fuel combustion, including oil and gas emissions, is a key driver of climate change.

84. The 2018 IPCC Report determined with a high degree of scientific confidence that if the current pace of greenhouse gas emissions continues, warming will reach 1.5 degrees Celsius above pre-industrial levels between 2030 and 2052.

85. Defendant Interior and the dozen other federal agencies that comprise the U.S. Global Change Research Program warned in the November 2018, Fourth National Climate Assessment that without substantial and sustained efforts to reduce greenhouse gas emissions, climate change will increasingly disrupt ecosystems; threaten human health, safety, and quality of life; damage infrastructure; and hinder economic growth throughout the United States, including in Plaintiffs' states.

86. Multiple studies repeatedly have demonstrated that a substantial portion of the world's recoverable fossil fuel reserves, such as those located in the Coastal Plain, must remain unburned in order to avert the most catastrophic impacts of climate change.

87. Over the past ten years, these unburnable reserve estimates have steadily increased. The 2018 IPCC report warned that to have only a 50% chance of avoiding the most devastating consequences of climate change resulting from global warming above the 1.5-degree Celsius level, about 80% of recoverable fossil fuel reserves must remain unburned.

88. Heeding these warnings, State Plaintiffs, businesses, and individuals are working to decrease reliance on fossil fuels and transition to cleaner technology. These efforts notwithstanding, State Plaintiffs already are experiencing devastating and increasingly severe climate impacts.

89. Along the coasts of Plaintiffs Washington, Massachusetts, California, Connecticut, Delaware, Maine, Maryland, New York, New Jersey, Oregon, and Rhode

Island, ocean acidification through the ocean's absorption of excess carbon dioxide in the atmosphere and warming water temperatures threaten natural resources and vital fisheries, including oysters, cod, lobster, and other marine life that play vital roles in the states' economy and culture. For example, without greenhouse gas mitigation, ocean acidification along Washington's coast is expected to cause a 34% decline in shellfish survival by 2100.

90. The rise of sea levels from melting ice sheets and glaciers and thermal expansion has impacted coastal and marine waters along over 18,000 shoreline miles of Plaintiffs Washington, Massachusetts, California, Connecticut, Delaware, Maine, Maryland, New Jersey, New York, Oregon, and Rhode Island. Sea level rise has led to more frequent tidal inundation, and when combined with more intense coastal storms, storm surges and severe flooding that cause significant damage to state properties, tourism, public infrastructure, private homes, businesses, and wildlife habitat, and increasing demands for emergency services. Impacted areas include a diverse array of coastal ecosystems (*e.g.*, sandy beaches, islands, estuaries, and salt marshes) that offer immense recreational, cultural, and aesthetic value to the residents of and visitors to coastal State Plaintiffs, while also serving important ecological functions.

91. Rising sea levels, coupled with intensifying weather events, also threaten State Plaintiffs' migratory birds and their habitat. Coastal wetlands provide an important stopover for millions of migratory birds. With intensifying storms and rising sea levels,

tidal flats and marshes could become open water, jeopardizing the survival of the migratory birds that depend on the tidal flats and marshes to feed and nest.

92. Specific impacts from sea level rise to State Plaintiffs' resources include:

92.1 Boston, the largest city in Massachusetts, could experience cumulative damage to buildings, building contents, and associated emergency costs as high as \$94 billion between 2000 and 2100, depending on the sea level rise scenario and the extent of adaptive and preventative actions in place.

92.2 Sea level rise in Delaware threatens property assessed at approximately \$1.5 billion and will harm coastal ecosystems that offer recreational, cultural, ecological, and aesthetic value to the residents of and visitors to the state. Delaware's 2012 Sea Level Rise Vulnerability Assessment determined that 8 to 11% of the state's land area could be inundated by sea level rise of 0.5 to 1.5 meters.

92.3 Maryland is projected to experience between 2.1 and 5.7 feet of sea level rise over the next century, leading to shoreline erosion, coastal flooding, storm surges, inundation, and saltwater intrusion into groundwater supplies and adversely impacting tourism and the Port of Baltimore.

92.4 Sea level rise in New York will not only directly increase the risks to lives and property in the state from future storms, but also threaten coastal wetlands, which provide important species habitat and protect adjacent communities. Swiss Re, a reinsurance and insurance company, has estimated that expected annual economic losses

in New York City alone from rising sea levels and more intense storms may increase to \$4.4 billion by the 2050s.

92.5 Rhode Island has experienced over ten inches of sea level rise since 1930, averaging over an inch per decade. The mean annual rate of sea level rise has increased in recent decades and will continue to rise significantly. According to the National Oceanic and Atmospheric Administration, Rhode Island could experience nine feet of sea level rise by 2100, along with substantial increase in the frequency of tidal flooding. Further, Rhode Island's topography, geography, and land use patterns make it particularly susceptible to injuries from sea level rise. Particularly, Rhode Island has substantial public assets in 21 coastal municipalities along its nearly 400 miles of coastline and 20 Rhode Island municipalities have acreage lying below the floodplain.

93. The rise in extreme weather events have caused drought, flooding, wildfires, and other catastrophic natural disasters leading to significant losses for State Plaintiffs, including:

93.1 Extreme weather on the East Coast includes hurricanes, coastal storms, heavy downpours, and extreme heat that are increasing in frequency and intensity. In Connecticut, where the annual mean temperature rose by approximately three degrees Fahrenheit since 1895, warmer weather is contributing to a rise in average annual precipitation that will increase the frequency of heavy downpours. In New York, Hurricane Sandy caused an estimated \$32 billion in losses and over 50 deaths in the state.

Lake Ontario reached record high-water levels in 2017 and 2019 causing significant damage to properties in New York's lakefront communities. In New Jersey, Sandy's severe winds and coastal flooding cost the state an estimated \$11.7 billion in lost domestic product, including \$950 million in tourism losses. Hurricane Irene caused estimated damages of up to \$1 billion in New York and then dumped approximately 11 inches of rain on Vermont, temporarily or permanently displacing more than 1,400 households and causing \$733 million in damage, including damage to more than 500 miles of state highway and 480 bridges. Since 1960, average annual precipitation in Vermont has increased by 5.9 inches and increasingly frequent heavy rainstorms threaten to flood communities in Vermont's many narrow river valleys. Over the past 80 years, Rhode Island has experienced a doubling of the frequency of flooding, an increase in the magnitude of flood events and has had more extreme precipitation events between 2005 and 2014 than any prior decade in the state's history. In just Providence, Rhode Island, average annual precipitation has increased by 0.4 inches per decade since 1895 and intense rainfall events have increased 71% between 1958 and 2000.

93.2 Extreme weather in the Midwest includes flooding, drought, and whipsawing water levels on the Great Lakes. In 2011, 15 inches of rain fell in northwestern Illinois over just 12 hours, killing one person and damaging infrastructure. In spring 2019, flooding in Illinois delayed crop planting, causing the U.S. Department of Agriculture to declare an agricultural disaster in every county in Illinois. Predictions

indicate that warmer weather and altered rain patterns will reduce crop yield by 15% within two decades and up to 73% by the end of the century, making farming particularly vulnerable to extreme precipitation caused by climate change. Since 2004, Minnesota has experienced three 1,000-year floods and an increase in intense weather events including hailstorms, tornadoes and droughts. In 2007, several Minnesota counties received drought designation, while others experienced flood disasters—an occurrence that repeated itself in 2012 when 11 counties declared flood emergencies while 55 received drought designations. In 2019, Lake Michigan broke its 33-year-old high-water record; in 2013, it reached an all-time low. Rapidly swinging water levels harm commercial shipping, recreational boaters, and beach-goers—low water forces freighters to forgo cargo and high water erodes beaches.

93.3 In the West, extreme weather in Plaintiffs’ states threaten to devastate wildlife populations and agricultural industries. For example, rising stream temperatures and lower summer stream flows from reduced snow pack continue to reduce the quality and quantity of salmon habitat in western states, particularly California, Oregon, and Washington. In 2015, Oregon experienced the warmest year since recordkeeping began in 1895. The heat resulted in record low snowpack across the state, a two-third reduction of normal irrigation water for farmers in eastern Oregon’s Treasure Valley, and the loss of more than half of spring spawning salmon in the Columbia River.

94. Warmer temperatures also contribute to increased risks of disease and health impacts. Changes in vegetation and the rise in deer populations have contributed to an increased risk of West Nile Virus in Connecticut and the spread and prevalence of Lyme disease in Massachusetts, Connecticut, Minnesota, Rhode Island, and Vermont. Heat-related deaths in New York City have been projected to increase if actions are not taken to reduce greenhouse gas emissions and lessen temperature increases. In Michigan, heat-related illnesses, waterborne diseases, and vector-borne diseases are on the rise. In California, increased hospitalizations for multiple diseases, including cardiovascular disease, ischemic stroke, pneumonia, and heat stroke, are associated with increases in same-day temperature. California bears a substantial portion of the costs of these medical conditions as a result of its financial responsibility for Medi-Cal and Medicare payments. Increased forest fire activity in western states like California, Oregon, and Washington, leads to an increase in unhealthy air days, impacting public health.

95. Like State Plaintiffs, the Arctic ecosystem, including the Coastal Plain, is rapidly changing due to climate change. Accelerated melting of multiyear sea ice, increased boreal wildfires, reduction of terrestrial snow cover, and permafrost degradation are stark examples of the rapid Arctic-wide response to global warming.

96. Annual average near-surface air temperatures across Alaska and the Arctic have increased over the last 50 years at a rate more than twice as fast as the global

average temperature. Increased temperatures on Alaska’s North Slope contribute to thawing permafrost that releases carbon dioxide and methane that amplifies warming.

97. Yet, despite the overwhelming and increasingly harmful impacts of climate change in the United States and around the world, Defendants asserted in the FEIS that “[T]here is not a climate crisis.” FEIS S-686.

98. The 2018 IPCC Report gravely warns that an increase in global temperatures of 1.5 degrees Celsius above preindustrial levels will significantly increase risks for human health, food security, biodiversity, national security, and global economies. Yet, the Defendants summarily dismissed this conclusion as “rel[ying] on global climate models that have grossly overestimated the amount of warming (based on actual observations) from a given amount of GHG emissions” FEIS S-569.

99. Defendants further trivialized the importance of reducing U.S. emissions, stating, “Restricting GHG emissions, especially in just the [United States], which now represents a small and shrinking portion of global emissions, would not have a measurable effect on climate change globally or regionally in Alaska.” FEIS S-581.

100. In fact, the United States remains the second-largest contributor of carbon emissions in the world. Recent reports affirm that immediate and substantial global greenhouse gas emission reductions are essential to limiting the most harmful impacts of climate change in the United States and across the globe.

D. The Leasing Program FEIS and Record of Decision

1. NEPA's Requirements

101. Before authorizing the Leasing Program, Defendants must comply with NEPA's environmental review requirements.

102. NEPA declares a national policy to “use all practicable means and measures” to “create and maintain conditions in which man and nature can exist in productive harmony.” 42 U.S.C. § 4331(a).

103. The objectives of NEPA are realized through a set of “action-forcing” procedures that require that agencies take a “‘hard look’ at environmental consequences.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

104. A federal agency must ensure that its impacts analysis “inform[s] the public that it has indeed considered environmental concerns in its decisionmaking process.” *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 781 (9th Cir. 2006) (quoting *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1153–54 (9th Cir. 2006)).

105. The Council on Environmental Quality (CEQ) promulgated rules implementing NEPA, which apply to all federal agencies. 40 C.F.R. pt. 1500.¹ Interior also promulgated rules governing its NEPA implementation. 43 C.F.R. pt. 46.

¹ CEQ recently issued new regulations implementing NEPA that take effect September 14, 2020. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) (to be codified at 40 C.F.R. pt. 1500). CEQ's prior regulations, promulgated in 1978 with minor amendments in 1986 and 2005, govern Defendants' Record of Decision and FEIS. All regulatory references in this complaint are to the 1978 regulations, as amended.

106. NEPA requires federal agencies to prepare an environmental impact statement (EIS) for all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332.

107. “Major federal actions” include “new and continuing activities” with “effects that may be major and which are potentially subject to Federal control and responsibility.” 40 C.F.R. § 1508.18.

108. An EIS must “provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” *Id.* § 1502.1.

109. An EIS must discuss, among other things: the environmental impact of the proposed federal action, any adverse and unavoidable environmental effects, alternatives to the proposed action, and any irreversible and irretrievable commitments of resources involved in the proposed action. 42 U.S.C. § 4332.

110. An EIS’s analysis of reasonable alternatives “is the heart of the environmental impact statement.” 40 C.F.R. § 1502.14.

111. Agencies must rigorously explore and objectively evaluate all reasonable alternatives, including the alternative of taking no action, and must discuss the reasons for eliminating any alternatives rejected from detailed study. *Id.*

112. An EIS must state how alternatives considered will achieve the requirements of NEPA and “other environmental laws and policies.” *Id.* § 1502.2.

113. NEPA’s regulations require agencies to analyze both the direct impacts that an action will have on the environment, as well as the action’s “reasonably foreseeable” indirect and cumulative impacts. *Id.* § 1508.8.

114. Direct impacts are caused by the action and occur at the same time and place as the action. *Id.* § 1508.8(a).

115. Indirect impacts are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b).

116. Cumulative impacts are those impacts that result “from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” *Id.* § 1508.7.

117. A legally adequate impact analysis requires the establishment of accurate baseline conditions to determine the effect the action will have on the environment. *Half Moon Bay Fisherman’s Mktg. Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988).

118. If information that is essential for making a reasoned choice among alternatives is not available, an agency must obtain that information unless the costs of doing so would be exorbitant. 40 C.F.R. § 1502.22(a).

119. Agencies also have an obligation to consider in the EIS mitigation measures to avoid, minimize, rectify, reduce, eliminate, or compensate for environmental harms of agency action. *Id.* §§ 1502.16(h), 1508.20.

2. Defendants' FEIS and Record of Decision

120. On December 28, 2018, Defendants published a Notice of Availability of the Draft Environmental Impact Statement (DEIS). Interior, BLM, Notice of Availability of the Draft Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program and Announcement of Public Subsistence-Related Hearings, 83 Fed. Reg. 67,337 (Dec. 28, 2018).

121. Nearly all State Plaintiffs submitted detailed comments on the DEIS, highlighting numerous inadequacies in Defendants' environmental review, including a deficient range of alternatives, a deficient analysis of greenhouse gas emissions and associated climate change impacts, and a deficient analysis of migratory bird impacts.

122. The vast majority of the more than one million public comments on the DEIS, including comments submitted by nearly all State Plaintiffs, opposed expansive leasing and development in the Coastal Plain.

123. Just six months after the comment period closed on the DEIS, Defendants noticed the availability of the FEIS in the Federal Register on September 25, 2019. Interior, BLM, Notice of Availability of the FEIS for the Coastal Plain Oil and Gas Leasing Program, Alaska, 84 Fed. Reg. 50,472 (Sept. 25, 2019).

124. Defendants issued the Record of Decision approving the Leasing Program on August 17, 2020.

125. The Record of Decision authorizes Alternative B, which will allow oil and gas leasing on the entire program area encompassing 1,563,500 acres of the Coastal Plain. As the Record of Decision notes, this expansive area will also be available for “future exploration, development, and transportation” resulting from the Leasing Program. Interior, BLM, Coastal Plain Oil and Gas Leasing Program Record of Decision 3 (August 2020) (ROD).

126. Alternative B has the most severe environmental impacts of all considered alternatives. It maximizes the acreage available for leasing, seismic exploration, development, and transportation and includes the fewest environmental protections. Alternative B has the greatest anticipated impacts on the delicate Coastal Plain ecosystem, including impacts to the area’s wildlife (including migratory birds), habitat, subsistence values, and water resources.

127. The Record of Decision adopts the lease stipulations and required operating procedures considered in the FEIS. BLM may waive, exempt, or modify the lease stipulations and required operating procedures. Among other things, the lease stipulations and required operations procedures do not adequately protect the conservation purposes of the Arctic Refuge, including migratory birds.

128. Although the Record of Decision recognizes that the Tax Act “included a Coastal Plain oil and gas program as a refuge purpose on *equal footing* with the other refuge purposes,” ROD 1 (emphasis added), the Record of Decision elevates the oil and gas program over the other refuge purposes stated in ANILCA.

129. The Record of Decision does not acknowledge the purposes identified in Public Land Order 2214.

130. The Record of Decision does not contain a determination that the Leasing Program authorized by Defendants is a compatible use of the Arctic Refuge or that the Leasing Program fulfills the eight refuge purposes. Instead, the Record of Decision states only that it took the ANILCA refuge purposes into account and that there will be some “potential impact” on those purposes. ROD 7–8.

131. The Record of Decision adopts an interpretation of the Tax Act’s 2,000-acre surface development limit that is different than the FEIS’s and allows for even greater disturbance of the Coastal Plain. Although the Record of Decision continues to interpret the surface acre limit as requiring Defendants to authorize 2,000 acres of surface development, Defendants assert for the first time in the Record of Decision that the surface development provision applies only to a narrow subset of facilities that are both “production and support” facilities. ROD 11–13. Under this new interpretation, many facilities (*e.g.*, airstrips, roads, and gravel mines) that BLM previously considered in the

FEIS to count toward the 2,000-acre surface disturbance limit may not count toward that limit under the authorized Leasing Program.

132. The Record of Decision further adopts an interpretation of the rights-of-way provision of the Tax Act that overrides the 2,000-acre surface development limit, stating that BLM must issue a right-of-way grant or necessary access authorizations.

133. The Record of Decision relies on the deficient FEIS, which, among other things, fails to consider an adequate range of alternatives, fails to assess adequately the greenhouse gas emissions and climate impacts of the Leasing Program, and fails to assess adequately migratory bird impacts of the Leasing Program.

a. Defendants' Deficient Range of Alternatives

134. The FEIS does not consider a reasonable range of alternatives.

135. The FEIS considers three action alternatives and a no-action alternative. Alternatives B and C authorize leases in the entire program area, covering 1,563,500 acres. Alternative D contains two sub-alternatives, D-1 and D-2. Alternative D-1 authorizes lease sales on 1,037,200 acres and Alternative D-2 authorizes lease sales on 800,000 acres.

136. In the purpose and need statement, Defendants stated that “[a]ll action alternatives were designed to meet Section 2001 of [the Tax Act] and to account for all purposes of the Arctic Refuge.” FEIS ES-1. Defendants further stated that “[t]he alternatives analyze various terms and conditions (i.e., lease stipulations and required

operating procedures) to be applied to leases and associated oil and gas activities, to properly balance oil and gas development with protection of surface resources.” *Id.*

137. Yet, instead of balancing development with surface resource protection, each action alternative unlawfully prioritizes oil and gas production above the conservation purposes of the Arctic Refuge.

138. Among other things, all of the action alternatives considered would allow 174 or more miles of gravel road construction *plus* extensive and harmful ice road construction, 212 or more miles of pipeline, nearly 300 acres of gravel pits and stockpiles, and seismic activity across much of the Coastal Plain. These action alternatives permit, and in fact exceed, the maximum surface infrastructure limits Congress set in the Tax Act.

139. Each action alternative threatens significant and long-lasting harm to the unique ecology, wildlife, wilderness, and recreational values of the Arctic Refuge, including to the migratory bird populations of great importance to State Plaintiffs and to the Arctic Refuge itself.

140. In addition, each action alternative threatens to worsen greenhouse gas emissions and associated climate impacts and to alter forever the hydrology and habitat of the Coastal Plain.

141. None of the action alternatives considered in the FEIS would restrict surface acre disturbance, limit ice road construction, delay or phase leasing, limit seismic

activity, mitigate greenhouse gas emissions, effectively protect migratory bird habitat, effectively minimize or mitigate adverse environmental impacts, or otherwise fulfill the conservation purposes of the Arctic Refuge to the extent consistent with the Tax Act.

142. An alternative that includes some or all of these components to better protect the Coastal Plain from significant environmental harm and advance the conservation purposes of the Arctic Refuge, to the extent consistent with the Tax Act, is a reasonable alternative consistent with the purpose and need of the proposed Leasing Program that Defendants should have considered in the FEIS.

143. Because Defendants did not consider this reasonable alternative, Defendants' lacked critical information about which areas within the Coastal Plain to make available for oil and gas leasing, which lease stipulations and required operating procedures to adopt, and how to avoid, minimize, and mitigate adverse impacts from the Leasing Program.

b. Defendants' Deficient Analysis of Greenhouse Gas Emissions and Climate Impacts

144. The FEIS analysis of greenhouse gas emissions and climate impacts from the Leasing Program violates NEPA's "hard look" mandate and undermines Defendants' ability to make reasoned decisions by both underestimating the potential greenhouse gas emissions from Coastal Plain development and failing to meaningfully analyze the climate impacts associated with such development.

(1) Defendants' Deficient Analysis of Greenhouse Gas Emissions

145. Although the FEIS acknowledges that Coastal Plain production will cause both direct and indirect greenhouse gas emissions, it drastically underestimates the Leasing Program's indirect greenhouse gas emissions.

146. The FEIS assumes that production from the Coastal Plain will be between 1.5 billion barrels of oil and zero cubic feet of natural gas at the low end and 10.6 billion barrels of oil plus 2.5 trillion cubic feet of natural gas at the high end.

147. The FEIS uses these production levels to evaluate indirect greenhouse gas emissions from the Leasing Program.

148. The FEIS also assumes that approximately 96% of Coastal Plain production will replace other domestic oil and gas production that would be developed in the absence of the Leasing Program, and, thus, the FEIS calculates that Coastal Plain production will increase U.S. demand by just 3.4 to 3.9%.

149. The FEIS recognizes that oil is a global commodity, but does not model energy source substitutions that would globally occur in the absence of Coastal Plain development. Instead, the FEIS models only domestic substitutions to determine the increase in demand resulting from Coastal Plain development.

150. Based on this limited analysis, and without considering oil and gas consumption globally, the FEIS projects that Coastal Plain development and production

will increase net annual U.S. greenhouse gas emissions by less than 0.10% and will increase net annual global emissions by a fraction of that amount.

151. The FEIS relies on these projected low percentage increases in U.S. and global emissions to dismiss concerns about potential climate change impacts from Coastal Plain production.

152. This analysis underestimates potential greenhouse gas emissions by not fully incorporating global effects from Coastal Plain production and unreasonably assuming that 96% of Coastal Plain oil and gas production will replace other U.S. fuels—mostly oil, natural gas, and coal—that would otherwise be developed.

153. Development of Coastal Plain oil and gas is particularly expensive because of its remote location, environmental conditions, and lack of existing pipelines, processing centers, and other infrastructure.

154. Even assuming that Defendants account for this, Defendants do not justify their assumption that Coastal Plain oil and gas once produced will compete with and ultimately displace oil and gas from cheaper domestic projects, let alone analyze how it will interact with global markets.

155. Given the high cost of Coastal Plain production, the FEIS likely overstates the potential for Coastal Plain oil and gas to displace production from more economical projects elsewhere within the United States. If Coastal Plain oil and gas production, even accounting for its relative high cost, significantly displaces U.S. consumption, it is

reasonable that such Coastal Plain production would also be consumed by global energy markets, thereby increasing greenhouse gas emissions beyond BLM's projections. However, BLM does not consider these impacts, even assuming that its other projections are reasonable, which they are not.

156. If Coastal Plain oil and gas is produced but does not displace production from these other domestic projects, then Coastal Plain production will contribute to greater supply and demand and greater greenhouse gas emissions in the U.S. and globally. As a result, contrary to the Record of Decision's assertions that the FEIS overstates environmental impacts, the FEIS likely understates the greenhouse gas emissions and climate change impacts of the Leasing Program in violation of NEPA.

157. The FEIS also does not reconcile or rationally justify its conflicting assumptions that Coastal Plain development will displace other domestic oil and gas production but also only add jobs (and not displace) in the United States. In other words, the FEIS assumes, without justification, that the jobs created by Coastal Plain development and production would not be offset by jobs lost through the displacement of development elsewhere in the United States.

(2) Defendants' Deficient Analysis of Emission Costs

158. The FEIS greenhouse gas emission analysis further violates NEPA because it quantifies the economic benefits of Coastal Plain development without quantifying the

costs of development, particularly costs from greenhouse gas emissions and associated climate change.

159. NEPA requires that where an agency quantifies the benefits of a proposed action, the agency must also quantify the costs, including the social costs associated with greenhouse gas emissions, to ensure that the agency accurately analyzes the environmental consequences of its proposed action.

160. The social cost of carbon is a federally developed tool to assist agencies in evaluating the social benefits of reducing carbon dioxide emissions when analyzing the costs and benefits of agency action.

161. Defendants could have applied the social cost of carbon or another available metric to calculate the cost of development in the FEIS but they failed to do so. As a result, their analysis is deficient under NEPA.

(3) Defendants' Deficient Methane Emissions Analysis

162. The FEIS also fails to meaningfully analyze climate change impacts from methane emissions.

163. Methane is a potent greenhouse gas that is over 30 times more powerful than carbon dioxide in its ability to trap heat in the atmosphere over a 100-year time frame, and 86 times more potent over a 20-year time frame.

164. Methane, thus, has significant short-term climate change impacts.

165. Yet, in the FEIS, Defendants improperly analyzed methane emissions and their climate impacts, further contributing to the deficient analysis of greenhouse gas emissions and climate impacts in the FEIS.

(4) Defendants' Deficient Cumulative Impacts Analysis

166. NEPA obligates Defendants to meaningfully consider in the FEIS the cumulative impacts of greenhouse gas emissions associated with the leases on climate change. *See* 42 U.S.C. § 4332; 40 C.F.R. § 1508.7.

167. Defendants failed to meet this NEPA obligation, devoting a mere paragraph to its analysis of the cumulative climate impacts of the proposed Leasing Program.

c. Defendants' Inadequate Analysis of Migratory Bird Impacts

168. The FEIS analysis of the Leasing Program's impact on migratory birds in the Coastal Plain violates NEPA's "hard look" mandate and undermines Defendants' ability to make reasoned decisions about programmatic measures, including but not limited to lease stipulations, required operating procedures, and pre-leasing seismic activities.

169. The FEIS analysis is incomplete, unsupported by current data or evidence, and cursory, thereby significantly impairing Defendants' ability to make reasoned decisions.

170. Following Congress' authorization of the Leasing Program, lead experts from BLM, FWS, and other agencies identified actions that would be necessary to implement successfully the Leasing Program, including conducting studies to obtain the

best available science and gathering baseline data necessary to assess potential impacts of development.

171. The FEIS irrationally dismisses its own experts' opinions about both the sufficiency of available information, the necessity to gather data as quickly as possible, and the necessity for the information to make programmatic leasing decisions.

172. Defendants cannot fulfill their duty to take a "hard look" at potential impacts of the Leasing Program without vital baseline data about migratory birds because there is no way to know what effect the Leasing Program will have on the birds without it.

173. The absence of such critical data precludes Defendants from making reasoned choices about impacts of pre-leasing seismic activity, which land to lease, and how to define conservation and management priorities, including what impacts to mitigate, whether mitigation proposed would be adequate to offset impacts, or why mitigation measures were not adopted. The contradiction and inconsistencies between expert reports, studies, and opinions and the FEIS and subsequent Record of Decision are arbitrary and irrational.

174. Without the necessary data to meaningfully analyze the Leasing Program's impact on migratory birds, Defendants' analysis relies on generic, broad, and unsupported statements.

175. When the FEIS does cite studies to support its conclusory statements, it improperly relies on stale data, some of which is more than 40 years old.

176. Updated geographic, population, and impact data are essential to make reasoned programmatic decisions for the Leasing Program, specifically those determining where and under what terms and conditions leasing will occur; those decisions cannot be remedied later with to-be-determined site-specific analysis.

177. Moreover, because the Record of Decision permits substantially more surface disturbance than the FEIS contemplates, the Record of Decision renders the FEIS's incomplete analysis of migratory birds impacts even more deficient.

178. In addition, the deficient analysis of impacts on migratory birds undermines Defendants' ability to comply with their legal obligations under ANILCA and the Refuge Administration Act to manage the Arctic Refuge consistent with all of its purposes.

V. THE LEASING PROGRAM WILL HARM STATE PLAINTIFFS

179. State Plaintiffs have concrete and particularized interests in preventing harm to their natural resources, including public lands, waterways, and migratory birds that State Plaintiffs own and hold in both proprietary and regulatory capacities and in trust by the states for the benefit of the people of each state. These interests include protecting migratory birds that frequent the Coastal Plain and State Plaintiffs and reducing climate change impacts from fossil fuel development.

180. State Plaintiffs suffer concrete and redressable injury to these interests as a consequence of Defendants' failure to develop a lawful and adequate Record of Decision and FEIS that satisfy NEPA, properly interpret the Tax Act, and act in a manner consistent with all purposes of the Arctic Refuge.

181. Defendants' actions harm State Plaintiffs' sovereign and proprietary interests. State Plaintiffs devote considerable resources and efforts to fulfill their trustee duties and protect their sovereign and proprietary interests in their natural resources. *See supra* III. Parties; IV.C. Fossil Fuels and Climate Change Impacts.

182. However, because nature does not recognize state borders, environmental harms often have cross-border impacts. As discussed above, climate change impacts resulting from accumulation of greenhouse gas emissions have harmed and are increasingly harming state sovereign lands and coastal areas, state natural resources, state infrastructure, and the health and safety of state residents. These impacts result in economic losses for State Plaintiffs and their residents and businesses. Intergovernmental bodies like the Flyway Councils recognize the reality of cross-border impacts in their efforts for coordinated migratory bird conservation. But whether State Plaintiffs act alone or in collaboration with public agencies, they cannot make informed and reasoned regulatory decisions to protect their natural resources if they do not have accurate or meaningful information about the environmental impacts of actions taken outside of their states.

183. Defendants acknowledged in the FEIS that the Leasing Program will impact climate change and migratory birds, and those impacts will reach State Plaintiffs. The Record of Decision also recognizes that the Leasing Program “will have transboundary impacts” on migratory birds and other wildlife. ROD 16. However, without an adequate Record of Decision and FEIS, State Plaintiffs can neither mitigate these environmental impacts through their independent regulatory authorities nor protect their sovereign and proprietary interests. This inability to prevent these harms is especially concerning because the environmental impacts of the Leasing Program may be particularly devastating and lasting due to the already harsh and rapidly changing climate of the Arctic Refuge. Moreover, accelerated climate change on the Coastal Plain directly impacts State Plaintiffs because atmospheric circulation patterns connect the climates of the Arctic and the contiguous United States.

184. State Plaintiffs have a particularly pronounced interest in the health of migratory birds on the Coastal Plain given the documented and staggering net population loss of nearly three billion birds in North America since 1970. Given the immense density (millions) and diversity (at least 156 species) of migratory birds on the Coastal Plain, the area’s ecological importance cannot be overstated. The area is vital for conservation and population management of thousands of birds that fly 3,000 miles or more annually from breeding, molting, and resting areas in the Coastal Plain to lower-48 states, including Plaintiffs’ states where the bird and wildlife watchers collectively spent

over \$20 billion in 2011, generating an economic impact—including direct, indirect, and induced effects—of approximately \$37 billion. The Leasing Program, including its authorization of expansive surface development, will forever alter the fragile landscape of the Coastal Plain, imperiling migratory birds and their habitat.

185. State Plaintiffs have also expended considerable resources and efforts to significantly reduce greenhouse gas emissions in their states through increased use of renewable energy sources and promoting electric vehicles. Any greenhouse gas emissions from the Leasing Program’s will offset and undermine these efforts and will harm State Plaintiffs’ sovereign and proprietary interests. *See also supra* IV.C. Fossil Fuel and Climate Change Impacts.

186. Defendants’ actions also harm State Plaintiffs procedural interests. Nearly all State Plaintiffs participated in the administrative review process by submitting comments on the DEIS and expressed their interest in Defendants’ legal compliance, including environmental review obligations under NEPA. Defendants’ failure to comply with NEPA in developing the challenged FEIS and Record of Decision and Defendants’ failure to reach a reasoned decision that complies with the framework of laws protecting the Arctic Refuge harms State Plaintiffs’ procedural interests. Lease sales and authorizations for oil and gas activities, including pre-leasing seismic exploration that could occur across the entire leasing program area, will irreparably degrade the Arctic

Refuge, harm wildlife and their habitat, emit greenhouse gases, and harm State Plaintiffs' concrete sovereign and proprietary interests in the resources affected by these impacts.

187. A court judgment vacating the Record of Decision and the Final EIS will redress the harms to State Plaintiffs by requiring Defendants to comply with its statutory obligations under the Refuge Administration Act, ANILCA, the APA, NEPA, and the Tax Act.

**VI. FIRST CAUSE OF ACTION
(Violation of Refuge Administration Act, ANILCA, and APA)**

188. State Plaintiffs incorporate all preceding paragraphs by reference.

189. The APA, which establishes the requirements of agency decision making, applies to review of the Record of Decision, FEIS, and any other final agency action concerning the Arctic Refuge. 5 U.S.C. §§ 701–06.

190. Under the APA, a “reviewing court shall . . . hold unlawful and set aside” agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “without observance of procedure required by law.” 5 U.S.C. § 706.

191. Agency actions are “arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n, Inc. v.*

State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983), cited in *Greater Yellowstone Coal., Inc. v. Servheen*, 665 F.3d 1015, 1023 (9th Cir. 2011).

192. The Refuge Administration Act and ANILCA govern administration of the Arctic Refuge.

193. Under ANILCA, the Secretary must administer the Arctic Refuge “in accordance with the laws governing the administration of units of the National Wildlife Refuge System, and this Act.” ANILCA § 304(a). ANILCA, Public Land Order 2214, and the Tax Act identify the Arctic Refuge’s purposes.

194. ANILCA identifies four conservation purposes for the Arctic Refuge: (1) conservation of wildlife and their habitat (including migratory birds); (2) fulfillment of international treaty obligations with respect to wildlife and their habitats; (3) protection of water quality and quantity; and (4) opportunity for continued subsistence uses by local residents. ANILCA § 303(2)(B).

195. The ANILCA purposes built on the original conservation purposes the Secretary identified for creating the Arctic Range to preserve unique wildlife, wilderness, and recreational values. PLO 2214.

196. The Tax Act added “to provide for an oil and gas program on the Coastal Plain” to the existing conservation purposes for the Arctic Refuge. Tax Act § 20001(b)(2)(B).

197. The Refuge Administration Act provides that “the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use.” 16 U.S.C. § 668dd(d)(3)(A)(i).

198. ANILCA provides that oil and gas leasing is a “use” that requires compatibility with the Refuge purposes. ANILCA § 304(b); *see also* 50 C.F.R. § 25.12.

199. A use is a “compatible use” if it will not “materially interfere with or detract from the fulfillment of the mission of the [Refuge] System or the purposes of the refuge.” 16 U.S.C. § 668ee(1).

200. Compatibility determinations must be in writing and based on “sound professional judgment.” 50 C.F.R. § 25.12.

201. “Sound professional judgment” means a decision “that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of [the Refuge Administration] Act and other applicable laws.” 16 U.S.C. § 668ee(3).

202. The Leasing Program is a new use of the Arctic Refuge that requires a compatibility determination. Defendant Bernhardt did not make such a determination in violation of the Refuge Administration Act. 16 U.S.C. §§ 668dd–68ee.

203. The Refuge Administration Act also requires that the Secretary manage each refuge “to fulfill the mission” of the Refuge System, “as well as the specific purposes for which that refuge was established.” *Id.* § 668dd(a)(3)(A).

204. The Refuge Administration Act further directs the Secretary to, among other things, provide for the conservation of fish, wildlife, and their habitats, ensure the biological integrity and health of the Refuge System, contribute to the conservation of ecosystems in the United States, and ensure the mission of the Refuge System and the purposes of each refuge are carried out. *See id.* § 668dd(a)(4).

205. The Record of Decision authorizes a leasing program that materially interferes with or detracts from the fulfillment of the mission of the Refuge System and purposes of the Arctic Refuge because it unlawfully prioritizes oil and gas development above the conservation purposes of the Refuge System and the Arctic Refuge. The Secretary thus violated his obligations under the Refuge Administration Act, 16 U.S.C. §§ 668dd–668ee, and ANILCA, § 303(2)(B), as well as the rational decision making mandates of the APA, 5 U.S.C. § 706.

206. To the extent the Secretary made a compatibility determination or considered fulfillment of the Refuge System mission and the Arctic Refuge purposes, the Secretary failed to provide a rational explanation to support either a compatibility determination or a decision that the Leasing Program will fulfill the mission of the Refuge System or the Arctic Refuge purposes. The Secretary’s authorization of the

Leasing Program is thus arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706.

VII. SECOND CAUSE OF ACTION
(Violation of NEPA and the APA:
Failure to Consider a Reasonable Range of Alternatives)

207. State Plaintiffs incorporate all preceding paragraphs by reference.

208. Courts review claims challenging NEPA violations under the APA. *Pit River Tribe*, 469 F.3d at 778.

209. NEPA requires federal agencies to review the environmental impacts of major federal actions before the action occurs to ensure agencies make informed decisions based on sound science and public input. 42 U.S.C. § 4332.

210. As part of this environmental review, agencies must, “to the fullest extent possible,” develop an EIS that rigorously explores and objectively evaluates all reasonable alternatives to the proposed action, including a no action alternative, and to discuss the reasons for eliminating any alternatives rejected from detailed study. 42 U.S.C. § 4332; 40 C.F.R. § 1502.14(a) and (d).

211. NEPA further requires that agencies state in the EIS how alternatives considered will achieve NEPA’s requirements and the requirements of other environmental laws, including the Refuge Administration Act and ANILCA. 42 U.S.C. §§ 4331–32; 40 C.F.R. § 1502.2(d).

212. The Refuge Administration Act and ANILCA require the Secretary to manage the Arctic Refuge consistent with its seven conservation purposes and the oil and gas program purpose established in the Tax Act and to fulfill the mission of the Refuge System. 16 U.S.C. § 668dd(a)(3)(A), (4); ANILCA §§ 303(2)(B), 304–05; PLO 2214.

213. Contrary to these mandates, Defendants failed to analyze a reasonable alternative that adequately protects the Coastal Plain from significant environmental harm and is consistent with the conservation purposes of the Arctic Refuge. Instead, Defendants analyzed action alternatives that prioritize oil and gas development above those conservation purposes.

214. An alternative that minimizes environmental impact to the Coastal Plain would, among other things, place parameters on the Leasing Program that are consistent with the Tax Act; protect the integrity of the Coastal Plain and its wildlife (by restricting surface acre disturbance, limiting ice road construction, limiting seismic activity, delaying or phasing leasing, minimizing greenhouse gas emissions, protecting wildlife habitat, and minimizing other adverse environmental impacts); and otherwise be consistent with the conservation purposes of the Arctic Refuge. Such an alternative is a reasonable alternative under the purpose and need of the Leasing Program.

215. Defendants should have analyzed such an alternative in detail but did not do so.

216. Defendants' failure to analyze an alternative that would implement the Tax Act in a manner consistent with the conservation purposes of the Arctic Refuge renders the Record of Decision and the FEIS inadequate under NEPA.

217. Because Defendants failed to consider a reasonable range of alternatives, the Record of Decision and the FEIS on which it relies are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and without observance of procedure required by law contravening NEPA, 42 U.S.C. §§ 4331, 4332, its implementing regulations, and the APA, 5 U.S.C. §§ 701–06.

**VIII. THIRD CAUSE OF ACTION
(Violation of NEPA and the APA: Inadequate Analysis of
Greenhouse Gas Emissions and Climate Change Impacts)**

218. State Plaintiffs incorporate all preceding paragraphs by reference.

219. Courts review claims challenging NEPA violations under the APA. *Pit River Tribe*, 469 F.3d at 778.

220. NEPA requires that federal agencies take a “hard look” at the significant impacts on the human environment of any proposed major federal action to foster informed decision making and informed public participation. *Methow Valley Citizens Council*, 490 U.S. at 350.

221. To fulfill this requirement, an EIS must carefully review the reasonably foreseeable direct, indirect, and cumulative environmental impacts of a proposed action and the significance of those impacts. 42 U.S.C § 4332; 40 C.F.R. §§ 1502.16, 1508.8.

222. An EIS must also discuss measures to mitigate adverse environmental consequences by avoiding, minimizing, rectifying, reducing, eliminating, or compensating for adverse impacts. 40 C.F.R. §§ 1502.14(f); 1502.16(h), 1508.20.

223. Defendants' FEIS inadequately and irrationally analyzes the direct, indirect, and cumulative impacts of greenhouse gas emissions and associated climate impacts from the proposed action.

224. The FEIS irrationally fails to analyze how Coastal Plain oil and gas development will impact global energy demand and emissions and irrationally concludes that 96% of Coastal Plain production will replace other U.S. production, likely underestimating program emissions; fails to consider the social cost of carbon or otherwise quantify the costs of carbon emissions; fails to analyze adequately methane emissions; and fails to analyze adequately the cumulative climate impacts of development and production.

225. For these reasons, Defendants failed to take a hard look at the greenhouse gas emission and climate change impacts of the Leasing Program and to consider measures to mitigate those impacts.

226. The Record of Decision and the FEIS on which it relies are thus arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and without observance of procedure required by law, in violation of NEPA, 42 U.S.C. §§ 4331, 4332, and its implementing regulations, and the APA, 5 U.S.C. §§ 701–06.

**IX. FOURTH CAUSE OF ACTION
(Violation of NEPA and the APA:
Inadequate Analysis of Migratory Bird Impacts)**

227. State Plaintiffs incorporate all preceding paragraphs by reference.

228. Courts review claims challenging NEPA violations under the APA. *Pit River Tribe*, 469 F.3d at 778.

229. In addition to NEPA's requirement that agencies take a "hard look" at significant environmental impacts and consider measures to mitigate those impacts, NEPA requires that agencies obtain information essential for making a reasoned choice among alternatives unless the costs of doing so would be "exorbitant." 40 C.F.R. § 1502.22.

230. The FEIS fails to adhere to these mandates by performing an inadequate analysis of impacts to migratory birds that in turn impairs Defendants' ability to consider the sufficiency of mitigation measures.

231. Specifically, the FEIS fails to include critical baseline data about migratory birds in the Coastal Plain. Instead, the FEIS relies on conclusory, unsupported statements and stale data and trivializes the significance of unknown data as inconsequential for the programmatic EIS. The FEIS improperly defers this data for site-specific impact statements. The FEIS further substantially understates the impact on migratory birds by predicating its incomplete analysis on surface disturbance acreage that is significantly

less than what is reasonably foreseeable under the Leasing Program as authorized in the Record of Decision.

232. The absence of essential data and failure to consider significant impacts precludes Defendants from making reasoned choices about programmatic parameters and potential mitigation measures, including but not limited to pre-leasing seismic activity, which tracts of land to lease, terms of lease stipulations, and sufficiency of required operating procedures.

233. In addition, Defendants' decision to defer analysis of migratory bird impacts violates NEPA's mandate that environmental analysis occur at the earliest possible time. 40 C.F.R. § 1501.2.

234. For these reasons, the Record of Decision and the FEIS on which it relies are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and without observance of procedure required by law, contravening NEPA, 42 U.S.C. §§ 4331, 4332, its implementing regulations, and the APA, 5 U.S.C. §§ 701–06.

**X. FIFTH CAUSE OF ACTION
(Violation of Tax Act and APA)**

235. State Plaintiffs incorporate all preceding paragraphs by reference.

236. The Tax Act contains a surface development provision that directs the Secretary, through BLM, to authorize up to 2,000 acres of federal land on the Coastal Plain “to be covered by production and support facilities (including airstrips and any

areas covered by gravel berms or piers for support of pipelines) during the term of the leases under the oil and gas program under this section.” Tax Act § 20001(c)(3). This provision limits surface development to no more than 2,000 acres.

237. The Tax Act also contains a rights-of-way provision: “The Secretary shall issue any rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation necessary to carry out this section.” *Id.* § 20001(c)(2).

238. In the Record of Decision and the FEIS, Defendants unlawfully and irrationally interpreted the surface development provision as precluding an oil and gas leasing program that would allow less than 2,000 acres of surface disturbance, claiming such an alternative would be inconsistent with the Tax Act.

239. In the Record of Decision, Defendants also unlawfully and irrationally interpreted the 2,000-acre surface disturbance limit as applying only to facilities that are both production and support facilities. Under Defendants’ interpretation, surface disturbance that does not fall within this narrow definition would not count towards the surface development cap, thereby allowing surface disturbance on the Coastal Plain to exceed the 2,000-acre limit Congress imposed.

240. Finally, Defendants unlawfully and irrationally interpreted the rights-of-way provision to override the 2,000-acre surface development limit by stating that BLM

must issue a right-of-way grant or necessary access authorization, providing Defendants another avenue to exceed the 2,000-acre surface development cap set by Congress.

241. Defendants' interpretation of the Tax Act violates the statute's plain language and contravenes Congressional intent. Thus, Defendants' adoption the Leasing Program based on these unlawful interpretations is contrary to the Tax Act and exceeds Defendants' statutory authority.

242. For these reasons, Defendants' interpretation of the Tax Act's surface acre development limit and the rights-of-way provision and adoption of the Leasing Program based on that interpretation is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of the Tax Act, § 20001, and the APA, 5 U.S.C. § 706.

XI. RELIEF REQUESTED

WHEREFORE, State Plaintiffs respectfully request that this Court:

A. Declare that Defendants have violated NEPA, the Refuge Administration Act, ANILCA, and the Tax Act, and further declare that Defendants abused their discretion and acted arbitrarily, capriciously, contrary to law, and in excess of their statutory jurisdiction and authority in authorizing the Leasing Program;

B. Vacate and set aside Defendants' Record of Decision, FEIS, and any other action taken by Defendants in reliance on either document;

C. Enter injunctive relief as necessary to prevent irreparable harm from

implementation of the Leasing Program based on the unlawful Record of Decision and FEIS;

- D. Award State Plaintiffs all reasonable costs and fees as authorized by law; and
- E. Award State Plaintiffs such other relief as the Court may deem just and proper.

DATED this 9th day of September, 2020.

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**motions for pro hac vice admission pending or forthcoming*

From: Hayes, Miriam (Nicole) N <mnhayes@blm.gov>
Subject: Re: Urgent ANWR ROD Corrections
To: "Swanson, Conner D" <conner_swanson@ios.doi.gov> "Cardinale, Richard" <Richard_Cardinale@ios.doi.gov>
"Padgett, Chad B" <cpadgett@blm.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
CC:"Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov> "Abernathy, Justin R" <justin_abernathy@ios.doi.gov>
"Zwemke, Christopher L" <czwemke@blm.gov>
Sent: Mon, 17 Aug 2020 13:02:06 -0400 (Mon, 17 Aug 2020 17:02:06 GMT)
Attachment 1: Coastal-Plain-ROD-FINAL-08172020-508.pdf

Please let me know if you need anything else.

Nicole

Nicole Hayes

Chief, Renewable Resources

222 W. 7th Avenue #13

Anchorage, Alaska 99513

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907.290.0179 - cell

From: Swanson, Conner D <conner_swanson@ios.doi.gov>

Sent: Monday, August 17, 2020 8:43 AM

To: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>; Padgett, Chad B <cpadgett@blm.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Hayes, Miriam (Nicole) N <mnhayes@blm.gov>

Cc: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Abernathy, Justin R <justin_abernathy@ios.doi.gov>; Zwemke, Christopher L <czwemke@blm.gov>

Subject: RE: Urgent ANWR ROD Corrections

Chad-

Thanks for talking with me just now.

If your team sends me the final ROD, I will make sure the BLM webmaster (CC'd) gets it on a web link while E planning is down.

Conner Swanson
Deputy Press Secretary
Office of the Secretary
U.S. Department of the Interior
Cell #: (202) 340-6295

From: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>

Sent: Monday, August 17, 2020 12:31 PM

To: Padgett, Chad B <cpadgett@blm.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Hayes, Miriam (Nicole) N <mnhayes@blm.gov>

Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>; Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Abernathy, Justin R <justin_abernathy@ios.doi.gov>

Subject: RE: Urgent ANWR ROD Corrections

Chad,

Per your request, attached please find a PDF of the signature page from the ROD.

Best,
Rich

From: Padgett, Chad B <cpadgett@blm.gov>
Sent: Monday, August 17, 2020 12:23 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Hayes, Miriam (Nicole) N <mnhayes@blm.gov>
Cc: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>; Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: RE: Urgent ANWR ROD Corrections

Thanks Gregg, we just need the signature page itself, not the entire document.

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Monday, August 17, 2020 8:21 AM
To: Padgett, Chad B <cpadgett@blm.gov>; Hayes, Miriam (Nicole) N <mnhayes@blm.gov>
Cc: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>; Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Subject: RE: Urgent ANWR ROD Corrections

I just got it back. I am taking the package to Rich now and he will get it to you asap.

From: Padgett, Chad B <cpadgett@blm.gov>
Sent: Monday, August 17, 2020 12:20 PM
To: Hayes, Miriam (Nicole) N <mnhayes@blm.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: Urgent ANWR ROD Corrections
Importance: High

Gregg,
Can we get the signature page? Since the news hit, we are getting numerous requests for the document to be uploaded and viewed. As soon as we get the signature page, we can upload.

From: Hayes, Miriam (Nicole) N <mnhayes@blm.gov>
Sent: Monday, August 17, 2020 7:05 AM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Padgett, Chad B <cpadgett@blm.gov>
Subject: Re: Urgent ANWR ROD Corrections

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From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Sent: Monday, August 17, 2020 6:26 AM

To: Padgett, Chad B <cpadgett@blm.gov>

Cc: Hayes, Miriam (Nicole) N <mnhayes@blm.gov>

Subject: RE: Urgent ANWR ROD Corrections

Can you forward the November 19, 2019 letter from Defenders of Wildlife referenced on page 38?

From: Padgett, Chad B <cpadgett@blm.gov>

Sent: Monday, August 17, 2020 10:18 AM

To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Cc: Hayes, Miriam (Nicole) N <mnhayes@blm.gov>

Subject: Re: Urgent ANWR ROD Corrections

Working on it now. Trying to get ahold of folks.

Sent from my iPhone

On Aug 17, 2020, at 5:38 AM, Renkes, Gregg D <gregg_renkes@ios.doi.gov> wrote:

Chad,

We found two errors that need to be corrected before we sign and upload.

On page 5, paragraph 2, last word should be “analyses” not “analysis”.

On page 19, second full paragraph, the last sentence should read “the Congressional action directing the Secretary, acting through the BLM, to establish and administer an oil and gas development program in the ANWR supersedes any conflicting provisions in the current CCP.”

Please let me know as soon as you can when you can get the corrected copy back so we can sign and upload. The press will be waiting to see it.

Thanks,

Gregg

Gregg D. Renkes
Office of the Secretary
202-208-4043 (O)
202-774-4833 (C)



U.S. Department of the Interior
Bureau of Land Management

Coastal Plain Oil and Gas Leasing Program Record of Decision

August 2020

Prepared by:

US Department of the Interior
Bureau of Land Management

In cooperation with:

US Fish and Wildlife Service
US Environmental Protection Agency
State of Alaska
North Slope Borough
Arctic Village Council
Native Village of Kaktovik
Native Village of Venetie Tribal Government
Venetie Village Council



Cover Photo: Northward view in central coastal plain area near the Sadlerochit River showing gently rolling topography typical of the area. Natural oil indications are visible of an oil seep that occurs along the coast (Barter Island). Photo by David Houseknecht (USGS).

DOI-BLM-AK-0000-2018-0002-EIS

BLM/AK/PL-20/003+1610+930

Record of Decision

I hereby adopt Alternative B of the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement as described further and modified herein, and subject to the lease stipulations, required operating procedures, and lease notices developed by the Bureau of Land Management for that alternative, as reflected in this Record of Decision. My approval of this Decision constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR § 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR Part 4.

Approved by:

A handwritten signature in black ink, appearing to read "David L. Bernhardt", written over a horizontal line.

David L. Bernhardt
Secretary of the Interior

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- Appendix A Lease Stipulations and Required Operating Procedures
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Record of Decision

SUMMARY

On December 22, 2017, after decades of congressional consideration regarding whether oil and gas development should take place on any area of the 1.56 million-acre Coastal Plain within the 19.3 million-acre Arctic National Wildlife Refuge (ANWR), Congress looked to the oil and gas potential of this area for needed federal revenues and enacted Section 20001 of the Tax Cuts and Jobs Act (Public Law [PL] 115-97). The law was considered pursuant to rules contained in the Congressional Budget Act of 1974 (2 United States Code (U.S.C.) 644) that limited the scope of the text to matters necessary for establishing an oil and gas program that would generate revenue for the treasury.

Section 20001(b)(1) of PL 115-97 lifted a prior prohibition on oil and gas leasing and development in the ANWR that had been established by Section 1003 of the Alaska National Interest Lands Conservation Act (ANILCA), as that prohibition pertained to the Coastal Plain. Section 20001(b)(2)(A) of PL 115-97 went further to *require* the Secretary of the Interior (Secretary), acting through the Bureau of Land Management (BLM)¹, to establish and administer a competitive oil and gas program for the “leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.” The Secretary is required to manage the oil and gas program on the Coastal Plain “in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et. seq.) (including regulations).”

In addition to directing the establishment of a new competitive oil and gas program in the Coastal Plain, the statute also includes additional mandates to the Secretary, acting through the BLM, to expedite and provide certainty toward establishment and development of the program in order to meet the statute’s revenue-generating purpose. First, Section 20001(c)(1) requires that at least two lease sales be held by December 22, 2024, including the first by December 22, 2021, and that each sale offer for lease at least 400,000 acres of the highest hydrocarbon potential lands within the Coastal Plain. Section 20001(c)(2) requires that the BLM issue any rights-of-way or easements across the Coastal Plain “for the exploration, development, production, or transportation” necessary to carry out the oil and gas program. Finally, Section 20001(c)(3) requires the Secretary, acting through the BLM, to authorize up to 2,000 surface acres of federal land on the Coastal Plain to be covered by production and support facilities during the term of the leases under the oil and gas program.

In summary, exercising its plenary authority over the management of federal lands, Congress’s enactment of Section 20001 of PL 115-97 decided the question of whether activities related to leasing, exploration, development, production and transportation of oil and gas would take place on the Coastal Plain. In doing so, Congress, among other things: (1) directed the Secretary, acting through the BLM, to “establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain”; (2) included a Coastal Plain oil and gas program as a refuge purpose on equal footing with the other refuge purposes; (3) directed the Secretary, acting through the BLM, to manage the program in a manner similar to the administration of lease sales on the National Petroleum Reserve-Alaska

¹This provision grants authority to the Secretary but prevents the Secretary from re-delegating his authority to an agency within Interior other than the Bureau of Land Management. *See Trustees for Alaska v. Watt*, 524 F. Supp. 1303 (D. Alaska 1981) (holding that certain delegations of authority to the US Geological Survey were invalid because Congress had required those functions to be performed by the U.S. Fish and Wildlife Service).

(the NPR-A); (4) directed the Secretary, acting through the BLM, to issue rights-of-way or easements “for the exploration, development, production, or transportation necessary” to carry out the program; and (5) directed the Secretary, acting through the BLM, to authorize up to 2,000 surface acres to be covered by production and support facilities.

This Record of Decision (ROD or Decision) approves a program to carry out this statutory directive. By determining *where and under what terms and conditions* leasing will occur, this Decision takes into account the requirements of PL 115-97 and other applicable law. To inform this Decision, the BLM prepared the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (Leasing EIS).

As explained further in the Leasing EIS, there is tremendous uncertainty regarding future potential exploration and development on the Coastal Plain. Any development scenario at this point is highly speculative because: it is unknown whether or where leases will be issued, it is unknown whether or where exploratory drilling may occur under such leases, and it is unknown whether or where commercially developable oil and gas discoveries may be made.

Despite these vast uncertainties, to meet its obligations under the National Environmental Policy Act (NEPA) the BLM endeavored to develop a hypothetical development scenario in a good faith effort to identify plausible indirect effects of leasing that are not known at this time but nonetheless might be theoretically considered "reasonably foreseeable" if leasing was to result in the exploration and development of oil and gas resources (40 Code of Federal Regulations [CFR] Section 1508.8(b)) (see Appendix B to the Leasing EIS). Further, in order to minimize the chance that the resultant impact analysis would understate potential impacts, the hypothetical scenario described in the Leasing EIS represents a successful discovery and optimistic high-production development scenario in a situation of favorable market prices.

Given the uncertainty, and the hypothetical, speculative and aggressive nature of the development scenario analyzed, the potential impacts described in the Leasing EIS are necessarily uncertain and likely overstated. At some future stage in the administration of the oil and gas program where impacts from proposed actions are actually reasonably foreseen, i.e., if and when the BLM is presented with proposals for exploration or development, those decisions by the BLM for specific authorizations will also be subject to project-specific analysis, including compliance with NEPA and other laws.

This Decision adopts Alternative B of the Leasing EIS as to where and under what terms and conditions leasing may occur subject to future specific environmental analysis and permitting decisions, except clarifications have been provided for required operating procedures (ROP) 11 and 17, as well as Lease Notice 2.² The ROD also does not adopt the interpretive assumptions made in the Leasing EIS as to the implementation of Section 20001(c)(3) of PL 115-97. Rather, it provides guidance regarding certain general principles for the future application of that section of the law. As explained in further detail below, this is not a substantial change in the proposed action.

This Decision implements the requirement that the Secretary, acting through the BLM, provide for a competitive oil and gas program for the leasing, production, development, and transportation of oil and gas in and from the Coastal Plain. This Decision takes into account protection of important surface resources and other uses of the Coastal Plain in consideration of the purposes of the ANWR set out in Section 303(2)(B) of ANILCA, as amended by Section 20001(b)(2)(B) of PL 115-97.

² See Section 3.4 and Appendix A of the ROD.

This Decision makes approximately 1,563,500 acres, or the entire program area,³ available for oil and gas leasing, and consequently for potential future exploration, development, and transportation. While providing these opportunities, the program adopted in this ROD also provides protections for surface resources and other uses, including subsistence use, through a comprehensive package of lease stipulations and ROPs, listed in **Appendix A**, that will apply to future oil and gas activities. Together these lease stipulations and ROPs build on, without frustrating, the statutorily-mandated oil and gas program taking into account other refuge purposes, which include conservation of fish and wildlife populations and habitats, fulfillment of international treaty obligations, allowance for continued subsistence use, and protection of water quality and quantity necessary to meet fish and wildlife conservation needs. This Decision also takes into account that any future specific exploration and development proposals will be subject to further environmental analysis and additional, project-specific ROPs as appropriate and necessary.

This Decision establishes a program to achieve the statutory oil and gas program while still providing that approximately 359,400 acres (23 percent of lands available) will be subject to No Surface Occupancy (NSO) stipulations within barrier islands and important aquatic habitats, including rivers and streams, nearshore marine waters, and lagoons, and that approximately 721,200 acres (46 percent of lands available) will be subject to operational timing limitations (TLs) in the primary calving habitat area for the Porcupine caribou herd. Together, these partially overlapping lease stipulations cover more than 60 percent of the program area. Additional lease stipulations and the 44 ROPs that apply to oil and gas activities throughout the program area provide further protections for important resources and uses, as discussed in **Section 3.3**, below.⁴

This Decision was reached after an extensive review and is made after an outreach effort where the BLM and the Department of the Interior heard and benefited from a wide variety of perspectives. The U.S. Fish and Wildlife Service (USFWS), U.S. Environmental Protection Agency (EPA), State of Alaska, North Slope Borough (NSB), Native Village of Kaktovik, Native Village of Venetie Tribal Government, Venetie Village Council, and Arctic Village Council participated in the NEPA process as cooperating agencies. These agencies worked with the BLM by providing input as to what should be analyzed in the Leasing EIS, including suggestions for alternatives, lease stipulations, and ROPs, and by reviewing in-house drafts of the Draft and Final Leasing EISs; however, as the lead agency for the Leasing EIS, the BLM is ultimately responsible for the analysis therein, as well as this ROD.

In addition, the BLM met with Canadian government officials in Canada and conducted tribal consultation throughout the NEPA process with tribes in northern Alaska, including the four tribes that served as cooperating agencies and other tribes whose members have the potential to be substantially impacted by implementation of the Coastal Plain oil and gas leasing program. The BLM also held Native consultations with Alaska Native Claims Settlement Act (ANCSA) corporations during development of the EIS. See Appendix C of the Leasing EIS for complete listings of consultations.

The BLM provided for public involvement in the development of the Leasing EIS. Public meetings, both during scoping and on the Draft EIS, were held in Anchorage, Arctic Village, Fairbanks, Kaktovik, Utqiagvik, and Venetie, Alaska, and Washington, DC. A public meeting on the Draft EIS was also held in Fort Yukon,

³ The program area includes all lands within the Coastal Plain for which the federal government owns the mineral interest, with the exception of Air Force-administered lands near Kaktovik and approximately 4,400 acres of federal lands selected for conveyance under the Alaska Native Claims Settlement Act.

⁴ The specific conditions of those stipulations and ROPs are contained in Table 2-3 in Chapter 2 of the Final EIS. As noted therein, PL 115-97 requires that the BLM issue rights-of-way for essential roads and pipeline crossings, and other necessary access, even in areas subject to an NSO stipulation.

Alaska. In addition to receiving public comments at the scoping and Draft EIS public meetings, comments were also taken online, by email, and through the mail. Altogether, during the public scoping period and public review period for the Draft EIS, the BLM received more than 1.8 million comment submissions, containing more than 8,000 unique substantive comments. Additionally, the BLM and Departmental officials met with representatives of a broad range of stakeholders, including local and state governments, tribes, Canadian government, Alaska Native corporations, and industry and environmental organizations.

1. DECISION

An environmental impact statement informs a decision-maker before the decision is made. See 40 CFR 1502.1, 1505.2. To facilitate this outcome, the Council on Environmental Quality's (CEQ) NEPA regulations establish a minimum 30-day period after notice is published that the Final EIS has been filed with EPA before the agency may make a decision on a proposed action. See 40 CFR 1506.10. During this period, the decisionmaker completes its own internal final review, and the public and other agencies may comment on the Final EIS prior to the agency's final action on the proposal. See CEQ's NEPA's Forty Most Asked Questions (Q&A 34b). Consistent with this process, this Decision is rendered after carefully reviewing the Draft EIS and the Final EIS, public comments, and the BLM's response to public comments submitted on the Draft EIS.

The Decision described and adopted in this ROD implements the Congressional directive to the BLM in Section 20001(b)(2)(A) of PL 115-97 to establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain area of the ANWR, as that area is defined by Section 20001(a)(1) of PL 115-97 (see **Map 1-1** in **Appendix B**).

In accordance with the provisions of PL 115-97 and for the reasons stated in more detail below,⁵ this Decision adopts Alternative B in the Leasing EIS as to where and under what terms and conditions leasing may occur subject to future specific environmental analysis and permitting decisions, except clarifications have been provided for ROPs 11 and 17, as well as Lease Notice 2. The ROD also does not adopt the interpretive assumptions made in the Leasing EIS as to the implementation of Section 20001(c)(3) of PL 115-97. The Decision makes the entire "program area" covered by the Congressional directive in PL 115-97, approximately 1,563,500 acres, available for oil and gas leasing, and consequently, for potential oil and gas exploration and development (see **Map 1-2** in **Appendix B**), subject to the lease stipulations and ROPs listed in **Appendix A**.

Map 1-3 in **Appendix B** illustrates the geographic scope of some of these lease stipulations. These stipulations and ROPs are derived from those listed for Alternative B in Table 2-3 of the Leasing EIS. This Decision expressly establishes the program to carry out the statutorily-required lease sales as described in **Section 1.5** below, including the issuance of necessary rights-of-way and easements and the authorization of up to 2,000 surface acres to be covered by production and support facilities as mandated by PL 115-97.

As noted above, the program area includes all lands within the Coastal Plain for which the federal government owns the mineral interest, with the exception of Air Force-administered lands near Kaktovik and approximately 4,400 acres of federal lands selected for conveyance under ANCSA; however, while the BLM may lease the subsurface mineral interest underlying Native allotments, which comprise approximately 900 acres of the program area (0.06 percent), lease stipulations and ROPs will not apply on Native allotments,

⁵ This section describes how the Decision conforms to the applicable provisions of PL 115-97. Additional considerations, including compliance with other applicable laws, are discussed in **Section 3, Management Considerations**.

except for Lease Stipulation 11, which requires written consent from allotment owners for the construction and maintenance of improvements on allotments. Instead, as the surface owners of these privately-owned lands, Native allotment owners have the authority to establish conditions for oil and gas operators' surface use of their allotments.

Future on-the-ground actions requiring BLM approval, including potential exploration, development, production and transportation proposals, will require further NEPA analysis based on site-specific proposals. For example, before drilling on any lease, a leaseholder will be required to submit an application for permit to drill, which will require appropriate NEPA analysis (as well as compliance with other applicable laws) before any drilling may be authorized. Potential applicants will be subject to the terms of the lease; however, the BLM Authorized Officer may require additional project-specific terms and conditions before authorizing any oil and gas activity based on the required project-level environmental, marine mammal, endangered species and subsistence impact analyses.

As described in more detail in **Section 1.5** below, this Decision provides guidance for potential future permitting purposes, regarding Section 20001(c)(3) of PL 115-97. The determination as to whether particular surface acreage must be authorized to be covered by "production and support facilities" is necessarily left to future fact specific determinations. This Decision determines where and under what conditions to apply to the statutorily-required lease sales that will benefit from the statutory mandate for authorizing production and support facilities covering up to the 2,000 acres of federal land. In so doing, this Decision takes a conservative approach to the highly speculative oil and gas program analyzed under the Leasing EIS that could span more than five decades.

1.1 Statutory Background

The ANWR established by ANILCA (PL 96-487) on December 2, 1980, consists of approximately 19.3 million acres in northeast Alaska. Section 303(2) of ANILCA established the ANWR, converting and expanding by approximately 9.2 million acres of public domain lands to the south and west the prior Arctic National Wildlife Range established by the Secretary of the Interior in 1960. Section 702(3) of ANILCA designated approximately 8 million acres of the ANWR as wilderness. Section 1002 of ANILCA excluded the Coastal Plain from wilderness designation, setting aside 1.56 million acres for study of all the resources of what is referred to commonly as the "1002 area" in recognition of the area's potential for oil and gas resources. Section 1003 of ANILCA prohibited oil and gas development throughout the ANWR until authorized by Congress.

Pursuant to Section 1002(a) of ANILCA, the Secretary was required to conduct ". . . an analysis of the impacts of oil and gas exploration, development, and production, and to authorize exploratory activity within the coastal plain in a manner that avoids significant adverse effects on the fish and wildlife and other resources." Section 1002(c)(D) of ANILCA required the Secretary to analyze the potential impacts of oil and gas exploration, development, and production on such wildlife and habitats, and Section 1002(c)(E) of ANILCA required the Secretary to analyze the potential effects of such activities on the culture and lifestyle (including subsistence) of affected Native and other people.

Section 1002(h) of ANILCA required the Secretary to prepare and submit a report to Congress with recommendations with respect to whether further exploration for, and the development and production of, oil and gas within the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitats, and other resources are avoided or minimized.

On April 21, 1987, the Department of the Interior's *Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment: Report and Recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement* was published in accordance with Section 1002(h) of ANILCA. The report analyzed the environmental consequences of five management alternatives, ranging from opening the entire Coastal Plain area to oil and gas leasing, to wilderness designation. Therein, after 5 years of scientific study by the USFWS, U.S. Geological Survey (USGS) and BLM, the Secretary of the Interior selected as the preferred alternative making available for consideration the entire ANWR Coastal Plain for oil and gas leasing.

On December 22, 2017, following more than three decades of Congressional debate and consideration of the Secretary's recommendation to Congress, Congress enacted the Tax Cuts and Jobs Act (PL 115-97). Section 20001(b)(1) of PL 115-97 amends ANILCA to provide that Section 1003, which prohibited oil and gas development in the ANWR unless authorized by Congress, does not apply to the Coastal Plain. Section 20001(b)(2)(A) directs the Secretary, acting through the BLM, to establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain area of the ANWR, as that area is defined by Section 20001(a)(1).

Section 20001(b)(2)(B) amended Section 303(2)(B) of ANILCA to add as a purpose of the ANWR: "to provide for an oil and gas program on the Coastal Plain." Section 20001(b)(3) requires the Secretary, acting through the BLM, to "manage the oil and gas program on the Coastal Plain in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et seq.) (including regulations)." Section 20001(b)(4) sets a royalty rate of 16.67 percent for leases, and Section 20001(b)(5) requires 50 percent of revenues from lease bonus bids, rentals, and royalties to be paid to the State of Alaska and the other 50 percent to be deposited into the Federal Treasury.

Section 20001(c)(1) of PL 115-97 requires that at least two lease sales be held by December 22, 2024, with the first sale conducted by December 22, 2021, and that each sale offer for lease not fewer than 400,000 acres of the highest hydrocarbon potential lands within the Coastal Plain. Section 20001(c)(2) requires the Secretary, acting through the BLM, to issue any rights-of-way or easements across the Coastal Plain for "exploration, development, production, or transportation necessary to carry out the program." Additionally, Section 20001(c)(3) requires the Secretary, acting through the BLM, to authorize up to 2,000 surface acres of federal land to be covered by production and support facilities.

As set forth more fully below, this Decision takes into account and is fully consistent with all the foregoing provisions of Section 20001 of PL 115-97.

1.2 Section 20001(b)(2)(A) of PL 115-97—Establishment of the Program

As noted above, this Decision establishes a competitive oil and gas program. Section 20001(b)(2)(A) of PL 115-97 requires the Secretary, acting through the BLM, to both establish and to administer "a competitive oil and gas program for leasing, development, production, and transportation of oil and gas in and from the Coastal Plain." This broad directive by Congress plainly gives the Secretary, acting through the BLM, both a directive and the express authority necessary to carry out all elements typically associated with a competitive oil and gas program, including leasing, exploration, development, production, and transportation of oil and gas in and from the Coastal Plain. The lease stipulations and ROPs adopted in this ROD provide terms and conditions applicable to each such aspect of the program, from lease sales through reclamation of resulting oil and gas developments.

1.3 Section 20001(b)(2)(B) of PL 115-97—The Purposes of the ANWR

After the amendment by Section 20001(b)(2)(B) of PL 115-97, Section 303(2)(B) of ANILCA now provides (emphasis added in *italic*):

The purposes for which the Arctic National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents;

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge; *and*

(v) to provide for an oil and gas program on the Coastal Plain.

Under Section 20001 of PL 115-97, Congress directed the Secretary, acting through the BLM, to implement the Coastal Plain oil and gas program in the ANWR. See Sections 20001(a)(2) and (b)(2)(A). Thus, under Section 20001 of PL 115-97 and, acting through the BLM, the Secretary's administration of the Coastal Plain oil and gas program, the USFWS does not have jurisdiction over matters related to administration of the oil and gas program within the Coastal Plain, but exercises its authorities and responsibilities with regard to all other matters not related to the oil and gas program throughout the entire ANWR, under the National Wildlife Refuge System Administration Act (NWRSA), ANILCA, and various other applicable fish and wildlife and conservation-related statutes.

Jurisdiction for the authorization and administration of uses related to the oil and gas program rests with the Secretary, acting through the BLM. The specific requirements of Section 20001 and its directive to establish an oil and gas program on the Coastal Plain in accordance with the terms set by Congress requires, among other things, that the Secretary, acting through the BLM, hold lease sales and authorize all uses necessary to carry out the Coastal Plain oil and gas program.

By adding an oil and gas program on the 1.56 million-acre Coastal Plain as a purpose of the ANWR, Congress itself balanced the purposes of the 19.3 million-acre refuge, a balance which is now law. Although the ANWR has multiple purposes, Congress has mandated more specific management within particular areas. Just as Congress has mandated that 8 million acres of the ANWR be managed as wilderness, it has mandated that the 1.56 million-acre Coastal Plain be managed for an oil and gas program. Following the statutory directive, should leasing, exploration, development, production, and transportation activities actually take place on the Coastal Plain, those actions would potentially be limited in scope to only approximately 8 percent of the ANWR, with some potential impact on the other four refuge purposes.

Within this statutory framework, this Decision takes into account the other purposes of the ANWR. In developing lease stipulations and ROPs for evaluation in the Leasing EIS, and for purposes of adopting Alternative B's lease stipulations and ROPs in this Decision, the Secretary, acting through the BLM, implements purpose (v) of the ANWR in a way that takes into consideration that Congressional direction in light of the other four purposes of the ANWR.

This Decision provides consideration to the other refuge purposes so that the fifth purpose does not defeat the other four. In this way, the oil and gas program can take into account all of the purposes of the ANWR. For example, Alternative B, as adopted by this ROD, incorporates several lease stipulations and ROPs for the protection of the types of resources and uses that are cited in the statutory purposes of the ANWR. Such lease stipulations and ROPs include for example, but are not limited to: Lease Stipulation 9 and ROP 4, which provide protection for polar bears and their habitat, consistent with purpose (i); Lease Stipulation 7 and ROP 23, which provide protections for Porcupine herd caribou and their habitat, consistent with purpose (ii); Lease Stipulation 4 and ROP 18, which protect subsistence uses, consistent with purpose (iii); and Lease Stipulation 1 and ROP 8, which protect water quality and quantity, consistent with purpose (iv).

1.4 Section 20001(b)(3) of PL 115-97—Management in a Manner Similar to the Administration of Lease Sales in the NPR-A

This Decision follows the statutory direction to “manage the oil and gas program on the Coastal Plain in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et seq.) (including regulations),” required by Section 20001(b)(3) of PL 115-97, except as otherwise provided. In this regard, where appropriate, and except as otherwise provided in Section 20001, the elements of the Coastal Plain oil and gas leasing program adopted by this Decision follow the NPR-A program statutory and regulatory scheme. For example, both programs determine which areas are available for leasing in future lease sales, and both establish the terms and conditions under which oil and gas activities will be conducted.

In many cases the terms and conditions (i.e., lease stipulations and ROPs) that will apply to oil and gas activities in the Coastal Plain pursuant to this Decision are derived from (with appropriate adjustments relevant to the Coastal Plain) lease stipulations and required best management practices contained in the February 2013 ROD for the current NPR-A Integrated Activity Plan, which governs the NPR-A program. Additionally, future on-the-ground oil and gas activities will be evaluated through additional, project-specific NEPA analysis, as is the case with the NPR-A program.

The words “similar to,” in this context means consistent except where the statutory goals and mandates or differences in circumstances between the NPR-A and the Coastal Plain support a departure. For example, special areas, as that term is used by the BLM in its management of the NPR-A, including in its current NPR-A Integrated Activity Plan, are not established for the Coastal Plain.

In the NPR-A, the BLM is both the oil and gas program manager and the surface manager of the entire Petroleum Reserve. The term special area is used by the BLM to describe areas in the NPR-A that contain significant surface resource values which require specialized management prescriptions in order to adequately protect those values (see 42 U.S.C. 6504(a)).

Given that the USFWS is responsible for management of the ANWR, except for implementation of the oil and gas program, this Decision declines to establish special areas in the Coastal Plain. Nevertheless, the Decision treats much of the Coastal Plain as special, adopting particular, location-specific management

prescriptions in certain areas where appropriate, in a manner similar to the BLM's management of the NPR-A oil and gas program.

In this regard, the Leasing EIS considered, and this Decision adopts, the use of special, particularly stringent lease stipulations described in **Appendix A** that apply in certain large areas containing significant surface values. These include Lease Stipulations 1 and 4, establishing NSO prohibitions on 359,400 acres within barrier islands and important aquatic habitats, including rivers and streams, nearshore marine waters, and lagoons, and Lease Stipulation 7, which applies operational timing limitations on 721,200 acres of the program area within the primary calving habitat area for the Porcupine caribou herd during the calving season, prohibiting construction activities using heavy equipment (except drilling from established pads), and applying ground and air traffic restrictions.

In applying the NPR-A statutory and regulatory framework to the Coastal Plain oil and gas program, the BLM has determined that Section 202 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1712, which applies to lands managed by the BLM and provides for its development of land use plans, does not apply to the surface management of the ANWR. In particular, the Naval Petroleum Reserves Production Act explicitly exempts the NPR-A program from the land use planning requirements of Section 202 of FLPMA. See 42 U.S.C. 6506a(c). Thus, similar to its management of the NPR-A, the Secretary, acting through the BLM, is not preparing land use plans under FLPMA for the Coastal Plain program. Moreover, as stated above, and except for jurisdiction over the oil and gas program on the Coastal Plain, the USFWS is responsible for management of the entire ANWR, as governed by its Comprehensive Conservation Plan (CCP) and in accordance with the NWRSA and ANILCA.⁶

1.5 Section 20001(c) of PL 115-97

In General

To reduce uncertainty for prospective leaseholders and thereby increase the likelihood of achieving revenue goals for the ANWR oil and gas program, Congress went beyond the authorizations applicable to the NPR-A and required that necessary rights of way, easements and production and support facilities be authorized; thus, in contrast to the legislation and regulations establishing an oil and gas leasing program for the NPR-A, Section 20001(c) provides three striking differences. First, unlike in the NPR-A, where the timing of lease sales is left to the BLM's discretion, Section 20001(c)(1) directs the Secretary, acting through the BLM, to conduct "not fewer than 2 lease sales area-wide" by not later than December 22, 2024, each sale offering not fewer than 400,000 acres in areas with the highest hydrocarbon potential. The question as to whether or not to offer oil and gas leases in the Coastal Plain of the ANWR is not an open one. The BLM will comply with these mandatory provisions for lease sales under this ROD.

Second, Section 20001(c)(2) states that the Secretary, acting through the BLM, "shall issue any rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation necessary to carry out this section." The BLM interprets the plain language of this provision as requiring that it authorize any such rights-of-way necessary to carry out the Coastal Plain oil and gas program established by Section 20001 of PL 115-97.

⁶ Subsections (b)(4) and (b)(5) of 16 U.S.C. 3143 provide that the royalty rate for leases will be 16.67 percent and that 50 percent of adjusted bonus, rental and royalty receipts derived from the program shall go to the State of Alaska, respectively. These provisions will be appropriately implemented for leases issued under the program. These provisions are not significantly different from the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et. seq.), which sets a 12.5 percent minimum royalty rate for low potential areas and a 16.67 percent rate in high potential areas. As under subsection (b)(5), 50 percent of NPR-A receipts are paid to the State.

Clearly Congress intended that successful implementation of the mandated oil and gas program should not be frustrated by an unavailability of necessary access. This directive is unlike the NPR-A, where issuance of such rights-of-way are at the BLM's discretion. This directive is not limited to development under a particular *lease*, but rather any right-of-way necessary to carry out the *section*. It would, for example, apply to a request for a road or pipeline right-of-way, even if sought by a non-leaseholder.

Finally, Section 20001(c)(3) provides:

SURFACE DEVELOPMENT—In administering this section, the Secretary shall authorize up to 2,000 surface acres of Federal land on the Coastal Plain to be covered by production and support facilities (including airstrips and any area covered by gravel berms or piers for support of pipelines) during the term of the leases under the oil and gas program under this section.

This provision requires the Secretary, acting through the BLM, to authorize up to 2,000 surface acres of federal land to be covered by production and support facilities during the term of the leases under the oil and gas program. Just as with the rest of Section 20001, Congress's use of the term "shall" constitutes a directive to the Secretary, acting through the BLM, that he or she must: (1) establish and administer a competitive oil and gas program (Section 20001(b)), (2) hold lease sales within certain timeframes (Section 20001(c)(1)), (3) issue certain rights-of-way (Section 20001(c)(2)), and (4) authorize production and support facilities consistent with those leases (Section 20001(c)(3)).

In a letter dated October 21, 2019, after publication of the Final EIS, Region 10 of the EPA commented on several aspects of the document. As relevant here, Region 10 reiterated its comment on the Draft EIS that the BLM should have considered an alternative to reduce the impact area to less than 2,000 acres of production and support facilities.⁷

Such an interpretation is inconsistent with the mandate in Section 20001(c)(3), and, as described in the Final EIS, therefore inconsistent with the purpose and need for action. This mandate, requiring the authorization of up to 2,000 surface acres of federal land to be covered by production and support facilities during the term of the leases, will be carried out through leases that allow for regulation of facilities but may not preclude such infrastructure.

If a lessee discovers oil or gas, it may seek approval to develop the resources by submitting an application for a permit to drill that includes a drilling plan and a surface use plan of operations. In addition to the stipulations and ROPs included in this Decision, the BLM may require additional project-specific measures to further protect surface resources.

Consistent with Congress's objective to achieve revenue from the Coastal Plain oil and gas program, the "shall authorize" language in (c)(3) functions as a directive to the BLM that it must not deny or unreasonably limit development of production and support facilities on the Coastal Plain until 2,000 surface acres are covered by production and support facilities.

⁷ The October 21 letter actually states that the BLM should "reduce the impact area" to less than 2,000 surface acres where practicable. Given the reference to 2,000 acres and EPA's prior comments on the draft, the BLM interprets this comment to suggest that the BLM consider an alternative of less than 2,000 acres of production and support facilities, not "impact area."

While Congress clearly mandated that the Secretary, acting through the BLM, authorize up to 2,000 acres to be covered by production and support facilities, it did not define the terms “covered by” or “production and support facilities.” There are a broad range of actions potentially carried out during the entire life of an oil and gas program which may necessitate authorization of facilities related to exploration, development, transportation, production, and related facilities. In implementing the mandate of Section 20001(c)(3), the Secretary, acting through the BLM, will have to determine whether each type of proposed facility constitutes a “production and support facility,” and if so, whether such proposed facilities would cover federal land on the Coastal Plain.

Future BLM determinations about which facilities benefit from the 2,000-surface acre mandate, and which do not, could potentially influence the total extent of development in the Coastal Plain and, thus, the potential environmental impacts stemming from the leasing program. Recognizing this, the BLM included in its Leasing EIS several preliminary interpretative assumptions that facilitated the creation of a more detailed reasonably foreseeable development (RFD) scenario and thus provided a clearer picture of how much total development is reasonably foreseeable at this preliminary stage. For example, all transportation facilities were included whether or not they supported production, the authorization of gravel mines was considered discretionary in the Draft EIS and mandatory in the Final EIS, and the reclamation of covered land over time was considered to increase the required authorization of surface acres covered by production and support facilities beyond 2,000 acres.

The analytical assumptions contained in Section 1.9.1 of the Leasing EIS generally had the effect of assuring that overall program impacts from the hypothetical RFD scenario would be evaluated in the EIS.

Statutory Interpretation and Guidance for Future Project-Specific Decisions

This Decision does not need to adopt the Leasing EIS’s interpretive assumptions concerning Section 20001(c)(3) for several reasons. First, interpreting the language “covered by production and support facilities” is unnecessary at this preliminary stage of the leasing program, which focuses on broader issues such as which federal lands within the Coastal Plain are suitable for leasing, and under what general terms and conditions. To accomplish a good faith effort to meet its obligation under NEPA, the BLM reached these interpretive assumptions regarding the phrase “production and support facilities,” to apply the mandatory authorization requirement to the hypothetical development scenario. This Decision does not actually authorize any surface acreage to be covered by “production and support facilities,” so whether a particular facility will or will not fall within the 2,000-acre mandate is speculative at this stage and merely illustrative to provide an understanding of the hypothetical impacts.

Second, adopting and applying interpretive assumptions at this initial stage of the program would be premature. It is currently unknown whether any leases will ever be issued, it is unknown if any exploration will take place,⁸ and if so, it is unknown whether eventually any lessees will ever apply to the BLM for authorization of any production and support facilities. It bears repeating that as we make this Decision all aspects of a future oil and gas program are highly speculative and dependent on unpredictable circumstances that will play out over decades. If leases are issued, if exploration takes place, and if lessees apply for BLM authorization of any production and support facilities, the types of facilities and technologies deployed may be very different than what is foreseeable today. It is, at this stage, not possible, reasonable or necessary to

⁸ ROP 17, as amended by this Decision, prohibits construction of gravel roads and pads for exploratory drilling, and geophysical exploration does not result in the construction of production and support facilities.

establish for future administration the interpretive assumptions contained in the Leasing EIS regarding the treatment of each hypothetical facility for purposes of applying the mandate under Section 20001(c)(3).

Third, further review and consideration of the Leasing EIS's interpretive assumptions concerning Section 20001(c)(3) have highlighted several opportunities for improvement. Certain interpretive principles can be gleaned from the plain language of the statute, some of which may differ in some respects from the interpretive assumptions made in the Leasing EIS. Accordingly, this Decision provides the following guidance to help inform future project specific decisions about what does and does not qualify as "covered by production and support facilities":

- First, a proposal to cover surface acreage must be a facility; that is, under that term's ordinary dictionary definition, something that is built, installed, or established to serve a particular purpose.
- Second, under the plain language of the statute, the facility must be a "production and support facility." The term "production" is used elsewhere in Section 20001, but, in contrast to Section 20001(c)(3), in each of those other paragraphs the term is included as part of a longer list of various aspects that will likely occur with a successful oil and gas program. For example, Section 20001(c)(2) requires the issuance of rights-of-way or easements for necessary "exploration, development, production, or transportation," and Section 20001(b)(2)(A), refers to "leasing, development, production, and transportation." Had Congress decided to encompass a broad range of facilities for various aspects of an oil and gas program into 20001(c)(3) it knew how to do so. "Production and support facilities" are not "exploration and support facilities," nor are they "transportation and support facilities," or facilities that support some other aspect of the program that is not "production and support."

This understanding of Section 20001(c)(3) is particularly clear, given Congress's use of the conjunctive "and" rather than the disjunctive "or." Further, Congress's inclusion of the parenthetical reference in Section 20001(c)(3) to "airstrips and any area covered by gravel berms or piers for support of pipelines" supports this understanding of 20001(c)(3). Depending upon particular factual circumstances, such facilities may necessarily constitute "production and support facilities," and they should be included in the 2,000-acre mandate if they are a facility for production or a facility supporting production, but otherwise they would not. With respect to airstrips in particular—which outside of the context of oil and gas development in Alaska could on their face seem to be "transportation" facilities—production of oil and gas in Alaska often requires an airstrip at the actual site of production. In such a case, an airstrip would reasonably be considered a facility in support of production benefitting from the 2,000-acre mandate, but an airstrip that is not incident to the actual site of production, and which generally supports transportation in support of the program, may not.

- Third, the BLM's authorization of a qualifying facility above must be to cover the surface of the federal land supporting that facility. This follows from the plain language of the provision, which provides that the Secretary, acting through the BLM, shall authorize up to 2,000 acres to be covered by the qualifying facilities.
- Fourth, the inclusion of the phrase "during the term of the leases under the oil and gas program under this section" should be reasonably read to mean the 2,000-acre mandate must be authorized throughout the term of all of the leases issued under the program. The interpretive assumption reached in the Leasing EIS that the phrase could reasonably be read to mean at any point in time during the term of all the leases is not supported by the plain meaning of the statutory language.

Although, again, no definitive application of these principles to particular types of development need be reached at this early stage given the uncertainty and hypothetical nature of projected development, the future application of these principles may differ in some respects from some of the assumptions made in the Leasing EIS as to their interpretation. In particular:

- Although the EIS assumed for analytical purposes that reclaimed acreage of federal land formerly containing production and support facilities would free up additional acreage to be subject to the 2,000-acre mandate in Section 20001(c)(3) once they are reclaimed, this would not be the case given the fourth sideboard referenced above.
- Ice roads and pads are not production and support facilities. Although the EIS assumed that such roads would not be such facilities within the meaning of Section 20001(c)(3) because they are temporary, as noted above, they are also reasonably understood to be a transportation or exploration facility, not a “production and support” facility.
- Depending on the precise facts of a future proposal, certain other types of facilities that the BLM assumed were included within the 2,000 acre limit in the EIS, such as gravel roads not required for production,⁹ barge landing and storage, and gravel pits and stockpiles, may or may not be “production and support facilities,” depending on particular circumstances at issue.

That this ROD does not adopt the assumptions made in the Final EIS as to the interpretation of 20001(c)(3) now and instead provides general guidance and principles for the future is not a change in the proposed action. Although the Leasing EIS made certain hypothetical development assumptions for purposes of analysis, the decision made in this ROD, consistent with the description in the EIS of the BLM’s decisions to be made, are where and under what terms and conditions lease sales will occur. See Final EIS, Section 1.3. That decision need not, and does not here, adopt a particular interpretation of 20001(c)(3) or attempt to apply it to hypothetical future development. Providing guidance on how the BLM may interpret 20001(c)(3) in a potential subsequent permitting phase does not constitute a change to the BLM’s present leasing action.

For the purpose of proceeding with the lease sales required to be offered by the statutorily-mandated oil and gas program, the hypothetical RFD reasonably projects that development so that the Leasing EIS can project what the effects might be of potential future development associated with oil and gas leases that will benefit from statutory mandates related to rights of way, easements and surface use for production and support facilities. See *Conner v. Burford*, 848 F.2d 1441, 1449 (9th Cir. 1988); see also *Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969 (2006). The resulting analysis informs decision-making to the best of the agency’s current abilities by providing a general but sufficient understanding (i.e., a reasonable “picture”) of the potential types and potential extent of environmental impacts that may occur if leases are developed all the way up to the 2,000-surface acre mandate of 20001(c)(3).

2. ALTERNATIVES

Under the NEPA, an agency is required to take a “hard look” at the environmental effects of an agency action and its reasonable alternatives, including foreseeable direct, indirect, and cumulative impacts. The Leasing EIS presents four alternatives that were analyzed in detail. The alternatives focus on the questions of which areas within the Coastal Plain to make available for oil and gas leasing, and which terms and conditions (i.e., lease stipulations and ROPs) to apply to future oil and gas activities in order to avoid, minimize, and mitigate adverse impacts on Coastal Plain resources and uses, including subsistence use.

⁹ That is, roads connecting production facilities to barge landings or other facilities, as opposed to roads connecting satellite well pads to the central processing facility. See Final EIS Appendix B, Figure B-1.

Under the NEPA, the BLM is generally required to analyze the reasonably foreseeable impacts of its action. Although the uncertain and speculative nature of oil and gas exploration and development can make those projections difficult at the leasing stage of the process, the Ninth Circuit has held that, unless future surface-disturbing activities on those leases can be absolutely precluded, the agency issuing the leases must prepare an EIS before issuing a lease and estimate what the reasonably foreseeable effects of future development of those leases might be. See *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988).

Hypothetical future projections of development at the leasing stage are sufficient. See *Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969 (9th Cir. 2006). Here, as explained further in the Leasing EIS, the BLM's ability to gauge the impacts of future exploration and development at the leasing stage is necessarily far from clear. Indeed, the issuance of an oil and gas lease does not have any direct effects on the environment since it does not authorize drilling or any other ground disturbing activities; however, a lease does grant the lessee certain rights to drill for and extract oil and gas subject to reasonable regulation, including applicable laws, terms, conditions, and stipulations of the lease.

Although the BLM cannot ascertain the precise extent of the effects of granting those rights until it receives and reviews potential future site-specific proposals for exploration and development, in order to meet the intent of NEPA, the BLM developed a hypothetical development scenario consistent with those leases, in a good faith effort to identify indirect effects that are not known at this time but nonetheless could be considered reasonably foreseeable (40 CFR 1508.8(b)) (see Appendix B of the Leasing EIS). Again, there is tremendous uncertainty regarding potential exploration and development on the Coastal Plain, due in part to the remoteness and lack of previous exploration and development as well as its harsh environment and potentially challenging engineering considerations, along with the extended time it has taken to go from leasing to development in other regions of the North Slope of Alaska including in the NPR-A.

As noted above and described in the Leasing EIS, these uncertainties include the amount and location of technically and economically recoverable oil, the timing of oil field discoveries and associated development, the future prices of oil and gas, and, more to the point, the many exploration companies' individual assessment of future prices and other competitive calculations that play into corporate investment decisions, and the ability of industry to find petroleum and to mobilize the requisite technology to exploit it. Indeed, USGS has repeatedly revised their prior assessments of producible oil and gas for the NPR-A and surrounding areas, as new information has become available and additional analysis has been conducted.

These assessments have proven to fluctuate significantly over time. This is evidenced by the fact that the assessments of technically recoverable reserves for the NPR-A and surrounding areas were projected by USGS to be 10.5 billion barrels of oil and 61 trillion cubic feet of gas in 2002. This was revised in 2010 to be 896 million barrels of oil and 53 trillion cubic feet of gas. In 2017 it was revised again to be 8.7 billion barrels of oil and 25 trillion cubic feet of gas in 2017 (USGS 2002, 2010, and 2017, cited in Appendix B of the Leasing EIS).

Future studies and assessments, whether by the USGS or others, will likely continue to evolve and shift based on advancements in geophysical assessment and drilling technology and as new geophysical data is acquired and made available.

Given the uncertainty, and in order to minimize the chance that the resultant impact analysis will understate potential impacts, the hypothetical scenario described in the Leasing EIS assumes a successful discovery and optimistic high-production development scenario in a situation of favorable market prices; thus, the projected impacts, which are necessarily uncertain, are likely overstated. At the stage at which those impacts would be

more reasonable to foresee—i.e., when the BLM is presented with proposals for exploration or development—those authorizations would be subject to project-specific and site-specific analysis, including compliance with NEPA, the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), ANILCA, and other laws.

The Leasing EIS alternatives include the following:

2.1 Alternative A: No Action Alternative

Under Alternative A, the No Action Alternative, no federal oil and gas in the Coastal Plain would be offered for future lease sales. Alternative A would not comply with the directive in PL 115-97 to establish and administer a competitive oil and gas program for leasing, developing, producing, and transporting oil and gas in and from the Coastal Plain in the ANWR that requires authorizations for necessary rights-of-way, easements and surface acres for production and support facilities. It also would not meet the purpose of the ANWR to provide for an oil and gas program on the Coastal Plain, set out in Section 303(2)(B)(v) of ANILCA. Under this alternative, current management actions would be maintained, and resource trends are expected to continue, as described in the USFWS's ANWR Revised CCP.

Alternative A would not meet the purpose and need of the action, which is the BLM's implementation of a Coastal Plain oil and gas program as required by PL 115-97, including the requirement to hold lease sales and to permit oil and gas activities; however, Alternative A was carried forward for analysis to provide a baseline for comparing impacts under the action alternatives, as required by 40 CFR 1502.14(d).

2.2 Alternative B: Preferred Alternative

Alternative B is the Preferred Alternative in the Leasing EIS and is the basis for this ROD. Alternative B offers the opportunity to lease the entire "program area" (1,563,500 acres) and has the fewest acres with NSO stipulations. In addition to applicable lease stipulations, 44 ROPs would apply to oil and gas activities to avoid, minimize, and mitigate potential adverse impacts on resources and uses. The development scenario for this alternative incorporates the Alternative B lease stipulations and ROPs from Table 2-3 of the Leasing EIS into the hypothetical projections.

2.3 Alternative C

The entire program area (1,563,500 acres) would also be available for lease under Alternative C; however, a majority of the program area would be subject to NSO. The BLM would rely on the same ROPs as under Alternative B to reduce potential adverse impacts on resources and uses from oil and gas activities.

2.4 Alternative D

Under Alternative D, portions of the Coastal Plain would not be available for lease, including the primary calving habitat for the Porcupine caribou herd. In addition, a large portion of the remaining area would be subject to NSO. In some instances, more prescriptive ROPs are included under Alternative D than under Alternatives B and C.

Alternative D contains two sub-alternatives, Alternatives D1 and D2, which use different approaches to avoid, minimize, and mitigate potential impacts on resources and uses through lease stipulations. The amount of land available for leasing under Alternative D1 is 1,037,200 acres and under Alternative D2 800,000 acres. Alternative D2 maximizes high hydrocarbon potential areas available for lease, while making unavailable for leasing additional caribou calving and post-calving habitat (areas along the coast of Camden Bay and east of the mouth of the Niguanak River), and expanding existing NSO buffers, including lands adjacent to springs

and aufeis habitats. Alternative D2 reflects the total minimum acreage PL 115-97 requires to be offered in two mandated lease sales.

2.5 Environmentally Preferred Alternative

Alternative D2 is the environmentally preferred alternative. This is primarily because Alternative D2 would make the least amount of land available for leasing (800,000 acres). Fewer acres available for leasing would reduce potential for adverse impacts from oil and gas exploration and development in the Coastal Plain. Further, though most of the lease stipulations and ROPs are the same as Alternative D1 and many of the ROPs are common across the action alternatives, where there are differences Alternative D2 typically has the most protective measures across the program area.

3. MANAGEMENT CONSIDERATIONS

3.1 Key Considerations to the Decision

In reaching this Decision, and with the aid of the Leasing EIS and the input provided by the public and various stakeholders throughout the development of the EIS, the Secretary, acting through the BLM, considered and weighed several important factors. An overriding consideration was the need to implement the Congressional directive in Section 20001 of PL 115-97 to establish and administer a competitive oil and gas leasing program for the Coastal Plain in a manner similar to the NPR-A leasing program. PL 115-97 requires that the program be administered in such a way that would allow the BLM to hold at least two lease sales within seven years, each of not fewer than 400,000 acres of land having the highest potential for oil and gas discovery, and to provide for authorization of up to 2,000 surface acres to be covered by production and support facilities, and granting of all necessary rights-of-way or easements to support the oil and gas program.

This Decision is constructed to provide for the protection of important surface resources and uses thereof, such as caribou (especially the Porcupine herd), polar bears, migratory birds, surface waters, and subsistence uses, among other resources and uses, and to take into account the other, non-oil and gas purposes of the ANWR, which include conservation of fish and wildlife populations and habitats, fulfillment of international treaty obligations, allowance for continued subsistence use, and protection of water quality and quantity necessary to meet fish and wildlife conservation needs.

Subsistence uses of Coastal Plain resources by rural Alaska residents and indigenous communities in Canada was given important consideration, in recognition of the life-sustaining customary and traditional uses of these resources. The Kaktovikmiut (i.e., Iñupiat of Kaktovik) are the primary users of the program area. They have strong cultural and subsistence ties, having occupied the Coastal Plain and relied on its resources for thousands of years, and consider themselves the stewards of the program area.

One particular aspect of this consideration is the cultural importance of the Porcupine caribou herd to Native communities in both Alaska and Canada, which the Gwich'in have stated is "central to their cultural identity," in addition to the importance of the herd to many Iñupiat and Gwich'in for biological sustenance.

A related aspect of this consideration was the recognition that the program will have transboundary impacts on resources such as caribou, polar bears, and migratory birds, particularly affecting Native communities in Canada as well as in Alaska. For all these reasons, protection of subsistence uses of Coastal Plain resources and of the resources themselves, such as caribou, waterfowl and fish, as well as access to the resources and traditional hunting areas, was given due consideration in the development and adoption of lease stipulations and ROPs.

Another important factor in this Decision was to provide additional economic and community development opportunities to local residents and Alaska Native communities within and near the Coastal Plain. In this regard, much of the economic and community development that has occurred in Native communities on the North Slope of Alaska has been a direct result of North Slope oil and gas development, which provides job opportunities and substantial property taxes and other funding for community infrastructure development such as new schools, healthcare centers, roads, and drinking water, wastewater, and other utility systems. Prior to oil and gas development on the North Slope, many Native communities lacked these types of basic community infrastructure, including indoor plumbing in homes.

One particular aspect of this consideration was to ensure that the BLM's program will not impinge on the ability of ANCSA corporations owning lands and mineral interests within the Coastal Plain to develop their resources and thus provide economic and other benefits to the Native shareholders and communities they represent, as intended by ANCSA.

These types of considerations, together with the opportunity to generate substantial revenues for the State of Alaska and the Federal Treasury from the program, including from lease bonus bids, lease rentals, production royalties, and property and income taxes, played an important role in addressing the direction of Congress. This Decision does this by making the entire program area available for leasing, albeit subject to lease stipulations and ROPs that will serve to protect important resources and uses. By making the entire program area available for leasing, potential economic state and local opportunities and federal revenues from the program are maximized.

Additionally, making all of the "program area" available for leasing provides maximum flexibility for future decision-making and innovation for project proposals by potential lessees. This is particularly the case given that until exploration drilling occurs, the BLM cannot reasonably foresee which areas of the Coastal Plain have the highest prospects for oil and gas discoveries. Also, given the limited geophysical information that currently exists for the Coastal Plain, making the entire program area available for leasing ensures that the areas having the highest potential for the discovery of oil and gas can be prioritized for offering in the first two lease sales, as required by Section 20001(c)(1)(B)(i)(II) of PL 115-97.

This Decision recognizes that the ANWR provides large expanses of habitat for numerous species of fish and wildlife, including polar bear, Steller's eider, and spectacled eider, which are listed as threatened under the ESA, as well as support for meeting international treaty obligations associated with animals such as Porcupine caribou, polar bears, and migratory birds. The USFWS was a key partner in the BLM's development of the Leasing EIS and the Coastal Plain oil and gas program directed by Congress and adopted by this Decision. The BLM will continue to coordinate and consult with the USFWS, especially its ANWR management team, as the BLM implements the program, including during review of each application for proposed oil and gas activities in the Coastal Plain.

All of these and other factors were considered against the backdrop of our changing environment, with a recognition that the Arctic environment has been and will continue to be affected by a changing climate, experiencing such impacts as coastal erosion, melting permafrost, and changing sea ice patterns, among many others. There is a thorough discussion of climate change effects in the Leasing EIS in the Climate Change subsections of the Affected Environment as well as under the Direct and Indirect Impacts and Cumulative Impacts for each resource, as applicable. While the Coastal Plain program's contribution to global climate change is speculative, limited, and incremental in nature, this Decision was arrived at in full awareness of the potential environmental impacts associated with the potential development and continued use of fossil fuels.

Despite the vast uncertainty, the impact analysis undertaken for the Coastal Plain oil and gas development program presented in the Leasing EIS is robust and suitably specific for the broad-scale management decisions made in this ROD. This Decision authorizes multiple lease sales, including, at a minimum, the two sales mandated by Section 20001(c) of PL 115-97, as well as potential additional sales.

It is intended that the Leasing EIS and this ROD will provide NEPA compliance for multiple sales. Prior to the second and any subsequent sales, the BLM will evaluate the Leasing EIS to determine whether it remains adequate or requires supplementation based on new circumstances or information, or substantial changes to the leasing program (see 40 CFR 1502.9(c)(1) and 43 CFR 46.120(c)). The timing of the second and subsequent lease sales would depend in part on the response to earlier sales and the results of any exploration that may follow.

The Leasing EIS evaluates which lands to offer for lease and what terms and conditions to apply to oil and gas activities; it does not by itself provide NEPA compliance for any particular on-the-ground exploration or development. Future on-the-ground activities requiring BLM approval, including potential exploration and development proposals, would require further NEPA analysis based on the project-specific and site-specific proposal. In appropriate circumstances, such additional analyses could be tiered from the Leasing EIS, in accordance with 40 CFR 1502.20 and 43 CFR 46.140.

Applicants for oil and gas activities would be subject to the lease stipulations and ROPs adopted by this Decision; however, the BLM Authorized Officer may require additional project-specific and site-specific terms and conditions before authorizing any oil and gas activity based on the project-specific NEPA analysis. Provisions built in at the leasing stage through lease stipulations and ROPs allow for this Decision's selection of an alternative that both protects valuable resources and uses and is consistent with Congress's direction in PL 115-97 to establish and administer a competitive oil and gas program within the authorized area of the Coastal Plain.

In implementing the oil and gas development program required by Section 20001 of PL 115-97, the Secretary, acting through the BLM, will comply with applicable international agreements, federal, state, and local laws, regulations, and executive orders (see Appendix D of the Leasing EIS for a summary). The Secretary, acting through the BLM, will continue to consult with regulatory agencies, tribal governments, and ANCSA corporations, as appropriate, during subsequent NEPA processes before oil and gas activities are authorized, to ensure that all legal requirements are met.

3.2 Amendment of the Comprehensive Conservation Plan

To guide its management of the ANWR and other refuges in Alaska, the USFWS develops and implements CCPs as required by Section 304(g) of ANILCA. The USFWS adopted its most recently revised ANWR CCP in 2015,¹⁰ prior to enactment of PL 115-97. Certain aspects of the current CCP, as it applies to the "program area," are overridden by Congress's enactment of PL 115-97.¹¹ The CCP does not constrain BLM actions taken consistent with its jurisdiction over the statutorily mandated oil and gas program within ANWR. As the USFWS previously explained in the CCP, until Congress took action to allow oil and gas exploration, leasing,

¹⁰ USFWS 2015. Arctic National Wildlife Refuge Revised Comprehensive Conservation Plan. U.S. Fish and Wildlife Service, Final Environmental Impact Statement, Vol. 1. Internet website: <https://www.fws.gov/home/arctic-ccp/>.

¹¹ Both the Constitution's property clause and existing federal law make clear that Congress may direct the conduct of activities on Refuges that supersede the USFWS's administrative decisions. See 16 U.S.C. 668dd(c).

development and production, the Service could not permit it. Nevertheless, if Congress took such action, it would be incorporated into the CCP and implemented (see CCP at p. 1-1).

Now that Congress, through PL 115-97, has amended the purposes of the ANWR to provide for, and required the Secretary, acting through the BLM, to establish and administer, a competitive oil and gas program for leasing, developing, producing, and transporting oil and gas in and from the Coastal Plain, including authorizations for necessary rights-of-way, easements, and surface acres for production and support facilities, and in light of this ROD establishing the structure of such a program, the USFWS will take into account the statutory requirements and the Secretary's, acting through the BLM, jurisdiction over the "program area" oil and gas activities when it next amends the CCP. Thus, given the requirements of PL-115-97, this Decision does not require that the USFWS first amend its CCP governing the ANWR prior to its adoption.

Moreover, Section 304(g) of ANILCA, which requires the USFWS to develop management plans for Alaska Refuges, does not stipulate when the management plans must be amended. It leaves that matter to the USFWS's discretion, directing that the plans be amended, "... from time to time." While the USFWS adopted its original ANWR Management Plan in 1988, the plan was not amended until the adoption of the current plan in 2015. In the 2015 plan, the USFWS acknowledged that, "... much has changed since the (1988) Arctic Plan was completed" (see CCP at 1-1), and yet the USFWS had continued to manage the ANWR over the course of 27 years before amending the Plan. Thus, until the USFWS amends the CCP to be consistent with PL 115-97, the Congressional action directing the Secretary, acting through the BLM, to establish and administer an oil and gas development program in the ANWR supersedes any conflicting provisions in the current CCP.

3.3 Mitigation Measures

This Decision includes all practicable and reasonable means to avoid or minimize environmental harm consistent with the purpose and need of the action, including potential adverse direct, indirect, and cumulative impacts, through the lease stipulations, ROPs, and lease notices listed in **Appendix A**, which are designed to provide protection for a wide range of surface resources and non-oil and gas uses throughout the program area, including subsistence use. The lease stipulations, ROPs and lease notices, adopted herein will apply to all oil and gas activities authorized by the BLM in the Coastal Plain, according to the management framework outlined in Section 2.2.5 of the Leasing EIS.

Significant constraints on potential future oil and gas exploration and development activities are presented by lease stipulations adopted in this ROD. These include Lease Stipulations 1 and 4, which together apply NSO designations on approximately 359,400 acres of the program area within barrier islands and important aquatic habitats, including rivers and streams, nearshore marine waters, and lagoons; and Lease Stipulation 7, which applies operational timing limitations on 721,200 acres of the program area within the primary calving habitat area for the Porcupine caribou herd during the calving season, prohibiting construction activities using heavy equipment (except drilling from established pads), and applying ground and air traffic restrictions.

NSO stipulations prohibit the construction of most oil and gas facilities in areas open to leasing, with exceptions for facilities necessary to be located in such areas, such as essential road and pipeline crossings of streams and rivers as required by Section 20001(c)(2) of PL 115-97, and docks and seawater treatment plants located along coastlines (see Lease Stipulations 1 and 4).

Under Lease Stipulation 1, ten identified rivers and creeks will have 0.5 to 1-mile setbacks prohibiting permanent oil and gas facilities in the streambed and within the described setback distance, except for essential pipelines and road crossings. Under Lease Stipulation 4, exploratory well drill pads, production well drill

pads, and central processing facilities are prohibited in the nearshore marine waters, lagoons, and barrier island habitats to protect wildlife and subsistence uses and resources. Making these areas subject to an NSO stipulation allows for the use of modern technology to access oil and gas in accordance with the Congressional direction in PL 115-97. Other lease stipulations adopted by this ROD include measures to protect sensitive aquatic and coastal areas, polar bear denning habitat, and Native allotments.

In addition to lease stipulations, the 44 ROPs adopted by this ROD will apply to oil and gas activities throughout the Coastal Plain to provide further protections for numerous resources and uses. For example, ROP 4 requires operators to develop and implement polar bear interaction plans, ROP 19 requires 500-foot setbacks on all fish-bearing waterbodies (many of which are key drainages used for subsistence activities) within which permanent oil and gas facilities (except essential road and pipeline crossings) are prohibited, ROP 23 requires roads and pipelines to be designed to allow for the free movement of caribou and the safe passage of subsistence users, ROP 27 requires power lines to be buried or hung from pipeline vertical support members to reduce bird collisions, ROP 34 restricts use of aircraft to reduce interference with subsistence activities, and ROP 36 requires operators to coordinate activities directly with local communities to prevent unreasonable conflicts with subsistence uses and other activities.

In addition to ROPs and lease stipulations, this Decision requires baseline studies, oversight monitoring, and effectiveness monitoring for oil and gas related activities.

Baseline studies: Studies or surveys prior to activities to better mitigate impacts associated with the activities.

Project proponents may be responsible for conducting or funding baseline studies, including fish, wildlife, and vegetation surveys where applicable, to provide BLM decision-makers with sufficient information to make informed decisions on a project or series of projects. The type and scale of such studies will be determined by the BLM, based on the characteristics of the proposed project and location. The BLM will work with project proponents to coordinate any necessary surveys to ensure that consistent methods are used and that surveys are not duplicative of existing federal and state data or other publicly available data. Some such studies and surveys are described in Lease Stipulation 3, and ROPs 10, 23, 28, 29, 30, 32, 41, 43, 44 and 45.

Oversight monitoring: Monitoring to ensure compliance with applicable requirements.

The BLM will conduct oversight monitoring to ensure that project proponents' plans for activities and implementation of those plans conform to the relevant requirements. Commonly oversight monitoring will require review of planning documents; field visits prior to activities to ensure compliance with requirements at the on-the-ground preparation stage for construction, operational start-ups, and abandonment activities; presence in the field during activities to ensure compliance; and follow-up field visits to ensure that any required clean-up and abandonment activities were in compliance with requirements.

Effectiveness monitoring: Monitoring to evaluate the effectiveness of project designs and mitigation measures.

Project proponents may be responsible for planning and implementing monitoring to assess the effectiveness of project designs and required mitigations in protecting resources. As with baseline monitoring, the type and scale of such monitoring will be determined by the BLM Authorized Officer based on the characteristics of the proposed project and location. Lease Stipulation 9 is a specific example of a requirement at the leasing stage, for the development and implementation of an impact and conflict avoidance and monitoring plan to assess, minimize, and mitigate the effects of infrastructure and its use on the coastal habitats and their use by wildlife and people.

Studies and monitoring undertaken to provide baseline data or to monitor effectiveness of mitigation measures must meet the approval of the BLM Authorized Officer. As the Authorized Officer determines to be appropriate, the data collection process and product shall be consistent with standards established by the BLM's Assessment, Inventory, and Monitoring program. If studies and monitoring reveal significant changes in circumstances or conditions associated with the implementation of the oil and gas program, the BLM may re-evaluate its management of the program, including consideration of potential new lease stipulations and ROPs that would apply to future lease sales and oil and gas activities.

Taken together, the provisions of the program adopted by this ROD provide protections for areas important to numerous wildlife, bird, fish, and aquatic subsistence species, including primary calving habitat for the Porcupine caribou herd, and nearshore marine, lagoon, and barrier island habitats. Additionally, protections are put in place for coastal and river routes important for water quality, fish, wildlife, raptors, cultural resources, and subsistence uses and activities.

It is important to note that the lease stipulations and ROPs adopted in this ROD are the baseline for protection of the various resources and uses within the Coastal Plain. Subsequent NEPA analysis for on-the-ground oil and gas activities may evaluate additional, project-specific mitigation measures, including site-specific measures, suited and appropriate to the specific proposals, which could be adopted by the BLM and applied as additional required protective measures on a project-specific basis consistent with 40 CFR 1508.20.

3.4 Endangered Species Act Consultation

Section 7(a)(2) of the ESA requires federal agencies to consult with the USFWS and National Marine Fisheries Service (NMFS), as appropriate depending on the species at issue, to ensure that their actions do not jeopardize the continued existence of species listed as threatened or endangered under the ESA or destroy or adversely modify their critical habitat. To meet requirements outlined in Section 7(a)(2), the BLM consulted with the USFWS and NMFS on the species listed and described below.

USFWS-“managed species” under the ESA that are within or in close proximity to the program area include three threatened species: polar bear (*Ursus maritimus*), spectacled eider (*Somateria fischeri*), and the Alaska-breeding Steller's eider (*Polysticta stelleri*). In addition, there is USFWS-designated Critical Habitat for the polar bear within the program area.

The USFWS determined the oil and gas leasing program is *not likely to jeopardize the continued existence* of Spectacled eiders, Steller's eiders, or polar bears, and it is *not likely to destroy or adversely modify* polar bear critical habitat.

In addition, the threatened northern sea otter, Southwest Alaska Distinct Population Segment (DPS) (*Enhydra lutris kenyoni*), is present *en route* to the program area along the marine transit route described in the Leasing EIS. There is also USFWS-designated Critical Habitat for the northern sea otter, spectacled eider, and Steller's eider within or next to the marine transit route. USFWS has determined the oil and gas leasing program is *not likely to adversely affect* the southwest Alaska DPS of the northern sea otter, and *not likely to adversely affect* designated sea otter, spectacled eider, or Steller's eider critical habitat.

The USFWS identified four project design criteria (PDC) that would ensure compliance with Section 7(a)(2) of the ESA. They are:

1. Section 7 Consultation on Future Activities—The lease areas may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered. The BLM would not approve any activity that may affect any such species or critical habitat until it completes its obligations under

applicable requirements of the ESA, as amended (16 U.S.C. 1531 et seq.), including completion of any required procedure for conference or consultation.

*Lease Notice 1 is adopted as part of this Decision, which is the PDC described above (see **Appendix A**). It applies to all future oil and gas activities authorized by the BLM, including lease-based activities and non-lease-based activities.*

2. The lease area and/or potential project areas may now or hereafter contain marine mammals. The BLM may require modifications to exploration and development proposals to ensure compliance with federal laws, including the MMPA. The BLM would not approve any exploration or development activity absent documentation of compliance under the MMPA. Such documentation shall consist of a Letter of Authorization, Incidental Harassment Authorization, and/or written communication from USFWS and/or NMFS confirming that a take authorization is not warranted.

*Lease Notice 2 is adopted as part of this Decision, which is the PDC described above, the last two sentences of which are modified from what was published in the Final Leasing EIS (see **Appendix A**). It applies to all future oil and gas activities authorized by the BLM, including lease-based activities and non-lease-based activities.*

3. The USFWS and the BLM will conduct programmatic reviews by meeting at least annually beginning one year after the first Lease Sale. These reviews will evaluate, among other things, 1) whether activities proposed are consistent with the RFD scenario, as described, for the Proposed Program, 2) whether the nature and scale of predicted effects remain valid, and 3) whether the programmatic consultation, including the PDCs and determinations reached, remain adequate and appropriate. In addition, these meetings will provide a venue where any new information on the status of species, their critical habitat, or new methods to avoid or minimize impacts can be shared.

This requirement is adopted as part of this Decision. Annual meetings will be coordinated between the BLM and USFWS staff.

4. All activities, including plan development, study development, and consideration of exceptions, modifications, or waivers would include coordination with the USFWS as the refuge surface management agency¹² and would comply with the ESA. In addition, the BLM would coordinate with other appropriate federal, state, and NSB agencies, tribes, and ANCSA corporations.

*This requirement is adopted as part of this Decision (see **Appendix A**).*

NMFS “managed species” under the ESA that are within or in close proximity to the program area, include the endangered bowhead whale (*Balaena mysticetus*), and the threatened bearded seal, Beringia DPS (*Erignathus barbatus*) and ringed seal, Arctic subspecies (*Phoca hispida hispida*). Additionally, along the marine transit route in the Bering and Chukchi Seas, seven additional species are protected under the ESA, the threatened humpback whale, Mexico DPS (*Megaptera novaeangliae*), and endangered: Steller sea lion, western DPS (*Eumetopias jubatus*), North Pacific right whale (*Eubalaena japonica*), blue whale

¹² The USFWS manages the refuge except for implementation of the oil and gas program. As described above, implementation of the oil and gas program (including surface authorizations for those purposes) is under the jurisdiction of the BLM. References in this Record of Decision to USFWS as the surface manager of the refuge refer to its role as the manager for purposes other implementation of the oil and gas program.

(*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), humpback whale, Western North Pacific DPS (*Megaptera novaeangliae*), and the sperm whale (*Physeter catodon*).

NMFS determined that the proposed action is *not likely to jeopardize the continued existence* of Beringia DPS bearded seals, Arctic ringed seals, western DPS Steller sea lions, bowhead whales, blue whales, fin whales, Western North Pacific DPS and Mexico DPS humpback whales, North Pacific right whales, and sperm whales; and it is *not likely to destroy or adversely modify* designated critical habitat for North Pacific right whales and Steller sea lions.

Section 7(a)(1) of the ESA directs federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of the threatened and endangered species. Specifically, conservation recommendations are suggestions regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information (50 CFR 402.02). In this regard, both USFWS and NMFS provided two conservation recommendations each as follows:

USFWS

1. Continue to monitor threatened eiders, polar bears, and BLM special status species in the Arctic Refuge. Results will allow the Service and BLM to better evaluate abundance, distribution, and population trends of listed eiders, polar bears, and other special status species. These efforts will enhance the likelihood that future oil and gas development within the Arctic Refuge will not jeopardize listed species, impact the conservation value of critical habitat, or increase the need to list additional species.
2. Work with the Service and other Federal and State agencies in implementing recovery actions identified in the Steller's and spectacled eider recovery plans and the Polar Bear Conservation Management Plan. Research to determine habitat requirements, sensitivity to disturbance and other program-related impacts, and response to current population threats is an important step toward minimizing conflicts with current and future North Slope oil and gas activities.

NMFS

1. The BLM should conduct or fund surveys to determine densities and distribution of ringed and bearded seals on ice and in marine waters offshore of the Coastal Plain.
2. The BLM should conduct or fund surveys to determine densities and distribution of cetaceans in marine waters offshore of the Coastal Plain.

It should be noted that any proposed exploration or development projects will be subjected to further project-specific ESA consultation before permits or approvals for those projects will be granted to ensure that the BLM's decisions continue to be well informed as activities proceed. These subsequent ESA consultations will assess potential impacts from the specific projects on listed species in the project area, based on any new information about the resources and known information about the location and technology of the proposed projects. These subsequent ESA consultations will occur for each stage of oil and gas exploration and development activities proposed to be authorized by the BLM. It is during these subsequent reviews and through consultation with NMFS that the BLM will make a decision based on the proposed activities as to whether a survey to determine densities or distributions of marine mammals as identified above is necessary in order to minimize or avoid adverse effects on the listed species. Further, BLM will continue to work with USFWS, NMFS, and other federal agencies as appropriate to ensure continued compliance with ESA and

MMPA, and to ensure best available information is being gathered and used to inform decision making as it may relate to oil and gas development.

Lease Stipulation 5 further emphasizes the requirement to comply with the ESA and the MMPA to specifically minimize disturbance to denning polar bears and denning habitat areas. Lease Notice 1 notifies the lessee that the BLM would not approve any activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the ESA. Lease Notice 2 notifies lessees that activities that could result in the potential “take” of marine mammals would not be authorized without documentation of compliance with the MMPA by the USFWS and/or NMFS prior to commencement of such activities.

3.5 National Historic Preservation Act

In compliance with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108, the BLM developed a programmatic agreement concurrent with the NEPA process, in accordance with 36 CFR 800.14(b)(1)(ii), and in consultation with the Advisory Council on Historic Preservation, the State Historic Preservation Officer, and the USFWS, who are signatories to the agreement. In addition, the BLM consulted with federally recognized Indian Tribes, as defined in 36 CFR 800.16(m), including Native villages, and regional and village ANCSA corporations.

The programmatic agreement establishes the process the BLM will follow to fulfill its responsibilities under Section 106 of the NHPA, including consultation with Indian Tribes, while implementing the oil and gas leasing program within the Coastal Plain.

3.6 ANILCA Section 810 Subsistence Evaluation

ANILCA Section 810(a), 16 U.S.C. 3120(a), requires that in determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the federal agency having primary jurisdiction over such lands or his designee must evaluate and include findings on three specific issues:

1. The effect of such use, occupancy, or disposition on subsistence uses and needs;
2. The availability of other lands for the purpose sought to be achieved; and
3. Other alternatives that reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

The following discussion summarizes the ANILCA Section 810 Final Evaluation for the Decision in this ROD. The summary is based on the detailed ANILCA Section 810 Final Evaluation contained in Appendix E of the Final Leasing EIS, as it pertains to the alternative selected by this Decision, Alternative B. The BLM’s evaluation of the effects of this Decision are based on the impact analysis in the Final Leasing EIS, which, as described in this ROD, is based on the BLM’s hypothetical, speculative, and aggressive development scenario.

- *Without the Cumulative Case:* The effects of the alternative adopted in this ROD, Alternative B, will not result in a significant restriction to subsistence uses. A positive determination pursuant to ANILCA Section 810 is not required. Adequate lease stipulations and ROPs have been incorporated into the alternative, including specific procedures for subsistence consultation with directly affected subsistence communities, requirements for extensive studies of caribou movement, and setbacks or other protective measures specific to birds, to ensure that significant restrictions to subsistence uses and needs would not occur. This finding applies to the communities of Arctic Village, Kaktovik, Nuiqsut, and Venetie.

- *With the Cumulative Case:* The cumulative case includes, but is not limited to, a road and pipeline between the Kaktovik area and the Dalton Highway/Trans-Alaska Pipeline, oil and gas development in the Colville-Canning Area, and oil and gas activity in the vicinity of Alpine. The cumulative case, when taken in conjunction with the selected alternative, will not result in a significant restriction to subsistence uses for the communities of Arctic Village, Nuiqsut, and Venetie; however, the effects of the cumulative case exceed the “may significantly restrict” threshold for the community of Kaktovik, and thus a positive ANILCA Section 810 determination was made. Although the effects of the activities proposed under the program adopted in this ROD alone fall below the threshold, adding them to those of the cumulative case results in a level of effects that “may significantly restrict” subsistence uses, with the potential to affect Kaktovik due to the potential decrease in the community’s access to fish, marine mammals, and caribou.

ANILCA Section 810(a) provides that no “withdrawal, reservation, lease, permit, or other use, occupancy or disposition of the public lands which would significantly restrict subsistence uses shall be effected” until the federal agency gives the required notice and holds a hearing in accordance with Section 810(a)(1) and (2), and makes the three determinations required by Section 810(a)(3)(A), (B), and (C). The BLM has found in this subsistence evaluation that all the action alternatives (Alternatives B, C, D1, and D2) considered in the Leasing EIS, when considered together with all the past, present, and reasonably foreseeable future cumulative effects of the hypothetical development scenario discussed in the Leasing EIS, may significantly restrict subsistence uses for the community of Kaktovik; therefore, the BLM undertook the notice and hearing procedures required by ANILCA Section 810(a)(1) and (2), as described above, including a subsistence hearing held in Kaktovik in conjunction with the public meeting on the Draft Leasing EIS, and now must make the three determinations required by Section 810(a)(3)(A), (B), and (C) (16 U.S.C. Section 3120(a)(3)(A), (B), and (C)).

The BLM has determined that the program adopted in this ROD meets the following requirements (16 U.S.C. Section 3120(a)(3)(A), (B), and (C)) for federal actions that may result in a significant restriction on subsistence uses:

1. The significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands.

The BLM undertook the Leasing EIS to fulfill the Secretary of the Interior’s responsibilities under Section 20001 of PL 115-97, including the requirement to establish and administer an oil and gas program for the Coastal Plain, and to hold not fewer than two lease sales in the program area before December 22, 2024, each sale offering not fewer than 400,000 acres in areas with the highest hydrocarbon potential.

Alternative B, selected by this ROD, will provide the opportunity, subject to appropriate conditions developed through the NEPA process, to conduct at least two lease sales in the program area meeting the requirements of Section 20001 of PL 115-97. These conditions include lease stipulations and ROPs, attached as **Appendix A** of this ROD, that incorporate protective measures that would minimize potential impacts on important subsistence resources and subsistence use areas.

The cumulative case, in conjunction with Alternative B, could significantly restrict subsistence uses for the community of Kaktovik. The BLM has determined that such a significant restriction is necessary, consistent with sound management principles for the use of the public lands, and for the BLM to fulfill the Secretary of the Interior’s responsibilities under PL 115-97, described above.

2. The proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition.

The BLM has determined that Alternative B involves the minimal amount of public lands necessary to accomplish the purposes of the oil and gas leasing program required by Section 20001 of PL 115-97. Under all alternatives analyzed in the Leasing EIS, including Alternative B, no more than 2,000 acres of public lands would be covered by production and support facilities during the oil and gas program mandated by the law. In this regard, the alternatives do not vary with respect to the amount of public lands that would be covered by production and support facilities. An alternative that allowed less than 2,000 acres to be covered by production and support facilities would be inconsistent with the mandate contained in PL 115-97. In this regard, Section 20001(c)(3) states “the Secretary *shall* authorize up to 2,000 surface acres to be covered by production and support facilities.”

The BLM cannot administratively modify this explicit statutory directive. Alternative B includes numerous lease stipulations and ROPs that apply across the Coastal Plain for protection of specific habitats and site-specific resources and uses, while allowing reasonable opportunity for necessary infrastructure to support oil and gas exploration and development. Important subsistence habitats along rivers and streams, as well as nearshore marine, lagoon, and barrier island habitats contain no surface occupancy restrictions, to ensure the habitat is protected for the important subsistence uses and resources.

More restrictive alternatives that varied and offered less acreage for leasing were analyzed, and it was determined Alternative B best meets the purpose and need of the oil and gas program required by the law. As discussed in **Section 3.1** of this ROD, having the entire Coastal Plain program area available for leasing provides maximum flexibility for future decision-making and innovation for project proposals by potential lessees. This is particularly the case given that unless and until exploration drilling occurs, the BLM cannot be reasonably certain as to which areas of the Coastal Plain have the highest prospects for oil and gas discoveries. Furthermore, given the limited geophysical information that currently exists for the Coastal Plain, the BLM has determined that making the entire program area available for leasing is the only way to ensure that the areas having the highest potential for the discovery of oil and gas can be offered in the first two leases sales, as required by Section 20001(c)(1)(B)(i)(II) of PL 115-97.

3. Reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

When the BLM began its NEPA scoping process, it internally identified subsistence as one of the major issues to be addressed. The information found within the Leasing EIS’s analysis of impacts on subsistence were used to craft Alternative B. This information included access, harvests, and traditional use patterns, as well as the results of workshops with the cooperating agencies, public scoping meetings in the villages, and meetings with tribal and local governments.

This information resulted in the development of strict mitigation measures similar to those used on BLM-administered lands in the NPR-A. Several protective measures specifically minimize adverse impacts on subsistence uses and resources, such as, but not limited to:

- Lease Stipulation 1 minimizes impacts on subsistence cabins and campsites, as well as the disruption of subsistence activities.
- Lease Stipulation 4 protects fish and wildlife habitat and minimizes impacts on subsistence activities.
- Lease Stipulation 9 protects nearshore marine subsistence resources and activities.

- ROP 18 protects subsistence uses and access to subsistence hunting and fishing areas and minimizes the impact of oil and gas activities on air, land, water, fish, and wildlife resources.
- ROP 20 protects subsistence use and access to subsistence hunting and fishing and anadromous fish.
- ROP 23 minimizes disruption of caribou movement and subsistence use.
- ROP 34 minimizes impacts of aircraft activity on subsistence use.
- ROP 36 and ROP 37 require coordination and consultation with subsistence users.
- ROP 38 minimizes impacts on subsistence resources from non-local hunting, trapping, and fishing.
- ROP 39 minimizes impacts on subsistence access.

Based on these and several other lease stipulations and ROPs (see **Appendix A**) that serve to protect various subsistence resources or their habitat, and subsistence uses generally, including access to subsistence resources, the BLM has determined that the Decision presented in this ROD includes reasonable steps to minimize adverse impacts on subsistence uses and resources resulting from the Coastal Plain program. In addition to the lease stipulations and ROPs, the BLM will consider alternatives to avoid adverse effects and incompatible development to subsistence resources and uses and subsistence access before any on-the-ground activities are approved. This will be done through subsequent NEPA analysis, which will be conducted before any construction or operation permits or approvals are issued. Compliance with ANILCA Section 810(a) will be undertaken at these subsequent stages through project-specific ANILCA Section 810 evaluations.

3.7 Environmental Justice

Executive Order 12898 requires that an agency identify and address “as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Section 3.4.5 of the Leasing EIS identifies direct and indirect impacts that may affect the communities of Arctic Village, Kaktovik, Nuiqsut, and Venetie. The residents of these communities qualify as low-income and minority populations and could potentially be disproportionately impacted by this Decision.

This Decision avoids, minimizes, and mitigates potential adverse impacts on these populations. It accomplishes this primarily through adopting measures that protect subsistence resources, access to those resources, and public health; and by monitoring operators’ activities to ensure compliance with requirements and other monitoring to assess the effectiveness of lease stipulations and ROPs and help adapt management to better meet resource and use objectives.

The following are examples of some of the mitigation measures that accomplish this:

- Lease Stipulation 1 minimizes impacts on subsistence habitat and resources, as well as cultural and paleontological sites, by requiring setbacks for specific rivers and creeks that contain these important resources and sites.
- Lease Stipulation 4 protects fish and wildlife habitat and minimizes impacts on subsistence activities, by limiting development activities in nearshore marine, lagoon, and barrier island habitats, as well as requiring development and implementation of an impact and conflict avoidance and monitoring plan.
- Lease Stipulation 7 minimizes disturbance and hindrance of caribou or alteration of their movements in the areas identified as important for calving.
- ROP 6 contains specific requirements related to avoiding, minimizing, or mitigating impacts on air quality for various phases of development to prevent unnecessary or undue degradation of the air and lands and to protect health.

- ROP 18 requires design of roads, as well as construction, operation, and maintenance to be done in consultation with affected subsistence users, to protect subsistence use and access to subsistence hunting and fishing areas.
- ROP 36 requires the lessee/operator/contractor to coordinate directly with affected communities to provide opportunities for subsistence users to participate in planning and decision-making to prevent unreasonable conflicts between subsistence uses and other activities.
- ROP 38 prohibits lessees/operators/contractors in work status from hunting, trapping and fishing to minimize impacts from non-local hunting, trapping and fishing activities on subsistence resources.

Based on these and other lease stipulations and ROPs that serve to protect various cultural resources, subsistence resources and their habitat, and human health and the environment generally, the BLM has determined that this Decision includes reasonable measures to minimize adverse impacts on these populations. In addition to these and other lease stipulations and ROPs, the BLM will consider alternatives to avoid adverse effects and incompatible development to protect the various cultural resources, subsistence resources and their habitat, and human health and the environment, before any on-the-ground activities are approved. This will be done through subsequent NEPA analysis, which will be conducted before any construction or operation permits or approvals are issued. Compliance with Executive Order 12898 will be undertaken at these subsequent stages through consideration of all practicable alternatives and additional mitigation, as appropriate.

3.8 Floodplain Management and Protection of Wetlands

The following findings are based on a comprehensive impact analysis completed in compliance with Executive Orders 11988 and 11990 in the Leasing EIS (see Sections 3.2.4, 3.2.10, and 3.3.1).

Executive Order 11988—Floodplain Management

Executive Order 11988, concerning the protection of floodplains, requires an agency to provide leadership and to take action to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities. Pursuant to the order, the agency has a responsibility to:

1. Evaluate the potential effects of any actions that may take place in a floodplain;
2. Ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and
3. Prescribe procedures to implement the policies and requirements of Executive Order 11988.

Additional requirements are as follows:

1. Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain and the evaluation required will be included in any statement prepared under Section 102(2)(C) of the NEPA (42 U.S.C. 4332(2)(C)).
2. If an agency has determined to, or proposes to conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy presented in this order requires siting in a floodplain, the agency shall, prior to taking action,
 - a. design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations and

- b. prepare documentation explaining why the action is proposed to be located in the floodplain.

The following discussion summarizes methods under the alternative adopted by this Decision, Alternative B, to avoid to the extent possible potential impacts on floodplains at the leasing stage, recognizing additional requirements may be required if the NEPA analysis for project-specific activities identifies the need for site-specific mitigation measures.

River floodplains and deltas encompass approximately 24.6 percent of the Coastal Plain program area. Floodplains will be protected to the greatest extent practicable, primarily through lease stipulations and ROPs incorporated into this ROD (see **Appendix A**), including but not limited to:

- Lease Stipulation 1 minimizes the disruption of natural flow patterns and changes to water quality and the disruption of natural functions resulting from the loss or change to vegetative and physical characteristics of floodplain and riparian areas, springs, and aufeis.
- ROP 3 prohibits refueling equipment within 100 feet of the active floodplain of any waterbody.
- ROP 16 prohibits exploratory drilling in fish-bearing rivers and streams and other fish-bearing waterbodies. On a case-by-case basis, the BLM Authorized Officer may consider exploratory drilling in floodplains of fish-bearing rivers and streams.
- ROP 22 requires single-span bridges if technically feasible, to allow for sheet flow and floodplain dynamics and to ensure passage of fish and other organisms.
- ROP 24 requires gravel mine site design, construction, and reclamation be done in accordance with a plan approved by the BLM Authorized Officer. The plan must take into consideration locations inside or outside the active floodplain, depending on potential site-specific impacts. It must also consider the design and construction of gravel mine sites in active floodplains to serve as water reservoirs for future use.

In addition to these and other lease stipulations and ROPs, the BLM will consider alternatives to avoid adverse effects and incompatible development in the floodplains before any on-the-ground activities are approved. This will be done through subsequent project-specific NEPA analysis, which will be conducted before any construction or operation permits or approvals are issued. Compliance with Executive Order 11988 will be undertaken at these subsequent stages through consideration of all practicable alternatives and additional mitigation in order to ensure that all possible protection is provided for floodplain functions and values.

Executive Order 11990—Protection of Wetlands

Executive Order 11990, concerning the protection of wetlands, requires that the BLM consider factors relevant to the proposal's effect on the survival and quality of wetlands. Factors to be considered include the following:

1. Public health, safety, and welfare; including water supply, quality, recharge and discharge, pollution; flood and storm hazards; and sediment and erosion;
2. Maintenance of natural systems; including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and,
3. Other uses of wetlands in the public interest, including recreation, scientific, and cultural uses.

Under the order, in furtherance of the NEPA (42 U.S.C. 4331(b)(3)), to improve and coordinate federal plans, functions, programs, and resources so that the nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, the agency, to the extent permitted by law, shall

avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds:

1. There is no practicable alternative to such construction, and
2. The proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

The following discussion summarizes the evaluation of impacts and findings to wetlands as presented in the Leasing EIS for Alternative B, as applicable to this Decision. It also identifies protective mitigation measures developed to avoid to the extent possible potential impacts on wetlands.

Most of the landscape in the Coastal Plain program area is considered wetlands, and National Wetlands Inventory data indicate that at least 96 percent of the program area is classified as wetlands or waters of the U.S. The program area is largely undisturbed, and wetland structure and function are intact.

Potential impacts on vegetation and wetlands from seismic exploration include changes in plant community composition and structure, altered hydrology, compacted soil, and by direct damage to aboveground structures, such as tussocks or woody stems and branches. The most susceptible vegetation types to seismic impacts correspond to drier tundra types, typically saturated wetlands or possibly uplands. Potential effects on vegetation and wetlands from seismic operations are avoided, minimized, and mitigated through ROPs 11, 12, and 15 (see **Appendix A**).

Compaction of the soil and surface organic layers is also a potential effect of ice-road construction. ROP 11 requires operational and design criteria for the protection of stream banks and freshwater resources, by minimizing soil compaction and the breakage, abrasion, compaction, or displacement of vegetation.

The primary impact on vegetation and wetland types from development activities is permanent loss of those types due to the placement of fill for the construction of roads, pads, vertical support members for pipeline footings, and gravel excavation. The removal of surface layers for gravel extraction in material sites may also result in loss of vegetation and wetlands that may be recovered through reclamation. The potential loss as a result of these types of activities would be limited to a small fraction of the Coastal Plain.

During construction, vegetation and wetland plant community composition can be altered through the deposition of dust and gravel spray from vehicle traffic, alterations to drainage patterns from drifted snow, impounded drainages, the potential for introduction of invasive or noxious nonnative plants, and the potential for oil, water, and drilling mud spills to the tundra surface.

After construction is complete, gravel from roads, pads, and airstrips would be the main dust source; dust fallout from vehicle traffic could increase turbidity and contaminant loads in ponds, lakes, creeks, streams and rivers, and wetlands that are next to roads and construction areas. Dust particles may reduce plant growth by smothering the vegetation and may reduce wetland function by introducing pollutants. Many of the ROPs provide protections for water resources, and are designed to minimize disruptions to natural flow patterns and impacts on water quality, such as: ROPs 2, 3, 8, 9, 11, 12, 15, 17, and 21. ROP 43 was specifically designed to prevent the introduction or spread of nonnative, invasive species in the Coastal Plain.

Due to continuous permafrost, pipelines on the North Slope of Alaska are typically constructed above ground, which introduces the potential for damage due to oil spills and less severe long-term effects of shading and snow accumulation on vegetation and wetlands below the pipeline. Spill effects would range in severity and

impacts would be evaluated on a case-by-case basis. Lease Stipulations 4 and 9 and ROP 33 require operators to develop adequate spill response plans before construction begins.

Wetter vegetation types tend to provide important wildlife habitat function; thus, the NSO protections preferentially preserve some high functioning wetlands from impacts of road and pad construction in many riparian areas. Furthermore, the NSO areas in the high hydrocarbon potential zone includes 31,800 acres, or 22 percent of Herbaceous (Wet), which is the most common vegetation type within that land use category. The high hydrocarbon potential zone includes a large area in the Staines and Canning River deltas and the wettest terrain in the program area.

Placement and construction of gravel pads, roads, air access facilities, culverts, and bridges could affect natural drainage patterns. This would come about by creating new channels, inundating dry areas, causing ground surface subsidence under some seismic trails, and starving wetlands of water on the downstream side of roads. Also, gravel roads and pads tend to increase the occurrence of thermokarst next to the footprint edge, with ponded areas extending into the adjacent tundra and altering the vegetation and wetland plant community structure. Additionally, water withdrawals to support components of oil and gas activities under Alternative B would affect the water levels of lakes used as water sources and any connected waterbody, such as streams or wetlands.

Wetlands would be protected to the greatest extent practicable, primarily through lease stipulations and ROPs (see **Appendix A**) incorporated into this ROD. In addition to the lease stipulations and ROPs, the BLM will consider alternatives to avoid adverse effects and incompatible development in the wetlands before any on-the-ground activities are approved. This will be done through subsequent project-specific NEPA analysis, which will be conducted before any construction or operation permits or approvals are issued. Compliance with Executive Order 11990 will be undertaken at these subsequent stages through consideration of all practicable alternatives and mitigation measures in order to ensure that harm to wetland functions and values is minimized.

4. PUBLIC INVOLVEMENT

The BLM considered public comments throughout the Leasing EIS process. The following list highlights major steps in the public involvement process (for more information on public involvement, see Appendix C in the Leasing EIS):

- Scoping: Public scoping occurred from April 20 to June 19, 2018. The BLM held 6 public meetings in Alaska and one in Washington, DC, and received more than 760,000 scoping comment submissions, which contained 4,546 substantive comments.
- Public Review of the Draft Leasing EIS: The comment period for the Draft Leasing EIS occurred from December 28, 2018 through March 13, 2019. The BLM held 7 public meetings in Alaska and one in Washington, DC and received more than 1 million comment submissions, of which 3,709 were considered unique submissions.
- Comments received after the Final Leasing EIS was released: In reaching this Decision, the BLM reviewed and considered comments received after distribution of the Final Leasing EIS on September 12, 2019.

In addition to the above, the Leasing EIS benefited from suggestions and review of the analysis in the Leasing EIS by the eight cooperating agencies: Arctic Village Council, EPA, USFWS, Native Village of Kaktovik, Native Village of Venetie Tribal Government, Venetie Village Council, NSB, and the State of Alaska.

Formal (i.e., legally required) consultation occurred during the Leasing EIS process with:

- Tribes, as required by a Presidential Executive Memorandum dated April 29, 1994, and Executive Order 13175 (November 6, 2000), and in accordance with the Department of the Interior Policy on Consultation with Indian Tribes (December 1, 2011);
- ANCSA corporations, as required by Executive Order 13175 (November 6, 2000), as amended, and the Department of the Interior Policy on Consultation with ANCSA Corporations (August 10, 2012);
- The USFWS and NMFS, pursuant to the ESA; and
- Alaska's State Historic Preservation Office, pursuant to the NHPA.

Pursuant to ANILCA Section 810(a)(1) and (2), the BLM also conducted a hearing in the potentially affected community of Kaktovik to gather comments regarding potential impacts on subsistence uses resulting from the alternatives considered in the Draft Leasing EIS.

Additionally, the BLM met with representatives of a broad range of stakeholders, including local and state governments, tribes, Canadian government, ANCSA corporations, and industry and environmental organizations.

4.1 Comments Prior to Final Leasing EIS

While there were comments on a large number of topics and resources pertaining to an oil and gas leasing program in the ANWR, all of which were considered in the development of the Leasing EIS, throughout the NEPA process there were consistent concerns expressed regarding: 1) Timeline (the speed of development of the EIS); 2) data gaps or missing information and; 3) the fiscal purpose of PL 115-97.

- 1) **Timeline:** In accordance with 40 CFR 1501.8, and consistent with CEQ's Forty Most Frequently Asked Questions Concerning CEQ's National Environmental Act Regulations, Question 35; DOI Secretarial Order 3355 sets a goal of 12 months as the time limit for completing an EIS. Though there were dedicated staff working on the Leasing EIS, to include over 70 specialists that contributed in excess of 30,000 hours to its development, it took 21 months from implementation of PL 115-97, and 17 months from issuance of the Notice of Intent to publish the FEIS.
- 2) **Data gaps or missing information:** Prior to issuance of a Notice of Intent for preparation of the Leasing EIS, Rapid Response Resource Assessments were compiled by the USFWS and the BLM in order to inform decision-making related to successful implementation of an oil and gas program in the Coastal Plain, from leasing through production and reclamation. In addition, recommendations were made through the public process on potential data gaps and missing information. To ensure consistency with 40 CFR 1502.22, the BLM reviewed each item of "incomplete or unavailable" information that had been identified, which is included as Appendix Q in the Leasing EIS.
- 3) **Fiscal purpose of PL 115-97:** Comments were received regarding the Congressional Budget Office's 2017 fiscal estimate for the total revenue that would be generated by a leasing program within the Coastal Plain, suggesting the analysis in the EIS is not consistent with that estimate. PL 115-97 does not direct the Secretary, acting through the BLM, to generate specific amounts of revenue from an oil and gas leasing program in the Coastal Plain, and an analysis was included in the EIS of the total revenue that could be generated based on best available information.

4.2 Comments Received After Final Leasing EIS

After the Final Leasing EIS was distributed (September 12, 2019), the BLM received and considered several comments and additional information from the public and various stakeholders. Over 10,000 form letter style

comments were received opposed to an oil and gas program within the ANWR. These comments were generally similar to and consistent with the comments received during the development of the Leasing EIS. Some comment submissions were substantive and provided specific input, including recent studies, regarding the Final Leasing EIS and/or the ROD, which the BLM has included in the administrative record and considered prior to executing this ROD.

The BLM reviewed the submissions to determine if the information presents significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, consistent with 40 CFR 1502.9(c)(1)(ii). The BLM's review is outlined below.

Trustees for Alaska provided four documents with a September 17, 2019, letter:

- U.S. Department of the Interior, Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment, Report and Recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement, Plate 1, Plate 2, and Plate 3 (Apr. 1987);
- George M. Durner, David C. Douglas, and Todd C. Atwood, "Are polar bear habitat resource selection functions developed from 1985–1995 data still useful?" *Ecology and Evolution* (May 28, 2019);
- Matthew Strum, Charles Parr, and Chris Larsen, A Report on the Snow Cover of the 1002 Area of the Arctic National Wildlife Refuge, 2014–2019, University of Alaska Fairbanks, Geophysical Institute (Aug. 28, 2019); and
- Viktoriia Radchuk, Adaptive responses of animals to climate change are most likely insufficient, Nature Communications (2019).

Comment Response: The U.S. Department of the Interior, Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment, Report and Recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement, was cited and referenced in the Leasing EIS. No further review of this document is necessary. The existing analysis is valid in light of the additional information provided in the other documents referenced above. All of the information contributes to further understanding of the Arctic and specifically the Coastal Plain but does not change the overall analysis.

The Sierra Club's September 18, 2019, letter included a letter from Dr. Steven Amstrup, Chief Scientist for Polar Bears International, dated September 17, 2019.

Comment Response: The Leasing EIS discusses real-world conditions associated with aerial forward-looking infrared radiometry den detection for polar bear and acknowledges its limitations (see Section 3.3.5 of Leasing EIS). The letter does not change the overall analysis in the EIS.

World Wildlife Fund provided two documents with a September 20, 2019, letter:

- Benjamin J. Laurel, et al., Embryonic Crude Oil Exposure Impairs Growth and Lipid Allocation in a Keystone Arctic Forage Fish, 19 *ISCIENCE* 1101 (Sept. 27, 2019); and
- NOAA Fisheries, New Study Shows Arctic Cod Development, Growth, Survival Impacted by Oil Exposure (Sept. 17, 2019).

Comment Response: The existing analysis is valid in light of the additional information provided in the documents referenced above. All of the information contributes to further understanding of the Arctic and specifically the Coastal Plain but does not change the overall analysis.

Audubon Alaska provided four documents with an October 3, 2019, letter via email:

- Kenneth V. Rosenberg, Adriaan M. Dokter, Peter J. Blancher, John R. Sauer, Adam C. Smith, Paul A. Smith, Jessica C. Stanton, Arvind Panjabi, Laura Helft, Michael Parr, Peter P. Marra, “Decline of the North American avifauna,” *Science* (September 19, 2019).
- Moreno Di Marco, Simon Ferrier, Tom D. Harwood, Andrew J. Hoskins, and James E. M. Watson, “Wilderness areas halve the extinction risk of terrestrial biodiversity,” *Nature* (2019).
- Vojtěch Kubelka, Miroslav Šálek, Pavel Tomkovich, Zsolt Végvári, Robert P. Freckleton, Tamás Székely, Response to Comment on “Global pattern of nest predation is disrupted by climate change in shorebirds,” *Science* (June 14, 2019).
- S. G. Hamilton & A. E. Derocher, “Assessment of global polar bear abundance and vulnerability,” *Animal Conservation* (2018).

Comment Response: The existing analysis is valid in light of the additional information provided in the documents referenced above. All of the information contributes to further understanding of the Arctic and specifically the Coastal Plain but does not change the overall analysis.

USFWS sent an email on October 3, 2019, with concern regarding language in the Final Leasing EIS regarding springs and the potential impacts of exploration or development, suggesting that well drilling and fracking would be unlikely to contact groundwater flow to the springs because the flow paths of the springs are above the impenetrable permafrost layer. This statement is in contrast with Kane et al. (2013), who discuss with certainty that the flow paths come from deep below the permafrost layer with unclear pathways to the surface. They further suggest that the warmer the spring, the deeper the flow path.

Comment Response: The text USFWS references in the Final EIS is specific to EPA’s requirement that underground injection control wells be used to dispose of pumpable wastes as incorporated into ROP 2c. The text does not discuss any unknown future oil exploration practices concerning fracking which would be addressed in any future development EISs.

USFWS’s comment that “This statement is in contrast with Kane et al. (2013; attached), who discuss with certainty that the flow paths come from deep below the permafrost layer with unclear pathways to the surface (see page 43 of the attached reference)” is incorrect.

The reference actually states:

- In the Abstract “The transmission zone is beneath the permafrost, with discharge occurring through the springs via taliks through the permafrost (where faults are present) and also likely at the northern edge of the permafrost along the Beaufort Sea coast.”
- In the caption to Figure 2: “. . . that groundwater recharges through permafrost-free areas of limestone on the south side of the Brooks Range and discharges through taliks (probably coinciding with faults), extending through the permafrost north of the Brooks Range. Some discharge is apt to discharge along the northern boundary of the permafrost and the coast.”
- On page 44 of the reference “Hall and Roswell (1981) and others suggest that faults may represent the most likely pathway for groundwater discharge in this permafrost environment.”
- On page 45 of the reference “Also, Beikman and Lathram (1976) and others have mapped the distribution of faults across northern Alaska. They show that there are many more faults in northeastern Alaska than in the northwestern sector; this also matches the distribution of major icing

formations. Finally, Hall and Roswell (1981) have produced a map that shows the collocation of springs and faults in northeastern Alaska.”

Additionally, the USFWS comment, “They further suggest that the warmer the spring, the deeper the flow path,” is an incorrect interpretation of the referenced article. It states, “The two warmest springs are located the farthest away from the recharge area; this fits the concept of geothermal heating of deeper groundwater flow.” Being the farthest away from the recharge area indicates that this groundwater travels the farthest/longest time in the sub-permafrost or warmer/deeper ground conditions, not that the groundwater flow is deeper for these warmer springs.

The comment was thoroughly considered, and based on the above review, the BLM determined the existing analysis is valid as is.

Trustees for Alaska transmitted the USFWS water rights application maps with an October 8, 2019, transmittal letter:

Comment Response: Trustees for Alaska did not reference any specific study or new information, as the USFWS water rights applications were referenced in the analysis of the Leasing EIS. No further review of these documents is necessary.

The EPA submitted a letter via email on October 21, 2019 with several recommendations, though did not provide new information to consider. Some of their comments were previously responded to during review of the Draft EIS or Preliminary Final EIS (see Appendix S of the Leasing EIS); however, the following recommendations were specific to the ROD:

1. The BLM should commit in the ROD to develop a cumulative, quantitative analysis prior to authorizing any future development, and use this analysis to identify whether additional mitigation measures are necessary to protect air quality or air quality related values. In addition, the BLM should commit to begin development of an ambient air quality monitoring program to determine baseline air quality conditions at Kaktovik and at lease block locations on the Coastal Plain where development is most likely to occur.

Comment Response: ROP 6 requires all projects to comply with all applicable National and State Ambient Air Quality Standards and notes it may be required to provide a minimum of 1 year of baseline ambient air monitoring data for pollutants of concern.

2. Define successful reclamation in the ROD and adopt Alternative D’s ROP 35 and modify to specify how the BLM will ensure that reclamation has been successful prior to authorizing additional land disturbance to include specific criteria on how reclamation has been achieved.

Comment Response: Alternative B’s ROP 35 adequately describes requirement (i.e., . . . rehabilitation to the land’s previous hydrological, vegetation, and habitat functions . . .) and allows for the specific details of reclamation to be developed and implemented through a BLM-approved abandonment and reclamation plan, based on the site-specific project requirements.

3. Communicate with potentially affected environmental justice communities regarding the BLM’s final environmental justice determination and mitigation strategies in the selected alternative as well as include ROP 7 under Alternative D, to further minimize impacts.

Comment Response: The BLM has ensured the Final EIS was widely distributed and shared with potentially affected parties and will continue to reach out to potentially affected communities throughout implementation of the oil and gas leasing program. ROP 7 was not retained in Alternative B as this condition has not been practical to implement in the NPR-A nor has it resulted in meaningful mitigation to meet the objective identified in the ROP.

The Government of Canada sent a letter on October 25, 2019, via email, requesting several ROPs be revised to explicitly allow for Canadian management agencies to have access to data collected that is germane to the management of shared wildlife, including Porcupine caribou, polar bears, and migratory birds.

Comment Response: The BLM agrees there is value in continuing to share data with Canadian management agencies, however, because the ROPs are an agreement/requirement between the leaseholder and the BLM, it would not be the appropriate mechanism in which to do so. Formal data sharing should continue between the Department of the Interior and Canadian management agencies through established agreements, and/or the respective agencies should develop new data sharing agreements as appropriate. The letter was forwarded through the Department of the Interior to the State Department for formal response.

The Porcupine Caribou Management Board sent a letter on October 30, 2019, regarding impacts on the Porcupine Caribou herd with three main points, as follows:

1. Lack of quantitative analysis and proof of effectiveness of mitigation

Comment Response: The comment was thoroughly considered, and based on the above review, the BLM determined the existing analysis is valid as is.

2. Lack of consultation with Canadian user groups

Comment Response: The Leasing EIS gives consideration of transboundary impacts throughout the EIS. As stated in Appendix S of the Final EIS, the EIS gives due consideration to the International Porcupine Caribou Agreement, and Department of the Interior conducted consultation with the International Porcupine Caribou Board and with Canadian officials.

3. Emphasis on the need for future data-sharing and international collaborative study of the effectiveness of the mitigation measures

Comment Response: The BLM agrees there is value in continuing to share data with Canadian management agencies. Formal data sharing should continue between the Department of the Interior and Canadian management agencies through established agreements, and/or the respective agencies should develop new data sharing agreements as appropriate.

Natural Resources Defense Council provided two letters on November 8, 2019. One was specific to climate change as described below.

This comment asserts that the BLM must account for changes in foreign energy consumption that could result under the Proposed Action and No Action alternatives, and provides the documents listed below, which purportedly illustrate how the BLM could model such changes. This comment also suggests that the BLM use a social cost of carbon calculation or a comparable technique to quantify the economic impacts associated with those marginal changes in foreign energy consumption, in order to more fully account for the benefits and detriments associated with the Proposed Program.

- Jason Bordoff and Trevor Houser, Center on Global Energy Policy, Navigating the U.S. Oil Export Debate (2015);
- Bureau of Ocean Energy Management, U.S. Department of the Interior, OCS Oil and Natural Gas: Potential Lifecycle Greenhouse Gas Emissions and Social Cost of Carbon (2016);
- Peter Erickson and Michael Lazarus, “Impact of the Keystone XL Pipeline on global oil markets and greenhouse gas emissions,” 4 *Nature Climate Change* 778, 788-81 (2014);
- ICF International, The Impacts of U.S. Crude Oil Exports on Domestic Crude Production, GDP, Employment, Trade, and Consumer Costs (2014); and
- IHS Energy, U.S. Crude Oil Export Decision: Assessing the Impact of the Export Ban and Free Trade on the U.S. Economy (2014).

Comment Response: This comment largely reiterates prior comments concerning potential changes in foreign consumption that were submitted in response to the DEIS (see Comment Letter, Alaska Wilderness League et al., Comments re: Notice of Availability of the Draft Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program and Announcement of Public Subsistence Related Hearings, 83 Fed. Reg. 67,337 (Dec. 28, 2018) at 105-11 (Mar. 13, 2019)). The BLM responded to those prior comments in Appendix S to the Final EIS, pages S-591-92, and those responses are again applicable here. This comment also cites several documents not referenced in prior comments on the Draft EIS. These additional documents do not provide a sufficiently reliable method to calculate marginal changes in foreign consumption attributable to the Proposed Action.

The majority of sources referenced in the comment advocate for or simply analyze the hypothetical effects of lifting the U.S. crude oil export ban on the domestic U.S. economy. They do not address emissions. Only two of the papers actually propose analyses quantifying how increases in domestic production or supply will lead to increased global consumption of oil. They then estimate the changes in global greenhouse gas (GHG) emissions likely to result from the oil consumption changes, but none of the studies acknowledge(s) the increased consumption of energy substitutes for oil and attempt(s) to estimate the overall net change in GHG emissions. None provides any useful guidance to the BLM as to how to account for the varied consumption responses across local or national energy markets to an increase in oil production (which lowers prices) and then to increased global GHG emissions. Notably, the comment submits Bureau of Ocean Energy Management’s GHG emission analysis for the 2017-2022 National Program, which supports the BLM’s approach.

Even if the BLM could reliably calculate marginal differences in foreign energy consumption under the Proposed Action and No Action alternatives, it would still lack the information needed to calculate the relevant concern here, which is the associated changes in foreign GHG emissions. Every country in the global energy market meets its energy demand through a different mix of energy sources, and each particular energy source emits different types of GHG emissions at different rates. In order to predict how changes in foreign consumption will translate into changes in foreign GHG emissions, one must understand the particular energy sources that each country would consume more or less of as its energy consumption increases or decreases. If a given country replaces oil with solar, for instance, its emissions would decrease by a certain factor, whereas if that same country replaced oil with coal, its emissions would increase by a certain factor. The BLM simply lacks sufficient information to conduct credible modelling of foreign energy markets and emissions rates, and the comment has not provided any such information.

The rigorous modeling that informed the Final EIS’s quantitative analysis of GHG impacts already constitutes a hard look at the Proposed Action’s potential contributions to GHG emissions and adequately informs decision-making. The slight reduction in global oil prices that could result from the Proposed Action and action alternatives—which the Final EIS acknowledged and the decision-maker is aware of—cannot reasonably be expected to increase foreign energy consumption and associated GHG emissions to an extent that fundamentally alters the results of the Final EIS’s analysis. It follows that additional information about marginal changes in foreign energy consumption and associated GHG emissions is simply not essential to making a reasoned choice amongst Final EIS alternatives. The fact that (1) the BLM is statutorily required to implement an oil and gas leasing program, and (2) estimated GHG emissions are the same under each action alternative also render such information not essential to a choice amongst Final EIS alternatives.

Meanwhile, Appendix F, Section F.2.1 of the Final EIS explains the BLM’s rationale for not conducting a cost-benefit analysis, social cost of carbon analyses, or similar analyses recommended by this comment.

The second letter from the Natural Resources Defense Council dated November 8, 2019, was regarding conducting seismic exploration, and included an attached Memorandum from Dr. Cameron Wobus, Lynker Technologies.

The memorandum states:

1. The snow conditions that have been experienced in the past 5 years have not been conducive to the requirements of ROP 11 which says the snow depth must be an average of 9 inches with a minimum of 3 inches over the highest tussock. While average conditions may be met, there are large areas where wind scour could result in no to minimum snow depths.
2. If a seismic survey were to be conducted over the entire 1002 area, there would be areas where damage to the tundra vegetation would occur due to the snow conditions not being met.
3. Tundra vegetation damage will lead to increased permafrost thaw, thermokarst, and drainage changes.

Comment Response: The comment was thoroughly considered, and based on the above review, the BLM has determined the existing analysis is valid as is. ROP 11 is clarified to include language, stating “average snow depth along the line of vehicle travel,” which is consistent with the analysis. See **Appendix A**.

Defenders of Wildlife sent a letter via email on November 19, 2019, regarding the applicability of ANILCA Title XI to oil and gas development in the Coastal Plain.

Comment Response: The Final EIS acknowledges the applicability of Title XI in Appendix D and in the response to comments in Appendix S.

Dr. Martha K. Reynolds, University of Alaska Fairbanks, submitted a copy of an article via email on May 27, 2020: Reynolds, M. K., J. C. Jorgenson, M. T. Jorgenson, M. Kanevskiy, A. K. Liljedahl, M. Nolan, M. Sturm, and D. A. Walker. 2020. *Landscape impacts of 3D-seismic surveys in the Arctic National Wildlife Refuge, Alaska*. *Ecological Applications* 00(00):e02143. 10.1002/eap.2143

Comment Response: The existing analysis is valid in light of the additional information provided in the document referenced above. The information in the article contributes to further understanding of the Arctic and specifically the Coastal Plain but does not change the overall analysis.

The Natural Resource Defense Council sent a letter on May 28, 2020, referencing recent comments provided to the U.S. Fish and Wildlife Service, relating to the impacts on denning polar bears of industrial activity in the Coastal Plain of the Arctic National Wildlife Refuge.

Comment Response: The existing analysis is valid in light of the information provided in the document referenced above. To ensure compliance with the ESA and MMPA, BLM has included Lease Notices 1 and 2.

Appendix A

Lease Stipulations and Required
Operating Procedures

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Appendix A. Lease Stipulations and Required Operating Procedures

A.1 DEFINITIONS

The following definitions apply to the stipulations and required operating procedures listed in this appendix. The Glossary of the Final Environmental Impact Statement (EIS) has additional definitions.

- **Active floodplain:** The flat area along a waterbody where sediments are deposited by seasonal or annual flooding; generally demarcated by a visible high-water mark.
- **Authorized Officer (BLM):** Designated Bureau of Land Management (BLM) personnel responsible for a certain area of a project; for the Leasing EIS, generally this would be the BLM State Director.
- **Buffer area:** A spatial zone created to enhance the protection of a specific conservation area, often peripheral to the area.
- **Class I air quality area:** One of 156 protected areas, such as national parks over 6,000 acres, wilderness areas over 5,000 acres, national memorial parks over 5,000 acres, and international parks that were in existence as of August 1977, where air quality should be given special protection. Federal Class I areas are subject to maximum limits on air quality degradation called air quality increments (often referred to as prevention of significant deterioration increments). All areas of the United States not designated as Class I are Class II areas. The air quality standards in Class I areas are more stringent than national ambient air quality standards.
- **Consultation:** Exchange of information and interactive discussion; when capitalized it refers to consultation mandated by statute or regulation that has prescribed parties, procedures, and timelines, such as Consultation under the National Environmental Policy Act (NEPA) or Section 7 of the Endangered Species Act (ESA).
- **Criteria air pollutants:** The six most common air pollutants in the U.S.: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter (both PM₁₀ and PM_{2.5} inhalable and respirable particulates), and sulfur dioxide (SO₂). Congress has focused regulatory attention on these six pollutants because they endanger public health and the environment, are widespread throughout the U.S., and come from a variety of sources. Criteria air pollutants are typically emitted from many sources in industry, mining, transportation, electricity generation, energy production, and agriculture.
- **Development:** The phase of petroleum operations that occurs after exploration has proven successful and before full-scale production. The newly discovered oil or gas field is assessed during an appraisal phase, a plan to fully and efficiently exploit it is created, and additional wells are usually drilled.
- **Exception:** A one-time exemption to a lease stipulation, determined on a case-by-case basis.
- **Greenhouse gas (GHG):** A gas that absorbs and emits thermal radiation in the lowest layers of the atmosphere. This process is the fundamental cause of the greenhouse effect. The primary greenhouse gases that are considered air pollutants are carbon dioxide, (CO₂), methane (CH₄), nitrous oxide (N₂O), and chlorofluorocarbons (CFCs).
- **Hazardous air pollutants (HAPs):** Also known as toxic air pollutants, those that cause or may cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental and ecological effects. The Environmental Protection Agency (EPA) is required to

control 187 hazardous air pollutants. Examples of HAPs are benzene (found in gasoline), perchloroethylene (emitted from dry cleaning facilities), and methylene chloride (used as a solvent).

- **Major construction activity:** Creation or construction of infrastructure, causing surface disturbance.
- **Modification:** A change to a lease stipulation either temporarily or for the life of the lease.
- **No surface occupancy (NSO):** An area that is open for mineral leasing but does not allow the construction of surface oil and gas facilities in order to protect other resource values. Facilities such as essential roads and pipelines would be allowed in these areas in accordance with Public Law (PL) 115-97. Facilities such as a dock and a seawater treatment/desalinization plant may be allowed in these areas on a case-by-case basis.
- **NO_x:** Mono-nitrogen oxides, including nitric oxide (NO) and NO₂. It is formed when naturally occurring atmospheric nitrogen and oxygen are combusted with fuels in automobiles, power plants, industrial processes, and home and office heating units.
- **Offshore:** (1) In beach terminology, the comparatively flat zone of variable width, extending from the shoreface to the edge of the continental shelf. It is continually submerged. (2) The direction seaward from the shore. (3) The zone beyond the nearshore zone where sediment motion induced by waves alone effectively ceases and where the influence of the seabed on wave action is small in comparison with the effect of wind. (4) The breaker zone directly seaward of the low tide line.
- **Ordinary high-water mark:** The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- **Permanent oil and gas facilities:** Production facilities, pipelines, roads, airstrips, production pads, docks, seawater treatment plants, and other structures associated with oil and gas production that occupy land for more than one winter season. Material sites and seasonal facilities, such as ice roads, are excluded, even when the pads are designed for use in successive winters. Gravel mines are also excluded from this definition.
- **Reclamation:** Reclamation helps to ensure that any effects of oil and gas development on the land and on other resources and uses are not permanent. The ultimate objective of reclamation is ecosystem restoration, including restoration of any natural vegetation, hydrology, and wildlife habitats affected by surface disturbances from construction and operating activities at an oil and gas site. In most cases, this means a condition equal to or closely approximating that which existed before the land was disturbed.
- **Required operating procedures (ROPs):** Procedures carried out during proposal implementation that are based on laws, regulations, executive orders, BLM planning manuals, policies, instruction memoranda, and applicable planning documents.
- **Setback:** A distance by which a structure or other feature is set back from a designated line.
- **SO_x:** Sulfur oxides, including SO₂. A product of vehicle tailpipe emissions.
- **Spill prevention control and countermeasure plan (SPCC):** A plan that the EPA requires to be on file within six months of project inception. It is a contingency plan for avoidance of, containment of, and response to spills or leaks of hazardous materials.
- **Standard:** A model, example, or goal established by authority, custom, or general consent as a rule for the measurement of quantity, weight, extent, value, or quality.

- **Stipulation:** A requirement or condition placed by the BLM on the leaseholder for operations the leaseholder might carry out within that lease. The BLM develops stipulations that apply to all future leases within the Arctic Refuge Coastal Plain.
- **Timing limitation (TL):** This stipulation, a moderate constraint, is applicable to fluid mineral leasing, all activities associated with fluid mineral leasing (e.g., truck-mounted drilling and geophysical exploration equipment off designated routes, and construction of wells and pads) and other surface-disturbing activities (i.e., those not related to fluid mineral leasing). Areas identified for TL are closed to fluid mineral exploration and development, surface-disturbing activities, and intensive human activity during identified time frames. This stipulation does not apply to operation and basic maintenance, including associated vehicle travel, unless otherwise specified. Construction, drilling, completions, and other operations considered to be intensive are not allowed. Intensive maintenance, such as workovers on wells, is not permitted. TLs can overlap spatially with no surface occupancy and controlled surface use, as well as with areas that have no other restrictions.
- **Unavailable:** When referring to oil and gas leasing, unavailable lands would not be offered for oil and gas leasing.
- **Volatile organic compounds (VOCs):** A group of chemicals that react in the atmosphere with nitrogen oxides in the presence of sunlight and heat to form ozone. VOCs contribute significantly to photochemical smog production and certain health problems. Examples of VOCs are gasoline fumes and oil-based paints.
- **Waiver:** A permanent exemption to a stipulation or lease.

A.2 APPLICABILITY OF REQUIREMENTS/STANDARDS

A.2.1 Lease Stipulations

Appropriate stipulations will be attached to the lease when the BLM issues it. As part of a lease contract, stipulations are specific to the lease. All oil and gas activity permits issued to a lessee must comply with the lease stipulations appropriate to the activity under review, such as exploratory drilling or production pad construction.

A stipulation included in an oil and gas lease will be subject to a waiver, exception, or modification, as appropriate. The objective of a stipulation must be met before a waiver, exception, or modification would be granted. Waivers, exceptions, and modifications are:

- A waiver—A permanent exemption to a stipulation on a lease;
- An exception—A one-time exemption to a lease stipulation, determined on a case-by-case basis; and
- A modification—A change attached to a lease stipulation, either temporarily or for the life of the lease.

The BLM Authorized Officer may authorize a modification to a lease stipulation only if they determine that the factors leading to the stipulation have changed sufficiently to make the stipulation no longer justified; the proposed operation would still have to meet the objective stated for the stipulation.

While the BLM may grant a waiver, exception, or modification of a stipulation through the permitting process, it may also impose additional requirements through permitting terms and conditions to meet the objectives of any stipulation. This would be the case if the BLM Authorized Officer considers that such requirements are

warranted to protect the land and resources, in accordance with the BLM's responsibility under relevant laws and regulations. Note that PL 115-97 requires that the BLM authorize rights-of-way (ROWs) for essential roads and pipeline crossings and other necessary access, even in areas closed to leasing or with an NSO stipulation.

A.2.2 Required Operating Procedures

The ROPs describe the protective measures that the BLM will impose on applicants during the permitting process. Similar to lease stipulations, the objective of a ROP must be met in order for exceptions, modifications, or waivers to be granted.

Any applicant requesting authorization for an activity from the BLM will have to address the applicable ROPs in one of the following ways:

- Before submitting the application (e.g., performing and documenting subsistence consultation or surveys);
- As part of the application proposal (e.g., including in the proposal statements that the applicant will meet the objective of the ROP and how the applicant intends to achieve that objective); and
- As a term imposed by the BLM in a permit.

At the permitting stage, the BLM Authorized Officer will not include those ROPs that, because of their location or other inapplicability, are not relevant to a specific permit application. Note also that at the permit stage, the BLM Authorized Officer may establish additional requirements as warranted to protect the land, resources, and uses in accordance with the BLM's responsibilities under relevant laws and regulations.

A.3 LEASE STIPULATIONS, REQUIRED OPERATING PROCEDURES AND LEASE NOTICES

While the language below refers only to the BLM or its Authorized Officer, it is understood that all activities, including plan development, study development, and consideration of exceptions, modifications, or waivers will include appropriate coordination with the U.S. Fish and Wildlife Service (USFWS) as the surface management agency, and, if necessary, consultation under the ESA. In addition, the BLM will coordinate with other appropriate federal, state, and North Slope Borough (NSB) agencies, tribes, Alaska Native Claims Settlement Act corporations, and other Native organizations as appropriate.

A.3.1 Lease Stipulations

PROTECTIONS THAT APPLY IN SELECT BIOLOGICALLY SENSITIVE AREAS

Lease Stipulation 1—Rivers and Streams (Map 1-3)

Objective: Minimize the disruption of natural flow patterns and changes to water quality; the disruption of natural functions resulting from the loss or change to vegetative and physical characteristics of floodplain and riparian areas, springs, and auefis; the loss of spawning, rearing, or overwintering fish habitat; the loss of cultural and paleontological resources; the loss of raptor habitat; impacts on subsistence cabins and campsites; and the disruption of subsistence activities.

Requirement/Standard: (NSO) Permanent oil and gas facilities, including gravel pads, roads, airstrips, and pipelines, are prohibited in the streambed and within the described setback distances outlined below, from the southern boundary of the Coastal Plain to the stream mouth. For streams that are entirely in the Coastal Plain, the setback extends to the head of the stream, as identified in the National Hydrography Dataset. Essential pipelines and road crossings will be permitted through setback areas in accordance with Section 20001(c)(2)

of PL 115-97, which requires issuance of rights-of-way or easements across the Coastal Plain, including access to private land used in support of the federal oil and gas leasing program, for the exploration, development, production, or transportation necessary to carry out Section 20001. Gravel mines can be permitted in setback areas. Setbacks may not be practical in river deltas; in these situations, an exception may be granted by the Authorized Officer if the operator can demonstrate: (1) there are no practical alternatives to locating facilities in these areas; (2) the proposed actions would maintain or enhance resource functions; and (3) permanent facilities are designed to withstand a 100-year flood.

- a. Canning River: from the western boundary of the Coastal Plain to 1 mile east of the eastern edge of the active floodplain;
- b. Hulahula River: 1 mile in all directions from the active floodplain;
- c. Aichilik River: 1 mile from the eastern edge of the Coastal Plain boundary;
- d. Okpilak River: 1 mile from the banks' ordinary high-water mark;
- e. Jago River: 1 mile from the banks' ordinary high-water mark;
- f. The following rivers and creeks will have a 0.5-mile setback from the banks' ordinary high-water mark:
 - i. Sadlerochit River
 - ii. Tamayariak River
 - iii. Okerokovik River
 - iv. Katakturuk River
 - v. Marsh Creek

Lease Stipulation 2—Canning River Delta and Lakes

Objective: Protect and minimize adverse effects on the water quality, quantity, and diversity of fish and wildlife habitats and populations, subsistence resources, and cultural resources; protect and minimize the disruption of natural flow patterns and changes to water quality, the disruption of natural functions resulting from the loss or change to vegetation and physical characteristics of floodplain and riparian areas; the loss of passage, spawning, rearing, or overwintering habitat for fish; the loss of cultural and paleontological resources; and adverse effects on migratory birds.

Requirement/Standard: See **ROP 9** for requirements/standards.

Lease Stipulation 3—Springs/Aufeis

Objective: Protect the water quality, quantity, and diversity of fish and wildlife habitats and populations associated with springs and aufeis across the Coastal Plain. River systems with springs provide year-round habitat and host the most diverse and largest populations of fish, aquatic invertebrates, and wildlife; they are associated with major subsistence activity and cultural resources. An aufeis is a unique feature associated with perennial springs. It helps sustain river flow during summer and provides insect relief for caribou. Because the subsurface flow paths to perennial springs are unknown and could be disturbed by drilling, use buffer areas around the major perennial springs that support fish populations in which no leasing is permitted.

Requirement/Standard: Before drilling, the lessee/operator/permittee will conduct studies to ensure drilling would not disrupt flow to or from the perennial springs and waste injection wells would not contaminate any

perennial springs. Study plans will be developed in consultation with the BLM, USFWS, and other agencies, as appropriate.

See **Lease Stipulation 1** for additional requirements/standards.

Lease Stipulation 4—Nearshore marine, lagoon, and barrier island habitats of the Southern Beaufort Sea within the boundary of the Arctic Refuge (Map 1-3)

Objective: Protect fish and wildlife habitat, including that for waterfowl and shorebirds, caribou insect relief, marine mammals, and polar bear summer and winter coastal habitat; preserve air and water quality; and minimize impacts on subsistence activities, recreation, historic travel routes, and cultural resources in the nearshore marine area.

Requirement/Standard: (NSO) Exploratory well drill pads, production well drill pads, or a central processing facility (CPF) for oil or gas will not be permitted in nearshore marine waters, lagoons, or barrier islands within the boundaries of the Coastal Plain.

- a. The BLM Authorized Officer may approve infrastructure for oil and gas activities necessary to be located in these critical and sensitive habitats, such as barge landing, docks, spill response staging and storage areas, and pipelines.
- b. Before conducting open water activities, the lessee/operator/contractor will consult with the Alaska Eskimo Whaling Commission, the NSB, and local whaling captains' associations to minimize impacts on subsistence whaling and other subsistence activities of the communities of the North Slope. In a case in which the BLM authorizes permanent oil and gas infrastructure in the nearshore marine area, the lessee/operator/contractor will develop and implement an impact and conflict avoidance and monitoring plan. This would be used to assess, minimize, and mitigate the effects of the infrastructure and its use on these nearshore marine area habitats and their use by wildlife and people, including the following:
 - i. Design and construct facilities to minimize impacts on subsistence uses, travel corridors, and seasonally concentrated fish and wildlife resources.
 - ii. Daily operations, including use of support vehicles, watercraft, and aircraft, alone or in combination with other past, present, and reasonably foreseeable activities, will be conducted to minimize impacts on subsistence and other public uses, travel corridors, and seasonally concentrated fish and wildlife resources.
 - iii. The location of oil and gas facilities, including artificial islands, platforms, associated pipelines, ice or other roads, and bridges or causeways, will be sited and constructed to not pose a hazard to public navigation, using traditional high-use subsistence-related travel routes into and through the major coastal lagoons and bays, as identified by the community of Kaktovik and the NSB.
 - iv. Operators will be responsible for developing comprehensive prevention and response plans, including Oil Discharge Prevention and Contingency Plans and SPCC plans and maintain adequate oil spill response capability to effectively respond during periods of ice, broken ice, or open water, based on the statutes, regulations, and guidelines of the USFWS, EPA, Alaska Department of Environmental Conservation (ADEC), and the Bureau of Safety and Environmental Enforcement (BSEE), as well as ROPs, stipulations, and policy guidelines of the BLM.

Lease Stipulation 5—Coastal Polar Bear Denning River Habitat

Objective: Minimize disturbance to denning polar bears, and disturbance or alteration of key river and creek maternal denning habitat areas.

Requirement/Standard: Comply with ESA and Marine Mammal Protection Act (MMPA) requirements.

Lease Stipulation 6—Caribou Summer Habitat

Note: All lands in the Arctic Refuge Coastal Plain are recognized as habitat of the Porcupine Caribou Herd (PCH) and Central Arctic Herd (CAH) and would be managed to allow for unhindered movement of caribou through the area.

Objective: Minimize disturbance and hindrance of caribou or alteration of caribou movements.

Requirement/Standard: See **ROP 23** for requirements/standards.

Lease Stipulation 7—Porcupine Caribou Primary Calving Habitat Area (Map 1-3)

Note: PCH primary calving habitat area is defined as the area used for calving (based on annual 95 percent contours calculated using kernel density estimation of parturient female caribou locations May 26–June 10) during more than 40 percent of the years surveyed.

Objective: Minimize disturbance and hindrance of caribou or alteration of their movements in the south-southeast portion of the Coastal Plain, which has been identified as important caribou habitat during calving.

Requirement/Standard: (TL) Construction activities using heavy equipment, excluding drilling from existing production pads, will be suspended in the PCH primary calving habitat area from May 20 through June 20. These areas encompass approximately 721,200 acres. If caribou arrive on the Coastal Plain before May 20, construction activities using heavy equipment will be suspended. The lessee shall submit with the development proposal a stop work plan that considers this, and any other mitigation related to caribou early arrival. The intent of this latter requirement is to provide flexibility to adapt to changing climate conditions that may occur during the life of fields in the region. The Authorized Officer may waive this stipulation if the operator, through coordination with appropriate federal, state, and local regulatory agencies can demonstrate calving is not occurring in the lease area; or may grant an exception if the operator can demonstrate their action would not hinder caribou or alter their movements.

- a. The following ground and air traffic restrictions will apply to permanent oil and gas-related roads in the areas and time periods indicated:
 - i. Within the calving habitat area, from May 20 through June 20, traffic speed shall not exceed 15 miles per hour when caribou are within 0.5 miles of the road. Additional strategies may include limiting trips and using convoys and different vehicle types, to the extent practicable. The lessee will submit with the development proposal a vehicle use plan that considers these and any other mitigation. The plan shall include a vehicle-use monitoring plan. The BLM Authorized Officer will require adjustments if resulting disturbance is determined to be unacceptable.
 - a. Major equipment, materials, and supplies to be used at oil and gas work sites in the calving habitat area shall be stockpiled prior to the period of May 20 through June 20 to minimize road traffic during that period.

- ii. Operators of aircraft used for permitted activities will maintain an altitude of at least 1,500 feet above ground level (except for takeoffs and landings) over caribou calving range, unless doing so would endanger human life or violate safe flying practices. See **ROP 34** for additional conditions.

Lease Stipulation 8—Porcupine Caribou Post-Calving Habitat Area

Note: The PCH post-calving area is defined as the area used by female caribou (based on annual 95 percent contours calculated using kernel density estimation of female caribou locations June 11-30) during more than 40 percent of the years surveyed.

Objective: To protect key surface resources and subsistence resources/activities from permanent oil and gas development and associated activities in areas used by caribou during post-calving and insect-relief periods.

Requirement/Standard: See **ROP 23** for requirements/standards.

Lease Stipulation 9—Coastal Area

Objective: Protect nearshore marine waters, lagoons, barrier islands, coastlines, and their value as fish and wildlife habitat, including for waterfowl, shorebirds, and marine mammals; minimize the hindrance or alteration of caribou movement in caribou coastal insect-relief areas; minimize hindrance or alteration of polar bear use and movement in coastal habitats; protect and minimize disturbance from oil and gas activities to nearshore marine habitats for polar bears and seals; prevent loss and alteration of important coastal bird habitat; and prevent impacts on nearshore marine subsistence resources and activities.

Requirement/Standard: Before beginning exploration or development within 2 miles inland of the coastline, the lessee/operator/contractor will develop and implement an impact and conflict avoidance and monitoring plan to assess, minimize, and mitigate the effects of the infrastructure and its use on these coastal habitats and their use by wildlife and people. Operators will be responsible for developing comprehensive prevention and response plans, including Oil Discharge Prevention and Contingency Plans and SPCC plans and maintain adequate oil spill response capability to effectively respond during periods of broken ice or open water, based on the statutes, regulations, and guidelines of the EPA, ADEC, and the BSEE, as well as ROPs, stipulations, and policy guidelines of the BLM.

Lease Stipulation 10— [Not applicable under Alternative B]

Lease Stipulation 11

Objective: Ensure Native allotment owners maintain control over use of their land.

Requirement/Standard: Use of the surface of Native allotments for the construction and maintenance of improvements is prohibited unless written consent is obtained from the allotment owner.

A.3.2 Required Operating Procedures

WASTE PREVENTION, HANDLING, DISPOSAL, SPILLS, AND PUBLIC SAFETY

Required Operating Procedure 1

Objective: Protect public health, safety, and the environment by disposing of solid waste and garbage, in accordance with applicable federal, state, and local laws and regulations.

Requirement/Standard: Areas of operation will be left clean of all debris.

Required Operating Procedure 2

Objective: Minimize impacts on the environment from nonhazardous and hazardous waste generation. Encourage continuous environmental improvement. Protect the health and safety of oil and gas field workers, local communities, Coastal Plain subsistence users, Coastal Plain recreationists, and the general public. Avoid human-caused changes in predator populations. Minimize attracting predators, particularly bears, to human use areas.

Requirement/Standard: The lessee/operator/contractor will prepare and implement a comprehensive waste management plan for all phases of exploration, development, and production, including seismic activities. The plan will include methods and procedures to use bear resistant containers for all waste materials and classes. The plan will be submitted to the BLM Authorized Officer for approval, in consultation with federal, state, and NSB regulatory and resource agencies, as appropriate (based on agency legal authority and jurisdictional responsibility), as part of a plan of operations or other similar permit application.

Management decisions affecting waste generation will be addressed in the following order of priority: (1) prevention and reduction, (2) recycling, (3) treatment, and (4) disposal. The plan will consider and take into account the following requirements:

- a. Methods to avoid attracting wildlife to food and garbage: The plan will identify precautions that are to be taken to avoid attracting wildlife to food and garbage. The use of bear-resistant containers for all waste will be required.
- b. Disposal of rotting waste: Requirements prohibit burying garbage. Lessees/operators/contractors will have a written procedure to ensure that rotting waste will be handled and disposed of in a manner that prevents the attraction of wildlife. All rotting waste will be incinerated, backhauled, or composted in a manner approved by the BLM Authorized Officer. All solid waste, including incinerator ash, will be disposed of in an approved waste-disposal facility, in accordance with EPA and ADEC regulations and procedures. Burying human waste is prohibited, except as authorized by the BLM Authorized Officer. The use of bear-resistant containers for all waste will be required.
- c. Disposal of pumpable waste products: Except as specifically provided, the BLM requires that all pumpable solid, liquid, and sludge waste be disposed of by injection, in accordance with the applicable regulations and procedures. On-pad temporary muds and cuttings storage, as approved by the ADEC, will be allowed as necessary to facilitate annular injection and backhaul operations.
- d. Disposal of wastewater and domestic wastewater: The BLM prohibits wastewater discharges or disposal of domestic wastewater into bodies of fresh, estuarine, and marine water, including wetlands, unless authorized by an Alaska Pollutant Discharge Elimination System or State permit.
- e. Prevention of the release of poly- and perfluoroalkyl substances: At facilities where fire-fighting foam is required, use fluorine-free foam unless other state or federal regulations require aqueous film-forming foam (AFFF) use. If AFFF use is required, contain, collect, treat, and properly dispose of all runoff, wastewater from training events, and, to the greatest extent possible, from any emergency response events. All discharges must be reported to the ADEC Spill Response Division, Contaminated Sites Program. Measures shall also be taken to fully inform workers/trainees of the potential health risks of fluorinated foams and to specify appropriate personal protective equipment to limit exposure during training and use. Training events shall be conducted in lined areas or basins to prevent the release of poly- and perfluoroalkyl substances associated with AFFF.

Required Operating Procedure 3

Objective: Minimize the impact of contaminants from refueling operations on fish, wildlife, and the environment.

Requirement/Standard: Refueling equipment within 100 feet of the active floodplain of any waterbody¹ is prohibited. Fuel storage stations will be located at least 100 feet from any waterbody, except for small caches (up to 210 gallons) for motorboats, float planes, and ski planes, and for small equipment, such as portable generators and water pumps. The BLM Authorized Officer may allow storage and operations at areas closer than the stated distances if properly designed and maintained to account for local hydrologic conditions.

Required Operating Procedure 4

Objective: Minimize conflicts from the interaction between humans and bears during oil and gas activities.

Requirement/Standard:

- a. Implement policies and procedures to conduct activities in a manner that minimizes adverse impacts on polar bears, their habitat, and their availability for subsistence uses.
- b. Implement adaptive management practices, such as temporal or spatial activity restrictions, in response to the presence of polar bears or polar bears engaged in a biologically significant activity; must be used to avoid interactions with and minimize impacts on them and their availability for subsistence uses.
- c. Cooperate with the USFWS and other designated federal, state, and local agencies to monitor and mitigate the impacts of Industry activities on polar bears.
- d. Designate trained and qualified personnel to monitor for the presence of polar bears, initiate mitigation measures, and monitor, record, and report the effects of Industry activities on polar bears.
- e. Provide polar bear awareness training to personnel.
- f. Contact affected subsistence communities and hunter organizations to discuss potential conflicts.
- g. Polar bears: The lessee/operator/contractor, as a part of lease operation planning, will prepare and implement polar bear interaction plans to minimize conflicts between polar bears and humans. These polar bear interaction plans will be developed in consultation with and approved by the USFWS and the Alaska Department of Fish and Game (ADFG). The plans will include specific measures identified by the USFWS for petroleum activities on the Coastal Plain, which may include updated measures and/or may include similar measures identified in the current USFWS Incidental Take Regulations (81 CFR 52318 §18.128) that have been promulgated and applied to petroleum activities to the west of the Coastal Plain. If the USFWS issues Incidental Take Regulations for petroleum activities in the Coastal Plain, those will be followed instead. These plans must include:
 - i. The type of activity and where and when the activity will occur (i.e., a plan of operation);
 - ii. A food, waste, and other “bear attractants” management plan;
 - iii. Personnel training policies, procedures, and materials;
 - iv. Site-specific polar bear interaction risk evaluation and mitigation measures;

¹For the purposes of this document, waterbody is defined as any feature included in the National Hydrography Dataset. This is a feature-based database that interconnects and uniquely identifies the stream segments or reaches that make up the nation’s surface water drainage system.

- v. Polar bear avoidance and encounter procedures; and
- vi. Polar bear observation and reporting procedures.
- h. Grizzly bears: The lessee/operator/contractor will prepare and implement a grizzly bear interaction plan as necessary, in consultation with and approved by the ADFG.

Required Operating Procedure 5

Objective: Reduce air quality impacts.

Requirement/Standard: All oil and gas operations (vehicles and equipment) that burn diesel fuels must use ultra-low sulfur diesel, as defined by the EPA.

Required Operating Procedure 6

Objective: Prevent unnecessary or undue degradation of the air and lands and protect health.

Requirement/Standard:

- a. All projects and permitted uses will comply with all applicable National Ambient Air Quality Standards (NAAQS) and Alaska Ambient Air Quality Standards (AAAQS) and ensure Air Quality Related Values are protected under the Clean Air Act or other applicable statutes.
- b. Prior to initiation of a NEPA analysis for an application to develop a CPF, production pad/well, airstrip, road, gas compressor station, or other potential air pollutant emission source (hereafter called project), the BLM Authorized Officer may require the project proponent to provide a minimum of 1 year of baseline ambient air monitoring data for pollutants of concern, as determined by the BLM. This will apply if no representative air monitoring data are available for the project area or if existing representative ambient air monitoring data are insufficient, incomplete, or do not meet minimum air monitoring standards set by the ADEC or the EPA. If the BLM determines that baseline monitoring is required, this pre-analysis data must meet ADEC and EPA air monitoring standards and cover the year before the submittal. Pre-project monitoring may not be appropriate where the life of the project is less than 1 year.
- c. For an application to develop a CPF, production pad/well, airstrip, road, gas compressor station, or other potential substantial air pollutant emission source:
 - i. The project proponent shall prepare and submit for BLM approval an emissions inventory that includes quantified emissions of regulated air pollutants from all direct and indirect sources related to the proposed project, including reasonably foreseeable air pollutant emissions of criteria air pollutants, VOCs, HAPs, and GHGs estimated for each year for the life of the project. The BLM uses this estimated emissions inventory to identify pollutants of concern and to determine the appropriate form of air analysis to be conducted for the proposed project.
 - ii. The BLM may require air quality modeling for purposes of analyzing project direct, indirect, or cumulative impacts on air quality. The BLM may require air quality modeling depending on:
 - a. The magnitude of potential air emissions from the project;
 - b. Proximity to a federally mandated Class I area;
 - c. Proximity to a population center;
 - d. Location within or proximity to a nonattainment or maintenance area;
 - e. Meteorological or geographic conditions;

- f. Existing air quality conditions;
- g. Magnitude of existing development in the area; or
- h. Issues identified during the NEPA process.

The BLM will determine the information required for a project-specific modeling analysis through the development of a modeling protocol for each analysis. The BLM will consult with appropriate federal (including federal land managers), state, and/or local agencies regarding modeling to inform its modeling decision and avoid duplication of effort. The modeling shall compare predicted impacts on all applicable local, state, and federal air quality standards and increments, as well as other scientifically defensible significance thresholds (such as impacts on air quality related values and incremental cancer risks).

- iii. The BLM may require the proponent to provide an emissions reduction plan that includes a detailed description of operator-committed measures to reduce project-related air pollutant emissions, including, but not limited to, criteria pollutants, GHGs, heavy metals, mercury, and fugitive dust.
- d. Air monitoring or air modeling reports will be provided to the BLM; federal land managers; federal, state, local community, or Tribal governments; and other interested parties, as appropriate.
- e. The BLM may require monitoring for the life of the project depending on:
 - i. The magnitude of potential air emissions from the project;
 - ii. Proximity to a federally mandated Class I area;
 - iii. Proximity to a population center;
 - iv. Location within or proximity to a nonattainment or maintenance area;
 - v. Meteorological or geographic conditions;
 - vi. Existing air quality conditions;
 - vii. Magnitude of existing development in the area; or
 - viii. Issues identified during the NEPA process.
- f. If ambient air monitoring or air quality modeling indicates that project-related emissions cause or contribute to impacts, unnecessary or undue degradation of the lands, exceedances of the NAAQS/AAAQS, or fails to protect health (either directly or through use of subsistence resources), then the BLM may require changes or additional emission control strategies. To reduce or minimize emissions from proposed activities, in order to comply with the NAAQS/AAAQS and/or minimize impacts on Air Quality Related Values, the BLM shall consider air quality mitigation measure(s) within its authority in addition to regulatory requirements and proponent-committed emission reduction measures, and also for emission sources not otherwise regulated by ADEC or EPA. Mitigation measures will be analyzed through the appropriate form of NEPA analysis to determine effectiveness. The BLM will consult with the federal land managers and other appropriate federal, state, and/or local agencies to determine potential mitigation options for any predicted significant impacts from the proposed project development.
- g. Publicly available reports on air quality baseline monitoring, emissions inventory, and modeling results developed in conformance with this ROP shall be provided by the project proponent to the NSB and to local communities and tribes in a timely manner.

WATER USE FOR PERMITTED ACTIVITIES

Required Operating Procedure 7—[Not applicable under Alternative B]

Required Operating Procedure 8

Objective: In flowing waters (rivers, springs, and streams), ensure water of sufficient quality and quantity to conserve fish, waterbirds, and wildlife populations and habitats in their natural diversity.

Requirement/Standard: Withdrawal of unfrozen water from springs, rivers, and streams during winter (onset of freeze-up to break-up) is prohibited. The removal of ice aggregate from grounded areas 4 feet deep or less may be authorized from rivers on a site-specific basis.

Required Operating Procedure 9

Objective: Maintain natural hydrologic regimes in soils surrounding lakes and ponds, and maintain populations of, and adequate habitat for, fish, birds, and aquatic invertebrates.

Requirement/Standard: Withdrawal of unfrozen water from lakes and the removal of ice aggregate from grounded areas 4 feet deep or less during winter (onset of freeze up to breakup) and withdrawal of water from lakes during the summer may be authorized on a site-specific basis, depending on water volume and depth, the fish community, and connectivity to other lakes or streams and adjacent bird nesting sites. Current water use guidelines are as follows:

Winter Water Use

- a. Lakes with fish except ninespine stickleback or Alaska blackfish: unfrozen water available for withdrawal is limited to 15 percent of calculated volume deeper than 7 feet; only ice aggregate may be removed from lakes that are 7 feet deep or less.
- b. Lakes with only ninespine stickleback or Alaska blackfish: unfrozen water available for withdrawal is limited to 30 percent of calculated volume deeper than 5 feet; only ice aggregate may be removed from lakes that are 5 feet deep or less.
- c. Lakes with no fish, regardless of depth: water available for use is limited to 20 percent of total lake volume.
- d. In lakes where unfrozen water and ice aggregate are both removed, the total use will not exceed the respective 15 percent, 20 percent, or 30 percent volume calculations above, unless recharge calculations, river overbank flooding, or a connection to a stream or river indicate recharge will replenish full water withdrawal plus additional ice aggregate withdrawal amounts above these limits.
- e. Compacting snow cover or removing snow from fish-bearing waterbodies will be prohibited, except at approved ice road crossings, water pumping stations on lakes, or areas of grounded ice.

Summer Water Use

- f. Requests for summer water use must be made separately, and the volume allowance will be evaluated on a case-by-case basis. Approval from the BLM Authorized Officer is required.

All Water Use

- g. Any water intake structures in fish-bearing or non-fish-bearing waters will be designed, operated, and maintained to prevent fish entrapment, entrainment, or injury. Note: All water withdrawal equipment must be equipped with and use fish screening devices approved by the ADFG, Division of Habitat.
- h. Additional modeling or monitoring may be required to assess water level and water quality conditions before, during, and after water use from any fish-bearing lake or lake of special concern

WINTER OVERLAND MOVES AND SEISMIC WORK

The following ROPs apply to overland and over-ice moves, seismic work, and any similar cross-country vehicle use and heavy equipment on surfaces without roads during winter. These restrictions do not apply to the use of such equipment on ice roads after they are constructed.

Required Operating Procedure 10

Objective: Protect grizzly bear, polar bear, and seal denning and birthing locations.

Requirement/Standard:

- a. Grizzly bear dens: Cross-country use of all vehicles, equipment, and oil and gas activity is prohibited within 0.5 miles of occupied grizzly bear dens identified by the ADFG or the USFWS, unless alternative protective measures are approved by the BLM Authorized Officer, in consultation with the ADFG.
- b. Polar bear dens: Cross-country use of vehicles, equipment, oil and gas activity, and seismic survey activity is prohibited within 1 mile of known or observed polar bear dens, unless alternative protective measures are approved by the BLM Authorized Officer and are consistent with the MMPA and the ESA.

Polar bear and seal mitigation measures for onshore activities.

- c. In order to limit disturbance around known polar bear dens:
 - i. Attempt to locate polar bear dens. Operators seeking to carry out onshore activities in known or suspected polar bear denning habitat during the denning season (approximately November–April) must make efforts to locate occupied polar bear dens within and near areas of operation, utilizing appropriate tools, such as infrared imagery and/or polar bear scent-trained dogs. All observed or suspected polar bear dens must be reported to the USFWS prior to the initiation of activities.
 - ii. Observe the exclusion zone around known polar bear dens. Operators must observe a 1.6-kilometer (km) (1-mile) operational exclusion zone around all known polar bear dens during the denning season (approximately November–April, or until the female and cubs leave the areas). Should previously unknown occupied dens be discovered within 1 mile of activities, work must cease and the USFWS contacted for guidance. The USFWS will evaluate these instances on a case-by-case basis to recommend the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the authorization must comply with any additional measures specified.

- iii. Use the den habitat map developed by the U.S. Geological Survey. This measure ensures that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.
- iv. Polar bear den restrictions. Restrict the timing of the activity to limit disturbance around dens.
- d. In order to limit disturbance of activities to seal lairs in the nearshore area (<3 meters) water depth:

Specific to seismic operations:

- v. Before the seismic survey begins, the operator will conduct a sound source verification test to measure the distance of vibroseis sound levels through grounded ice to the 120 decibels (dB) re 1 μ Pa threshold in open water and water within ungrounded ice. Once that distance is determined, it will be shared with the BLM and National Marine Fisheries Service (NMFS). The distance will be used to buffer all on-ice seismic survey activity operations from any open water or ungrounded ice throughout the project area. The operator will draft a formal study proposal that will be submitted to the BLM and NMFS for review and approval before the activity begins.

For all activities:

- vi. Maintain airborne sound levels of equipment below 100 dB re 20 μ Pa at 66 feet. If different equipment will be used than was originally proposed, the applicant must inform the BLM Authorized Officer and share sound levels and air and water attenuation information for the new equipment.
- vii. On-ice operations after May 1 will employ a full-time trained protected species observer (PSO) on vehicles to ensure all basking seals are avoided by vehicles by at least 500 feet and will ensure that all equipment with airborne noise levels above 100 dB re 20 μ Pa were operating at distances from observed seals that allowed for the attenuation of noise to levels below 100 dB. All sightings of seals will be reported to the BLM using a NMFS-approved observation form.
- viii. Ice paths must not be greater than 12 feet wide. No driving beyond the shoulder of the ice path or off planned routes unless necessary to avoid ungrounded ice or for other human or marine mammal safety reasons. On-ice driving routes shall minimize travel over snow/ice/topographical features that lead to birthing lair development.
- ix. No unnecessary equipment or operations (e.g., camps) will be placed or used on sea ice.

Required Operating Procedure 11

Objective: Protect stream banks and freshwater sources, minimize soils compaction and the breakage, abrasion, compaction, or displacement of vegetation.

Requirement/Standard:

- a. Ground operation will be allowed when soil temperatures at 12 inches below the tundra surface (defined as the top of the organic layer) reaches 23 degrees Fahrenheit ($^{\circ}$ F) and snow depths are an average of 9 inches, or 3 inches over the highest tussocks along the line of vehicle travel. Ground operations will cease when the spring snowmelt begins. The dates will be determined by the BLM Authorized Officer.
- b. Low ground pressure vehicles used for off-road travel will be defined by the BLM Authorized Officer. These vehicles will be selected and operated in a manner that eliminates direct impacts on

the tundra caused by shearing, scraping, or excessively compacting the tundra. **Note:** This provision does not include the use of heavy equipment required during ice road construction; however, heavy equipment will not be allowed on the tundra until conditions in “a,” above, are met.

- c. Bulldozing tundra mat and vegetation, trails, or seismic lines is prohibited. Clearing or smoothing drifted snow is allowed to the extent that the tundra mat is not disturbed. Only smooth pipe snow drags will be allowed for smoothing drifted snow.
- d. To reduce the possibility of excessive compaction, vehicle operators will avoid using the same routes for multiple trips, unless necessitated by serious safety or environmental concerns and approved by the BLM Authorized Officer. This provision does not apply to hardened snow trails or ice roads.
- e. Ice roads will be designed and located to avoid the most sensitive and easily damaged tundra types as much as practicable. Ice roads may not use the same route each year; offsets may be required to avoid using the same route or track in subsequent years.
- f. Conventional ice road construction may not begin until off-road travel conditions are met (as described in “a,” above) within the ice road route and approval to begin construction is given by the BLM Authorized Officer.
- g. Snow fences may be used in areas of low snow to increase snow depths within an ice road or snow trail route. Excess snow accumulated by snow fences must be excavated or pushed to decrease snow depths to that found in surrounding tundra at the end of road use.
- h. Seismic operations and winter overland travel may be monitored by agency representatives, and the operator may be required to accommodate the representative during operations.
- i. Incidents of damage to the tundra will be reported to the BLM Authorized Officer within 72 hours of occurrence. Follow-up corrective actions will be determined in consultation with and approved by the BLM Authorized Officer.

Required Operating Procedure 12—[Not applicable under Alternative B]

Required Operating Procedure 13

Objective: Avoid additional freeze-down of aquatic habitat harboring overwintering fish and aquatic invertebrates that fish prey on.

Requirement/Standard: Travel up and down streambeds is prohibited unless it can be demonstrated that there will be no additional impacts from such travel on overwintering fish, the aquatic invertebrates they prey on, and water quality. Rivers, streams, and lakes will be crossed at areas of grounded ice or with the approval of the BLM Authorized Officer and when it has been demonstrated that no additional impacts will occur on fish or aquatic invertebrates.

Required Operating Procedure 14

Objective: Minimize the effects of high-intensity acoustic energy from seismic surveys on fish.

Requirement/Standard: When conducting vibroseis-based surveys above potential fish overwintering areas (water 6 feet deep or greater, ice plus liquid depth), lessees/operators/contractors will follow recommendations by Morris and Winters (2005):² only a single set of vibroseis shots will be conducted if possible; if multiple

²W. Morris and J. Winters. 2005. Fish Behavioral and Physical Responses to Vibroseis Noise, Prudhoe Bay, Alaska 2003. Alaska Department of Fish and Game Technical Report 05-02. March 2005.

shot locations are required, these will be conducted with minimal delay; multiple days of vibroseis activity above the same overwintering area will be avoided, if possible.

Required Operating Procedure 15

Objective: Reduce changes in snow distribution associated with the use of snow fences to protect water quantity and wildlife habitat, including snow drifts used by denning polar bears.

Requirement/Standard: The use of snow fences to reduce or increase snow depth requires permitting by the BLM Authorized Officer.

Oil and Gas Exploratory Drilling

Required Operating Procedure 16

Objective: Protect water quality in fish-bearing waterbodies and minimize alteration of riparian habitat.

Requirement/Standard: Exploratory drilling is prohibited in fish-bearing rivers and streams and other fish-bearing waterbodies. On a case-by-case basis, the BLM Authorized Officer may consider exploratory drilling in floodplains of fish-bearing rivers and streams.

Required Operating Procedure 17

Objective: Minimize surface impacts from exploratory drilling.

Requirement/Standard: Construction of gravel roads and pads will be prohibited for exploratory drilling. Use of a previously constructed road or pad may be permitted if it is environmentally preferred.

Required Operating Procedure 18

Objective: Protect subsistence use and access to subsistence hunting and fishing areas.

Requirement/Standard: All roads must be designed, constructed, maintained, and operated to create minimal environmental impacts and to avoid or minimize impacts on subsistence use and access to subsistence hunting and fishing areas. The BLM Authorized Officer will consult with appropriate entities before approving construction of roads. Subject to approval by the BLM Authorized Officer, the construction, operation, and maintenance of oil and gas field roads is the responsibility of the lessee/operator/contractor, unless the construction, operation, and maintenance of roads are assumed by the appropriate governing entity.

Required Operating Procedure 19

Objective: Protect water quality and the diversity of fish, aquatic invertebrates, and wildlife populations and habitats.

Requirement/Standard:

- a. Permanent oil and gas facilities, including roads, airstrips, and pipelines, are prohibited within 500 feet, as measured from the ordinary high-water mark, of fish-bearing waterbodies, unless further setbacks are stipulated under **Lease Stipulations 1, 2, or 3**. Pipeline and road crossings will be permitted by the BLM Authorized Officer in accordance with PL 115-97, following coordination with the appropriate entities. Temporary winter exploration and construction camps are prohibited on frozen lakes and river ice.

- b. Siting temporary winter exploration and construction camps on river sand and gravel bars is allowed and encouraged. Where trailers or modules must be leveled and the surface is vegetation, they will be leveled using blocking in a way that preserves the vegetation.

Required Operating Procedure 20

Objective: Maintain free passage of marine and anadromous fish, protect subsistence use and access to subsistence hunting and fishing and anadromous fish, and protect subsistence use and access to subsistence and non-subsistence hunting and fishing.

Requirement/Standard:

- a. Causeways and docks are prohibited in river mouths and deltas. Artificial gravel islands and permanent bottom-founded structures are prohibited in river mouths and active stream channels on river deltas.
- b. Causeways, docks, artificial islands, and bottom-founded drilling structures will be designed to ensure free passage of marine and anadromous fish and to prevent significant changes to nearshore oceanographic circulation patterns and water quality characteristics. A monitoring program, developed in coordination with appropriate entities (e.g., USFWS, NMFS, State of Alaska, or NSB), will be required to address the objectives of water quality and free passage of fish.

Required Operating Procedure 21

Objective: Minimize impacts of the development footprint.

Requirement/Standard: Facilities will be designed and located to minimize the development footprint and impacts on other purposes of the Arctic Refuge. Issues and methods that are to be considered, as appropriate, are as follows:

- a. Using extended-reach drilling for production drilling to minimize the number of pads and the network of roads between pads;
- b. Sharing facilities with existing development;
- c. Collocating all oil and gas facilities with drill pads, except airstrips, docks, base camps, and STPs;
- d. Using gravel-reduction technologies, e.g., insulated or pile-supported pads;
- e. Using approved impermeable liners under gravel infrastructure to minimize the potential for hydrocarbon and other hazardous materials spills to migrate to underlying ground;
- f. Harvesting the tundra organic layer within gravel pad footprints for use in rehabilitation;
- g. Coordinating facilities with infrastructure in support of adjacent development;
- h. Locating facilities and other infrastructure outside areas identified as important for wildlife habitat, subsistence uses, and recreation;
- i. Where aircraft traffic is a concern, balancing gravel pad size and available supply storage capacity with potential reductions in the use of aircraft to support oil and gas operations;
- j. Facilities and infrastructure will be designed to minimize alteration of sheet flow/overland flow; and
- k. Where gravel is brought in from outside of the Coastal Plain, require the use of certified weed-free gravel.

Required Operating Procedure 22

Objective: Reduce the potential for ice-jam flooding, damage from aufeis, impacts on wetlands and floodplains, erosion, alteration of natural drainage patterns, and restriction of fish passage.

Requirement/Standard:

- a. To allow for sheet flow and floodplain dynamics and to ensure passage of fish and other organisms, single-span bridges are preferred over culverts, if technically feasible. When necessary, culverts can be constructed on smaller streams, if they are large enough to avoid restricting fish passage or adversely affecting natural stream flow.
- b. To ensure that crossings provide for fish passage, all proposed crossing designs will adhere to the best management practices outlined in Fish Passage Design Guidelines, developed by the USFWS Alaska Fish Passage Program, McDonald & Associates (1994),³ Stream Simulation: An Ecological Approach to Providing Passage for Aquatic Organisms at Road-Stream Crossings (USFS 2008),⁴ and other generally accepted best management procedures prescribed by the BLM Authorized Officer, in consultation with the USFWS.
- c. In addition to the best management practices outlined in the aforementioned documents for stream simulation design, the design engineer will ensure that crossing structures are designed for aufeis, permafrost, sheet flow, additional freeboard during breakup, and other unique conditions of the arctic environment.

Required Operating Procedure 23

Objective: Minimize disruption of caribou movement and subsistence use.

Requirement/Standard: Pipelines and roads will be designed to allow the free movement of caribou and the safe, unimpeded passage of those participating in subsistence activities. Listed below are the accepted design practices.

- a. Aboveground pipelines will be elevated a minimum of 7 feet, as measured from the ground to the bottom of the pipeline at vertical support members (VSMs).
- b. In areas where facilities or terrain would funnel caribou movement or impede subsistence or public access, ramps of appropriate angle and design over pipelines, buried pipelines, or pipelines buried under roads may be required by the BLM Authorized Officer, in coordination with the appropriate entity.
- c. A minimum distance of 500 feet between pipelines and roads will be maintained. Where it is not feasible, alternative pipeline routes, designs, and possible burial under the road for pipeline road crossings will be considered by the BLM Authorized Officer.
- d. Aboveground pipelines will have a nonreflective finish.

³G. N. McDonald & Associates. 1994. Stream Crossing Design Procedure for Fish Streams on the North Slope Coastal Plain. Prepared by G. N. McDonald & Associates, Anchorage, Alaska. Prepared for BP Exploration (Alaska) Inc., Anchorage, Alaska, and Alaska Department of Environmental Conservation, Juneau.

⁴U.S. Forest Service. 2008. Stream Simulation: An Ecological Approach to Providing Passage for Aquatic Organisms at Road-Stream Crossings. U.S. Department of Agriculture, Forest Service National Technology and Development Program. 7700—Transportation Management 0877 1801—SDTDC. San Dimas, California.

- e. When laying out oil and gas field developments, lessees will orient infrastructure to avoid impeding caribou migration and to avoid corralling effects.
- f. Before the construction of permanent facilities is authorized, the lessee will design and implement and report a study of caribou movement, unless an acceptable study specific to the PCH and CAH has been completed within the last 10 years and approved by the BLM Authorized Officer.
- g. A vehicle use management plan will be developed by the lessee/operator/contractor and approved by the BLM Authorized Officer, in consultation with the appropriate federal, state, and NSB regulatory and resource agencies. The management plan will minimize or mitigate displacement during calving and would avoid, to the extent feasible, delays to caribou movements and vehicle collisions during the midsummer insect season, with traffic management following industry practices. By direction of the BLM Authorized Officer, traffic may be stopped throughout a defined area for up to 4 weeks, to prevent displacement of calving caribou. If required, a monitoring plan can include collection of data on vehicle counts and caribou interaction.

Required Operating Procedure 24

Objective: Minimize the impact of mineral materials mining on air, land, water, fish, and wildlife resources.

Requirement/Standard: Gravel mine site design, construction, and reclamation will be done in accordance with a plan approved by the BLM Authorized Officer. The plan will take into consideration the following:

- a. Locations inside or outside the active floodplain, depending on potential site-specific impacts;
- b. Design and construction of gravel mine sites in active floodplains to serve as water reservoirs for future use;
- c. Potential use of the site for enhancing fish and wildlife habitat; and
- d. Potential storage and reuse of sod/overburden for the mine site or at other disturbed sites on the North Slope.

Required Operating Procedure 25

Objective: Avoid human-caused changes in predator populations on ground-nesting birds.

Requirement/Standard:

- a. Lessee/operator/contractor will use best available technology to prevent facilities from providing nesting, denning, or shelter sites for ravens, raptors, and foxes. The lessee/operator/contractor will provide the BLM Authorized Officer with an annual report on the use of oil and gas facilities by ravens, raptors, and foxes as nesting, denning, and shelter sites.
- b. Feeding of wildlife and allowing wildlife to access human food or odor-emitting waste is prohibited.

Required Operating Procedure 26

Objective: Reduction of risk of attraction and collisions between migrating birds and oil and gas and related facilities during low light conditions.

Requirement/Standard: All structures will be designed to direct artificial exterior lighting, from August 1 to October 31, inward and downward, rather than upward and outward, unless otherwise required by the Federal Aviation Administration.

Required Operating Procedure 27

Objective: Minimize the impacts on bird species from direct interaction with oil and gas facilities.

Requirement/Standard:

- a. To reduce the possibility of birds colliding with aboveground utility lines (power and communication), such lines will either be buried in access roads or will be suspended on VSMS, except in rare cases, limited in extent. Exceptions are limited to the following situations:
 - i. Overhead power or communication lines may be allowed when located entirely within the boundaries of a facility pad;
 - ii. Overhead power or communication lines may be allowed when engineering constraints at the specific and limited location make it infeasible to bury or connect the lines to a VSM; or
 - iii. Overhead power or communication lines may be allowed in situations when human safety would be compromised by other methods.

If exceptions are granted allowing overhead wires, overhead wires will be clearly marked along their entire length to improve visibility to low-flying birds. Such markings will be developed through consultation with the USFWS.

- b. To reduce the likelihood of birds colliding with them, communication towers will be located, to the extent practicable, on existing pads and as close as possible to buildings or other structures and on the east or west side of buildings or other structures. Towers will be designed to reduce bird strikes and raptor nesting. Support wires associated with communication towers, radio antennas, and other similar facilities, will be avoided to the extent practicable. If support wires are necessary, they will be clearly marked along their entire length to improve visibility to low-flying birds. Such markings will be developed through consultation with the USFWS.

Required Operating Procedure 28

Objective: Use ecological mapping as a tool to assess wildlife habitat before developing permanent facilities to conserve important habitat types.

Requirement/Standard: An ecological land classification map of the area will be developed before approval of facility construction. The map will integrate geomorphology, surface form, and vegetation at a scale and level of resolution and position accuracy adequate for detailed analysis of development alternatives. The map will be prepared in time to plan an adequate number of seasons of ground-based wildlife surveys needed, if deemed necessary by the BLM Authorized Officer, before the exact facility location and facility construction is approved.

Required Operating Procedure 29

Objective: Protect cultural and paleontological resources.

Requirement/Standard: The lessee/operator/contractor will conduct a cultural and paleontological resources survey before any ground-disturbing activity, based on a study designed by the lessee/operator/contractor and approved by the BLM Authorized Officer. If any potential cultural or paleontological resource is found, the lessee/operator/contractor will notify the BLM Authorized Officer and will suspend all operations in the immediate area until she or he issues a written authorization to proceed.

Required Operating Procedure 30

Objective: Prevent or minimize the loss of nesting habitat for cliff-nesting raptors.

Requirement/Standard:

- a. Removing greater than 100 cubic yards of bedrock outcrops, sand, or gravel from cliffs shall be prohibited.
- b. Any extraction of sand or gravel from an active river or stream channel will be prohibited, unless preceded by a hydrological study that indicates no potential impact on the integrity of the river bluffs.

Required Operating Procedure 31

Objective: Prevent or minimize the loss of raptors due to electrocution by power lines.

Requirement/Standard: Comply with the most up-to-date, industry-accepted, suggested practices for raptor protection on power lines. Current accepted standards were published in *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*, by the Avian Power Line Interaction Committee (APLIC 2012)⁵ and are updated as needed.

Required Operating Procedure 32

Objective: Avoid and reduce temporary impacts on productivity from disturbance near Steller's or spectacled eider nests.

Requirement/Standard: Ground-level vehicle or foot traffic within 200 meters (656 feet) of occupied Steller's or spectacled eider nests, from June 1 through July 31, will be restricted to existing thoroughfares, such as pads and roads. Construction of permanent facilities, placement of fill, alteration of habitat, and introduction of high noise levels within 200 meters (656 feet) of occupied Steller's or spectacled eider nests will be prohibited. Between June 1 and August 15, support/construction activity must occur off existing thoroughfares, and USFWS-approved nest surveys must be conducted during mid-June before the activity is approved.

Collected data will be used to evaluate whether the action could occur based on a 200-meter (656-foot) buffer around nests or if the activity will be delayed until after mid-August once ducklings are mobile and have left the nest site.

The BLM will also work with the USFWS to conduct nest surveys or oil spill response training in riverine, marine, and intertidal areas that is within 200 meters (656 feet) of shore outside sensitive nesting/brood-rearing periods. The protocol and timing of nest surveys for Steller's or spectacled eiders will be determined in cooperation with and must be approved by the USFWS. Surveys will be supervised by biologists who have previous experience with Steller's or spectacled eider nest surveys.

Required Operating Procedure 33

Objective: Provide information to be used in monitoring and assessing wildlife movements during and after construction.

⁵Avian Power Line Interaction Committee. 2012. *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*. Edison Electric Institute and APLIC. Washington, DC.

Requirement/Standard: A representation, in the form of ArcGIS-compatible shapefiles, of the footprint of all new infrastructure construction will be provided to the BLM Authorized Officer, the USFWS Arctic Refuge Manager, State of Alaska, and NSB by the operator. During the planning and permitting phase, GIS shape files representing proposed footprint locations will be provided. Within 6 months of construction completion, shapefiles of all new infrastructure footprints will be provided.

Infrastructure includes all gravel roads and pads, facilities built on pads, pipelines, and independently constructed power lines (as opposed to those incorporated in pipeline design). Gravel pads will be included as polygon features. Roads, pipelines, and power lines may be represented as line features but must include ancillary data to denote such data as width and number of pipes. Poles for power lines may be represented as point features. Ancillary data will include construction beginning and ending dates.

USE OF AIRCRAFT FOR PERMITTED ACTIVITIES

Required Operating Procedure 34

Objective: Minimize the effects of low-flying aircraft on wildlife, subsistence activities, local communities, and recreationists of the area, including hunters and anglers.

Requirement/Standard: The operator will ensure that operators of aircraft used for permitted oil and gas activities and associated studies maintain altitudes according to the following guidelines (**Note:** This ROP is not intended to restrict flights necessary to survey wildlife to gain information necessary to meet the stated objectives of the lease stipulations and ROPs; however, such flights will be restricted to the minimum necessary to collect such data and should consider other technologies, such as remote sensing and drones, in order to minimize impacts from aircraft):

- a. Land users will submit an aircraft use plan as part of an oil and gas exploration or development proposal, which includes a plan to monitor flights and includes a reporting system for subsistence hunters to easily report flights that disturb subsistence harvest. The plan will address strategies to minimize impacts on subsistence hunting and associated activities, including the number of flights, type of aircraft, and flight altitudes and routes, and will also include a plan to monitor flights. Proposed aircraft use plans will be reviewed by the appropriate Alaska Native or subsistence organization. Consultations with these same agencies will be required if unacceptable disturbance is identified by subsistence users. Adjustments, including possible suspension of all flights, may be required by the BLM Authorized Officer, if resulting disturbance is determined to be unacceptable. The number of takeoffs and landings to support oil and gas operations with necessary materials and supplies will be limited to the maximum extent practical.
- b. Use of aircraft, especially rotary wing aircraft, will be kept to a minimum near known subsistence camps and cabins or during sensitive subsistence hunting periods (e.g., spring goose hunting and summer caribou) and when recreationists are present.
- c. Operators of aircraft used for permitted activities will maintain an altitude of at least 1,500 feet above ground level (except for takeoffs and landings) within 0.5 miles of cliffs identified as raptor nesting sites, and over caribou calving range, unless doing so would endanger human life or violate safe flying practices. An exception to flight altitudes may be approved by the Authorized Officer after coordination and review of the aircraft use plan to accommodate requirements to fly lower for some required activities (e.g., archaeological clearance).
- d. Minimize the number of helicopter landings in caribou calving ranges from May 20 through June 20.

- e. Pursuing running wildlife is hazing. Hazing wildlife by aircraft pilots is prohibited, unless otherwise authorized. If wildlife begins to run as an aircraft approaches, the aircraft is too close, and the operator must break away.
- f. Avoid operation of aircraft over snow goose staging areas between August 15 and September 30. Necessary overflights during this timeframe shall avoid areas of heavy snow goose concentrations.
- g. When polar bears are present:
 - i. Operators of support aircraft shall conduct their activities at the maximum distance possible from concentrations of polar bears.
 - ii. Aircraft will not operate at an altitude lower than 457 meters (1,500 feet) within 805 meters (0.5 miles) of polar bears observed on ice or land. Helicopters may not hover or circle above such areas or within 805 meters (0.5 miles) of such areas. When weather conditions do not allow a 457-meter (1,500-foot) flying altitude, operators will take precautions to avoid flying directly over or within 805 meters (0.5 miles) of these areas.
 - iii. Plan all aircraft routes to minimize any potential conflict with known subsistence polar bear hunting activity.

Oil and Gas Field Abandonment

Required Operating Procedure 35

Objective: Ensure ongoing and long-term reclamation of land to its previous condition and use.

Requirement/Standard: Before final abandonment, land used for oil and gas infrastructure—including well pads, production facilities, access roads, and airstrips—will be reclaimed. The leaseholder will develop and implement a BLM-approved abandonment and reclamation plan. The plan will describe short-term stability, visual, hydrological, and productivity objectives and steps to be taken to ensure eventual rehabilitation to the land's previous hydrological, vegetation, and habitat functions. The BLM Authorized Officer may grant exceptions to satisfy stated environmental or public purposes.

Subsistence Consultation for Permitted Activities

Required Operating Procedure 36

Objective: Provide opportunities for subsistence users to participate in planning and decision-making to prevent unreasonable conflicts between subsistence uses and other activities.

Requirement/Standard: The lessee/operator/contractor will coordinate directly with affected communities, using the following guidelines:

- a. Before submitting an application to the BLM, the applicant will work with directly affected subsistence communities, the Native Village of Kaktovik, NSB, and the North Slope and Eastern Interior Alaska Subsistence Regional Advisory Councils. They will discuss the siting, timing, and methods of their proposed operations to help discover local traditional and scientific knowledge. This is to minimize impacts on subsistence uses. Through this coordination, the applicant will make every reasonable effort, including such mechanisms as conflict avoidance agreements and mitigating measures, to ensure that proposed activities will not result in unreasonable interference with subsistence activities. In the event that no agreement is reached between the parties, the BLM

Authorized Officer will work with the involved parties and determine which activities would occur, including the time frames.

- b. Applicants will submit documentation of coordination as part of operation plans to the North Slope and Eastern Interior Alaska Subsistence Regional Advisory Councils for review and comment. Applicants must allow time for the BLM to conduct formal government-to-government consultation with Native Tribal governments if the proposed action requires it.
- c. A plan will be developed that shows how the activity, in combination with other activities in the area, will be scheduled and located to prevent unreasonable conflicts with subsistence activities. The plan will also describe the methods used to monitor the effects of the activity on subsistence use. The plan will be submitted to the BLM Authorized Officer as part of the plan of operations. The plan will address the following items:
 - i. A detailed description of the activities to take place (including the use of aircraft);
 - ii. A description of how the applicant will minimize or address any potential impacts identified by the BLM Authorized Officer during the coordination process;
 - iii. A detailed description of the monitoring to take place, including process, procedures, personnel involved, and points of contact both at the work site and in the local community;
 - iv. Communication elements to provide information on how the applicant will keep potentially affected individuals and communities up-to-date on the progress of the activities and locations of possible, short-term conflicts (if any) with subsistence activities; communication methods can include holding community open house meetings, workshops, newsletters, and radio and television announcements;
 - v. Procedures necessary to facilitate access by subsistence users to conduct their activities;
 - vi. Barge operators requiring a BLM permit are required to demonstrate that barging activities will not have unmitigable adverse impacts, as determined by NMFS, on the availability of marine mammals to subsistence hunters; and
 - vii. All operators of vessels over 50 feet in length engaged in operations requiring a BLM permit must have an automatic identification system transponder system on the vessel.
- d. Permittees who propose transporting facilities, equipment, supplies, or other materials by barge to the Coastal Plain in support of oil and gas activities in the Arctic Refuge will notify and coordinate with the Alaska Eskimo Whaling Commission, the appropriate local community whaling captains' associations, and the NSB to minimize impacts from the proposed barging on subsistence whaling.
- e. For polar bears:

Operators must minimize adverse impacts on the availability of polar bears for subsistence uses.

 - viii. Community consultation. Applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence polar bear hunting caused by the location, timing, and methods of operations and support activities.
 - ix. Plan of Cooperation (POC). If conflicts arise, the applicant must address conflict avoidance issues through a POC, where an operator will be required to develop and implement a USFWS-approved POC.

Required Operating Procedure 37

Objective: Avoid conflicts between subsistence activities and seismic exploration.

Requirement/Standard: In addition to the coordination process described in **ROP 36** for permitted activities, before seismic exploration begins, applicants will notify the local search and rescue organizations in proposed seismic survey locations for that operational season. For the purpose of this standard, a potentially affected cabin or campsite is defined as one used for subsistence purposes and located within the boundary of the area subject to proposed geophysical exploration or within 1 mile of actual or planned travel routes used to supply the seismic operations.

- a. Because of the large land area covered by typical geophysical operations and the potential to affect a large number of subsistence users during the exploration season, the permittee/operator will notify all potentially affected subsistence use cabin and campsite users.
- b. The official recognized list of subsistence users of cabins and campsites is the NSB's most current inventory of cabins and campsites, which have been identified by the subsistence users' names.
- c. A copy of the notification letter, a map of the proposed exploration area, and the list of potentially affected users will also be provided to the office of the appropriate Native Tribal government.
- d. The BLM Authorized Officer will prohibit seismic work within 1 mile of any known subsistence use cabin or campsite, unless an alternate agreement between the owner or user is reached through the consultation process and presented to the BLM Authorized Officer.
- e. Each week, the permittee will notify the appropriate local search and rescue of the operational location in the Coastal Plain. This notification will include a map indicating the extent of surface use and occupation, as well as areas previously used or occupied during the operation. The purpose of this notification is to give hunters up-to-date information regarding where seismic exploration is occurring and has occurred, so that they can plan their hunting trips and access routes accordingly. A list of the appropriate search and rescue offices to be contacted can be obtained from the coordinator of the North Slope and Eastern Interior Alaska Subsistence Regional Advisory Councils in the BLM's Arctic District Office.

Required Operating Procedure 38

Objective: Minimize impacts from non-local hunting, trapping, and fishing activities on subsistence resources.

Requirement/Standard: Hunting, trapping, and fishing by lessees/operators/contractors are prohibited when persons are on work status. This is defined as the period during which an individual is under the control and supervision of an employer. Work status is terminated when workers' shifts ends, and they return to a public airport or community (e.g., Kaktovik, Utqiagvik, or Deadhorse). Use of operator/permittee facilities, equipment, or transport for personnel access or aid in hunting, trapping, and fishing is prohibited.

Required Operating Procedure 39

Objective: Prevent disruption of subsistence use and access.

Requirement/Standard: Before starting exploration or development, lessees/operators/contractors are required to develop a subsistence access plan, in coordination with the Native Village of Kaktovik and the City of Kaktovik, to be approved by the BLM Authorized Officer.

ORIENTATION PROGRAMS ASSOCIATED WITH PERMITTED ACTIVITIES

Required Operating Procedure 40

Objective: Minimize cultural and resource conflicts.

Requirement/Standard: All personnel involved in oil and gas and related activities will be provided with information concerning applicable lease stipulations, ROPs, standards, and specific types of environmental, social, traditional, and cultural concerns that relate to the region. The operator will ensure that all personnel involved in permitted activities will attend an orientation program at least once a year. The proposed orientation program will be submitted to the BLM Authorized Officer for review and approval and will accomplish the following:

- a. Provide sufficient detail to notify personnel of applicable lease stipulations and ROPs and to inform individuals working on the project of specific types of environmental, social, traditional, and cultural concerns that relate to the region.
- b. Address the importance of not disturbing archaeological and biological resources and habitats, including endangered species, fisheries, bird colonies, and marine mammals, and provide guidance on how to avoid disturbance, including on the preparation, production, and distribution of information cards on endangered or threatened species.
- c. Be designed to increase sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which personnel would be operating.
- d. Include information concerning avoidance of conflicts with subsistence and pertinent mitigation.
- e. Include information for aircraft personnel concerning subsistence activities and areas and seasons that are particularly sensitive to disturbance by low-flying aircraft; of special concern is aircraft use near traditional subsistence cabins and campsites, flights during spring goose hunting and fall caribou and moose hunting seasons, and flights near potentially affected communities.
- f. Provide that individual training is transferable from one facility to another, except for elements of the training specific to a site.
- g. Include on-site records of all personnel who attend the program for so long as the site is active, though not to exceed the 5 most recent years of operations; this record will include the name and dates of attendance of each attendee.
- h. Include a module discussing bear interaction plans to minimize conflicts between bears and humans.
- i. Provide a copy of 43 CFR 3163 regarding noncompliance assessment and penalties to on-site personnel.
- j. Include training designed to ensure strict compliance with local and corporate drug and alcohol policies; this training will be offered to the NSB Health Department for review and comment.
- k. Include employee training on how to prevent transmission of communicable diseases, including sexually transmitted diseases, to the local communities; this training will be offered to the NSB Health Department for review and comment.

In order to limit disturbance around known polar bear dens:

Monitoring requirements.

- a. Develop and implement a site-specific, USFWS-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on polar bears, and the subsistence use of this species.
- b. Provide trained, qualified, and USFWS-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.
- c. For offshore activities, provide trained, qualified, and USFWS-approved observers on board all operational and support vessels to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.
- d. Cooperate with the USFWS and other designated federal, state, and local agencies to monitor the impacts of Industry activities on polar bears. Where information is insufficient to evaluate the potential effects of activities on polar bears, and the subsistence use of this species, operators may be required to participate in joint monitoring and/or research efforts to address these information needs and ensure the least practicable impact on these resources.

Reporting requirements. Operators must report the results of monitoring and mitigation activities to the USFWS.

- a. In-season monitoring reports
 - i. Activity progress reports. Notify the USFWS at least 48 hours prior to the onset of activities; provide the USFWS weekly progress reports of any significant changes in activities and/or locations; and notify the USFWS within 48 hours after ending of activities.
 - ii. Polar bear observation reports. Report all observations of polar bears and potential polar bear dens, during any Industry activity. Information in the observation report must include, but is not limited to: (1) Date, time, and location of observation; (2) Number of bears; (3) Sex and age; (4) Observer name and contact information; (5) Weather, visibility, sea state, and sea-ice conditions at the time of observation; (6) Estimated closest distance of bears from personnel and facilities; (7) Industry activity at time of sighting; (8) Possible attractants present; (9) Bear behavior; (10) Description of the encounter; (11) Duration of the encounter; and (12) Mitigation actions taken.
- b. Notification of Letters of Authorization incident report. Report all bear incidents during any Industry activity. Reports must include: (1) All information specified for an observation report; (2) A complete detailed description of the incident; and (3) Any other actions taken.
- c. Final report. The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the USFWS for review within 90 days of the expiration of an authorization. Information in the final report must include: (1) Copies of all observation reports submitted under an authorization; (2) A summary of the observation reports; (3) A summary of monitoring and mitigation efforts, including areas, total hours, total distances, and distribution; (4) Analysis of factors affecting the visibility and detectability of polar bears during monitoring; (5) Analysis of the effectiveness of mitigation measures; (6) Analysis of the distribution, abundance, and behavior of polar bears observed; and (7) Estimates of take in relation to the specified activities.

SUMMER VEHICLE TUNDRA ACCESS

Required Operating Procedure 41

Objective: Protect stream banks and water quality; minimize compaction and displacement of soils; minimize the breakage, abrasion, compaction, or displacement of vegetation; protect cultural and paleontological resources; maintain populations of and adequate habitat for birds, fish, and caribou and other terrestrial mammals; and minimize impacts on subsistence activities.

Requirement/Standard: On a case-by-case basis, the BLM Authorized Officer, in consultation with the USFWS, may permit low-ground-pressure vehicles to travel off gravel pads and roads during times other than those identified in ROP 11. Permission for such use will be granted only after an applicant has completed the following:

- a. Submitted studies satisfactory to the BLM Authorized Officer of the impacts on soils and vegetation of the specific low-ground-pressure vehicles to be used; these studies will reflect use of such vehicles under conditions like those of the route proposed and will demonstrate that the proposed use will have no more than minimal impacts on soils and vegetation. Alternatively, the most current list of summer off-road vehicles approved by the State may be used to fulfill this requirement.
- b. Submitted surveys satisfactory to the BLM Authorized Officer of subsistence uses of the area as well as of the soils, vegetation, hydrology, wildlife, and fish (and their habitats), paleontological and archaeological resources, and other resources, as required by the BLM Authorized Officer.
- c. Designed or modified the use proposal to minimize impacts to the BLM Authorized Officer's satisfaction; design steps to achieve the objectives and based on the studies and surveys may include timing restrictions (generally it is considered inadvisable to conduct tundra travel before August 1 to protect ground-nesting birds), shifting work to winter, rerouting, and not proceeding when certain wildlife are present or subsistence activities are occurring.

GENERAL WILDLIFE AND HABITAT PROTECTION

Required Operating Procedure 42

Objective: Minimize disturbance of wildlife or alteration and hinderance of wildlife movements through the Coastal Plain.

Requirement/Standard:

- a. Following wildlife with ground vehicles or aircraft is prohibited. Particular attention will be given to avoid disturbing caribou.
- b. Avoid and minimize the disturbance to loafing and nesting birds to the extent practicable.

Required Operating Procedure 43

Objective: Prevent the introduction or spread of nonnative, invasive species in the Coastal Plain.

Requirement/Standard:

- a. Certify that all equipment, supplies (including gravel, lumber, erosion control material), and vehicles (including helicopters, planes, boats, off-road vehicles, trucks, tracked vehicles, and barges) intended for use either off or on roads are free of invasive species before transiting into the Coastal Plain.

- b. Survey annually along roads, drilling platforms, and barge access points for invasive species and begin effective eradication measures on evidence of their introduction.
- c. Before beginning operations into the Coastal Plain, submit a plan, for BLM approval, detailing the methods for 1) cleaning equipment, supplies, and vehicles, including off-site disposal of cleaning fluids or materials and detected organisms, and 2) early detection surveys, and eradication response measures (including post treatment monitoring) for all invasive species, noxious plants and animals, and weeds.

Required Operating Procedure 44

Objective: Minimize loss of populations and habitat for plant species designated as sensitive by the BLM in Alaska.

Requirement/Standard: If a development is proposed in an area that provides potential habitat for a BLM sensitive plant species, the development proponent will conduct surveys at appropriate times of the summer season and in appropriate habitats for the sensitive plant species. The results of these surveys and plans to minimize impacts will be submitted to the BLM with the application for development.

Required Operating Procedure 45

Objective: Minimize loss of individuals and habitat for mammalian, avian, fish, and invertebrate species designated as sensitive by the BLM in Alaska.

Requirement/Standard: If a development is proposed in an area that provides potential habitat for BLM sensitive species, the development proponent will conduct surveys at appropriate times of the year and in appropriate habitats to detect the presence of BLM sensitive species. The results of these surveys and plans to minimize impacts will be submitted to the BLM with the application for development.

MARINE VESSEL TRAFFIC-ASSOCIATED ACTIVITIES

Required Operating Procedure 46

Objective: Minimize impacts on marine mammals from vessel traffic.

Requirement/Standard:

General vessel traffic

- a. Operational and support vessels will be staffed with dedicated PSOs to alert crew of the presence of marine mammals and to initiate adaptive mitigation responses.
- b. When weather conditions require, such as when visibility drops, support vessel operators must reduce speed and change direction, as necessary (and as operationally practicable), to avoid the likelihood of injuring marine mammals.
- c. The transit of operational and support vessels is not authorized before July 1. This operating condition is intended to allow marine mammals the opportunity to disperse from the confines of the spring lead system and minimize interactions with subsistence hunters. Exemption waivers to this operating condition may be issued by the NMFS and USFWS on a case-by-case basis, based on a review of seasonal ice conditions and available information on marine mammal distributions in the area of interest.

- d. Vessels may not be operated in such a way as to separate members of a group of marine mammals from other members of the group.
- e. Operators shall take reasonable steps to alert other vessel operators in the vicinity of marine mammals.
- f. Operators shall report any dead or injured listed marine mammals to NMFS and the USFWS.
- g. Vessels will not allow tow lines to remain in the water when not towing, all closed lops will be cut, and all trash will be retained on board for disposal in secure landfills, thereby reducing the potential for marine mammal entanglement.
- h. The lessees will implement measures to minimize risk of spilling hazardous substances. These measures will include avoiding operation of watercraft in the presence of sea ice to the extent practicable and using fully operational vessel navigation systems composed of radar, chart plotter, sonar, marine communication systems, and satellite navigation receivers, as well as Automatic Identification System for vessel tracking.

Vessels in vicinity of whales

- a. Vessel operators will avoid groups of three or more whales by staying at least 1 mile away. A group is defined as being three or more whales observed within a 1,641-foot (500-meter) area and displaying behaviors of directed or coordinated activity (e.g., group feeding).
- b. All boat and barge traffic will be scheduled to avoid periods when bowhead whales are migrating through the area. Boat, hovercraft, barge, and aircraft will remain at least 12 miles from Cross Island during the bowhead whale subsistence hunting consistent with the conflict avoidance agreement.
- c. The transit of operational and support vessels through the North Slope region is not authorized prior to July 1. This operating condition is intended to allow marine mammals the opportunity to disperse from the confines of the spring lead system and minimize interactions with subsistence hunters. Exemption waivers to this operating condition may be issued by NMFS and USFWS on a case-by-case basis, based upon a review of seasonal ice conditions and available information on marine mammal distributions in the area of interest.
- d. If the vessel approaches within 1 mile of observed whales, except when providing emergency assistance to whalers or in other emergency situations, the operator will take reasonable precautions to avoid potential interaction with the whales by taking one or more of the following actions, as appropriate:
 - i. Reducing vessel speed to less than 5 knots within 900 feet of the whale;
 - ii. Steering around the whale if possible;
 - iii. Operating the vessel to avoid causing a whale to make multiple changes in direction, avoiding sudden or multiple course changes;
 - iv. Checking the waters around the vessel to ensure that no whales are within 164 feet of the vessel prior to engaging the propellers;
 - v. Reducing vessel speed to 9 knots or less when weather conditions reduce visibility to avoid the likelihood of injury to whales;
 - vi. Vessels shall not exceed speeds of 10 knots in order to reduce potential whale strikes; and
 - vii. If a whale approaches the vessel and if maritime conditions safely allow, the engine will be put in neutral and the whale will be allowed to pass beyond the vessel. If the vessel is taken out of gear, vessel crew will ensure that no whales are within 50 meters of the vessel when propellers are re-engaged, thus minimizing risk of marine mammal injury.

- e. Vessels will stay at least 984 feet away from cow-calf pairs, feeding aggregations, or whales that are engaged in breeding behavior. If the vessel is approached by cow-calf pairs, it will remain out of gear a long as whales are within 984 feet of the vessel (consistent with safe operations).
- f. Consistent with NMFS marine mammal viewing guidelines (<https://alaskafisheries.noaa.gov/pr/mm-viewing-guide>), operators of vessels will, at all times, avoid approaching marine mammals within 300 feet. Operators will observe direction of travel and attempt to maintain a distance of 300 feet or greater between the animal and the vessel by working to alter course or slowing the vessel.
- g. Special consideration of North Pacific right whale and their critical habitat:
 - i. Vessel operators will avoid transit through North Pacific right whale critical habitat. If such transit cannot be avoided, operators must post a dedicated PSO on the bridge and reduce speed to 10 knots while in the North Pacific right whale critical habitat. Alternately, vessels may transit at no more than 5 knots without the need for a dedicated PSO.
 - ii. Vessel operators will remain at least 800 meters from all North Pacific right whales and avoid approaching whales head-on, consistent with vessel safety.
 - iii. Operators will maintain a ship log indicating the time and geographic coordinates at which vessels enter and exit North Pacific right whale critical habitat.

Vessels in vicinity of pacific walruses and polar bears

- a. Operators shall take all reasonable precautions, such as reduce speed or change course heading, to maintain a minimum operational exclusion zone of 0.5 mile around groups of feeding walruses.
- b. Except in an emergency, vessel operators will not approach within 0.5 mile of observed polar bears, within 0.5 mile of walrus observed on ice, or within 1 mile of walrus observed on land.
- c. For polar bears:
 - i. Operational and support vessels must be staffed with dedicated marine mammal observers to alert crew of the presence of polar bears and initiate mitigation responses.
 - ii. Vessels must maintain the maximum distance possible from concentrations of polar bears. No vessel shall approach within an 805-meter (0.5-mile) radius of polar bears observed on land or ice.
 - iii. Vessels must avoid areas of active or anticipated polar bear subsistence hunting activity as determined through community consultations.
 - iv. The USFWS may require trained marine mammal monitors on the site of the activity or on board any vessel or vehicles to monitor the impacts of Industry's activity on polar bear.

Vessels in vicinity of seals

- a. Vessels used as part of a BLM-authorized activity will be operated in a manner that minimizes disturbance to wildlife in the coastal area. Vessel operators will maintain a 1-mile buffer from the shore when transiting past an aggregation of seals (primarily spotted seals) when they have hauled out on land, unless doing so would endanger human life or violate safe boating practices.

Vessel transit through steller sea lion critical habitat/near major rookeries and haul outs

- a. Vessels will remain 3 nautical miles (5.5 kilometers) from all Steller sea lion rookery sites listed in paragraph 50 CFR 224.103 (d)(1)(iii). The vessel operator will not purposely approach within 3

nautical miles of any major Steller sea lion rookery or haul out unless doing so is necessary to maintain safe conditions.

A.3.3 Lease Notices

ENDANGERED SPECIES ACT SECTION 7 CONSULTATION AND MARINE MAMMAL PROTECTION ACT

Lease Notice 1. The lease areas may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered. The BLM will not approve any activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the ESA, as amended (16 United States Code 1531 et seq.), including completion of any required procedure for conference or consultation.⁶

Lease Notice 2. The lease area and/or potential project areas may now or hereafter contain marine mammals. The BLM may require modifications to exploration and development proposals to ensure compliance with Federal laws, including the MMPA. The BLM would not approve any exploration or development activity absent documentation of compliance under the MMPA. Such documentation shall consist of a Letter of Authorization, Incidental Harassment Authorization, and/or written communication from USFWS and/or NMFS confirming that a take authorization is not warranted.

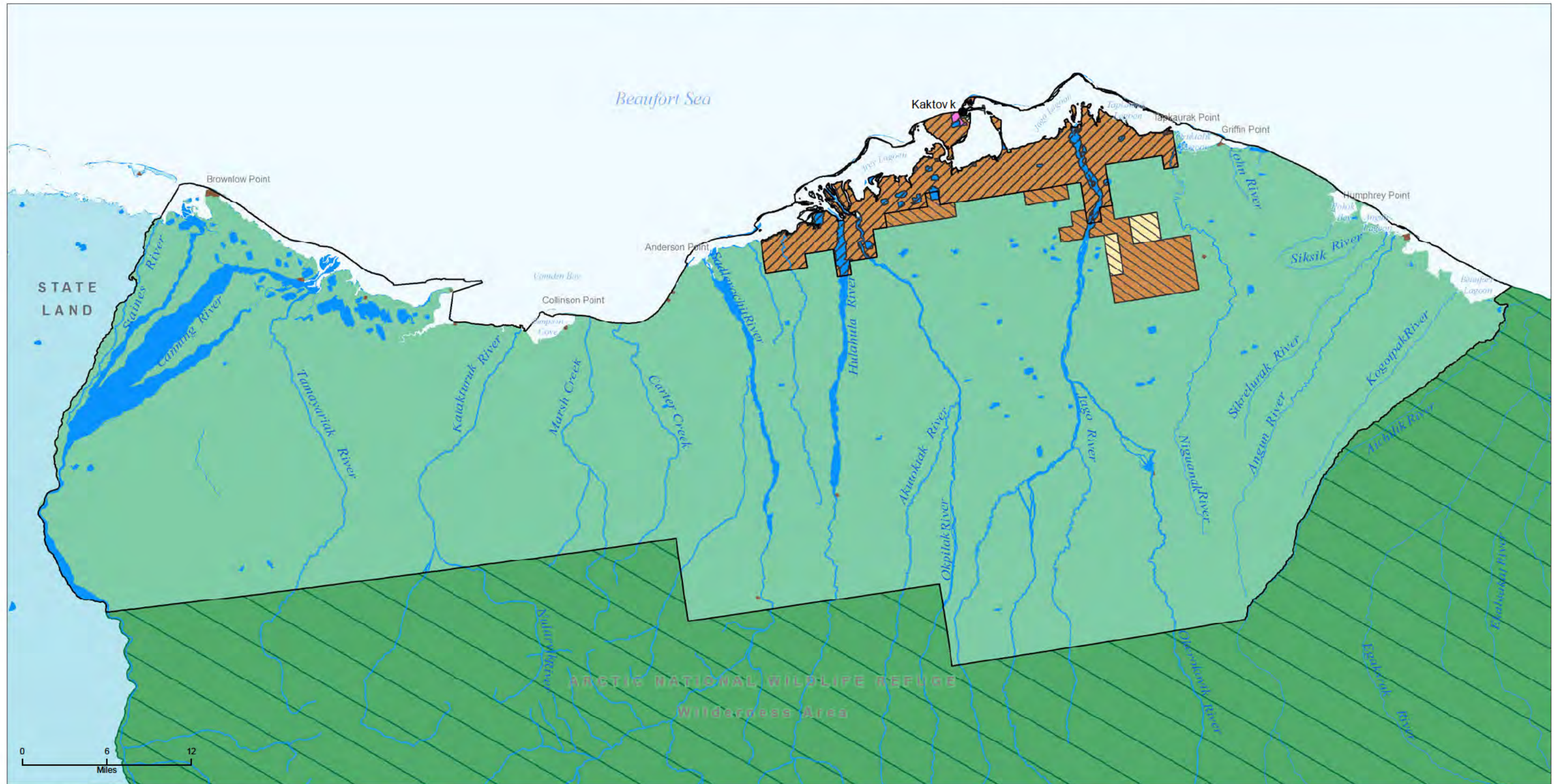
⁶ Lease Notice 1 was developed through the ESA Section 7 Consultation process and has been adjusted to more accurately reflect the requirements of the ESA.

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Appendix B

Maps

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- U.S. Fish and Wildlife Service
- U.S. Fish and Wildlife Service, wilderness area
- Native-conveyed
- Native-selected
- State
- Native allotment
- Air Force

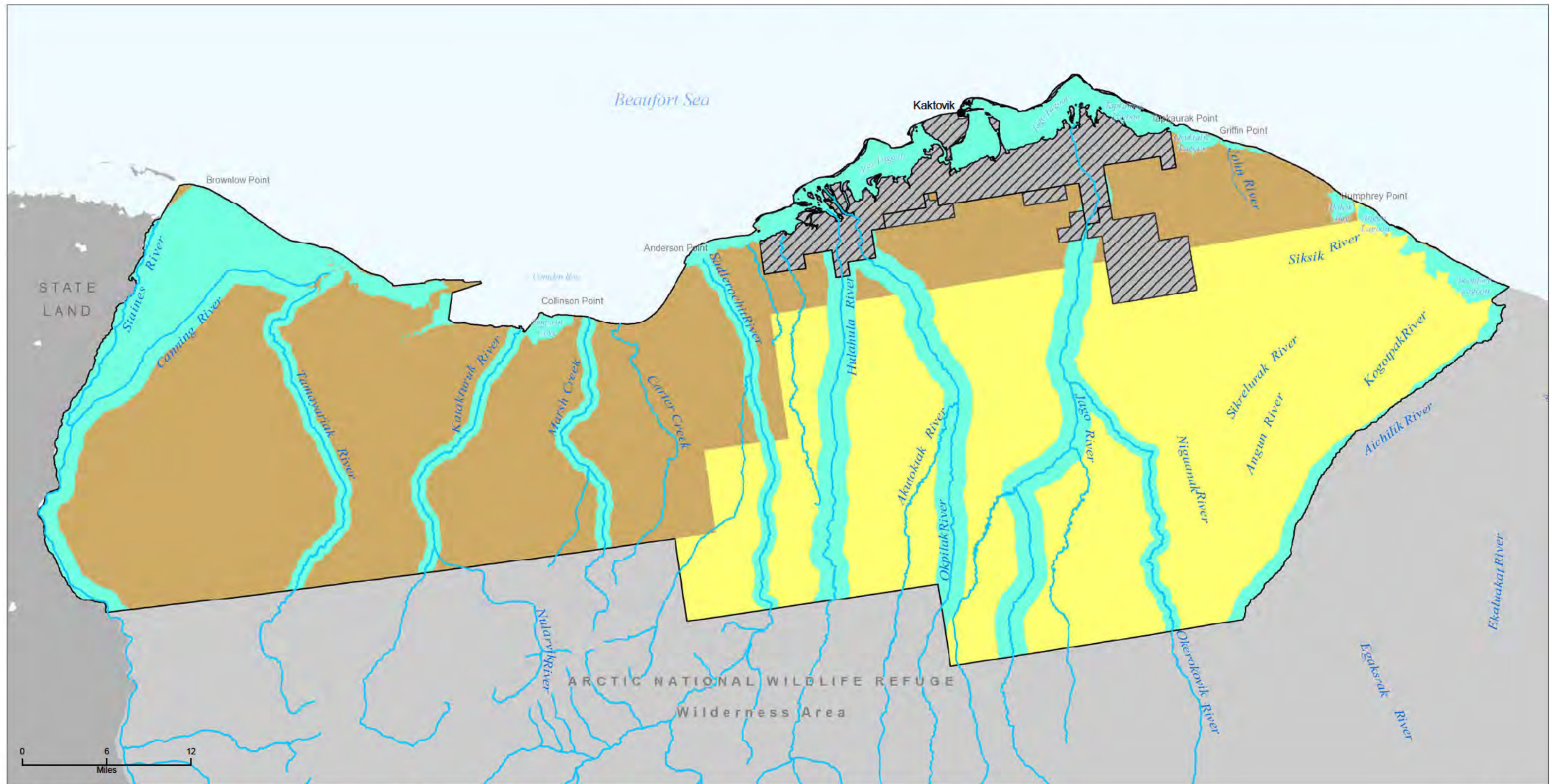
- Public Law 115-97 Coastal Plain
- Outside BLM's oil and gas leasing authority:
- Excluded from Public Law 115-97 Coastal Plain
- Native or other mineral ownership



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Data Source: BLM GIS 2018
Print Date: 10/21/2019

Map 1-1



- Not offered for lease sale (none)
- Available for lease sale:
- Subject to no surface occupancy
- Subject to controlled surface use (none)
- Subject to timing limitations
- Subject to only standard terms and conditions

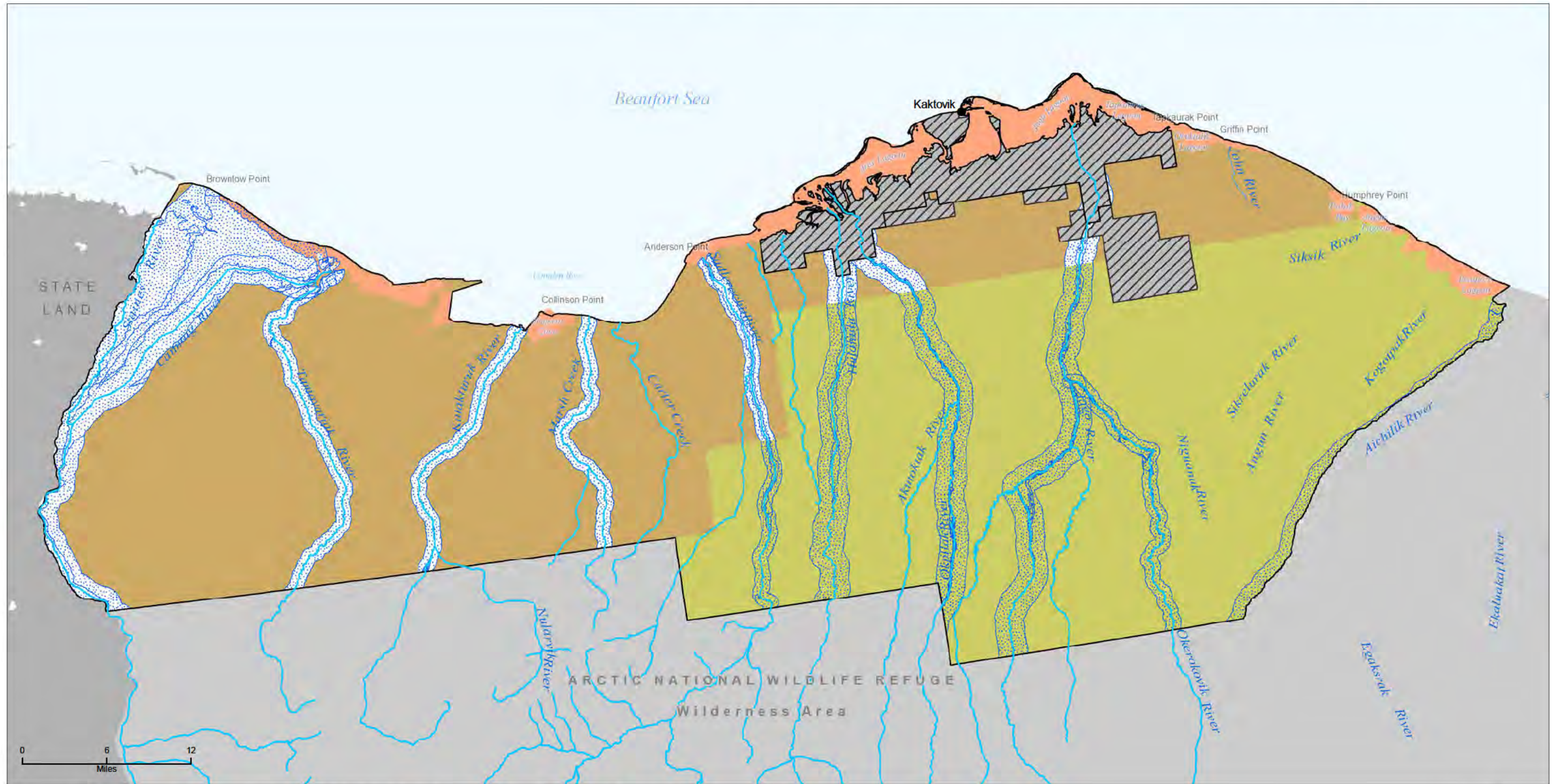
- Public Law 115-97 Coastal Plain
- Excluded from Public Law 115-97 Coastal Plain or outside the BLM's oil and gas leasing authority



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Data Source: BLM GIS 2018, FWS GIS 2018
Print Date: 10/21/2019

Map 1-2



Available for lease sale, subject to no surface occupancy

Lease stipulation 1—rivers and streams

Lease stipulation 4—nearshore marine, lagoon, and barrier island habitat, exploration

Available for lease sale, subject to timing limitations

Lease stipulation 7—Porcupine Caribou calving habitat

Available for lease sale
Subject to only standard terms and conditions

Public Law 115-97 Coastal Plain
Excluded from Public Law 115-97 Coastal Plain or outside the BLM's oil and gas leasing authority



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Data Source: BLM GIS 2018, FWS GIS 2018
Print Date: 10/21/2019

From: Moody, Aaron G <Aaron.Moody@sol.doi.gov>
Subject: USG response to CERD committee chair on coastal plain
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
CC: "Deam, Seth R" <seth.deam@sol.doi.gov> "Taylor, Sara M" <sara_taylor@ios.doi.gov>
Sent: Thu, 29 Oct 2020 10:49:45 -0400 (Thu, 29 Oct 2020 14:49:45 GMT)
Attachment 1: AGM revisions.docx

Hi Gregg-

In addition to the edits from Seth and Sara yesterday, please see attached. Mostly, the "P" in NEPA stands for "Policy" not "Protection" and I would delete (b) (5)

-Aaron

Aaron G. Moody
Associate Solicitor
Division of Land Resources
Office of the Solicitor
U.S. Department of the Interior
202-208-3495 (o)
202-309-6928 (c)

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From: City Of Kaktovik - City Administrator <admin@cityofkaktovik.org>
Subject: [EXTERNAL] REFERENCE: CERD/EWUAP/101st Session/2020/USA/JP/is
To: "(b) (6)" <(b) (6)>
CC: "registry@onchr.org" <registry@onchr.org>
"Bernhardt, David L" <dwbernhardt@ios.doi.gov>
"Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
"teresa.imm@inupiatvoice.org" <teresa.imm@inupiatvoice.org>
Sent: Mon, 26 Oct 2020 15:59:22 -0400 (Mon, 26 Oct 2020 19:59:22 GMT)
Attachment 1: UN ANWR City-1.pdf
Attachment 2: ATT00001.txt

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City of Kaktovik
907.640.6313, phone • 907.640.6314, fax

PUBLIC RECORDS LAW DISCLOSURE: This e-mail is subject to the State of Alaska Local Government Retention Schedule and may be made available to the public.

From: Fischer, Mackenzie <mfischer@inupiatvoice.org>

Subject: [EXTERNAL] Voice of the Arctic Inupiat Letter to Ambassador Bremberg re: ANWR

To: "(b) (6)" <(b) (6)>

CC: "registry@ohchr.org" <registry@ohchr.org> "Bernhardt, David L" <dwbernhardt@ios.doi.gov> "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>

Sent: Wed, 28 Oct 2020 16:00:49 -0400 (Wed, 28 Oct 2020 20:00:49 GMT)

Attachment 1: Voice of the Arctic Inupiat Letter to Ambassador Bremberg ANWR 10.28.2020.pdf

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Ambassador Bremberg,

Please see attached letter from Voice of the Arctic Inupiat President Sayers Tuzroyluk, Sr. regarding the current inquiry into oil and gas leasing in the Coastal Plain of the Arctic National Wildlife Refuge by the UN Committee on the Elimination of Racial Discrimination. Please let us know if you have any questions or would like further clarification about this letter or the Inupiat people and our ancestral homelands. Thank you in advance for your consideration.

Quyanaq,

Mackenzie Fischer, Program Manager

Voice of the Arctic Inupiat

[PO Box 431](#)

[914 Ippiq Street, Point Hope, Alaska 99766](#)

[\(907\) 339-6078](#) direct • [\(907\) 301-2006](#) mobile

mfischer@inupiatvoice.org email

<http://voiceofthearticinupiat.org> website

VOICE LOGO



From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Delegation of Authority Memo - BLM Oil & Gas Leasing on the Coastal Plain of the ANWR
To: "Relat, Hubbel R" <hubbel.relat@sol.doi.gov> "Zerzan, Gregory P" <gregory.zerzan@sol.doi.gov>
CC:"Jorjani, Daniel H" <daniel.jorjani@sol.doi.gov>
Sent: Mon, 28 Sep 2020 10:40:48 -0400 (Mon, 28 Sep 2020 14:40:48 GMT)
Attachment 1: Signed Delegation Memo.pdf

FYI - attached

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: [Cason, James E](#)
To: Loren.Smith@DOT.gov
Cc: [MacGregor, Katharine S](#); [Renkes, Gregg D](#); [Cruickshank, Walter](#); [Hawbecker, Karen X](#); [Noble, Michaela E](#); [Alexander Herrgott - Y](#)
Subject: Qilak Deepwater LNG Project
Date: Thursday, October 8, 2020 3:07:00 PM
Attachments: [2020.9.2 Qilak LNG letter to Hon. Alex Hergott FPISC Executive Director with attachments \(1\) \(3\).pdf](#)
[7.17.2020 Qilak Memo - CLEAN \(3\).docx](#)

Loren,

Thanks for taking my call this morning regarding inquiries into the appropriate Federal jurisdiction to permit and regulate a proposed liquified natural gas (LNG) facility to be located on the US Outer Continental Shelf (OCS) in northern Alaska.

As I understand the situation, normally this type of project falls under the jurisdiction of MARAD and the Coast Guard per the Deepwater Port Act. I think Qilak has reached out to your agencies and found a significant impediment...the State of Alaska does not have a Coastal Zone Management Act (CZMA) program, which is a requirement for your agencies to act.

[I have asked staff in DOI to reach out to Alaska to see if they would be willing to adopt a geographically specific CZMA for the affected area and asked a Solicitor's office attorney to

(b) (5)

Qilak has reached out to the State of Alaska regarding an alternative. The State has reached out to the DOI agency, Bureau of Ocean Energy Management, suggesting BOEM also has potential jurisdiction for their project. In addition, Qilak has approached Alex Herrgott, FPISC, to enlist his help. [See the first attachment for a project description, the Qilak letter to Alex and the Alaska State letter to BOEM.]

Our attorneys have considered Qilak's & Alaska's alternative jurisdictional legal theory. [See second attachment.]

Bottom line: (b) (5)



A Division of Lloyds Energy

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mt@qilaklng.com

September 2, 2020

VIA EMAIL TO fast.fortyone@fpisc.gov AND US MAIL

The Honorable Alexander Hergott, Executive Director
Federal Permitting Improvement Steering Council
1800 G St. NW, Suite 2400
Washington, DC 20006

Project Sponsor Request for Guidance and Early Coordination under Section 5 (f) (ii) of EO 13807

Dear Mr. Hergott,

Qilak LNG is an Alaska-based firm which is project sponsor of Qilak LNG 1, a \$5 billion LNG export project planned to be sited in federal waters approximately six miles offshore from Pt. Thomson on Alaska's Arctic Coast in the Beaufort Sea. As project sponsor, we write to you as Executive Director of the Federal Permitting Improvement Steering Council under Section 5 (f) (ii) of Presidential Executive Order 13807, **Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure**, dated August 15, 2017, for guidance and "early coordination" between federal agencies for our project.¹

While our project is not yet ready to begin the environmental review process, it is very important for us to determine a permitting path now as ability to permit the project is necessary to complete our feasibility studies and attain the confidence of LNG buyers and project investors as we advance to a final investment decision. We expect, within the next year, to return to the Council to work with you under the One Federal Decision Policy, and to establish a timetable and tracking under the provisions of FAST-41.

We seek the following coordination and guidance from the Federal Permitting Improvement Steering Council:

Convene DOI, DOT, and perhaps DOC and CEQ to determine which agency is lead for environmental review and permitting for Qilak LNG. We understand from DOT that Alaska's non-participation in a voluntary federal program, Coastal Zone Management, alleviates any

¹ "Additional Duties. In addition to the duties and responsibilities charged to the FPISC Executive Director under 42 U.S.C. 4370m-4370m-12 and this order, the FPISC Executive Director may, upon request of a FPISC member agency or a project sponsor, work with the lead agency or any cooperating and participating agencies to facilitate the environmental review and authorization process for any infrastructure project regardless of whether the project is a "covered project" under 42 U.S.C. 4370m, including by resolving disputes and promoting early coordination." EO 13807, Section 5(f)(iii)

jurisdiction from MARAD for permitting this project. DOT has not, however, stated affirmatively that their absence of jurisdiction allows BOEM to permit the project. We believe it does. But despite clear authority in OCSLA, backed by a court opinion in another case, DOI is uncertain as to whether it can exercise its leasing and permitting jurisdiction. Please help us resolve this impasse.

Legal and Factual Background

An offshore LNG project located in federal waters (OCS) is typically permitted by MARAD at DOT. A provision of the Deep-Water Port Act (DPWA) requires the adjacent state to adopt, or plan to adopt, a Coastal Zone Management Program in order to receive a license from MARAD for a deep water port.

Alaska began developing a Coastal Zone Management Program (ACMP) in the late 1970's and administered it with the oversight of the US Secretary of Commerce until the ACMP was not renewed by the Alaska Legislature in 2012. A statewide initiative attempting to reinstate the program failed at the ballot box in 2014. As project sponsor, we have no control over the State's decision not to participate in this voluntary federal program. A new attempt to reinstate Coastal Zone Management would have effects statewide, on every activity from homebuilding to road building to resource development projects, so a new State decision to participate is neither simple, timely for us, nor likely. We intend to work closely with the communities and the civil and tribal governments of the North Slope Borough to ensure that their ordinances and regulations (many of which were incorporated in the previous Alaska Coastal Management Program) are followed. Because Alaska does not have a Coastal Zone Management Program, we are precluded by federal law to seek a license from MARAD.

Section 1337(p) of the Outer Continental Shelf Leasing Act (OCSLA), which was added as part of the Energy Policy Act of 2005, states that the Secretary has the authority to issue a lease, easement or right-of-way (also referred to in the regulations as a "right-of-use") for OCS submerged lands "for activities **not otherwise authorized** in [the OCSLA], the Deepwater Port Act of 1974 (33 USC 1501 et seq), . . . **or other applicable law**[".]"² OCSLA also provides that DOI/BOEM may make such a grant for activities that "support exploration, development, production, or storage of oil or natural gas" or "support transportation of oil or natural gas." *Id.*³ Thus, when read together, these provisions provide that DOI/BOEM have been granted the authority to step in and permit activities that support the development and transportation of natural gas when no other authority exists.

² Section 1337(p) reads: "The Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating and other relevant departments and agencies of the Federal Government, may grant a lease, easement, or right-of-way on the outer Continental Shelf for activities not otherwise authorized in this subchapter, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law, if those activities-- (A) support exploration, development, production, or storage of oil or natural gas, except that a lease, easement, or right-of-way shall not be granted in an area in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium; (B) support transportation of oil or natural gas, excluding shipping activities...."

³ In making such a grant, DOI is obligated to consult with the Secretary of Transportation "and other relevant departments and agencies of the Federal Government." Section 1337(p). This provision, which post-dates litigation in which project opponents attempted to use the Deepwater Ports Act as an additional hurdle for operations authorized under OCSLA, is best read as a gap-filler to authorize the Secretary to evaluate and issue permits for activities that support energy development but may not be approved under any other statute.

Despite this statutory grant of authority to permit offshore facilities in federal waters that will support production and transportation of oil and gas on adjacent lands onshore, the agency is not sure it can accept our application based on the DPWA.⁴

Qilak LNG is proposed to be sited in federal waters to meet water depth requirements for ship maneuvering, marine mammal avoidance, subsistence hunting avoidance, and the ice management needs of the project. The LNG ship loading facility will not serve as a general “deepwater port” for any other purpose, and cannot, for safety and other reasons, be open to public shipping.

We are engineering this project to avoid, or mitigate if necessary, all air and water quality impacts, noise and biological disturbances, or impacts on subsistence hunting and fishing. Residents of Alaska and the nation will have the same opportunities to intervene in federal decisions as they would have had under coastal zone management, and the State of Alaska has several veto authorities for this project already as they must agree to support use of state land for onshore production and gas conditioning, use of state tidelands for the pipeline offshore, and the oil and gas conservation plan for the Point Thomson Unit.

Surely, we believe, there must be a permitting path for this project.

Background on Qilak LNG

In October 2019, Lloyds Energy, Qilak LNG’s parent firm, signed a Heads of Agreement with ExxonMobil Alaska to procure a minimum 20-year supply of 560 mmcf/d of natural gas from the Point Thomson Unit (PTU) on Alaska’s Arctic coast. Point Thomson is a major gas and gas condensate field on state land onshore which cannot economically produce its full potential of gas condensate liquids for shipment via the Trans-Alaska Pipeline without a mechanism to handle the natural gas which is simultaneously produced. Alaska and the entire US have, in several attempts, worked to produce and market this gas and other North Slope gas via a pipeline to a tidewater LNG project on the south coast of Alaska or by transporting the gas via pipeline to Alberta, where it would connect with North America’s pipeline grid. Neither approach has proven economic, despite decades of work, and billions of public and private dollars spent permitting and engineering several projects.

Russia began shipping LNG through the Arctic Ocean with a project four times the size of Qilak LNG’s proposal. Fifteen icebreaking tankers have, since 2017, delivered Yamal LNG to Atlantic and Pacific markets year-round, sometimes traveling as far as 2600 nautical miles through Arctic sea ice to reach the Bering Sea. Qilak LNG plans to build upon the operating example of the Yamal project with a smaller, pioneering North American LNG project which would be the closest US LNG supplier to the world’s largest LNG market in East Asia. Conveyance of LNG through sea ice is limited to 600 nautical miles, much less than what Russian shipments contend with their icebreaking tankers.

State and National interest

From inception of this project forward, Qilak LNG has benefitted from the advocacy and assistance of the State of Alaska, White House officials, the Departments of State, Commerce and Energy and the Alaska Congressional Delegation. The project has received positive support in Asia, where we are

⁴ FERC’s lead jurisdiction for LNG projects under the Natural Gas Act is limited to LNG projects inside the three-mile limit, state waters.

perceived as a competitive, reliable supplier for offtake we have already identified in Japan, Korea, China, Thailand, the Philippines and Vietnam. The project aligns with the goals of the Japan-US Energy Program and the Indo-Pacific Initiative of the US, Japan and Australia to help develop infrastructure in the Indo-Pacific region, and certainly US goals to balance our trade in Asia.

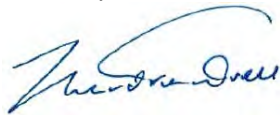
In the State of Alaska, development of North Slope gas has been a longtime priority. In support of this project, favorable statements have been made by many state officials, including Governor Michael J. Dunleavy, here and in Asia. The State Department of Natural Resources, the landowner, has offered to partner closely with BOEM in overseeing the permitting of this project, as the project covers both state and federal lands.

Conclusion

Enclosed, with this letter, you will find a short project description and map of the project's proposed siting, a legal analysis by the Qilak LNG team explaining why we believe BOEM has authority to permit this project, and a letter from the State of Alaska's Commissioner of Natural Resources explaining the need for this clear authority. A clear permitting path is necessary. Your action will help Qilak LNG ultimately commercialize \$30 billion worth of LNG and to help maintain America's growing dominance in energy supply.

Please let us know if you have any questions or need assistance in fulfilling this request.

Sincerely,



Mead Treadwell, Chair and CEO

Enclosures

Full Field Development of Point Thomson

Qilak LNG 1 Supports Full-Field Development of Pt. Thomson

In 2019, Qilak LNG entered into a Heads of Agreement (HOA) with ExxonMobil Alaska Production Inc. to acquire a supply of 560 million standard cubic feet per day (mmscfd) of natural gas from the Point Thomson field. Currently, Point Thomson operates as an onshore natural gas cycling project in which liquid condensates are separated from gas for export. The natural gas is currently compressed back into the reservoir, resulting in high pressure conditions that limit the volume of condensate that can be exported. The Qilak LNG 1 project will advance the full field development of Point Thomson through the development of the first North American arctic Liquefied Natural Gas (LNG) export project. The export of LNG from Pt. Thomson will remove a bottleneck in gas production that will allow greater volumes of condensate to be extracted and exported by ExxonMobil.

Offshore Qilak LNG 1 Facility and a Portion of Subsea Gas Pipeline to be Sited in BOEM Lease Block(s)

The current offshore development concept for Qilak LNG 1 includes the following:

- Fabrication of a Near Shore LNG (NSLNG) facility in a shipyard that would be floated to a location offshore from Point Thomson and grounded in place within one of BOEM's lease blocks: 6806, 6807, 6808, 6857 or 6858 (Figure 1). The NSLNG facility would be sited at a depth that would afford LNG Carriers safe and complete year-round access without the need for operational dredging.
 - The NSLNG facility would have approximate dimensions of 350 meters x 90 meters, offering LNG storage and two processing trains that would facilitate export up to 4 million tons per annum (MTPA) of LNG over a 20-year term.
 - Additional facility and/or deck space would be required to support camp activities and LNG loading operations.
- A subsea, buried natural gas pipeline would be constructed to provide pipeline quality gas from a Gas Treatment Plant (GTP) constructed at Point Thomson's Central Pad to the NSLNG facility. The pipeline would largely lie in state waters, but a portion of the pipeline would also lie in federal waters (territorial sea) in one or two of BOEM's lease blocks: 6806, 6807, 6808, 6857 and/or 6858 (Figure 1).

New ExxonMobil Onshore Components at Point Thomson

Onshore development in support of gas sales for ExxonMobil are likely to include the following components:

- Drilling of two additional gas producing wells from the existing Central and West Pads, as well as converting two of the existing wells (PTU-15 and -16) from injection wells to production wells.
- Development of a GTP facility at Central Pad which would most likely be integrated with the expansion of the gas handling facilities.

Benefits

The proposed project will:

- Provide economic benefits to federal, state, and local governments and populations;
- Provide the long-awaited export opportunity for North Slope gas to markets overseas;
- Increase domestic production of petroleum products;
- Contribute to the throughput and efficiency of the Trans-Alaska Pipeline System (TAPS); and
- Provide opportunity for strategic planning and partnership around greater energy affordability in communities.

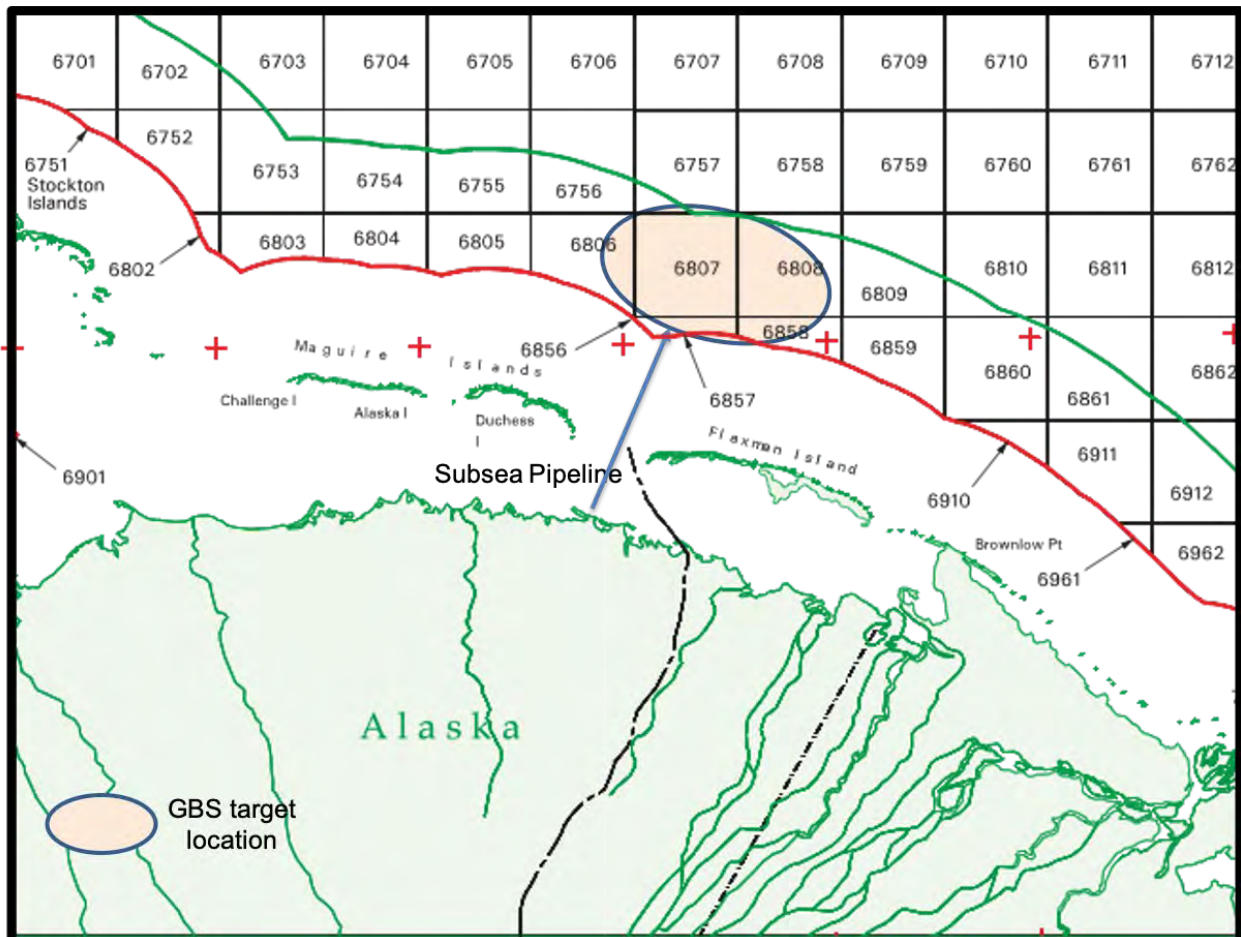


Figure 1 – Map showing potential location of GBS offshore from Flaxman Island



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

OFFICE OF THE COMMISSIONER

550 West 7th Avenue, Suite 1400
Anchorage, AK 99501-3561
Main: 907.269-8431
Fax: 907-269-8918

June 1, 2020

Walter Cruickshank
Acting Director
Bureau of Ocean & Energy Management
1849 C. Street, NW
Washington, DC, 20240

RE: Accessing BOEM Jurisdictional Lands in Support of Development of Adjacent State of Alaska Hydrocarbon Resources

Dear Acting Director Cruickshank:

The Point Thomson Unit is comprised of State of Alaska oil and gas leases located along the Beaufort Sea coast, 60 miles east of Deadhorse, Alaska. The Point Thomson reservoir holds an estimated 8 trillion cubic feet of natural gas and 200 million barrels of natural gas condensates, a high-quality and high-value hydrocarbon similar to kerosene or diesel.

Currently, ExxonMobil, the operator of the Point Thomson Unit, is producing natural gas and liquid condensates from the Point Thomson reservoir. The liquid condensates are separated from the gas for shipment via pipeline to Deadhorse and then down to Valdez via the Trans-Alaska Pipeline System (TAPS). The gas produced from the reservoir is compressed and reinjected under very challenging, high-pressure conditions.

Continuing mechanical complications with the equipment required to reinject the gas separated from the liquid condensates produced at Point Thomson has resulted in a gas handling bottleneck that severely limits the volume of liquid condensates that can be produced from the reservoir. In other words, absent some alternative outlet for the gas separated from the liquid condensates, the full value of the significant hydrocarbon resources at Point Thomson cannot be realized.

ExxonMobil has contracted with Qilak LNG (Qilak), a subsidiary of Lloyds Energy, to assess the feasibility of developing a near shore gas liquification facility to relieve the current gas handling bottleneck at Point Thomson, thereby allowing for the increased production of the high value liquid condensates and advancing the full field development of the Point Thomson Unit. The current offshore development concept includes installation of a Gravity Based Structure (GBS) that would be fabricated in a shipyard and floated to a location offshore from Point Thomson, where it would be grounded in place within one of BOEM's lease blocks: 6806, 6807, 6808, 6857 or 6858 (Figure 1 (attached)). The GBS would be sited at a depth that would afford tankers safe and complete year-round access without the need for operational dredging. A subsea, buried natural gas pipeline would also be constructed to move gas from a Gas Treatment Plant (GTP), constructed at Point Thomson's Central Pad, to the GBS. The pipeline would largely lie in state waters, but a portion

of the pipeline would also lie in federal waters (territorial sea) in one or two of BOEM's lease blocks: 6806, 6807, 6808, 6857 and/or 6858 (Figure 1).

The Outer Continental Shelf Lands Act, 43 U.S.C. §1337(p), provides the Department of the Interior (Department) with the authority to issue a lease, easement, or right-of-way, in federal waters (Outer Continental Shelf or OCS) to support the exploration, development, production, or storage of oil or natural gas.

Under 30 C.F.R. 550.160 an entity that does not hold a federal offshore oil and gas lease may apply to the Bureau of Ocean Energy Management (BOEM) for a "right-of-use" and an easement (RUE) "to maintain platforms, artificial islands, and installations and other devices at an OCS site other than an OCS lease you own[.]" BOEM's regulations also make clear that this authority is not limited to allowing the development of federal leases. BOEM may issue a RUE when it is necessary to locate a facility (*i.e.*, a platform, artificial island, or installation) on federal submerged lands to support the production of oil and gas "from the adjacent or accessible State lease and for other operations related to these activities." 30 C.F.R. 550.163(b).

Qilak anticipates completing the feasibility study and finalizing a project description in the next few months. At that point, the project proponents will complete an application for a RUE, consistent with the regulatory requirements at 30 CFR 550.160(a) (i).

By this letter, I respectfully request that the Department designate a team at BOEM to work with my team at the Alaska Department of Natural Resources, as well as the Point Thomson project proponents, to coordinate the permitting and National Environmental Policy Act (NEPA) review for the RUE and placement of the offshore facilities required for Point Thomson full-field development. This coordination relationship is set forth in an MOU between the State of Alaska and the BOEM, "On Coordination and Collaboration Regarding OCS Energy and Marine Minerals Development and Environmental Stewardship." Early designation of the BOEM team and State collaboration is critical to facilitate the overall project review currently underway regarding the future of gas commercialization from the Point Thomson Unit. Designation of the BOEM project team will also allow us, in coordination with the project proponents, to address key issues with the Department ahead of submission of the required Development Operations Coordination Document (DOCD) and initiation of the NEPA review process.

Sincerely,



Corri A. Feige
Commissioner

Cc: Sara Longan, Deputy Commissioner
James Kendall, Regional Director, BOEM Alaska

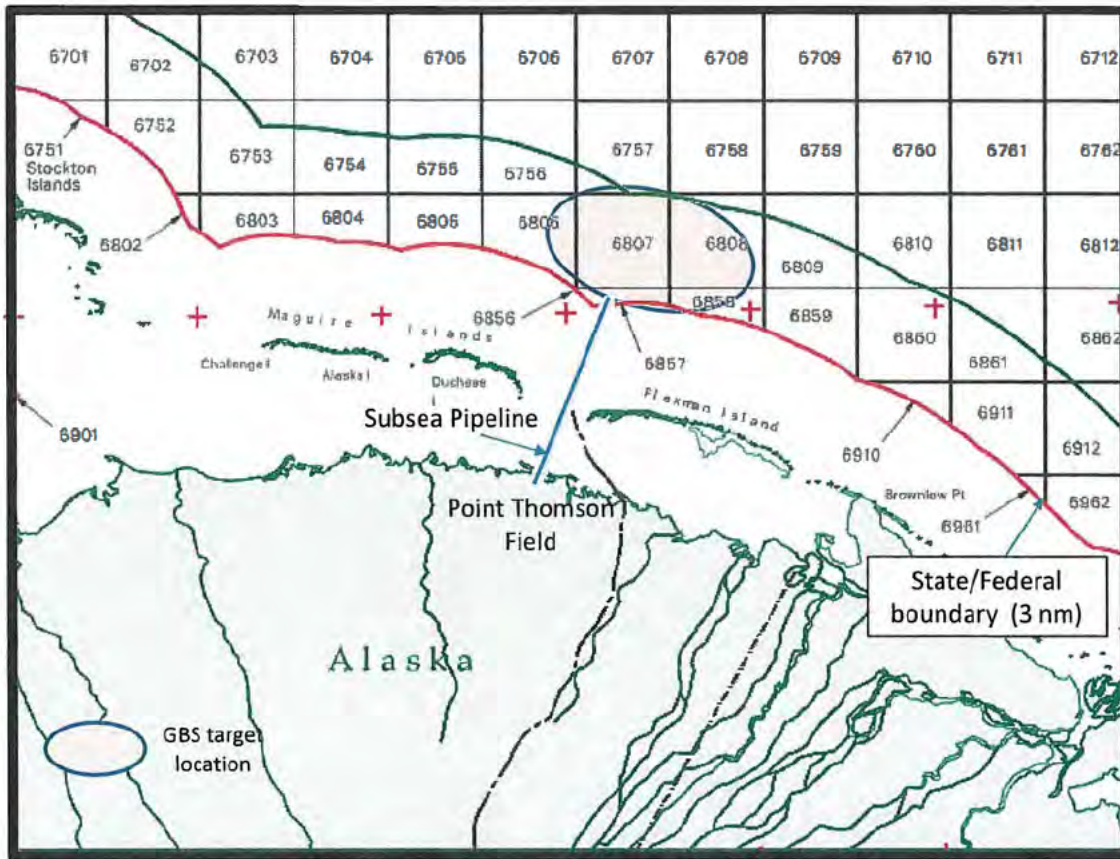


Figure 1 – Map showing potential location of GBS offshore from Flaxman Island

Permitting Pathways for Outer Continental Shelf Production Infrastructure to Support State Energy Development

Under federal law, Outer Continental Shelf Lands Act (OCSLA) and the Deepwater Port Act (DWPA) regulate the permitting, construction and operations of LNG facilities sited in the OCS. What follows outlines the respectful authorities of the responsible agencies under these laws and explains why OCSLA provides BOEM with the authority to permit LNG facilities that will be utilized for the development of the Point Thomson field.

I. BOEM'S Authority to Permit Facilities in the OCS

A. The Outer Continental Shelf Lands Act (OCSLA) includes several provisions authorizing BOEM to permit production infrastructure on the OCS.

Section 1337(p), which was added as part of the Energy Policy Act of 2005, authorizes the Secretary to issue a lease, easement or right-of-way (also referred to in the regulations as a “right-of-use”) for OCS submerged lands “for activities *not otherwise authorized* in [the OCSLA], the Deepwater Port Act of 1974 (33 USC 1501 et seq), . . . *or other applicable law*[.]” 43 USC 1337(p)(1) (emphasis added).¹

OCSLA also provides that BOEM may make such a grant for activities that “support exploration, development, production, or storage of oil or natural gas” or “support transportation of oil or natural gas.” *Id.*²

Thus, when read together, these provisions in Section 1337 provide that DOI/BOEM have been granted the authority to step in and permit activities that support the development and transportation of natural gas when no other authority exists.

¹ Section 1337(p) reads: “The Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating and other relevant departments and agencies of the Federal Government, may grant a lease, easement, or right-of-way on the outer Continental Shelf for activities not otherwise authorized in this subchapter, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law, if those activities-- (A) support exploration, development, production, or storage of oil or natural gas, except that a lease, easement, or right-of-way shall not be granted in an area in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium; (B) support transportation of oil or natural gas, excluding shipping activities....”

² In making such a grant, DOI is obligated to consult with the Secretary of Transportation “and other relevant departments and agencies of the Federal Government.” Section 1337(p). This provision, which post-dates litigation in which project opponents attempted to use the Deepwater Ports Act as an additional hurdle for operations authorized under OCSLA, is best read as a gap-filler to authorize the Secretary to evaluate and issue permits for activities that support energy development but may not be approved under any other statute.

B. BOEM’s Regulations authorize the agency to permit facilities in the OCS to facilitate the development of adjacent state resources.

BOEM has provided the following guidance related to the requirements for a Right-of-Use and Easement (the agency reference is “RUE”) request to construct and maintain platforms, artificial islands, installations and other devices permanently or temporarily attached to the seabed (collectively referred to as "installations") pursuant to the regulations set forth in 30 CFR Part 550, subpart A:

Under 30 CFR Part 550, subpart A, BOEM may grant a RUE on leased and unleased lands on the OCS. Pursuant to the regulations at 30 CFR 550.160(a) - (i), a RUE may be granted if certain requirements are met. One specific requirement, 30 CFR 550.160 (e), states that a project proponent must receive BOEM approval for all installations. BOEM approval is intended to ensure the proposed activities conform to sound conservation practices and are carried out in a safe and environmentally sound manner as to prevent harm or damage to any natural resource or human, marine, or coastal environment. The requirement for BOEM approval for all installations occurs with the submittal, review and approval of an Exploration Plan (EP), a Development and Production Plan (DPP), or a Development Operations Coordination Document (DOCD). Therefore, in order for BOEM to grant the RUE request for installations, the proposed activities by OCS lessees are also subject to the Plans approval process and the regulation requirements set forth in 30 CFR Part 550, subpart B: (1) a project proponent must submit and receive BOEM approval of an EP, DPP, or DOCD for the proposed activities at the subject installations before an RUE may be granted; (2) requests for exceptions to this requirement may be submitted to the Regional Director for consideration (the exception request must clearly demonstrate that RUE approval is needed before or without Plan Approval); and (3) the project proponent must satisfy all other BOEM regulations at 30 CFR 550.160 in order for BOEM to grant an RUE on leased and unleased lands on the OCS.

BOEM regulations also seem to support the issuance of a RUE to parties that do not hold a federal oil and gas lease. There are two provisions that are relevant – one gives parties that do not have a federal oil and gas lease the ability to get a RUE and a second regulation gives a state oil and gas lessee a RU:

- 30 C.F.R. 550.160 an entity that does not hold a federal offshore oil and gas lease may apply to the BOEM for a “right-of-use” and an easement “to maintain platforms, artificial islands, and installations and other devices at an OCS site other than an OCS lease you own[.]” Note – this regulation only gives an easement “to maintain . . . installations” – it does not say anything about the right to construct and install a facility.
- BOEM’s regulations grant a lessee of a State lease located adjacent to or accessible from the OCS a right-of-use and easement on the OCS “to enable a State lessee to conduct and maintain a device that is permanently or temporarily attached to the seabed (i.e., a platform, artificial island, or installation). The lessee must use the device to explore for, develop, and produce oil and gas from the adjacent or accessible State lease and for other operations related to these activities.” 30 C.F.R. 550.163(b).

II. MARAD's Authority Under the Deepwater Ports Act To

The federal government owns submerged lands beyond three miles from the coast.³ The submerged lands beyond three miles are called the Outer Continental Shelf. A deepwater port may be constructed on the Outer Continental Shelf only under the authority of the Deepwater Ports Act.⁴ DWPA broadly defines a deepwater port to mean:

- (A) means any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to or from any State, except as otherwise provided in section 1522 of this title, and for other uses not inconsistent with the purposes of this chapter, including transportation of oil or natural gas from the United States outer continental shelf;
- (B) includes all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark;
- (C) in the case of a structure used or intended for such use with respect to natural gas, includes all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed or approved for construction and operation as part of a deepwater port, to the extent that they are located seaward of the high water mark and do not include interconnecting facilities;

33 U.S.C. § 1502(9).

The Deepwater Port Act also establishes approval criteria that must be met before the applicable federal agency, the U.S. Maritime Administration (MARAD), may approve a deepwater port on the Outer Continental Shelf.⁵ Among these conditions is the requirement that the adjacent State have an approved Coastal Zone Management Plan or be making reasonable progress toward the same.⁶ Alaska chose not to renew its Coastal Zone Management Plan in

³ *United States v. Maine*, 420 U.S. 515 (1975).

⁴ 33 U.S.C. § 1503(a) provides: "No person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license issued pursuant to this chapter. No person may transport or otherwise transfer any oil or natural gas between a deepwater port and the United States unless such port has been so licensed and the license is in force."

⁵ 33 U.S.C. § 1503(c).

⁶ 33 U.S.C. § 1503(a), (c)(9) ("the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress, as determined in accordance with section 1508(c) of this title,

2011. The Deepwater Port Act, 33 U.S.C. §§ 1501-1521, prohibits the construction of deepwater ports in the Outer Continental Shelf, unless the adjacent coastal State is participating in a separate federal regulatory scheme under the Coastal Zone Management Act (CZMA).

III. The Deepwater Ports Act Need Not be Read to Bar BOEM from Issuing an Authorization for Production Infrastructure Tied to the Development of an Oil or Gas Field Located on Adjacent State Lands.

The foregoing interpretation of the OCLSA and BOEM's regulations creates an apparent conflict with the Deepwater Ports Act provision providing that MARAD has exclusive jurisdiction to permit stand-alone LNG facilities located in the OCS. While it is true that the Deepwater Ports Act establishes a permitting pathway for stand-alone deepwater ports, such as stand-alone LNG facilities, where the facility is part of a larger energy development project, at least one court has held that the Deepwater Port Act should not be read as an *additional* permitting requirement, at least for OCS lessees. *See Get Oil Out! v. Exxon Corp.*, 586 F.2d 726, 729 (9th Cir. 1978) ("We do not accept an interpretation of the Deepwater Port Act which would render provisions of the OCS Lands Act ineffective."). Thus, MARAD's authority is not paramount in all instances.

For our purposes, Section 1337(p) clearly provides DOI/BOEM with the authority to permit projects in the OCS when they are not otherwise authorized by the Deepwater Ports Act. It is also significant that this provision of OCLSA was enacted long after the Deepwater Port Act and, therefore, can be read in a way to provide DOI with authority to step in if no other agency (MARAD or FERC) has the authority to permit facilities in the OCS that will allow for the development of adjacent state resources.

This construction is bolstered by the DWPA's requirement that "A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions . . ." 33 U.S.C. § 1507(a). Because the Qilak facilities are going to be used solely to process and transport Point Thomson gas, these facilities will not function as a common carrier. Accordingly, the best way to harmonize OCLSA with DPWA is to limit the latter to situations where facilities are not exclusively associated with the development of a single field and will not process gas received from multiple fields.

In short, Section 1337(p) of OCLSA signals that Congress understood that there were gaps in federal law that prevent a party from getting infrastructure permitted. Congress amended this law in 2005 presumably to fill such a gap. In addition, OCSLA and the Department of the Interior's implementing regulations grant BOEM the authority to permit facilities tied to the development of adjacent state resources. These regulations presumably have not been repealed. Consequently, DWPA should not be read to strip BOEM of jurisdiction to permit such facilities.

toward developing, an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 [16 U.S.C. 1451 et seq.]").

July 15, 2020

Memorandum

TO: Walter Cruickshank, Acting Director, BOEM
FROM: Dennis Daugherty, Melissa Hearne, Susan Cason, Stephen Vorkoper, and Jes Spuhler
Attorney-Advisors, SOL
Subject: (b) (5) _____

I. Introduction

(b) (5) _____

II. Discussion

(b) (5) _____

(b) (5) [Redacted text block]

[Redacted text block]

III. Conclusion

(b) (5) [Redacted text block]

[Redacted text block]

From: [O'Scannlain, Kevin S](#)
To: [MacGregor, Katharine S](#); [Jorjani, Daniel H](#); [Hammond, Casey B](#)
Cc: [Zerzan, Gregory P](#); [Lawkowski, Gary M](#); [Kaster, Amanda E](#); [Davis, Natalie D](#); [Nixon, Molly E](#)
Subject: Oilak LNG
Date: Thursday, October 8, 2020 5:36:29 PM
Attachments: [2020.9.2 Oilak LNG letter to Hon. Alex Hergott FPISC Executive Director with attachments \(1\).pdf](#)
[7.17.2020 Oilak Memo - CLEAN \(1\).docx](#)

Kate –

Following up on our conversation in the Ops meeting, attached are the following documents relating to the subject matter:

(b) (5) [Redacted]

[Redacted]

[Redacted]

(b) (5) [Redacted]

[Redacted]

Please let me know if you want to set up a time to discuss further.

Kevin

Kevin O'Scannlain

Acting Deputy Solicitor / Energy & Mineral Resources

U.S. Department of the Interior

202-760-1811 (m)

From: [MacGregor, Katharine S](#)
To: [Lawkowski, Gary M](#)
Subject: RE: FWS RIN Requests
Date: Friday, September 18, 2020 9:40:00 AM

Approved.

From: Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>
Sent: Friday, September 18, 2020 9:09 AM
To: MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>
Subject: Fwd: FWS RIN Requests

For your awareness:
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From: Patnaik, Bivan R <bivan_patnaik@ios.doi.gov>
Sent: Friday, September 18, 2020 8:58:28 AM
To: Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>
Cc: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>
Subject: RE: FWS RIN Requests

Gary,

As our meeting w/Kate isn't until 11 this morning, would you be able to ask Kate when she gets in if we can draw the ESA RINs so we can send the Agenda today? FWS will need to draw 37 RINs and that will take a couple of hours to do so.

Thanks for your assistance,
B

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Thursday, September 17, 2020 5:44 PM
To: Patnaik, Bivan R <bivan_patnaik@ios.doi.gov>
Cc: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>; Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>
Subject: RE: FWS RIN Requests

That sounds good. That will give me a chance to understand what is going on with the MMPA rule.

Gregg D. Renkes

Deputy Chief of Staff/Senior Counselor

Office of the Secretary

U.S. Department of the Interior

(202) 208-4043 (O)

(202) 774-4833 (C)

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From: Patnaik, Bivan R <bivan_patnaik@ios.doi.gov>
Sent: Thursday, September 17, 2020 3:43 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Cc: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>; Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>

Subject: Re: FWS RIN Requests

Thanks Gregg.

Gary-if Kate approves the ESA RINs, we can have FWS draw those RINs tomorrow morning as that will be time consuming and then we can send the Agenda to OIRA. We can add the MMPA and any other RINs during the passback with OIRA.

B

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From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Sent: Thursday, September 17, 2020 5:26:41 PM

To: Patnaik, Bivan R <bivan_patnaik@ios.doi.gov>

Cc: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>; Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>

Subject: RE: FWS RIN Requests

I see no issues regarding RINs for the ESA listing determinations put forward by FWS and FWP. However, I am surprised by the ANWR MMPA request and want to learn more. I should be able to find out more tomorrow.

Gregg D. Renkes

Deputy Chief of Staff/Senior Counselor

Office of the Secretary

U.S. Department of the Interior

(202) 208-4043 (O)

(202) 774-4833 (C)

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From: Patnaik, Bivan R <bivan_patnaik@ios.doi.gov>

Sent: Thursday, September 17, 2020 2:30 PM

To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Cc: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>; Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>

Subject: FWS RIN Requests

Gregg,

I'm sending these to you again as they may have been overlooked w/the number of emails you've received on this. Please note that Kate ask that you review these before her and note that Aurelia S and Rob W have approved these.

Thanks,

B

Bivan R. Patnaik

Deputy Director of Regulatory Affairs

Office of the Executive Secretary and Regulatory Affairs

Department of the Interior

RM 7319

(W) 202.208.4582

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: Script - ANWR
To: "Goodwin, Nicholas R" <nicholas_goodwin@ios.doi.gov>
Sent: Sun, 16 Aug 2020 16:53:27 -0400 (Sun, 16 Aug 2020 20:53:27 GMT)
Attachment 1: ANWR Coastal Plain Secretary Bernhardt Script + GR.docx

Here you go.

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Sunday, August 16, 2020 4:30 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: RE: Script - ANWR

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Goodwin, Nicholas R
Sent: Sunday, August 16, 2020 4:30 PM
To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Script - ANWR

Gregg,

Please take a quick look before I send to DB.

Thanks,

Nicholas Goodwin
Communications Director
Office of the Secretary
Department of the Interior
(202) 412-2249



From: [Sweeney, Tara M](#)
To: [Cardinale, Richard](#); [Jorjani, Daniel H](#); [MacGregor, Katharine S](#); [Skipwith, Aurelia](#); [Wallace, George R](#)
Cc: [Willens, Todd D](#); [Renkes, Gregg D](#); [White, Katherine M](#); [Foster, Maureen D](#); [Gale, Michael](#); [Myers, Richard G](#)
Subject: RE: TIME SENSITIVE - Draft Presidential Memo on Polar Bear Viewing
Date: Friday, October 9, 2020 9:23:19 AM
Attachments: [image001.png](#)

I am recused from Arctic National Wildlife Refuge issues. I may need ethics clearance to provide comments with respect to Alaska Native corporations, therefore I will not be submitting comments. Thank you.

Katuk

Tara M. Sweeney
Assistant Secretary, Indian Affairs
U.S. Department of the Interior
(202) 208-7163



@ASIndianAffairs

To schedule a meeting, please follow this link: <https://www.indianaffairs.gov/node/add/meeting-request>

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From: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>
Sent: Friday, October 9, 2020 8:47 AM
To: Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>; Skipwith, Aurelia <aurelia_skipwith@fws.gov>; Wallace, George R <george_wallace@ios.doi.gov>; Sweeney, Tara M <Tara_Sweeney@ios.doi.gov>
Cc: Willens, Todd D <todd_willens@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; White, Katherine M <katherine_white@ios.doi.gov>; Foster, Maureen D <maureen_foster@ios.doi.gov>; Gale, Michael <michael_gale@fws.gov>; Myers, Richard G <RichardG.Myers@bia.gov>
Subject: TIME SENSITIVE - Draft Presidential Memo on Polar Bear Viewing

All,

Attached please find the above-referenced draft Presidential memo that we received from the White House. This document is moving on an expedited schedule. Please review the draft memo and provide any comments/edits or your concurrence **by Noon today**. This is a close hold document, so please do not distribute it. Thank you.

Rich

From: Downes, David R <David_Downes@ios.doi.gov>
Subject: RE: more information regarding UN inquiry re ANWR
To: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
CC: "Taylor, Sara M" <sara_taylor@ios.doi.gov>
Sent: Mon, 26 Oct 2020 09:36:09 -0400 (Mon, 26 Oct 2020 13:36:09 GMT)

Thanks, Gregg.

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Saturday, October 24, 2020 3:33 PM
To: Downes, David R <David_Downes@ios.doi.gov>
Cc: Taylor, Sara M <sara_taylor@ios.doi.gov>
Subject: more information regarding UN inquiry re ANWR

David, See attached. Gregg

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: [Gieryic, Michael S](#)
To: [MacGregor, Katharine S](#); [Renkes, Gregg D](#); [Cason, James E](#); [Bockmier, John M](#); [Wackowski, Stephen M](#); [Hammond, Casey B](#); [Dermody, Matthew D](#); [Pendley, William P](#); [Nedd, Michael D](#); [Benedetto, Kathleen M](#); [Kaster, Amanda E](#); [Padgett, Chad B](#); [Murphy, Ted A](#); [Pendergast, Kevin J](#); [Jones, Nichelle \(Shelly\) W](#); [Svejnoha, Wayne](#); [Brumbaugh, Robert](#); [Kendall, Gina](#); [Sweet, Serena E](#); [Hayes, Miriam \(Nicole\) N](#); [Lord, Satrina R](#); [Ellis-Wouters, Lesli J](#); [Tausch, Eric C](#); [Siekaniec, Greg E](#); [Skipwith, Aurelia](#)
Cc: [Jorjani, Daniel H](#); [Zerzan, Gregory P](#); [Noble, Michaela E](#); [Marie, Marc G](#); [Moody, Aaron G](#); [O'Scannlain, Kevin S](#); [Hawbecker, Karen X](#); [Budd-Falen, Karen J](#); [Romanik, Peg A](#); [Deam, Seth R](#); [Lord, Kenneth M](#); [Collier, Briana W](#); [Mellinger, Larry P](#); [Dorman, Wendy S](#); [Dimauro, Danielle N](#); [Bernhardi, Leah B](#); [Routhier, Michael P](#)
Subject: Re: ANWR Coastal Plain Oil and Gas Leasing Program Lawsuits
Date: Tuesday, August 25, 2020 5:18:09 PM
Attachments: [Complaint - Gwichin Steering Comm et al v Bernhardt et al 24Aug2020.pdf](#)
[Complaint - National Audubon Soc et al v Bernhardt et al 24Aug2020.pdf](#)

Here are the docketed complaints.

Note that they are currently assigned to two different judges; I suspect that ultimately they will be assigned to the same judge (i.e., one or the other of the current judges).

From: Gieryic, Michael S
Sent: Monday, August 24, 2020 7:56 PM
To: MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Cason, James E <james_cason@ios.doi.gov>; Bockmier, John M <john_bockmier@ios.doi.gov>; Wackowski, Stephen M <stephen_wackowski@ios.doi.gov>; Hammond, Casey B <casey_hammond@ios.doi.gov>; Dermody, Matthew D <matthew_dermody@ios.doi.gov>; Pendley, William P <wpendley@blm.gov>; Nedd, Michael D <mnedd@blm.gov>; Benedetto, Kathleen M <kbenedetto@blm.gov>; Kaster, Amanda E <akaster@blm.gov>; Padgett, Chad B <cpadgett@blm.gov>; Murphy, Ted A <t75murph@blm.gov>; Pendergast, Kevin J <kpendergast@blm.gov>; Jones, Nichelle (Shelly) W <njones@blm.gov>; Svejnoha, Wayne <wsvejnoh@blm.gov>; Brumbaugh, Robert <rbrumbau@blm.gov>; Kendall, Gina <gkendall@blm.gov>; Sweet, Serena E <ssweet@blm.gov>; Hayes, Miriam (Nicole) N <mnhayes@blm.gov>; Lord, Satrina R <slord@blm.gov>; Ellis-Wouters, Lesli J <lellis@blm.gov>; Tausch, Eric C <etausch@blm.gov>; Siekaniec, Greg E <greg_siekaniec@fws.gov>
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Subject: ANWR Coastal Plain Oil and Gas Leasing Program Lawsuits
FYI -

Today a Native organization and two groups of environmental plaintiffs filed two separate

complaints in U.S. District Court for the District of Alaska, challenging the Department's August 17th Record of Decision (ROD) adopting an oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge, as required by Section 20001 of the Tax Cuts and Jobs Act of 2017.

The first lawsuit, *Gwich'in Steering Committee et al. v. Bernhardt et al.* (filed by Trustees for Alaska on behalf of thirteen plaintiffs), names Secretary Bernhardt, the Department of the Interior, BLM, and USFWS as defendants, alleging violations of the APA, NEPA, ESA, ANILCA, National Wildlife Refuge System Administration Act, Wilderness Act, and the Tax Cuts and Jobs Act.

The second lawsuit, *National Audubon Society et al. v. Bernhardt et al.* (filed by NRDC and EarthJustice on behalf of four plaintiffs), names Secretary Bernhardt, BLM, and USFWS as defendants, alleging violations of the APA, NEPA, ESA, and the National Wildlife Refuge System Administration Act.

The complaints seek various relief including setting aside the Final EIS, ANILCA Section 810 Subsistence Evaluation, USFWS Biological Opinion, and Secretary Bernhardt's ROD, and an injunction against any lease sale or other action implementing the ROD.

The attached unofficial complaints (without docket numbers) are from the plaintiffs' websites. I have not yet been able to download the filed complaints from Pacer, however I wanted to get this note out ASAP given that news outlets are already carrying stories of the lawsuits. I will send the docketed complaints on Tuesday.

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**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

GWICH'IN STEERING COMMITTEE,
ALASKA WILDERNESS LEAGUE,
ALASKA WILDLIFE ALLIANCE,
CANADIAN PARKS & WILDERNESS
SOCIETY-YUKON, DEFENDERS OF
WILDLIFE, ENVIRONMENT
AMERICA, INC., FRIENDS OF
ALASKA NATIONAL WILDLIFE
REFUGES, NATIONAL WILDLIFE
FEDERATION, NATIONAL
WILDLIFE REFUGE ASSOCIATION,
NORTHERN ALASKA
ENVIRONMENTAL CENTER,
SIERRA CLUB, THE WILDERNESS
SOCIETY, and WILDERNESS
WATCH,

Plaintiffs,

v.

DAVID BERNHARDT, in his official
capacity as Secretary of the Interior,
UNITED STATES DEPARTMENT OF
THE INTERIOR, BUREAU OF LAND
MANAGEMENT, and U.S. FISH &
WILDLIFE SERVICE,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Alaska National Interest Lands Conservation Act, §§ 303(2)(B), 304(a), Pub. L. No. 96-487, 94 Stat. 2371 (1980) & 16 U.S.C. §§ 3101–3233; National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd–668ee; National Environmental Policy Act, 42 U.S.C. §§ 4321–4370j; Tax Cuts and Jobs Act, Pub. L. 115-97, tit. 2, § 20001; Wilderness Act, 16 U.S.C. §§ 1131–1136; Endangered Species Act, 16 U.S.C. §§ 1531–1544; Administrative Procedure Act, 5 U.S.C. §§ 702–706)

Plaintiffs Gwich'in Steering Committee, Alaska Wilderness League, Alaska Wildlife Alliance, Canadian Parks & Wilderness Society-Yukon, Defenders of Wildlife, Environment America, Inc., Friends of Alaska National Wildlife Refuges, National Wildlife Federation, National Wildlife Refuge Association, Northern Alaska Environmental Center, Sierra Club, The Wilderness Society, and Wilderness Watch (collectively, Plaintiffs) file this Complaint for Declaratory and Injunctive Relief, alleging:

I. NATURE OF THE CASE

1. The Coastal Plain of the Arctic National Wildlife Refuge (Arctic Refuge) is iconic and sacred. It provides habitat for numerous fish and wildlife species, including caribou, polar bears, birds, and wolves. It offers exceptional recreational experiences, in large part because of its incredible wilderness and wildlife values. Most critically, it is sacred land to the Gwich'in Nation, Indigenous people of Alaska and Canada, because of the importance of the Coastal Plain to the Porcupine Caribou Herd and the deep cultural and spiritual connection between the Gwich'in and the caribou.

2. Because of its exceptional subsistence, wildlife, habitat, and cultural values, the Coastal Plain has been protected under federal law for decades. Those protections prohibited oil and gas leasing and development in the area.

3. This protected status changed in 2017. A rider to tax reform legislation allowed for an oil and gas leasing program on the Coastal Plain. The U.S. Department of

the Interior (DOI) and the Bureau of Land Management (BLM) have since rushed to complete their environmental review and adopt an extensive and harmful leasing program.

4. In issuing the final environmental impact statement (EIS) and signing the record of decision (ROD), BLM failed to comply with numerous federal statutes and regulations that impose important protections for the lands and resources on the Coastal Plain. These laws require thorough, transparent, and careful analysis of the impacts of BLM's decision. The agency's failure threatens the exceptional resources of the Coastal Plain and the subsistence, cultural, and spiritual connection between the Gwich'in People and the Coastal Plain.

5. The U.S. Fish and Wildlife Service (FWS) issued a Biological Opinion (BiOp) in support of the final EIS and ROD. FWS determined the leasing program would not jeopardize polar bears on the Coastal Plain nor adversely modify their critical habitat. In making this determination, FWS relied on mitigation measures that are not reasonably certain to occur, and failed to consider the best available science, the impacts of the entire leasing program on designated critical habitat, and the contribution of the leasing program to climate change. FWS violated the Endangered Species Act (ESA) and the Administrative Procedure Act (APA) because its consultation with BLM was deficient and its determinations in the BiOp are arbitrary and capricious.

6. This action arises under, and alleges violations of: the Alaska National Interest Lands Conservation Act (ANILCA), §§ 303(2)(B), 304(a), Pub. L. No. 96-487, 94 Stat. 2371 (1980) and 16 U.S.C. §§ 3101–3233; Title II of the Tax Cuts and Jobs Act, Public Law 115-97, Section 20001 (Tax Act); the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370j, and implementing regulations; the National Wildlife Refuge System Administration Act (Refuge Act), 16 U.S.C. §§ 668dd–668ee, and implementing regulations; the Wilderness Act, 16 U.S.C. §§ 1131–1136; the ESA, 16 U.S.C. §§ 1531–1544, and implementing regulations; and the APA, 5 U.S.C. §§ 701–706.

7. Plaintiffs bring this action to invalidate BLM’s unlawful final EIS, ROD, and ANILCA Section 810 Final Evaluation, and FWS’s deficient BiOp, and any related or subsequent decisions based on those documents.

8. Plaintiffs seek vacatur and declaratory and injunctive relief against the Secretary of the Interior, DOI, BLM, and FWS. The agencies’ actions and decisions fail to comply with applicable law, are arbitrary, capricious, an abuse of discretion, and not in accordance with the law, in excess of statutory authority, and without observance of the procedure required by law. 5 U.S.C. § 706(2).

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over the parties and subject matter of this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (action to compel

mandatory duty), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202 (injunctive relief).¹

10. The BLM’s final EIS, ROD, and ANILCA Section 810 Final Evaluation, and FWS’s BiOp are final agency actions for which Plaintiffs have a right to judicial review under the APA. 5 U.S.C. §§ 701–706.

11. Defendants’ sovereign immunity is waived pursuant to the APA. 5 U.S.C. § 702.

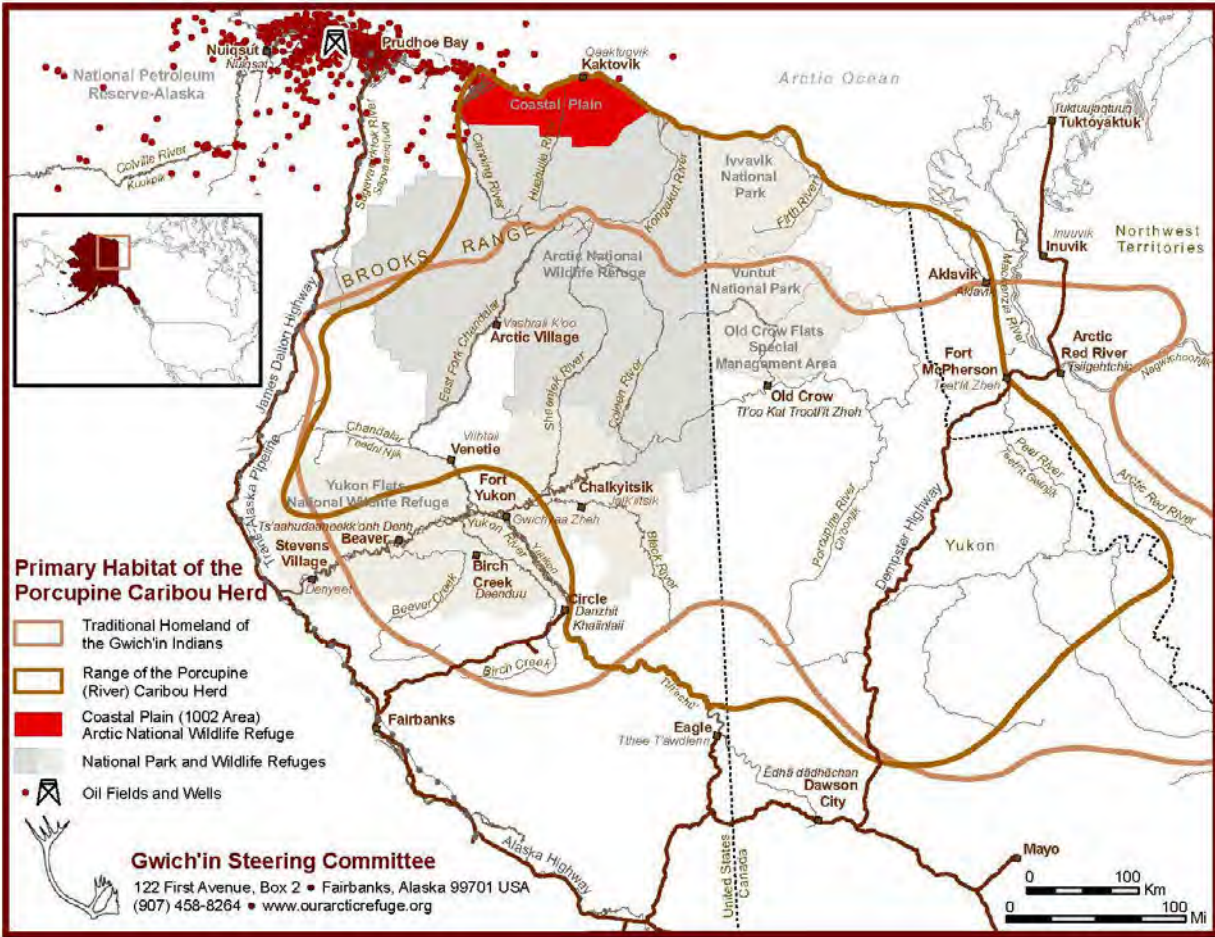
12. Venue is proper in the District of Alaska under 28 U.S.C. § 1391(a)–(c) and (e) because a substantial part of the events giving rise to the claims occurred within the BLM Alaska State and Arctic District Offices, and the FWS Alaska Regional Office, because many groups are primarily located in or maintain offices in Alaska, and because the lands at issue in the case — the Coastal Plain of the Arctic National Wildlife Refuge — are located in Alaska.

III. PARTIES

Plaintiffs

¹ Pursuant to 16 U.S.C. § 1540(g)(2)(A), on August 24, 2020, Plaintiffs provided 60 days’ notice of intent to sue to DOI, BLM, and FWS regarding BLM’s unreasonable and unlawful reliance on the BiOp, in violation of its substantive duty under section 7(a)(2) of the ESA to ensure against jeopardy and destruction or adverse modification of critical habitat for the polar bear.

13. Plaintiff Gwich'in Steering Committee is a 501(c)(3) nonprofit organization based in Fairbanks, Alaska. The Gwich'in Steering Committee is a voice for the 8,000 members of the Gwich'in Nation speaking out to protect the sacred calving and nursery grounds of the Porcupine Caribou Herd — the Coastal Plain. The Gwich'in Steering Committee was formed in 1988 in response to proposals to drill for oil in the Coastal Plain. The Gwich'in Steering Committee represents the communities of Arctic Village, Venetie, Fort Yukon, Beaver, Chalkyitsik, Birch Creek, Canyon Village, Circle, and Eagle Village in Alaska, and Old Crow, Fort McPherson, Tsiigehtchic, Aklavik, and Inuvik in Canada. The mission of the Gwich'in Steering Committee is to ensure the long-term health and viability of the Porcupine Caribou Herd, which sustains the Gwich'in way of life. Protecting the Coastal Plain and the Porcupine Caribou Herd is a human rights issue for the Gwich'in People. The Gwich'in Steering Committee is dedicated to protecting the entire ecosystem that the caribou rely on so that the Gwich'in People will have a future in their homeland. As depicted in the map below, the traditional homelands of the Gwich'in generally follow the migratory path of the Porcupine Caribou Herd, but because of how sacred the Coastal Plain is to the Gwich'in, the area is not visited:



The Gwich'in Steering Committee's goal is to permanently protect the Coastal Plain of the Arctic Refuge. Gwich'in leaders have advocated for permanent protection of the Coastal Plain of the Refuge for decades, since before the passage of the Alaska National Interest Lands Conservation Act. The Gwich'in Steering Committee engages in numerous activities to advocate for permanent protection of the Refuge, including public outreach and education, media work, public speaking, and attending conferences and events. The Gwich'in Steering Committee has submitted comments on numerous Refuge

decisions and has presented testimony to Congress, the United Nations Special Rapporteur on Indigenous Peoples, and at public hearings on the EIS. The Gwich'in Steering Committee submitted extensive comments on the draft EIS, including raising issues under ANILCA section 810 and subsistence use of the Coastal Plain's resources.

14. Plaintiff Alaska Wilderness League (AWL) is a nonprofit organization founded in 1993 with approximately 100,000 members and supporters, including many members in Alaska. AWL's mission is to galvanize support to secure vital policies that protect and defend America's last great wild public lands and waters. AWL advocates for the protection of Alaska's wild lands and waters and works to prevent environmental degradation on Alaska's public lands and waters, including the Arctic Refuge. AWL actively works on issues related to oil and gas development and the protection of the Arctic Refuge. AWL is committed to honoring the human rights and traditional values of the people of the Arctic.

15. Plaintiff Alaska Wildlife Alliance (AWA) was founded by Alaskans in 1982 to protect intact ecosystems so that our state's wildlife can be managed for biodiversity and the benefit of present and future generations. AWA has over 300 members and supporters. AWA and its members speak out against energy development that unduly threatens vulnerable Alaskan ecosystems and species, including BLM's leasing program for the Coastal Plain. AWA is particularly concerned about impacts on Coastal Plain ecosystems and wildlife, including but not limited to the endangered

Steller's eider and Beaufort Sea Polar bears, as well as millions of migrating and nesting shorebirds, the Porcupine and Central Arctic caribou herds, and muskoxen. In addition to threatening wildlife, the leasing program violates the rights of Alaska Natives to subsist on this vibrant landscape. AWA views the Coastal Plain as one of the last unspoiled wild areas in the world, and seeks to ensure that protections guaranteed in its designation are honored for future generations of Alaskans and wildlife.

16. Plaintiff Canadian Parks and Wilderness Society – Yukon Chapter (CPAWS Yukon) is one of thirteen chapters of the Canadian Parks and Wilderness Society, which has over 40,000 supporters across Canada. CPAWS Yukon has approximately 220 members and over 2,000 supporters. It was founded in 1992 by Yukoners who wanted to bring attention to conservation issues in the Yukon Territory. CPAWS Yukon aims to preserve vast tracts of the Yukon's most beautiful and ecologically important lands and waters. CPAWS Yukon supports fair and democratic land-use planning that respects the rights of Yukon First Nations, engages all Yukoners, and recognizes the importance of protected areas as a means to promote ecological integrity and a sustainable future for the Yukon. CPAWS Yukon works on issues related to oil and gas activities on the Coastal Plain of the Arctic Refuge, which have the potential to harm the Porcupine Caribou Herd, which is critical to the culture and subsistence ways of life for Indigenous peoples across northern Yukon and into the Northwest Territories.

17. Plaintiff Defenders of Wildlife (Defenders) is a nonprofit conservation organization and one of the nation's leading advocates for endangered species and wildlife. Founded in 1947, Defenders is headquartered in Washington, D.C. and maintains six regional offices throughout the country, including in Anchorage, Alaska. Defenders represents approximately 1.8 million members and supporters nationwide and around the world, including more than 6,000 in Alaska. Defenders uses education, public outreach, science, policy, and litigation, along with legislative and administrative advocacy, to defend the species, ecosystems, and habitats that are central to the organization's mission, including on the Arctic National Wildlife Refuge. Defenders has worked for decades to safeguard the Arctic Refuge from destructive oil and gas development. Protecting this vital unit of the National Wildlife Refuge System is key to implementing Defenders' vision to ensure that diverse wildlife populations are secure and thriving, sustained by a healthy and intact network of lands and waters. Defenders also works to support implementation of the FWS's Polar Bear Conservation and Recovery Plan, and to reduce any conflicts or impacts to polar bears and other wildlife that may arise from current or proposed development activities in the Arctic Refuge and elsewhere in the Arctic.

18. Plaintiff Environment America, Inc. (Environment America) is an advocacy group comprised of twenty-nine affiliate organizations and members and supporters in every state, including Alaska. Environment America works to protect air, water, and open

spaces. Environment America engages in independent environmental research and advocates for policies by lobbying and mobilizing the public. Environment America has worked to raise awareness about the harmful impacts of oil and gas on public lands, including the Arctic Refuge, and the need to protect our natural heritage over fossil fuel extraction.

19. Plaintiff Friends of Alaska National Wildlife Refuges (Friends) is a nonprofit organization founded in 2005 and based in Homer, Alaska. It is a volunteer group that works to assist FWS to accomplish its congressionally-mandated mission for the sixteen national wildlife refuges in Alaska. Friends promotes the conservation of all Alaska National Wildlife Refuges by helping to protect and enhance their habitats and wildlife, including the Arctic Refuge, and by assisting the FWS through outreach to decision-makers and testimony before Congress.

20. Plaintiff National Wildlife Federation (NWF), one of America's largest conservation organizations, has worked across the country to unite Americans from all walks of life in giving wildlife a voice for over eighty years. NWF has 51 state and territorial affiliates, including an Alaska affiliate, and more than 6 million members and supporters, including hunters, anglers, gardeners, birders, hikers, campers, paddlers, and other outdoor enthusiasts. NWF programs work to protect the 600 million acres of public lands owned by all Americans and has a longstanding interest in ensuring these lands are managed properly for fish, wildlife, and communities.

21. Plaintiff National Wildlife Refuge Association is a non-profit organization focused exclusively on protecting and promoting the 850 million-acre National Wildlife Refuge System, the world's largest network of lands and waters set aside for wildlife conservation. Founded in 1975, its mission is to conserve America's wildlife heritage for future generations through strategic programs that enhance the National Wildlife Refuge System and the landscapes beyond its boundaries. With approximately 80% of the land mass of the National Wildlife Refuge System in Alaska, the National Wildlife Refuge Association has throughout its history focused significant resources on protecting and enhancing Refuge System resources in Alaska, including the Arctic Refuge.

22. Plaintiff Northern Alaska Environmental Center (Northern Center) is an Alaska nonprofit environmental organization founded in 1971 with over 900 members, sixty percent of whom are located throughout Alaska. The Northern Center's mission is to promote the conservation of the environment and sustainable resource stewardship in Interior and Arctic Alaska through education and advocacy. One of the Northern Center's major focus areas is its Arctic program. The Northern Center actively works to protect the Arctic, its communities, and vital wildlife habitats and wildlands, including the Arctic Refuge, from the harms associated with oil and gas development. The Northern Center also works to amplify the voices of local populations impacted by development. The Northern Center participates in agency decision-making processes related to oil and gas development in the Arctic, including the challenged action. The Northern Center provides

its members and the public with information about the impacts of oil and gas on the Arctic, enabling members to participate as well.

23. Plaintiff Sierra Club is the nation's oldest and largest grassroots environmental organization. The Sierra Club is a national nonprofit organization of approximately 800,000 members dedicated to exploring, enjoying, and protecting the wild places of Earth; to practicing and promoting the responsible use of the Earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment, and to using all lawful means to carry out these objectives. The Alaska Chapter of the Sierra Club has approximately 1,800 members. The Sierra Club's concerns encompass a variety of environmental issues in Alaska, and the organization has long been active on issues related to the protection of the Coastal Plain of the Arctic Refuge.

24. Plaintiff The Wilderness Society is a nonprofit organization headquartered in Washington, D.C., with offices throughout the country, including a six-person staff in Alaska. Its overall mission is to protect wilderness and inspire Americans to care for wild places. The Wilderness Society has close to a million members and supporters, many of whom are in Alaska. The goal of its Alaska program is to permanently protect special places in America's Arctic and sub-Arctic, including in the Arctic Refuge. The Wilderness Society has been engaged in Arctic Refuge conservation efforts for decades, and has consistently participated in public processes associated with Arctic Refuge

decisions. Among other areas of focus, staff from The Wilderness Society work to advance scientific understanding and conservation policy for highly migratory caribou and fish resources that utilize much of the landscape to complete their life cycles.

25. Plaintiff Wilderness Watch is a nonprofit organization founded in 1989. Its mission is to defend the nation's 111-million-acre National Wilderness Preservation System. Wilderness Watch advocates for appropriate stewardship according to the requirements of the Wilderness Act of 1964. Wilderness Watch monitors agency stewardship of designated Wilderness in Alaska and organizes its members to participate in public processes in Alaska, including the Arctic Refuge, that impact designated Wilderness.

26. Plaintiffs participated actively in the administrative process related to the oil and gas leasing program by submitting public comments, engaging with experts to review the analysis, giving oral testimony, and engaging their millions of members and supporters to participate in support of Coastal Plain protection to achieve organizational missions and goals. Plaintiffs also have an interest in ensuring that DOI, BLM, and FWS comply with applicable laws.

27. Plaintiffs' members and supporters work, visit, and recreate in and around the Arctic Refuge and on the Coastal Plain, including those lands and waters on the Coastal Plain that are open to oil and gas leasing and activities under BLM's decision, and plan to return to the Coastal Plain. Plaintiffs' members and supporters also live in and

around the Arctic Refuge. Plaintiffs' members and supporters use the Coastal Plain and depend on the health of the subsistence resources in the Coastal Plain and its vicinity to support their subsistence way of life, including to maintain cultural and spiritual practices and their identity. Plaintiffs' members and supporters have health, subsistence, cultural, economic, recreational, scientific, environmental, aesthetic, educational, conservation, and other interests in the Coastal Plain of the Arctic Refuge. Plaintiffs' members and supporters enjoy or use wildlife that inhabit these areas, in particular caribou, polar bears, and birds. Plaintiffs' members and supporters recreate on the Coastal Plain in multiple seasons because of its exceptional wilderness values and the exceptional visitor experience.

28. These interests, their members' and supporters' use and enjoyment of the Coastal Plain and adjacent areas, and the resources present in the area and that rely on the area, have been, are being, and will continue to be adversely affected by oil and gas program and activities in the Coastal Plain, including leasing the Coastal Plain. The leasing program, leasing, and oil and gas activities allowed by the lease program — including seismic exploration — will degrade and harm the natural environment and wildlife and habitat used and enjoyed by the Plaintiffs' members and supporters, thereby harming the interests of Plaintiffs' members and supporters. The oil and gas lease program, and activities enabled by the lease program and lease sale, will also impede Plaintiffs' members' ability to access subsistence resources in the region or to use

subsistence resources that rely on the Coastal Plain, and impact cultural and spiritual connections and traditions.

29. BLM's adoption of a leasing program in violation of NEPA, ANILCA, the Refuge Act, the Tax Act, and the Wilderness Act threatens imminent irreparable harm to the interests of the Plaintiffs and their members. The agency's failure to adhere to mandated procedures and its reliance on a flawed analysis also harms Plaintiffs' and their members' and supporters' ability to engage in the public process and ensure informed decision making and compliance with statutory protections otherwise mandated for the Coastal Plain.

30. These actual, concrete injuries suffered by Plaintiffs and their members and supporters are fairly traceable to BLM's adoption of the leasing program in violation of the substantive and procedural protections of these laws, and would be redressed by the relief sought in this case.

31. FWS's deficient BiOP in violation of the ESA and APA threatens imminent, irreparable harm to the interests of Plaintiffs and their members and supporters to the Southern Beaufort Sea (SBS) population of polar bears. These actual, concrete injuries suffered by Plaintiffs and their members and supporters are fairly traceable to the deficient BiOp for the leasing program and would be redressed by the relief sought in this case.

Defendants

32. Defendant David Bernhardt is the Secretary of the Interior and is being sued in his official capacity. Secretary Bernhardt is the official ultimately responsible under federal law for ensuring that the actions and decisions of BLM and FWS comply with all applicable laws and regulations. Secretary Bernhardt is the official who signed the ROD.

33. Defendant DOI is an agency of the United States responsible for oversight of BLM and FWS.

34. Defendant BLM is an agency within DOI. Under the Tax Act, it is responsible for management of a competitive oil and gas program including the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.

35. Defendant FWS is an agency within DOI and is charged with administering units of the national wildlife refuge system, including the Arctic Refuge, and with administering the ESA for polar bears (in addition to other terrestrial species).

IV. STATEMENT OF FACTS

The Exceptional Values of the Coastal Plain of the Arctic Refuge

36. The Arctic Refuge is iconic among America's wildlife refuges. Many consider it to be the crown jewel of the National Wildlife Refuge System, the largest system of public lands and waters managed for wildlife conservation in the world. At over 19 million acres, the Arctic Refuge is America's largest and wildest national wildlife

refuge. It encompasses boreal forests in the south, glaciers in the Brooks Range, the highest peak in Arctic Alaska, numerous braided rivers and natural springs, and the Coastal Plain that borders the Beaufort Sea to the north.

37. Its over 1.5-million-acre Coastal Plain is a vibrant and ecologically rich area that has been referred to as the “Serengeti of the Arctic” and is recognized as the biological heart of the Arctic Refuge. It is rare and important habitat for many animals, including caribou, polar and grizzly bears, birds, ice seals, musk oxen, and wolves.

38. The Porcupine Caribou Herd migrates annually through Alaska and Canada, traveling upwards of 2,700 miles per year — the longest overland migration of any terrestrial mammal. The Porcupine Caribou Herd relies on the Coastal Plain for calving, post-calving, and insect relief habitat, and as a source of high-protein nutrition away from predators.

39. The herd’s migratory path brings it to the Coastal Plain in the early summer, as early as May, where, in a frenzy of activity, the tens of thousands of calves are born within a few days of each other. The caribou cows find plentiful and high-protein food on the Coastal Plain to nourish and replenish them after their long journey and the stress of birth. The insect relief attributes of the Coastal Plain are also critical to the herd. The relentless insects of the Arctic are a major problem for the caribou and can even lead to death. The winds, coastline, and aufeis (areas of ice buildup along rivers) provide critical and potentially life-saving insect relief.

40. The Arctic Refuge lies at the heart of the traditional homelands of the Gwich'in people. As they have since time immemorial, the Gwich'in Nation of Alaska and Canada relies heavily on the Porcupine Caribou Herd for subsistence and as the foundation of their culture. Indeed, Porcupine caribou are so central to the lives of the Gwich'in that they call themselves the "caribou people," and the Gwich'in name for the Coastal Plain is "Izhik Gwats'an Gwandaii Goodlit" — which translates to "the Sacred Place Where Life Begins."

41. The relationship between the caribou and the Gwich'in is guided by the belief that the caribou have a piece of the Gwich'in in their heart and the Gwich'in have a piece of the caribou in their heart. As a result, the Gwich'in made a pact with the caribou to protect them so the caribou can continue to provide for the Gwich'in. The Gwich'in have maintained their cultural identity and connection to the Arctic Refuge and the Coastal Plain for millennia.

42. Gwich'in traditional knowledge instructs that the caribou will be harmed by the development of the Coastal Plain, the sacred calving and nursery grounds of the Porcupine Caribou Herd.

43. The Coastal Plain also provides denning habitat for polar bears, which are protected as a threatened species under the ESA. Polar bear populations have been reduced to a precarious state due to impacts from climate change, which will only worsen as warming in the Arctic region continues.

44. The Coastal Plain has the highest density of onshore polar bear denning habitat in America's Arctic. This is because the topography of the Coastal Plain, where the rivers and hills of the Coastal Plain create areas of deep snow drifts, is uniquely different from the rest of Alaska's Arctic. These areas where snow accumulates are ideal denning sites for pregnant polar bears. Maternal denning habitat includes corridors between the dens and the coast, as polar bears move along riverine corridors, traveling between their dens and food sources.

45. The abundant plants and insects available in the summer also allow many bird species to nest and forage on the Coastal Plain, which they do as part of their annual migrations through all of North America's flyways and, remarkably, to six continents. Birds begin returning to the Coastal Plain in the spring and remain through late summer and into early fall.

46. The Arctic Refuge is our nation's premiere wilderness Refuge and the wilderness values of the Coastal Plain are incomparable. The untrammled nature provides unique opportunities to study and understand ecosystems and functions on a landscape scale. The integrity of the ecosystems provides unique habitat to numerous wildlife species. The undeveloped and undisturbed character of the area offers world-class wilderness recreation opportunities. The Coastal Plain also borders the 8-million acre Mollie Beattie Wilderness area within the Arctic Refuge.

47. In short, the ecological, cultural, and wilderness values of the Coastal Plain are exceptional.

The Imperiled Southern Beaufort Sea Population of Polar Bears

48. In 2008, FWS published its final rule listing the polar bear as a threatened species under the ESA. FWS, Determination of Threatened Status for the Polar Bear (*Ursus maritimus*) Throughout Its Range, 73 Fed. Reg. 28,212 (May 15, 2008). FWS also published a Special Rule for the Polar Bear, 73 Fed. Reg. 76,249 (Dec. 16, 2008), which specifies the protective measures that apply to the polar bear because of its threatened status.

49. The Coastal Plain has the highest density of onshore polar bear denning habitat for polar bears in America's Arctic. FWS designated critical habitat for polar bears in Alaska in 2011, including barrier island, sea ice, and terrestrial denning habitat. Designation of Critical Habitat for the Polar Bear (*Ursus maritimus*) in the United States, 75 Fed. Reg. 76,086, 76,088–91 (Dec. 7, 2010). The vast majority of BLM's oil and gas leasing program area is land designated as terrestrial denning critical habitat.

50. The proportion of females denning on land has increased significantly as sea ice diminishes due to climate change. Polar bears are particularly vulnerable to sea ice melt given their life history and specialized habitat needs.

51. The Southern Beaufort Sea (SBS) population is among the most imperiled polar bear populations in the world, having declined dramatically since the 1990s. In

addition to climate change, polar bears in the SBS population face threats from a wide range of industrial activities, including onshore and offshore oil and gas development and increased shipping. They are also subject to subsistence hunting and mortality due to interactions with humans where there is a perceived threat to life and property.

52. The data and information on the population dynamics for the SBS polar bears are outdated and incomplete.

53. Noise and visual disturbance from human activity and operation of equipment, especially aircraft and vehicle traffic, have the potential to disturb polar bears nearby. Disturbance of maternal females during the winter denning period can result in premature den abandonment, or earlier den emergences and departures, adversely affecting polar bear cub survival.

BLM's Coastal Plain Leasing Program Process

54. In April 2018, BLM began the National Environmental Policy Act (NEPA) process for the Coastal Plain leasing program when it published a notice of intent to prepare an environmental impact statement for the Coastal Plain oil and gas program in the Federal Register. Notice of Intent to Prepare an Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska, 83 Fed. Reg. 17,562 (Apr. 20, 2018).

55. Numerous groups, including Plaintiffs, and hundreds of thousands of individuals submitted comments to the agency. Plaintiffs' comments outlined myriad

legal, technical, and resource issues that the agency needed to thoroughly explain and review before adopting a leasing program.

56. In spring 2018, working in conjunction with the Arctic Slope Regional Corporation and Kaktovik Inupiat Corporation, SAExploration, Inc. (SAE) applied to BLM for an authorization to conduct three-dimensional (3D) seismic exploration on the Coastal Plain.

57. According to SAE's Plan of Operations, the goal of its proposal was to identify potential targets for future lease sales on the Coastal Plain. SAE proposed to conduct seismic activities across the entire Coastal Plain, including its lagoons, over the course of two winter seasons.

58. Several groups, including Plaintiffs and scientific experts on Coastal Plain resources, submitted comments to BLM on the proposed seismic application. These comments explained that the agency should evaluate seismic exploration as part of the Leasing Program EIS, in addition to other issues.

59. BLM has yet to approve or reject SAE's proposal to conduct seismic exploration on the Coastal Plain. According to BLM statements in a Petroleum News article, as of August 13, 2020, BLM paused its processing of the application, pending BLM's receipt of an updated plan from SAE. To date, BLM has not released a NEPA document analyzing the impacts of SAE's seismic exploration project and application, nor has the agency addressed these comments.

60. In December 2018, BLM released the draft environmental impact statement (EIS) for the Coastal Plain leasing program and the ANILCA Section 810 Preliminary Evaluation.

61. Plaintiffs and over one million individuals submitted comments on BLM's draft EIS. The majority of these comments opposed the oil and gas program.

62. BLM's draft EIS considered a no-action alternative (Alternative A) and three action alternatives — Alternatives B, C, and D, with Alternative D having two subalternatives, Alternatives D1 and D2.

63. In comments on the draft EIS, Plaintiffs criticized BLM's consideration of alternatives, noting that the agency failed to consider a reasonable range of alternatives and failed to consider numerous viable alternatives. Letter from Alaska Wilderness League et al. to Nicole Hayes, Project Manager, BLM (Mar. 13, 2019).

64. Plaintiffs proposed multiple alternatives or components of alternatives that provided more protections for the Coastal Plain's resources. Plaintiffs explained how each proposed alternative or component would be consistent with applicable statutory mandates, including the Tax Act. *Id.*

65. In their comments, Plaintiffs also explained how BLM's proposed program was inconsistent with ANILCA's and the Refuge Act's conservation purposes for the Coastal Plain and otherwise failed to comply with the Refuge Act and ANILCA. *Id.*

66. Plaintiffs also submitted comments criticizing BLM's interpretation and application of the 2,000-acre limitation on surface development. *Id.*

67. Plaintiffs submitted extensive comments on the faults and errors with BLM's analysis of direct, indirect, and cumulative impacts of the proposed oil and gas leasing program for numerous resources. Plaintiffs commented on BLMs failure to consider any site-specific impacts, transboundary impacts, and impacts from climate change, in addition to other fundamental failings. *Id.*

68. These comments also included criticisms of the lease stipulations and required operating procedures, as well as the analysis of the affected environment and environmental consequences for greenhouse gas emissions and climate change, air quality, water, polar bears, caribou, wilderness and recreation, soils, permafrost, vegetation, and wetlands, and subsistence uses and resources, in addition to many others. *Id.*

69. Plaintiffs also commented extensively on BLM's failures to analyze the impacts to or propose measures for the protection of the wilderness characteristics of the Mollie Beattie Wilderness. *Id.*

70. Plaintiffs, and in particular the Gwich'in Steering Committee, submitted extensive comments criticizing BLM's ANILCA Section 810 Preliminary Evaluation and the related draft EIS analysis, including raising BLM's failure to consider all affected Gwich'in communities in the analysis, its incomplete and faulty conclusions about the

impacts of an oil and gas program on the subsistence resources relied on by the Gwich'in, including caribou and birds, and its incorrect conclusion that the oil and gas leasing program would not significantly restrict subsistence uses for the Gwich'in. *Id.*; Letter from Gwich'in Steering Committee to Nicole Hayes, Project Manager, BLM (Mar. 13, 2019).

71. BLM did not analyze either the proposed SAE seismic program or the potentially significant impacts of seismic exploration in general on polar bears, tundra, vegetation, permafrost, and other resources in the draft EIS — issues that Plaintiffs raised in their comments. Letter from Alaska Wilderness League et al. to Nicole Hayes, Project Manager, BLM.

72. Plaintiffs also pointed out that the draft EIS failed to examine impacts to the SBS polar bear population or explain how such impacts could be avoided or mitigated. *Id.* at 273–95.

73. The draft EIS did not adequately consider how current levels of lethal take will adversely affect individual SBS polar bears or the population as a whole, including the cumulative effects to the population when combined with the additional impacts of oil and gas activities on the Coastal Plain. *Id.*

74. BLM did not consider a range of alternatives or enforceable mitigation measures sufficient to offer a meaningful difference in impacts to polar bears and their critical habitat.

75. The draft EIS relied primarily on the use of forward looking infrared (FLIR) camera surveys to detect denning bears in advance of activities as a means to mitigate impacts. Plaintiffs submitted comments, including technical analysis from polar bear expert Dr. Steven Amstrup, explaining why such surveys are not effective given recent research demonstrating their shortcomings. *See id.*; Letter from Sierra Club to Nicole Hayes, Project Manager, BLM (Mar. 13, 2019) (attaching Letter from Dr. Steven Amstrup to Nicole Hayes, Project Manager, BLM (Mar. 8, 2019)). In fact, research suggests that a 50% detection rate is probably close to the highest that could reasonably be expected from FLIR surveys. Letter from Sierra Club to Nicole Hayes, Project Manager, BLM, (Sept. 18, 2019) (attaching Letter from Dr. Steven Amstrup to Nicole Hayes, Project Manager, BLM (Sept. 17, 2019)); *see also* Tom Smith *et al.*, *Efficacy of aerial forward-looking infrared surveys for detecting polar bear maternal dens*, 15 PLOS ONE 2 (2020) (finding FLIR detection success rate of only 45% based on empirical data from a set of industry surveys of northern Alaska). Detection success rates for the Coastal Plain are likely be even lower than the 45% observed in other areas of northern Alaska because of the deeper snow drifts and higher wind speeds prevailing on the Coastal Plain.

76. In September, BLM issued the final EIS and ANILCA Section 810 Final Evaluation for the leasing program, and identified Alternative B as the preferred alternative. EPA, Environmental Impact Statements, Notice of Availability, 84 Fed. Reg. 49,521 (Sept. 20, 2019).

77. In the final EIS, BLM modified the acreage available for lease under Alternative D2 to 800,000 acres. 1 U.S. Dep't of the Interior, Bureau of Land Mgmt., Coastal Plain Oil and Gas Leasing Program Final Environmental Impact Statement at 2-3 (2019) [hereinafter FEIS]. Otherwise, BLM did not analyze any new alternatives, including the other alternatives proposed by Plaintiffs.

78. BLM did not explain its failure to consider an alternative that would not allow seismic exploration on areas not offered for lease in the final EIS. *See* 1 *id.* at 2-44.

79. BLM did not explain its failure to consider a phased-leasing alternative in the final EIS. *See id.*

80. BLM did not adequately consider the purposes of the Coastal Plain or ensure that the oil and gas program would protect these purposes, and failed to consider the three purposes of the public land order setting the Refuge aside in 1960. *Id.* at 3-296 to -297; 2 *id.* at app. D at D-3. BLM stated, summarily, that the action alternatives “account for all purposes of the Arctic Refuge.” 1 *id.* at 1-2. However, the final EIS does not indicate how the purposes will be met and BLM failed to analyze the impacts to all purposes from the proposed program. *Id.* at 3-296 to -297.

81. Despite the concerns identified by Plaintiffs and numerous other commenters, BLM's final EIS still failed to adequately analyze the affected environment, the environmental consequences, or ways to mitigate the impacts to numerous resources, including but not limited to greenhouse gas emissions and climate change, air quality,

water, polar bears, caribou, wilderness and recreation, soils, permafrost, vegetation and wetlands, and subsistence uses and resources.

82. In the final EIS, BLM only considered one mitigation measure to protect the wilderness characteristics of the 8-million acre Mollie Beattie Wilderness: a 3-mile buffer around the area that would prohibit surface occupancy and/or not offer those areas for lease, and would also require aircraft to avoid flights below 2,000 feet within the buffer. This measure, however, only applied to Alternative D. *Id.* at 2-18. BLM did not propose, analyze, or adopt other mitigation measures to protect wilderness characteristics of the Mollie Beattie Wilderness and the Coastal Plain. BLM otherwise failed to properly evaluate the impacts of an oil and gas program on the wilderness characteristics of the Mollie Beattie Wilderness and the Coastal Plain. *Id.* at 3-304 to -306.

83. BLM set out its interpretation of the 2,000-acre limit on surface development of production and support facilities. *Id.* at 1-6 to -7; 2 *id.* at app. S at S-3 to -9. BLM stated that it cannot authorize anything less than 2,000 acres of development for surface facilities under the terms of the Tax Act. 1 *id.* at 2-44. This interpretation set out what components of oil and gas activities would be included in the limitation. *Id.* It also informed BLM's development scenario and impacts analysis for each alternative. *Id.* at 1-7, 2 *id.* at app. S at S-4; *id.* app. B at B-10, B-22 to -26.

84. Additionally, BLM explained that it would allow acreage to be reclaimed and then new acreage to be developed, potentially in excess of 2,000 acres over time (but

not more than 2,000 acres could be authorized at any given time). *Id.* at app. S at S-5 to -6. In other words, BLM treated the 2,000-acre limitation as a rolling limitation, not a cumulative cap and applied this interpretation to each action alternative. *Id.*

85. BLM identified the areas of high, medium, and low hydrocarbon potential, including for each action alternative. 1 *id.* 3-46 to -47, 2 *id.* at app. A at Map 3-6, 3-7, 3-8 & 3-9, app. B at B-3 to -5 & Map B-1

86. BLM's ANILCA Section 810 Final Evaluation relied primarily on the information and analysis in the final EIS. 2 *id.* at app. E at E-2. In the ANILCA Section 810 Final Evaluation, BLM evaluated the impact of the oil and gas leasing program on only four communities: Kaktovik, Nuiqsut, Arctic Village, and Venetie — and failed to evaluate the impacts of an oil and gas leasing program on other communities, despite recognizing many additional communities have subsistence-use connections to Coastal Plain resources. *Id.* at E-3 to -4.

87. In evaluating the impacts of each alternative on these four communities, BLM incorrectly determined that the alternatives would not significantly restrict subsistence uses for Arctic Village and Venetie. *Id.* at E-4 to -20.

88. The subsistence resources that BLM evaluated included only fish, marine mammals, and caribou; BLM failed to consider other important food sources that make up the wild foods consumed by the Gwich'in. *Id.* at E-3.

89. BLM also failed to incorporate the extensive traditional knowledge shared by the Gwich'in about the impacts of oil and gas on their subsistence uses and traditional practices of Coastal Plain resources in the ANILCA Section 810 Final Evaluation.

90. BLM did not hold a formal ANILCA section 810 hearing or make formal findings under ANILCA section 810(a)(3) for any Gwich'in village.

91. BLM included Lease Notice 2, which provides that BLM will not approve any exploration or development activity with the potential to “take” marine mammals unless the applicant/operator applies for and provides documentation of compliance with relevant take authorization(s) under the MMPA prior to commencement of oil and gas activities. 1 *id.* at 2-43. Lease Stipulation 5 provides the following requirement/standard: “[c]omply with ESA and [MMPA] requirements.” *Id.* at 2-11.

92. In the final EIS, BLM repeatedly stated that it lacks authority to preclude activities on leases that are “necessary” for “access” to carry out the oil and gas program. *See, e.g., 2 id.* at app. S at S-223.

93. FWS released a modeling study in December 2019 that quantitatively evaluated the impacts to denning bears and cubs on the Coastal Plain from an area-wide seismic survey, taking into account the impact of mitigation measures. Ryan Wilson & George Durner, *Seismic Survey Design and Effects on Maternal Polar Bear Dens*, 84 *Jour. Wild. Mgmt.* 201 (2019). The study found that extensive timing and geographic

restrictions on seismic activities would be needed to protect denning bears and ensure compliance with the Marine Mammal Protection Act (MMPA).

94. On March 13, 2020, FWS issued the programmatic BiOp for the leasing program analyzing impacts to polar bears and other protected species under FWS's jurisdiction. FWS, Biological Opinion for Coastal Plain Oil and Gas Leasing Program Arctic National Wildlife Refuge (Mar. 13, 2020) [hereinafter BiOp].

95. The BiOp concluded that BLM's decision to open the entire Coastal Plain to leasing as described under Alternative B, and subsequent lease sales, will not jeopardize the survival and recovery of polar bears or result in the destruction or adverse modification of the species' designated critical habitat. *Id.* at 128.

96. The BiOp acknowledges that there could be harm to polar bears, but did not attempt to quantify those harms or incidental take, stating that the locations of specific exploration and development activities are unknown at the leasing stage and that quantifying take is not be possible at this stage. *Id.* at 113. The BiOp did not include an incidental take statement.

97. The BiOp did not acknowledge or discuss the recent FWS study quantitatively estimating the extent of take from area-wide seismic surveys, despite assuming such a survey would occur within two years of the first lease sale. *Id.* at 15.

98. FWS identified four project design criteria (PDC) that it stated would ensure compliance with Section 7(a)(2) of the ESA. *Id.* at 107–08. Most relevant here are

PDCs 1 and 2. PDC 1 provides that, through a “lease notice,” BLM will require documentation of compliance with the MMPA before BLM will authorize any on-the-ground oil and gas activities. *Id.* at 107. PDC 2 provides that BLM will conduct future “step-down” ESA consultation on a project-by-project basis. *Id.* at 107.

99. Throughout the BiOp, FWS relies on future MMPA compliance as the primary mechanism to ensure against jeopardy to the polar bear under the ESA. *Id.* at 114–16. In relying on future mitigation measures put in place via future MMPA authorizations, FWS failed to discuss recent studies finding that traditional den detection methods failed to detect the majority of known polar bear maternal dens. The BiOp also failed to address whether a “lease notice” would provide adequate authority to preclude activities on leases in light of DOI and BLM’s interpretations of the Tax Act, the MMPA, and the legal effect of “lease notices.”

100. Regarding critical habitat, the BiOp does not attempt to quantify the total extent of impacts from the program. The BiOp assumes that MMPA compliance and future ESA consultations will ensure against any destruction or adverse modification. *Id.* at 123. The BiOp does not explain this assumption in light of the fact that the MMPA does not include an express standard addressing protection or consideration of designated critical habitat; nor does it address FWS’s comments stating that MMPA compliance would not prevent habitat loss due to behavioral avoidance of structures after the construction period. Nor does it address that future consultations will not address the

totality of the program's impacts. The BiOp also relies on an interpretation of the 2,000-acre limit under the Tax Act that would restrict the total surface footprint of the oil and gas facilities to no more than 2,000 acres at any point in time. *Id.*

101. The BiOp does not consider the impacts of the direct or indirect greenhouse gas emissions from the Coastal Plain oil and gas development or production on exacerbating climate change related impacts on polar bears. It relies on a May 14, 2008 FWS policy memo to say that such analysis of indirect emissions is not required due to the unavailability of scientific information. The BiOp fails to address existing scientific and technical information that has become available in the last decade that demonstrates such an analysis can indeed be conducted for polar bears.

102. On August 17, 2020, Secretary Bernhardt signed the ROD for the leasing program. U.S. Dep't of the Interior & BLM, Coastal Plain Oil and Gas Leasing Program Record of Decision (2020) [hereinafter ROD].

103. The ROD adopted Alternative B as the Coastal Plain Leasing Program, the most extensive alternative considered in the final EIS, opening "the entire program area" to oil and gas leasing, "and consequently for future potential exploration, development, and transportation." *Id.* at 2–3.

104. The ROD adopted the lease stipulations and required operating procedures (ROPs) considered in the final EIS under that alternative (with only minor changes to two ROPs and one lease notice). *Id.* at 3, 5; *id.* at app. A.

105. The ROD stated that the leasing program protects the ANILCA purposes of the Coastal Plain, but acknowledged that there will be “some potential impact on the other four purposes.” *Id.* at 7–8. The ROD did not discuss the original purposes of the Arctic National Wildlife Range.

106. The ROD did not adopt the interpretation of the 2,000-acre limitation set forth and applied in the final EIS. *Id.* at 2, 4, 5. The ROD indicated that BLM would not apply the “rolling cap” approach from the final EIS that would have allowed additional infrastructure beyond the initial 2,000 acres once the previously impacted areas had been “reclaimed.” *Id.* at 12–13. However, the ROD also contained a new interpretation of the 2,000-acre limit that identified and defined what facilities could be included within that limitation. *Id.* at 11–13. The ROD explained that many facilities that were assumed to be within the 2,000-acre limitation in the final EIS may not actually be counted toward that limitation, including airstrips, barge landings, roads, and gravel mines. *Id.* at 13. BLM based this new interpretation on its conclusion that the facilities counting toward the 2,000-acre limitation needed to be both “production *and* support facilities.” *Id.* at 12. The ROD explained that “support” facilities that could be attributed to any other phase of oil and gas activities, such as transportation, exploration, or development, would not be limited by the 2,000-acre cap. In other words, the agency indicated that under this new interpretation that it could authorize far more than 2,000 acres of infrastructure to be present on the Coastal Plain at any given point in time. However, the ROD also stated

that the agency would not make specific determinations about which facilities would count toward the 2,000 acres until later in time. *Id.* at 12–13.

107. BLM stated that making the entire Coastal Plain available for leasing will ensure that it is offering the highest hydrocarbon potential areas for lease, and that the agency cannot know which areas have the highest potential until exploration drilling occurs. *Id.* at 17.

108. BLM stated its position in the ROD that it cannot refuse to issue a right-of-way grant or other authorizations necessary for access and that its discretion is superseded by the Tax Act. *Id.* at 9–10.

109. The ROD summarized the ESA consultation and recommendations from FWS’s BiOp. *Id.* at 23–24.

110. The ROD summarized the ANILCA Section 810 Final Evaluation from the final EIS. *Id.* at 24–27.

V. LEGAL BACKGROUND

111. Because of its abundant wildlife and ecological importance, efforts to protect the Arctic National Wildlife Refuge began in the mid-1950s. The area was first formally set aside and granted federal protections in 1960 when it was designated as the Arctic National Wildlife Range (Range). Public Land Order 2214, Establishing the Arctic National Wildlife Range at 1 (Dec. 6, 1960). The Range was designated “for the purpose of preserving unique wildlife, wilderness and recreational values.” *Id.*

Alaska National Interest Lands Conservation Act

112. Following statehood and various attempts to address Indigenous land claims and federal conservation land designations, the Alaska National Interest Lands Conservation Act (ANILCA) was passed in 1980. 94 Stat. 2371 (Dec. 2, 1980).

113. Congress passed ANILCA “[i]n order to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values.” ANILCA § 101(a), 16 U.S.C. § 3101(a).

114. ANILCA has a broad purpose focused on conservation and subsistence:

It is the intent of Congress in this Act to preserve unrivaled scenic and geological values associated with natural landscapes; to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable values to the citizens of Alaska and the Nation, including those species dependent on vast relatively undeveloped areas; to preserve in their natural state extensive unaltered arctic tundra, boreal forest, and coastal rainforest ecosystems; to protect the resources related to subsistence needs; to protect and preserve historic and archeological sites, rivers, and lands, and to preserve wilderness resource values and related recreational opportunities, including but not limited to hiking, canoeing, fishing, and sport hunting, within large arctic and subarctic wild lands and on free-flowing rivers; and to maintain opportunities for scientific research and undisturbed ecosystems.

ANILCA § 101(b), 16 U.S.C. § 3101(b).

115. Congress also specifically stated that a purpose of ANILCA was to “provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.” ANILCA § 101(c), 16 U.S.C. § 3101(c).

116. In ANILCA, Congress re-designated the Range as the Arctic National Wildlife Refuge. ANILCA § 303(2)(A). Congress added additional acreage to the south and west of the Range to expand the re-designated Arctic Refuge. *Id.*

117. Congress recognized four specific purposes for the Arctic Refuge, in addition to those recognized in the 1960 Public Land Order and ANILCA more generally.

The ANILCA purposes for the Arctic Refuge are:

- (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;
- (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;
- (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and
- (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

Id. § 303(2)(B).

118. ANILCA section 305 also recognized that existing protective mandates not in conflict with ANILCA would remain in place:

[a]ll proclamations, Executive orders, public land orders and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act, and in such case, the provisions of such Acts shall prevail.

119. The original three purposes of the Range and the four additional ANILCA purposes are all statutory purposes that apply to the Coastal Plain. ANILCA § 305; FWS, Arctic Nat'l Wildlife Refuge Revised Comprehensive Conservation Plan and Env'tl. Impact Statement at 1-21 (Jan. 2015).

120. ANILCA section 304(c) also withdrew all National Wildlife Refuges “from all forms of appropriation or disposal under the public land laws, including location, entry and patent under the mining laws.”

121. Additionally, Congress designated the majority of the Range (approximately 8 million acres, excluding the Coastal Plain) as Wilderness. ANILCA § 702(3). This Wilderness area was subsequently named the Mollie Beattie Wilderness after the first female director of the U.S. Fish and Wildlife Service.

122. The potential development of the Coastal Plain for oil and gas was also addressed in ANILCA. Other than authorizing a one-time surface exploration program that has now expired, ANILCA § 1002(a)–(h), 16 U.S.C. § 3142(a)–(h), ANILCA section 1003 imposed a prohibition on oil and gas development in the Arctic Refuge, including the Coastal Plain. 16 U.S.C. § 3143. The Coastal Plain was also specifically “withdrawn

from all forms of entry or appropriation under the mining laws, and from operation of the mineral lease laws, of the United States.” ANILCA § 1002(i), 16 U.S.C. § 3142(i).

123. Title VIII of ANILCA recognizes that subsistence uses are a public interest and provides a framework to consider and protect subsistence uses in agency decision-making processes. 16 U.S.C. §§ 3111–3126. In enacting Title VIII, Congress found that “the continuation of the opportunity for subsistence uses . . . is essential to Native physical, economic, traditional, and cultural existence.” ANILCA § 810(1), 16 U.S.C. 3111(1).

124. ANILCA broadly defines “subsistence use” as “the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.” ANILCA § 803, 16 U.S.C. § 3113.

125. Under ANILCA section 810, if an agency is going to withdraw, reserve, lease, or otherwise allow the use, occupancy, or disposition of land, the agency conducts what is often referred to as a “tier-1 analysis” to determine the proposed action’s impact on subsistence uses. ANILCA § 810(a), 16 U.S.C. § 3120(a). The agency “shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives

which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” *Id.* In doing so, the agency must also consider cumulative impacts.

126. If the agency conducts the tier-1 analysis and determines that the activities will not “significantly restrict subsistence uses,” then the agency issues a Finding of No Significant Restriction and section 810’s requirements are met. *Id.*

127. ANILCA also mandates that the agency provide public notice and hold hearings in potentially affected communities if it makes a finding that the action may significantly restrict subsistence uses under section 810. ANILCA § 810(a)(2), 16 U.S.C. § 3120(a)(2).

128. If the agency finds that the proposed action would “significantly restrict subsistence uses,” the agency then conducts a “tier-2” analysis. In that analysis, the agency can only move forward if it finds that the restriction on subsistence is necessary and consistent with sound public land management principals; involves the minimum amount of public lands necessary to accomplish the purpose of the proposed action; and the agency takes reasonable steps to minimize the adverse impacts to subsistence uses and resources. ANILCA § 810(a)(1)–(3), 16 U.S.C. § 3120(a)(1)–(3).

129. When an agency prepares an EIS under NEPA, the ANILCA section 810 evaluation is included as part of that process. ANILCA § 810(b), 16 U.S.C. § 3120(b).

130. To guide administration of refuges in Alaska, ANILCA states that “[e]ach refuge shall be administered by the Secretary . . . in accordance with the laws governing the administration of units of the National Wildlife Refuge System, and this Act.”

ANILCA § 304(a).

131. ANILCA also mandates that for Wilderness, “[e]xcept as otherwise expressly provided for in this Act wilderness designated by this Act shall be administered in accordance with applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness.” *Id.* § 707.

National Wildlife Refuge System Administration Act

132. The National Wildlife Refuge System Administration Act (Refuge Act) governs the administration of the entire National Wildlife Refuge System. 16 U.S.C. § 668dd. It mandates that the Secretary, acting solely through FWS, administer and manage the National Wildlife Refuge System, which includes the Arctic Refuge. *Id.* § 668dd(a)(1).

133. The mission of the National Wildlife Refuge System “is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” *Id.* § 668dd(a)(2); *see also* 50 C.F.R. § 25.11(b).

134. Under the Refuge Act, each refuge “shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established.” 16 U.S.C. § 668dd(a)(3)(A); *see also* 16 U.S.C. § 668ee(10) (defining “purposes of the refuge” to include those “purposes specified in or derived from the law, . . . [or] public land order . . . establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit”).

135. The Refuge Act also identifies multiple purposes for administration of the National Wildlife Refuge System, including “conservation of fish, wildlife, and plants, and their habitats,” “ensur[ing] that the biological integrity, diversity, and environmental health of the System are maintained,” and “to contribute to the conservation of the ecosystems of the United States.” *Id.* § 668dd(a)(4)(A–C); *see also* 50 C.F.R. § 25.11(b).

The Wilderness Act

136. In passing the Wilderness Act, Congress sought “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” 16 U.S.C. § 1131(a).

137. To achieve this goal, it established the National Wilderness Preservation System and mandated that areas designated as Wilderness “be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and

dissemination of information regarding their use and enjoyment as wilderness.” 16

U.S.C. § 1131(a).

138. Wilderness is defined in relation to what it is not: is it not areas where man and his own works dominate the landscape. *Id.* § 1131(c). Instead, Wilderness is “an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” *Id.*

139. Wilderness is defined as an undeveloped area protected and managed to preserve it:

An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Id.

140. The Wilderness Act recognizes the following public purposes for Wilderness: “recreational, scenic, scientific, educational, conservation, and historical use.” *Id.* § 1133(b).

141. The Wilderness Act mandates that “each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of

the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” 16 U.S.C. § 1133(b); *see also id.* § 1133(a) (noting that the purposes of the Wilderness Act supplement the purposes that national wildlife refuges “are established and administered”).

Tax Cuts and Jobs Act of 2017

142. In late 2017, Congress passed An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. 115-97, H.R. 1, title II (Tax Act), which repealed section 1003 of ANILCA as it applied to the Coastal Plain. *Id.* § 20001(b)(1).

143. That legislation directs the Secretary to “establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.” *Id.* § 20001(b)(2)(A).

144. The Tax Act also amended ANILCA section 303(2)(B) (the Arctic Refuge purposes section) to include an additional purpose for the Coastal Plain: “to provide for an oil and gas program on the Coastal Plain.” *Id.* § 20001(b)(2)(B)(iii). The Tax Act did not otherwise modify the purposes of the Arctic Refuge or waive or alter any other applicable laws.

145. The Tax Act requires the Secretary to hold two lease sales — the first within four years, the second within seven — from the enactment of that legislation. Each

lease sale must offer at least 400,000 acres and include “those areas that have the highest potential for the discovery of hydrocarbons.” *Id.* § 20001(c).

The Tax Act also limited surface development to a maximum of 2,000 acres for production and support facilities by stating that BLM: “shall authorize up to 2,000 surface acres of Federal land on the Coastal Plain to be covered by production and support facilities (including airstrips and any areas covered by gravel berms or piers for support of pipelines) during the term of the leases under the oil and gas program under this section.” *Id.* § 20001(c)(3).

National Environmental Policy Act

146. The National Environmental Policy Act (NEPA) is “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a).² NEPA’s twin aims are to ensure that federal agencies take a hard look at the environmental impacts of their proposed actions before taking an action and to ensure that agencies provide relevant information to the public so the public can play a role in both the decision-making process and the implementation of the decision. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.1, 1502.16. By focusing the agency’s attention on the environmental consequences

² The Council on Environmental Quality (CEQ) recently issued new regulations implementing NEPA, which take effect September 14, 2020. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (“Final Rule”), 85 Fed. Reg. 43,304 (July 16, 2020). CEQ’s prior regulations govern the EIS and ROD and all references are to those prior regulations.

of its proposed action, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after an agency has committed resources. 42 U.S.C. § 4332(2)(C).

147. NEPA requires federal agencies to prepare a detailed environmental impact statement (EIS) for every major federal action that will have a significant impact on the quality of the human environment. 42 U.S.C. § 4332. An EIS is required to “provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

148. An EIS must consider (1) “the environmental impact of the proposed action,” (2) “any adverse environmental impacts that cannot be avoided,” (3) “alternatives to the proposed action,” (4) “the relationship between local short-term uses . . . and the maintenance and enhancement of long-term productivity,” and (5) “any irreversible and irretrievable commitments of resources.” 42 U.S.C. § 4332(2)(C); *see also* 40 C.F.R. § 1502.16.

149. The alternatives analysis is the heart of a NEPA document, and NEPA’s implementing regulations direct agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a). The alternatives considered should include those “that will avoid or minimize adverse effects of the actions upon the quality of the human environment.” *Id.* § 1500.2(e).

150. In its alternatives' analysis, the agency must "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." *Id.* § 1502.14; *see also id.* § 1505.1(e). This requires the agency to "[d]evote substantial treatment to each alternative considered in detail . . . so that reviewers may evaluate their comparative merits." *Id.* § 1502.14(b).

151. An EIS must "state how alternatives considered in it and decisions based on it will or will not achieve the requirements of [NEPA] and other environmental laws and policies." *Id.* § 1502.2(d). For alternatives that are excluded from agency analysis, the agency must explain that decision. *Id.*

152. NEPA requires agencies to analyze the direct, indirect, and cumulative environmental effects of the alternatives, including the proposed action, as well as the means to mitigate against those adverse environmental consequences. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.14, 1502.16, 1508.7.

153. An "effect" as used in NEPA and its implementing regulations "includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8(b); *see also id.* § 1508.14 (defining "[h]uman environment . . . to include the natural and physical environment and the relationship of people with that environment").

154. Direct effects “are caused by the action and occur at the same time and place.” *Id.* § 1508.8(a).

155. Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b). Indirect effects include “induced changes in the pattern of land use” and “related effects on air and water and other natural systems, including ecosystems.” *Id.*

156. Cumulative impact is defined as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Id. § 1508.7.

157. Mitigation includes consideration of how to avoid impacts completely by not taking a certain action or parts of an action; minimize impacts by limiting the degree or magnitude of the action and its implementation; address the impact by repairing, rehabilitating, or restoring the affected environment; reduce the impact over time through preservation and maintenance; and compensate for the impact. *Id.* § 1508.20.

Endangered Species Act

158. Congress enacted the ESA to protect and conserve threatened and endangered species and the ecosystems upon which they depend. 16 U.S.C. § 1531(b), (c)(1).

159. The goal of the ESA is not only to temporarily save endangered and threatened species from extinction, but also to recover these species to the point where they are no longer in danger of extinction, and thus no longer in need of ESA protection. *Id.* §§ 1531(b) (purposes), 1532(3) (definitions).

160. The National Marine Fisheries Service and FWS jointly administer the ESA. As relevant here, FWS has responsibility for administering the ESA and performing consultations for the polar bear. 50 C.F.R. § 402.01(b). The BLM is the action agency for purposes of the Coastal Plain oil and gas leasing program.

161. Section 7(a)(2) of the ESA obligates federal agencies to ensure “that any action authorized, funded or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.” 16 U.S.C. § 1536(a)(2).

162. To fulfill this substantive duty, Section 7(a)(2) imposed procedural obligations on federal agencies to consult with FWS. *Id.*

163. The ESA prescribes a multi-step process to ensure compliance with its substantive provisions by federal agencies. A federal agency proposing to take an action must inquire of the Secretary of Interior whether any threatened or endangered species “may be present” in the area of the proposed action. 16 U.S.C. § 1536(c)(1). If the answer is affirmative, the agency shall conduct a biological assessment to determine whether such species “is likely to be affected” by the action. *Id.*

164. If the action agency determines that the action is “likely to adversely affect” the listed species, formal consultation with the Secretary is required. 50 C.F.R. § 402.14(b); *id.* at § 402.02, 402.14(a); 16 U.S.C. § 1536(a)(3). Formal consultation concludes with the FWS’s issuance of a biological opinion under Section 7(b)(3) of the ESA. 50 C.F.R. § 402.02. The FWS and the action agency must each utilize the “best scientific and commercial data available” during the consultation process. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d).

165. In a biological opinion, the FWS must determine whether the federal action subject to the consultation is likely to jeopardize the listed species or destroy or adversely modify critical habitat. 16 U.S.C. § 1536(b)(4). The biological opinion must include a summary of the information upon which the opinion is based, an evaluation of the current status of the listed species, the effects of the action, and the cumulative effects. 50 C.F.R. § 402.14(g)(2), (g)(3).

166. The “effects of the action” include “all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action.” 50 C.F.R. § 402.02. Cumulative effects are “effects of future State or private activities . . . that are reasonably certain to occur within the action area of the Federal action[.]” *Id.*

167. Programmatic consultation is:

a consultation addressing an agency's multiple actions on a program, region, or other basis . . . such as: (1) Multiple similar, frequently

occurring, or routine actions expected to be implemented in particular geographic areas; and (2) A proposed program, plan, policy, or regulation providing a framework for future proposed actions.

50 C.F.R. § 402.02.

168. Where an action is authorized by a statute that allows the agency to take incremental steps toward completing the action, the action agency may only proceed with or authorize the incremental steps if:

(1) [t]he biological opinion does not conclude that the incremental step would violate section 7(a)(2); (2) [t]he Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step; (3) [t]he Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action; (4) [t]he incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and (5) [t]here is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

50 C.F.R. § 402.14(k).

169. A biological opinion cannot limit its review of an agency action in a manner that segments the analysis and thereby allows for a piecemeal approach to the brink of jeopardy or destruction or adverse modification of critical habitat. *See Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 522–23 (9th Cir. 2010).

170. A biological opinion must analyze the entire action before making a decision that may affect listed species or their habitat, including a programmatic decision. *See Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir. 1988).

171. After FWS adds the direct and indirect effects of the action to the environmental baseline and cumulative effects, it must make its determination of “whether the action is likely to jeopardize the continued existence of a listed species.” 16 U.S.C. § 1536(b)(3), (b)(4); 50 C.F.R. § 402.14(h). In evaluating whether an action will jeopardize the continued existence of a listed species, the biological opinion must evaluate whether the action “reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of” the recovery of a listed species in the wild, even if the Service concludes the action would not reduce the likelihood of survival. *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 931–32 (9th Cir. 2008) (interpreting 50 C.F.R § 402.02).

172. Where an agency relies upon mitigation measures to ensure against jeopardy, such mitigation measures must be reasonably certain to occur. *Id.*, 524 F.3d at 936 n.17.

173. If the biological opinion concludes that an action is likely to result in jeopardy to a listed species, the biological opinion must set forth the reasonable and prudent alternatives that would avoid this ESA violation. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. §§ 402.02, 402.14(h)(3).

174. The ESA prohibits any “person” from “taking” individual members of an endangered species, as well as threatened species protected from such take by species-specific regulations or a “special rule.” 16 U.S.C. § 1538(a)(1)(B), (G). For polar bears,

the species-specific “special rule” prohibits incidental take from an activity “within the current range of the polar” bear unless the taking has been authorized or exempted under the Marine Mammal Protection Act. 50 C.F.R. § 17.40(q); *see also* 16 U.S.C. § 1361 *et seq.* (regulating killing and disturbance of marine mammals.).

175. Under the ESA, “take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” or any attempt to do the above actions. 16 U.S.C. § 1532(19). “Harm” means an “act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” 50 C.F.R. § 17.3. “Harass” means “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” *Id.*

176. Incidental take means “takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.” 50 C.F.R. § 402.02.

177. If a biological opinion concludes that the agency action is not likely to jeopardize the continued existence of a listed species, but results in incidental take, the Service provides an Incidental Take Statement (ITS) that must include the amount or extent of anticipated take due to the federal action, reasonable and prudent measures to

minimize the take, and terms and conditions that must be observed when implementing those measures. 16 U.S.C. § 1536(b)(4).

178. Framework programmatic action means a Federal action that approves a framework for the development of future action(s) that are authorized, funded, or carried out at a later time, and any take of a listed species would not occur unless and until those future action(s) are authorized, funded, or carried out and subject to further section 7 consultation. 50 C.F.R. § 402.02. An incidental take statement is not required for framework programmatic actions. *Id.* § 402.14(i)(6). Mixed programmatic action means a Federal action that approves an action that will not be subject to further section 7 consultation, and also approves a framework for the development of future actions. *Id.* § 402.02. For a mixed programmatic action, an incidental take statement is required at the programmatic level only for those program actions that are reasonably certain to cause take and are not subject to further section 7 consultation. *Id.* § 402.14(i)(6).

Administrative Procedure Act

179. Courts review agency actions under the Administrative Procedure Act (APA). 5 U.S.C. §§ 702, 704.

180. Under the APA, Courts “hold unlawful and set aside agency actions, findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in excess of statutory authority, or made “without observance of procedure required by law.” *Id.* § 706(2)(A)–(D).

CLAIMS FOR RELIEF

COUNT I

(Violation of ANILCA and Refuge Act; Failure to Adopt a Leasing Program Consistent with Purposes of the Coastal Plain)

181. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

182. Public Land Order 2214 established three purposes of the Range: “preserving unique wildlife, wilderness and recreational values.”

183. ANILCA recognized four additional purposes for the Arctic Refuge:

- (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;
- (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;
- (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and
- (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and quantity within the refuge.

ANILCA § 303(2)(B).

184. The original three purposes of the Range and the four additional ANILCA purposes all apply to the Coastal Plain and must be given effect. ANILCA § 305; 16 U.S.C § 668ee(10).

185. The Tax Act added an additional purpose for the Coastal Plain: “to provide for an oil and gas program on the Coastal Plain.” Pub. L. 115-97, tit. 2, § 20001(b)(2)(B).

186. ANILCA governs the administration of the Arctic Refuge. It mandates that the Arctic Refuge “shall be administered by the Secretary, subject to valid existing rights, in accordance with the laws governing the administration of units of the National Wildlife Refuge system, and this act.” ANILCA § 304(a).

187. The Refuge Act also governs the administration of all refuges and the National Wildlife Refuge System. 16 U.S.C. § 668dd. It mandates that each refuge “shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established.” *Id.* § 668dd(a)(3)(A).

188. The Secretary failed to adopt an oil and gas program consistent with and protective of the Coastal Plain’s conservation purposes because he: (a) disregarded the original Range purposes; (b) failed to consider and adopt an alternative that was consistent with and protective of the seven conservation purposes, (c) failed to consider and adopt lease stipulations and required operating procedures that were consistent with and protective of the conservation purposes, and (d) failed to accurately or adequately analyze and limit the impacts of an oil and gas leasing program on the conservation purposes, in addition to other reasons.

189. The Secretary also failed to provide an adequate explanation of how the program he adopted complies with and fulfills the seven conservation purposes of the Coastal Plain.

190. The Secretary's failure to consider and adopt an oil and gas program consistent with and protective of all seven of the conservation purposes of the Coastal Plain of the Arctic Refuge or to adequately explain how the program was consistent with protection of the conservation purposes of the Refuge violates ANILCA and the Refuge Act, and was arbitrary, capricious, and not in accordance with the law and was without observance of the procedure required by ANILCA, the Refuge Act, and the APA. 5 U.S.C. § 706(2).

COUNT II

(Violation of NEPA; Failure to Consider a Reasonable Range of Alternatives)

191. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

192. NEPA requires agencies to consider a reasonable range of alternatives. 43 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500.2, 1502.2, 1502.14, 1505.1. Agencies must, to the fullest extent possible, include “reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” 40 C.F.R. § 1500.2(e). The EIS must also state how the alternatives considered will meet both NEPA and other environmental laws and policies, including

the Refuge Act and ANILCA, and must discuss the reasons for eliminating any alternatives from detailed study. *See id.* §§ 1502.2(d), 1502.14(a).

193. BLM failed to consider a reasonable range of alternatives in the EIS that would protect the Coastal Plain's exceptional resources and limit oil and gas development consistent with law.

194. BLM failed to consider a reasonable range of alternatives in the Coastal Plain Leasing Program EIS because BLM failed to consider an alternative or alternatives that had the potential to reduce the adverse effects on the Coastal Plain and better protect the purposes of the Arctic Refuge. Viable, unconsidered alternatives or components of alternatives include, but are not limited to: (a) phased-leasing of only 400,000 acres of the highest hydrocarbon areas; (b) allowing less than 2,000 acres of surface development; (c) prohibiting seismic exploration on areas of the Coastal Plain not offered for lease; and (d) more protective lease stipulations and required operating procedures to protect Coastal Plain resources, uses, and users.

195. Consideration of a more protective alternative or alternative components would be consistent with BLM's and Department of the Interior's statutory mandates, the purpose and need of the Coastal Plain leasing program, and the nature and scope of the proposed program.

196. BLM failed to adequately explain its failure to consider viable alternatives that would reduce the impacts to the Coastal Plain and provide more protections for

Coastal Plain resources. To the extent BLM provided any explanation for failing to consider viable alternatives, that explanation was arbitrary and capricious.

197. For each of the above reasons, BLM failed to consider a reasonable range of alternatives, including viable alternatives proposed by the Plaintiffs, rendering the final EIS and ROD arbitrary, capricious, and not in accordance with the law, and its adoption of the final EIS and ROD was done without observance of the procedures required by NEPA, its implementing regulations, and the APA. 5 U.S.C. § 706(2).

COUNT III

(Violation of NEPA; Failure to Assess the Direct, Indirect, and Cumulative Impacts and to Adequately Consider Mitigation Measures)

198. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

199. Pursuant to NEPA, agencies must take a “hard look” at the consequences, environmental impacts, and adverse effects of their proposed actions, consider alternatives to the proposed action, and evaluate mitigation measures. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.1, 1502.14, 1502.16. NEPA requires that an EIS include an assessment of the cumulative impacts of the proposed action together with the impacts of past, present, and reasonably foreseeable activities. *Id.* § 1508.7.

200. NEPA’s implementing regulations require that an EIS discuss the means to mitigate adverse environmental consequences. *Id.* §§ 1502.14(f), 1502.16(h). Mitigation

includes, but is not limited to, avoiding, minimizing, rectifying, or compensating for adverse project impacts to the environment. *Id.* § 1508.20.

201. BLM violated NEPA and its implementing regulations in its evaluation and adoption of an oil and gas leasing program because BLM failed to take a hard look at the potential direct, indirect, and cumulative impacts of the Coastal Plain leasing program. These violations include, but are not limited to, BLM's evaluation of the impacts on greenhouse gas emissions and climate change, air quality, water, polar bears, caribou, wilderness and recreation, soils, permafrost, vegetation and wetlands, and subsistence uses and resources. BLM also failed to adequately analyze the impacts from reasonably foreseeable activities related to the oil and gas program, including but not limited to seismic exploration. BLM also failed to take a hard look at the potential impacts associated with and resulting from a scenario where infrastructure with a footprint exceeding 2,000 acres would be authorized at any given time.

202. The EIS also fails to provide a reasonably thorough discussion of the effectiveness of mitigation measures to reduce direct, indirect, or cumulative effects from the oil and gas program on Coastal Plain resources. These violations include, but are not limited to, BLM's failure to analyze or prescribe mitigation measures in the form of lease stipulations and/or required operating procedures that will limit the direct, indirect, and cumulative impacts to resources. These resources include, among others: greenhouse gas emissions and climate change, air quality, water, polar bears, caribou, wilderness and

recreation, soils, permafrost, vegetation and wetlands, and subsistence uses and resources.

203. BLM's cursory analysis of the implementation and anticipated effectiveness of the proposed mitigation measures is insufficient to show that the agency has properly evaluated the environmental consequences of its action or ways to address those consequences.

204. For each of the above reasons, BLM failed to take a hard look at the direct, indirect, and cumulative impacts of the Coastal Plain leasing program, including failing to analyze the effectiveness of the proposed mitigation measures, rendering the final EIS and ROD arbitrary, capricious, and not in accordance with the law and its adoption of the final EIS and ROD was done without observance of the procedure required by NEPA, its implementing regulations, and the APA. 5 U.S.C. § 706(2).

COUNT IV

(Violation of ANILCA; Failure to Comply with Section 810)

205. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1-180.

206. Pursuant to ANILCA section 810, agencies must consider effects and restrictions upon subsistence resources and uses, and actions which would significantly restrict subsistence uses may only be undertaken if BLM finds that such actions are necessary, involve the minimal amount of public lands necessary, and if the adverse effects to subsistence are minimized. 16 U.S.C. § 3120(a).

207. BLM's ANILCA Section 810 Final Evaluation fails to comply with the law for multiple reasons, including, but not limited to: (a) BLM improperly excluded many Gwich'in communities that use the subsistence resources of the Coastal Plain and that would be affected by the proposed action; (b) BLM failed to consider important subsistence resources that would be affected by its proposed action, including but not limited to migratory waterfowl; (c) BLM failed to consider all subsistence uses that would be affected by its proposed action, including but not limited to traditional sharing and bartering practices; (d) BLM's finding that there would not be significant restrictions to subsistence uses for Arctic Village and Venetie from its proposed action is based on flawed analysis and findings and fails to consider traditional knowledge; (e) BLM relied on the flawed analysis in the final EIS as the basis for its ANILCA Section 810 Final Evaluation; and (f) BLM did not adequately analyze alternatives in the final EIS that would be more protective of lands and resources that are important for key subsistence resources and uses.

208. For the above reasons, BLM's ANILCA Section 810 Final Evaluation was arbitrary, capricious, and not in accordance with the law and was without observance of the procedure required by ANILCA and the APA. 5 U.S.C. § 706(2).

COUNT V

(Violation of the Wilderness Act; Failure to Protect Wilderness)

209. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

210. The Wilderness Act mandates that “each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” 16 U.S.C. § 1133(b).

211. An agency has a duty to preserve Wilderness from activities outside the Wilderness area that degrade the area’s wilderness characteristics. *Id.*

212. In adopting the oil and gas program for the Coastal Plain, the Secretary failed to protect the wilderness character of the Mollie Beattie Wilderness.

213. These violations include, but are not limited to: (a) failing to analyze the impacts of an oil and gas program on the Mollie Beattie Wilderness, including mitigation measures to protect the wilderness characteristics of the area, and (b) adopting an oil and gas program that degrades the wilderness characteristics of the Mollie Beattie Wilderness.

214. The Secretary’s decision to adopt a leasing program that does not evaluate the impacts to and that degrades the wilderness character of the Mollie Beattie Wilderness was arbitrary, capricious, and not in accordance with the law, and was without observance of the procedure required by law, in violation of the Wilderness Act, and the APA. 5 U.S.C. § 706(2).

COUNT VI

(Violation of the Tax Act; Failure to Properly Interpret and Implement the 2,000-Acre Provision)

215. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

216. The Tax Act mandates that the Secretary “shall authorize up to 2,000 surface acres of Federal land on the Coastal Plain to be covered by production and support facilities (including airstrips and any areas covered by gravel berms or piers for support of pipelines) during the term of the leases under the oil and gas program under this section.” Pub. L. 115-97, tit. 2, § 20001(c)(3).

217. The Secretary and BLM interpret the “up to 2,000 surface acres” provision to mean that BLM could not authorize any amount of surface development less than 2,000 acres for purposes of its alternatives analysis.

218. BLM applied this unlawful interpretation to reject proposed alternatives.

219. The Secretary and BLM also interpret the 2,000-acre provision to only apply to facilities that qualify as both “production and support facilities.” Based on this interpretation, the Secretary and BLM indicate they will exclude a range of facilities and infrastructure from the 2,000 acre limit, thereby allowing infrastructure to cover more than 2,000 acres at any given time.

220. The Secretary and BLM also indicated that the right-of-way provision is not subject to the 2,000-acre provision.

221. The Secretary’s and BLM’s adoption of an oil and gas leasing program based on these incorrect interpretations is inconsistent with the Tax Act.

222. For each of the above reasons, the Secretary's and BLM's interpretation of the Tax Act's 2,000-acre provision for the Coastal Plain and adoption of an oil and gas program based on that interpretation was arbitrary, capricious, and not in accordance with the law and in excess of statutory authority, in violation of the Tax Act, and the APA. 5 U.S.C. § 706(2).

COUNT VII

(Violation of ESA Section 7 and the APA)

223. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

224. The ESA requires FWS to prepare a BiOp that uses the best scientific and commercial data available to evaluate whether BLM's leasing program is likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify designated critical habitat. 16 U.S.C. § 1536(a)(2). FWS must draw a rational connection between the facts found and the conclusions it draws.

225. FWS failed to consider relevant and available studies in the BiOp, including, but not limited to, its model for estimating quantitative take of polar bears from seismic activities, and recent science on the limitations of den detection technology (i.e., FLIR).

226. In issuing the BiOp for polar bears, FWS relies on a "lease notice" indicating that BLM will require documentation of compliance with the MMPA prior to authorizing any on-the-ground oil and gas activities, but FWS failed to consider whether

the lease notice would be enforceable in light of BLM's authority under the Tax Act with regard to "necessary access," DOI's interpretation of the MMPA, and DOI and BLM's interpretation of the legal effect of lease notices. As a result, it is not reasonably certain that BLM could refuse to authorize oil and gas activities that fail to comply with the MMPA.

227. FWS also failed to consider the impact of the whole oil and gas program on critical habitat, including, but not limited to: (1) FWS's unlawful and unreasonable conclusion that MMPA compliance will prevent loss or degradation of critical habitat; (2) FWS's unlawful conclusion that "step-down" consultations and consultations on MMPA authorizations will prevent such loss because those consultations will each reflect only a piecemeal analysis; and (3) FWS's deficient analysis of polar bear critical habitat impacts from the entire program.

228. Finally, FWS failed to address impacts to polar bears as a result of greenhouse gas emissions produced from oil and gas activities on the Coastal Plain and those emissions' contribution to exacerbating or hastening climate change effects.

229. FWS's failure to consider the best available science, its reliance on uncertain mitigation measures to avoid jeopardy, and its failure to analyze the impacts of the whole oil and gas program on critical habitat and consider impacts from increased greenhouse gas emissions each render the BiOp arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and without observance of the

requirements of the ESA and its implementing regulations, and the APA. 16 U.S.C. § 1536(a)(2); 5 U.S.C. § 706.

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court grant the following relief:

1. Declare that in issuing the final EIS, ROD, and ANILCA Section 810 Final Evaluation, the Secretary, DOI, and BLM violated ANILCA, the Refuge Act, NEPA, the Wilderness Act, the Tax Act, and the APA; declare that in issuing the BiOp the Secretary, DOI, and FWS violated the ESA and the APA; declare that the invalid final EIS, ROD, ANILCA Section 810 Final Evaluation, and BiOp cannot serve as the basis for any future actions, including decisions to conduct a lease sale or issue leases; and declare that the actions as set forth above are arbitrary, capricious, an abuse of discretion or not in accordance with law and without observance of procedure required by law;
2. Vacate and set aside as unlawful any and all agency approvals and underlying analysis documents, including the final EIS, ROD, ANILCA Section 810 Final Evaluation, and BiOp, as well as any decisions and documents based on the unlawful actions, including decisions to lease and leases;
3. Enter appropriate injunctive relief, including prohibiting BLM from authorizing any activities under the Coastal Plain leasing program in reliance on the unlawful final EIS, ROD, ANILCA Section 810 Final Evaluation, or BiOp;
4. Award Plaintiffs all reasonable costs and fees as authorized by law; and

5. Grant such other relief as this Court deems just and proper.

Respectfully submitted this 24th day of August, 2020,

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INTRODUCTION

1. The Secretary of Interior has impermissibly authorized a broad oil and gas leasing program (the Program) in the Coastal Plain of the Arctic National Wildlife Refuge (Plain or Coastal Plain). The Program violates multiple statutes governing management of the Coastal Plain and is arbitrary and capricious. The final environmental impact statement (FEIS), prepared by the Bureau of Land Management (BLM) and the Secretary of the Interior, does not meet foundational requirements of the National Environmental Policy Act (NEPA). The Program relies on a biological opinion issued by the United States Fish and Wildlife Service (Fish and Wildlife Service) in derogation of its legal obligations under the Endangered Species Act.

2. The Arctic National Wildlife Refuge (Refuge or Arctic Refuge) is our nation's largest wildlife refuge and the largest preserve of any sort, where the natural environment still exists undisturbed by industrial development.

3. The Coastal Plain is the biological heart of the Refuge: 1.56-million acres of tundra ecosystem that provide essential breeding, birthing, foraging, and/or over-wintering habitat to countless animals, including polar bears, caribou, and birds from all fifty states. The Coastal Plain comprises vast expanses of tundra, braided rivers, slopes, foothills, and shallow lakes and ponds. It is also exceedingly sensitive to change, with a short growing season, soils and waterbodies perched on permafrost and ice, and a thin, protective layer of productive vegetation vulnerable to disturbance and slow to recover.

Increasingly, its ecological processes and species—and even the frozen ground that supports all its surface features—are stressed by climate change.

4. Since its creation, the Refuge has been governed by a highly protective statutory and regulatory scheme. In 2017, while leaving these laws almost entirely in place, Congress instructed BLM to develop and administer a limited program of oil and gas leasing in the Coastal Plain.

5. The Program that Defendants Bernhardt and BLM adopted or approved opens essentially the entire Coastal Plain to leasing for intensive exploration and industrial development attendant on oil and gas production. Through their Record of Decision (ROD) adopting the Program, Defendant Bernhardt and BLM exceeded Congress's limited authorization, needlessly and unlawfully failing to protect the Refuge from damage within their control. They failed to develop and disclose to the public Program options that would have minimized such damage. They failed, as well, to disclose the actual nature and extent of potentially significant environmental damage associated with choices made in adopting the Program. And Defendant Fish and Wildlife Service issued a biological opinion for the Program without ensuring that its implementation would protect threatened species and their critical habitat, as required by law.

6. Plaintiffs ask this Court to enforce the statutory obligations and commands protecting the Coastal Plain environment that the Defendants have ignored and set aside

their unlawful ROD, FEIS, and biological opinion and any actions taken in reliance upon them.

JURISDICTION, RIGHT OF ACTION, AND VENUE

7. This court has jurisdiction under 28 U.S.C. § 1331 and may issue a declaratory judgment and further relief under 28 U.S.C. §§ 2201-02. Judicial review and vacatur of illegal agency actions is available under the Administrative Procedure Act, 5 U.S.C. §§ 701-06.

8. Venue is proper under 28 U.S.C. § 1391(e) because the Refuge is located within this District.

THE PARTIES

The Plaintiffs

9. The National Audubon Society (Audubon) is a national nonprofit conservation organization dedicated to protecting birds and the places they need, now and in the future, throughout the Americas, using science, advocacy, education, and on-the-ground conservation. Founded in 1905, Audubon has approximately 1.9 million members nationwide, including over 4,800 in Alaska. Among its many activities, Audubon operates 41 nature centers, and has 23 state programs, including a state office in Anchorage, Alaska, and over 450 local chapters throughout the country, including five chapters in Alaska. Audubon has long advocated for preserving the Arctic Refuge free from development.

10. The Natural Resources Defense Council (NRDC) is a membership organization that works to protect wildlife and wild places and to ensure a healthy environment for all life on earth. NRDC has more than 3.5 million members and online activists, including 375,000 dues-paying members, nearly 1,000 of them in the State of Alaska. NRDC's advocacy to protect the Refuge and keep it free from development dates back decades.

11. Plaintiff Center for Biological Diversity (the Center) is a national non-profit organization, with offices across the country and in La Paz, Mexico. The Center's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands, and public health. The Center has more than 81,800 members. The Center is actively involved in species and habitat protection issues throughout the United States, including protection of the Arctic and wildlife threatened by oil and gas leasing, exploration, and development. It has long advocated keeping the Arctic Refuge off limits to oil drilling.

12. Plaintiff Friends of the Earth is a tax-exempt, 501(c)(3) organization and a not-for-profit corporation. Friends of the Earth is a membership organization consisting of nearly 178,000 members and more than 1.7 million activists nationwide, including more than 400 members who live in Alaska. It is also a member of Friends of the Earth-International, which is a network of grassroots groups in 74 countries worldwide. Its mission is to protect our natural environment, including air, water, and land, to create a

more healthy and just world, using public education, advocacy, legislative processes, and litigation. Friends of the Earth is concerned about the adverse impacts that fossil fuel exploration and development in the Arctic Refuge have on the climate and people, fish, birds, and other species that depend on this region. Therefore, on behalf of its members and activists, Friends of the Earth actively engages in advocacy to influence U.S. energy and environmental policies affecting the Arctic Refuge.

13. Members of the plaintiff organizations reside near, visit, or otherwise use and enjoy the Arctic Refuge, including the Coastal Plain. Members of the plaintiff organizations use these lands for recreation, research, subsistence practices, wildlife viewing, photography, education, and aesthetic and spiritual purposes. The plaintiffs and their members derive scientific, recreational, aesthetic, and conservation benefits and enjoyment from their use of the area and from wildlife that use the Coastal Plain. The activities authorized by Defendant Bernhardt's and Defendant BLM's adoption of the Program will directly and irreparably injure these interests.

14. The plaintiff organizations monitor the use of Arctic Refuge ecosystems and compliance with the laws respecting these ecosystems, including the Coastal Plain, educate their members and the public concerning management of the ecosystems, and advocate policies and practices that conserve the natural values of the ecosystems.

Plaintiffs cannot achieve these organizational purposes fully without adequate information and public participation in the processes required by law. The interests and

organizational purposes of the plaintiffs are directly and irreparably injured by Defendants' violations of the laws as described in this complaint.

15. Plaintiffs participate actively in the administrative processes established for management of the Arctic Refuge and Coastal Plain, and did so for the Program. Plaintiff groups submitted comments on scoping and on the draft environmental impact statement for the Program. Plaintiffs have exhausted administrative remedies for the decision challenged in this complaint.

The Defendants

16. Defendant David Bernhardt is sued in his official capacity as Secretary of the Interior. Secretary of the Interior is the highest position within the Department of the Interior, has ultimate responsibility for overseeing the Department and its agencies and ensuring their compliance with all applicable federal laws, and specific responsibilities related to the administration of the Arctic Refuge. Defendant Bernhardt signed the ROD challenged herein.

17. Defendant BLM is the federal agency within the Department of the Interior that issued the FEIS and ROD challenged in this action.

18. Defendant Fish and Wildlife Service is the federal agency within the Department of the Interior responsible for administration of the Endangered Species Act (ESA) as it relates to terrestrial animals and some marine mammals, most relevantly here including polar bears.

FACTUAL BACKGROUND

The Coastal Plain of the Arctic National Wildlife Refuge

19. Bounded on the east by Ivvavik National Park and Vuntut National Park in Canada, and on the west by State lands already developed for oil and gas production, the Arctic Refuge is a uniquely undisturbed region of America's Arctic.

20. The Refuge's Coastal Plain is a dynamic and sensitive tundra environment. Its unique biodiversity includes primary calving grounds for the Porcupine caribou herd, a distinct population that annually undertakes the longest terrestrial migration on Earth. As Defendants Bernhardt and BLM acknowledge in the FEIS, even with low levels of human activity in calving areas, oil and gas development could displace calving caribou, result in decreased calf survival, and lead to a decline in caribou body condition.

21. The Plain is also home to the United States' highest density of onshore dens for maternal polar bears, listed as threatened under the federal Endangered Species Act. Polar bears in the Refuge belong to the species' highly imperiled and declining Southern Beaufort Sea population. They are increasingly being driven onto land as climate change reduces their sea ice habitat and are increasingly dependent on onshore denning habitat in the Coastal Plain.

22. The Coastal Plain's gravel bars, lagoons, tussocks, cliffs, and wetlands provide irreplaceable nesting, foraging, and staging grounds for more than 150 bird

species, including tundra and trumpeter swans, gyrfalcons and peregrines, cranes, phalaropes, king and common eiders, and snowy owls.

23. The Coastal Plain also serves as essential habitat for many terrestrial and aquatic species (including many with disturbance averse or imperiled populations), such as muskoxen, wolves, brown bears, wolverines, Arctic foxes, salmon, char, grayling, and Dolly Varden.

24. The Coastal Plain is vital to customary and traditional Indigenous practices, including subsistence hunting. Indigenous peoples of the U.S. and Canadian Arctic depend heavily on the Porcupine caribou herd that uses the Coastal Plain for calving and post-calving activities, migrates south in the fall, and travels up the Porcupine River in the spring. This 200,000-strong herd is essential to the cultural practices and way of life of the Gwich'in villages along the herd's migration route and provides them a principal food source.

25. The Coastal Plain, like the rest of America's Arctic, is already profoundly stressed by the effects of climate change. During recent decades, the Arctic has warmed more rapidly than any other region on Earth. In Alaska, average Arctic winter temperatures have increased by more than five degrees Fahrenheit during the past 50 years and are predicted to continue rising at a faster rate than elsewhere. Consumption of fossil fuels—encouraged by expanded oil and gas development, such as that proposed by Defendants Bernhardt and BLM in the Program—is the main cause of climate change.

26. The Mollie Beattie Wilderness Area, directly adjacent to and overlooking the Coastal Plain, offers vast and undisturbed natural areas rich with opportunities for solitude, self-discovery, self-reliance, remoteness, and unconfined recreation. The Coastal Plain, though not statutorily designated Wilderness, shares many of these characteristics. Poorly mitigated oil development would seriously erode these characteristics across vast areas of the Refuge, including the Mollie Beattie Wilderness.

27. The Coastal Plain, due to its unique topography and geomorphology, is ecologically distinct from other parts of America's Arctic. Notably, unlike the flatter coastal regions of the National Petroleum Reserve-Alaska (NPR-A) further to the west, two-thirds of the Refuge's Coastal Plain is hilly terrain or foothills, fundamentally influencing water flow, vegetation distribution, and habitat. Ice-rich permafrost is the foundation of this ecosystem. This ice is vulnerable to thawing, especially if the overlying—and insulating—vegetation or soil is compacted or stripped off by vehicles. Such thawing causes depressions in the tundra, diverts groundwater, and leads to formation of gullies, ponds, and lakes, permanently changing the topography and hydrological regimes, with cascading effects on surrounding landforms and vegetation.

Congressional Activity Controlling Development of the Coastal Plain

28. Lands that later became the Arctic Refuge, including the Coastal Plain, were set aside almost sixty years ago as the Arctic National Wildlife Range, for “preserving unique wildlife, wilderness and recreational values.” Public Land Order

2214, Alaska - Establishing the Arctic National Wildlife Range, 25 Fed. Reg. 12598, 12598-99 (Dec. 9, 1960). In 1980, Congress gave statutory protection to these and adjacent lands by creating the Arctic Refuge as part of the Alaska National Interest Lands Conservation Act (ANILCA). Pub. L. No. 96-487, § 303(2) (1980) (codified at 16 U.S.C. § 668dd note).

29. ANILCA supplemented the three Public Land Order purposes, mandating that the entire Refuge, including the Coastal Plain, be managed for four additional, specific, protective purposes:

- (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;
- (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;
- (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

ANILCA § 303(2)(B).

30. In ANILCA, Congress also banned the leasing of oil and gas resources within the Refuge, including the Coastal Plain, and any development leading to oil or gas production there. *See* ANILCA § 1003, 16 U.S.C. § 3143.

31. And, in ANILCA, Congress originally designated as Wilderness the current Mollie Beattie Wilderness. ANILCA § 702(3).

32. In addition to these organic authorities, the Coastal Plain is protected by a highly proscriptive web of federal environmental preservation laws and regulations. As part of a national wildlife refuge, the Secretary of the Interior's management of the Coastal Plain is governed by the National Wildlife Refuge System Administration Act (Refuge Act). The Refuge Act directs that, as a matter of national policy, every refuge "shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established." 16 U.S.C. § 668dd(a)(3)(A). To that end, the Secretary is directed to:

(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System;

(B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans;

[and]

(D) ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the mission of the System.

Id. § 668dd(a)(4).

33. Similarly, federal agency action affecting the Coastal Plain is fully subject to the National Environmental Policy Act (NEPA), “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA establishes comprehensive procedures to ensure that, before irreversibly committing resources to a project or program, federal agencies “encourage productive and enjoyable harmony between man and his environment,” “promote efforts which will prevent or eliminate damage to the environment,” and “enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 U.S.C. § 4321. To those ends, agencies must consider and disclose any potentially significant environmental consequences of their proposals, as well as less-damaging alternatives to them, and solicit input from other

agencies, Tribes, and the public, before reaching decisions on major federal actions. *See, e.g.*, 40 C.F.R. §§ 1502.1; 1503.1.

34. Much of the Arctic Refuge is also subject to the stringent provisions of the Wilderness Act, adopted by Congress to preserve certain lands “in their natural condition” and thus “secure for the American people of present and future generations the benefits of and enduring resource of wilderness.” 11 U.S.C. § 1131(a). It makes Defendants “responsible for preserving the wilderness character of the” Mollie Beattie Wilderness, directly adjacent to the Coastal Plain, 16 U.S.C. § 1133(b), including from activities on the Coastal Plain.

35. A number of wildlife species found either on or alongshore the Coastal Plain are protected by the Endangered Species Act. Congress enacted the ESA in part out of recognition that threatened or endangered species are of “esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people,” 16 U.S.C. § 1531(a), and deserving of the highest protection. Agencies that authorize, fund, or carry out actions that may affect such species must consult with either the Fish and Wildlife Service or the National Marine Fisheries Service, depending on the affected species, using the best available scientific and commercial data to ensure against likely jeopardizing their continued existence or adversely modifying habitat determined to be critical for them. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.01(b) (delegating authority for

consultations from the Secretaries of Interior and Commerce to the Fish and Wildlife Service and National Marine Fisheries Service).

36. In December 2017, Congress repealed ANILCA section 1003 as to the Coastal Plain and directed BLM to establish and administer a program for the leasing, development, production, and transportation of oil and gas in some portion of the Plain. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, §§ 20001(b)(1) & (b)(2)(A), 131 Stat. 2054, 2236 (2017) (“Tax Act”).

37. The Tax Act left all other provisions of ANILCA in effect but added for the Refuge an additional purpose: “to provide for an oil and gas program on the Coastal Plain.” Tax Act § 20001(b)(2)(B).

38. The Tax Act gave BLM four years from December 2017 to hold an initial lease sale of at least 400,000 acres and seven years to hold a second sale of at least 400,000 acres. *Id.* § 20001(c)(1)(B).

39. The Tax Act did not waive the Refuge Act, NEPA, the Wilderness Act, or any other environmental laws. *See generally id.* § 20001. It also specifically limited surface coverage by production and support facilities on federal land in the Coastal Plain to no more than 2,000 acres during the term of the leases under the Program. *Id.* § 20001(c)(3).

40. During Congressional consideration of the Tax Act, Alaska Senator Murkowski explained that protection of the environment of the Coastal Plain would

remain a statutory priority: She agreed that “the environment and local wildlife will always be a concern, always be a priority. That is why we did not waive NEPA or any other environmental laws. That is why the consultation requirements with our Alaska Native people still apply. That is why surface development will cover up to, but no more, than 2,000 Federal acres.” 163 Cong. Rec. S7539-40 (daily ed. Nov. 30, 2017) (statement of Sen. Murkowski).

Environmental Documentation and Leasing Program Decision

41. In December 2018, BLM released a draft environmental impact statement analyzing some environmental impacts of, and alternatives for, the Program. Plaintiffs timely submitted comments explaining and documenting numerous deficiencies in that draft statement.

42. In September 2019, BLM released an FEIS analyzing some environmental impacts of, and alternatives for, the Program.

43. In its FEIS, BLM rejected alternatives that would have caused less environmental harm to the Coastal Plain and elsewhere. Instead, BLM designated as its preferred alternative a Program making essentially the entire Plain available for leasing and seismic exploration. This alternative has the most acreage available for construction of oil and gas infrastructure. It includes the fewest protections for biological and ecological resources. It permits, and as described in the FEIS exceeds, the maximum surface infrastructure allowed by the Tax Act. And it has the greatest projected impacts

on wilderness values, recreation, permafrost and tundra, water quantity and quality, customary and traditional subsistence practices, wildlife, and climate change of all the alternatives considered in the FEIS. The FEIS acknowledges that implementation of the Program would interfere with and detract from the Refuge's conservation purposes. For example, it concludes that the Program has the potential to harm recreation throughout the entire Coastal Plain and cause the displacement or decline of sensitive species such as polar bears. It also acknowledges that the Program, which would allow surface occupancy and seismic surveying right up to the wilderness boundary, would degrade the wilderness characteristics of the Mollie Beattie Wilderness.

44. The FEIS fails to include accurate and available information about the potential adverse impacts of Program alternatives, in isolation and combination with other industrial activity in northern Alaska. The FEIS ignores or obscures potential harm to tundra, permafrost, and other landscape features, water quantity and quality, air quality, the climate, wilderness characteristics, and wildlife. In numerous instances, the FEIS explicitly fails to disclose potential impacts in favor of study at some later time, or relies on studies of other, significantly different, parts of America's Arctic rather than analyzing potential impacts from development of the Coastal Plain. Throughout, it fails to describe potential cumulative impacts of the Program and its alternatives, together with other past, present, and reasonably foreseeable activities or describes them so cursorily as to defeat informed public comment and agency decisionmaking.

45. The FEIS also includes a misleadingly narrow range of alternatives, none of which even purports to minimize risk and harms to natural and related values in and beyond the Coastal Plain. No alternative assures leasing would be kept to the minimum required by the Tax Act. None reduces roads, drill pads, and other surface infrastructure below the maximum permitted by the Tax Act. None limits ice roads, pipelines, and other connectors by restricting dispersal of processing facilities. None reduces impacts to wilderness values to the minimum feasible. None eliminates harmful seismic exploration or even significantly restricts where the seismic exploration it incorporates into the leasing program can occur.

46. On March 13, 2020, the Fish and Wildlife Service issued a biological opinion for the Program, covering ESA-listed species within its area of responsibility and based on its consultation with, and receipt of a biological assessment from, BLM.

47. On August 17, 2020, BLM released a ROD authorizing the Program, signed by Secretary Bernhardt. In the ROD, BLM adopted, with minimal changes, its preferred alternative from the FEIS and formalized its decision to zone essentially the entire Coastal Plain for oil and gas leasing and development.

CLAIMS FOR RELIEF

COUNT I (Violation of the APA and NEPA)

48. Plaintiffs incorporate by reference all preceding paragraphs.

49. The Refuge Act mandates that each national wildlife refuge “shall be managed to fulfill the mission of the [National Wildlife Refuge] System, as well as the specific purposes for which that refuge was established.” 16 U.S.C. § 668dd(a)(3)(A). A refuge’s purposes include “purposes specified in or derived from the . . . public land order . . . establishing . . . a refuge.” 16 U.S.C. § 668ee(10). Similarly, ANILCA requires the national wildlife refuges it created to be managed in accordance with the laws governing the administration of the National Wildlife Refuge System and pursuant to all consistent provisions of previously applicable public land orders. ANILCA §§ 304(a), 305.

50. Public Land Order 2214 established the original management purposes for much of the Arctic Refuge—including all of the Coastal Plain—as preserving the area’s unique wildlife, wilderness, and recreational values.

51. ANILCA § 303(2)(B) added four detailed conservation purposes for which the Arctic Refuge “shall be managed,” including maintenance of wildlife populations and habitats in their natural diversity, fulfillment of wildlife-related treaties, provision of continued opportunities for subsistence practices, and ensuring water quality and quantity.

52. ANILCA also designated much of the Refuge as Wilderness, including what is now known as the Mollie Beattie Wilderness, which adjoins the Coastal Plain. The Wilderness Act makes Defendants Bernhardt and BLM “responsible for preserving

the wilderness character” of congressionally designated Wilderness, including the Mollie Beattie Wilderness. 16 U.S.C. § 1133(b).

53. The Tax Act added a purpose to ANILCA § 303(2)(B) “to provide for an oil and gas program on the Coastal Plain,” but did not otherwise alter that section or the Refuge Act, and left in force the Wilderness Act and other laws applicable to management of the Arctic Refuge.

54. The Administrative Procedure Act (APA) bars an agency from arbitrary and capricious decisionmaking, including misinterpreting the agency’s legal obligations, failure to consider relevant factors, reliance on factors that Congress did not intend it to consider, and failure to analyze compliance with governing legal requirements. 5 U.S.C. § 706(2)(A).

55. The NEPA regulations require that a federal agency, in an environmental impact statement, “state how alternatives considered in it and decisions based on it will or will not achieve the requirements of . . . environmental laws and policies.” 40 C.F.R. §1502.2(d).

56. In their FEIS for the Program, Defendants Bernhardt and BLM developed alternatives that would bar oil and gas leasing from parts of the Coastal Plain. These alternatives would impose conditions designed to help fulfill the purposes for which the Refuge was created and preserve the wilderness values of the Mollie Beattie Wilderness,

beyond those included in these Defendants' preferred and subsequently chosen alternative of offering essentially the entire Coastal Plain for leasing.

57. Defendants Bernhardt and BLM based their ROD in part on their assertion that Congress "mandated that the 1.56 million acre Coastal Plain be managed for an oil and gas program" just as it mandated that other portions of the Refuge be managed as Wilderness. In so doing, they misinterpreted the Tax Act as overriding their other legal obligations, including those under the Refuge Act, ANILCA, and the Wilderness Act, beyond the minimal extent required by the Tax Act.

58. In neither the FEIS nor the ROD did Defendants Bernhardt and BLM consider or analyze their actual legal obligations under the Refuge Act, ANILCA, and the Wilderness Act or state how they would achieve those requirements. With respect to the Wilderness Act, they expressly found that operations under the Program would adversely affect wilderness characteristics of the Mollie Beattie Wilderness and considered measures to mitigate those impacts, but did not either adopt them or explain in the FEIS or the ROD how and why their decision not to adopt them or other measures to protect the wilderness characteristics of the Mollie Beattie Wilderness will achieve the requirements of the Wilderness Act.

59. By basing their ROD in part on a misinterpretation of their legal obligation to fulfill all the Refuge's purposes and to preserve the wilderness values of the Mollie Beattie Wilderness, and by failing to consider or analyze their actual obligations and

decide and state how they would achieve compliance with them, Defendants Bernhardt and BLM violated 5 U.S.C. § 706(2)(A) and 40 C.F.R. § 1502.2(d).

60. Defendants Bernhardt and BLM also acted arbitrarily and not in accordance with law, by neither mitigating adverse impacts they acknowledged the Program would have on the wilderness characteristics of the Mollie Beattie Wilderness nor explaining that failure, in violation of 5 U.S.C. § 706(2)(A) and 40 C.F.R. § 1502.2(d).

COUNT II
(Violation of the Refuge Act)

61. Plaintiffs incorporate by reference all preceding paragraphs.

62. The Refuge Act provides, in part, that “the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use.” 16 U.S.C. § 668dd(d)(3)(A)(i).

63. Uses of a refuge include management economic activities, such as oil and gas leasing activities. ANILCA 304(b); 50 C.F.R. § 25.12.

64. A “compatible use” is a “use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.” 16 U.S.C. 668ee(1). “[S]ound professional judgment,” in turn, “means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and

administration, available science and resources, and adherence to the requirements of this Act and other applicable laws.” 16 U.S.C. § 668ee(3). A compatibility determination must be made in writing and provide adequate opportunity for public comment. 16 U.S.C. § 668dd(d)(3)(B); 50 C.F.R. § 26.41.

65. Although Defendants Bernhardt and BLM, in adopting the Program concluded that Congress “included a Coastal Plain oil and gas program as a refuge purpose on equal footing with the other refuge purposes,” ROD at 1, they chose to open Refuge lands to oil and gas leasing activities in ways that give dominant effect to the oil and gas purpose across the Coastal Plain. The Program opens to leasing far more of the Coastal Plain than Congress required, it maximizes the surface area disturbed by permanent development, it contains no provision limiting the location or extent of destructive activities such as seismic testing and ice road construction, it fails to limit the dispersal of drill pads and pipelines across the landscape, and it foregoes numerous lease and operating restrictions that would protect natural values. The FEIS acknowledges that the Program would interfere with or detract from the fulfillment of the Refuge’s conservation-oriented purposes.

66. By adopting the Program, Defendant Bernhardt initiated a new use of the Refuge. Because he failed to make a determination that the Program is compatible with the purposes of the Refuge, Defendant Bernhardt’s adoption of the Program violates 16 U.S.C. § 668dd(d)(3)(A)(i). Or, if he made such a determination it is arbitrary and

capricious, violating 5 U.S.C. § 706(2)(A), because the Program materially interferes with and detracts from the fulfillment of all other established purposes of the Refuge.

COUNT III
(Failure to Consider a Reasonable Range of Alternatives, NEPA)

67. Plaintiffs incorporate by reference all preceding paragraphs.

68. NEPA establishes a national policy that federal agencies “use all practicable means and measures . . . to create and maintain conditions in which man and nature can exist in productive harmony,” 42 U.S.C. § 4331(a), and makes it their responsibility to “attain the widest range of beneficial uses of the environment without degradation” *Id.* § 4331(b)(3). NEPA directs that “to the fullest extent possible” all public laws of the United States “be interpreted and administered in accordance” with these policies. *Id.* § 4332(1).

69. In furtherance of these national policies, NEPA directs that federal agencies—including the BLM—study alternatives to their proposed actions. *Id.* §§ 4332(2)(C)(iii) & (E); *see also* 40 C.F.R. § 1502.14. For an environmental impact statement (EIS), NEPA requires that an agency “[r]igorously explore and objectively evaluate all reasonable alternatives” 40 C.F.R. § 1502.14(a). These must, to the fullest extent possible, include “reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” *Id.* § 1500.2(e).

70. The Refuge was created, and by law must be managed, for several stringent conservation-oriented purposes, relating to diversity of fish and wildlife and their habitats, preservation of wilderness qualities, unique recreational values, water quality and quantity, and traditional subsistence practices. These purposes remain in effect and binding, notwithstanding congressional adoption through the Tax Act of an eighth purpose, related to oil and gas leasing in the Coastal Plain.

71. Because of the full set of purposes for which the Refuge must be managed, and in light of the requirements of NEPA, it was reasonable to include and study in the FEIS a Program alternative that, among other things and to the extent permitted by the Tax Act, minimized:

- (i) the acreage leased;
- (ii) the area where surface disturbance is necessary and allowed;
- (iii) the number and dispersion of well pads and miles of pipeline;
- (iv) the extent or location of gravel mines, ice roads, desalination plants, and other support facilities;
- (v) the seismic surveys permitted;
- (vi) the seasons during which surface and aerial activity is allowed in and above calving, denning, and other sensitive wildlife habitat;
- (vii) the water withdrawn from Refuge rivers and lakes; and

otherwise included measures to reduce damage to the Refuge's natural values and the human activities that depend upon them, to the extent allowed by the Tax Act.

72. In the FEIS, however, Defendants Bernhardt and BLM did not develop or study any alternative that would fulfill, to the extent consistent with Tax Act obligations, the conservation-oriented purposes for which the Refuge must be managed or minimize adverse effects to the environment.

73. By failing to consider any alternative in the FEIS that would implement the Tax Act in a manner that minimizes the risk of damage to the natural values and related human activities associated with the Coastal Plain, Defendants Bernhardt and BLM violated NEPA, 42 U.S.C. § 4332.

COUNT IV
(Failure to Discuss Potentially Significant
Environmental Impacts from the Program, per NEPA)

74. Plaintiffs incorporate by reference all preceding paragraphs.

75. In an EIS, federal agencies must discuss the potentially significant “environmental impacts of the alternatives, including the proposed action” and “any adverse environmental effects which cannot be avoided should the proposal be implemented.” 40 C.F.R. § 1502.16. This includes discussions of “direct effects and their significance,” “indirect effects and their significance,” *id.*, and “cumulative” impacts. 40 C.F.R. §§ 1508.8, 1508.25(a)(2). Indirect effects include effects that “are

caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8.

76. Defendants Bernhardt and BLM failed, in their FEIS, to discuss the actual magnitude and nature of potential direct, indirect, and cumulative impacts that the Program may have on the Coastal Plain and elsewhere. Specifically, they did not provide important objective data and other scientific information concerning the Program’s potential impacts on—among other resources—permafrost, tundra, overall greenhouse gas emissions and their social costs, air quality, wilderness, and multiple wildlife species. Nor did they provide information about the potential extent of surface development and associated damage under the Program they adopted in the ROD, damage which Congress and numerous scientific studies identified as particularly severe and significant. They thereby obscured from the public, decisionmakers, and other officials both the potential environmental costs of different development alternatives and the need and opportunity for additional programmatic measures to mitigate those consequences.

77. The failure of Defendants Bernhardt and BLM to discuss potentially significant direct, indirect, and cumulative environmental and economic impacts from the Program renders their FEIS and ROD in violation of NEPA, 42 U.S.C. § 4332.

COUNT V
(Violation of the ESA and APA)

78. Plaintiffs incorporate by reference all preceding paragraphs.

79. Under section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), the Secretary of the Interior and/or Commerce—depending on the species involved—must consult with any agency authorizing an action that may affect threatened or endangered species or their critical habitat, in order to ensure that the action is not likely to jeopardize the continued existence of the species or adversely modify their critical habitat. To accomplish this, the agency and the Secretary must use the best scientific and commercial information available. After consultation and before initiation of the agency action, the Secretary must, pursuant to 16 U.S.C. § 1536(b)(3)(A), issue a biological opinion detailing how the action affects the listed species and critical habitat.

80. When the action being authorized has multiple implementing phases, the consultation must ensure against prohibited impacts from all phases of the entire action. The Secretary's biological opinion must be comprehensive, detailing the effects of all implementing phases. And where the specifics of future phases will be determined later, the Secretary and the agency must still use the best available scientific and commercial information to make impact projections during the initial consultation based on potential locations and levels of implementing activities and potential conflicts with protected species and their critical habitat.

81. The Secretary of the Interior is the relevant Secretary for potential impacts to polar bears, which are listed as threatened under the ESA, and their critical habitat, and

conducts consultations and issues biological opinions by and through the Fish and Wildlife Service.

82. For the Program described above, Defendant BLM and Defendant Fish and Wildlife Service engaged in ESA consultation in part because they agreed that the Program is an action that may affect polar bears. Defendant Fish and Wildlife Service concedes that this consultation had to demonstrate that the aggregate effect of activities implementing the Program will not jeopardize the continued existence of polar bears or adversely modify their designated critical habitat.

83. The polar bears of the Southern Beaufort Sea (SBS) population are declining and projected to decline even more in the future. As Defendant Fish and Wildlife Service acknowledges, these declines are due in part to loss of the bears' preferred sea ice habitat. As the sea ice has decreased, SBS bears have concentrated a disproportionate amount of foraging and maternal denning in the Coastal Plain, a trend that Fish and Wildlife Service scientists predict will continue. The area is thus especially important to the continued survival of this population of bears. Accordingly, 77 percent of the Coastal Plain is designated as critical habitat for polar bears.

84. Fish and Wildlife Service biologists predict that, because of the declining and precarious state of the SBS population of polar bears and mortality due to other causes, loss of even a single SBS bear to human disturbance could have population level effects.

85. Polar bears are particularly vulnerable to seismic exploration when they are denning with cubs. Defendant Fish and Wildlife Service acknowledges that disturbance from such activities conducted pursuant to the Program could lead to den abandonment by maternal polar bears and the death of their cubs.

86. Both Defendant Fish and Wildlife Service and Defendant BLM acknowledge that avoiding such adverse impacts on polar bears and their denning habitat from Program activities would require application of mitigation measures. During their ESA consultation, however, they did not agree on what measures would mitigate seismic impacts to polar bears and their habitat from the Program sufficiently to comply with section 7(a)(2) of the ESA or be required for Program activities. As a result, they could not accurately analyze how seismic exploration would likely affect polar bears and their critical habitat.

87. Despite these failures, Defendant Fish and Wildlife Service, issued a biological opinion for the Program concluding that it is not likely to jeopardize polar bears or adversely modify their critical habitat. In making that conclusion, Defendant Fish and Wildlife Service expressly relied on a promise of future, site-specific consultations under the ESA and the Marine Mammal Protection Act, rather than on a comprehensive analysis of all phases of the Program based on the best scientific and commercial information available at the time of the initial consultation.

88. Defendant Fish and Wildlife Service violated 16 U.S.C. § 1536(b)(3)(A) by failing to provide BLM, after consultation, with a biological opinion that included a comprehensive, predictive analysis detailing how all phases of the entire Program could affect, and potentially conflict with, polar bears and their critical habitat.

89. Defendant Fish and Wildlife Service violated 16 U.S.C. 1536(a)(2) when consulting with BLM by failing to use the best scientific and commercial information available to ensure that the Program is not likely to jeopardize the continued existence of polar bears or adversely modify their critical habitat.

90. Defendant Fish and Wildlife Service violated 5 U.S.C. § 706(2)(A) by arbitrarily concluding that the Program is not likely to jeopardize the continued existence of any threatened or endangered species or adversely modify its critical habitat, despite not determining what mitigation would accomplish that.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment providing the following relief:

A. Declare that Defendants have violated NEPA, the National Wildlife Refuge Administration Act, and the ESA, and further declare that the actions set forth above are arbitrary, capricious, and not in accordance with law and procedure required by law;

B. Set aside the ROD and FEIS for the oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge and any actions taken by Defendants in reliance on either document as void;

C. Set aside the biological opinion for the oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge and any actions taken by Defendants in reliance on the biological opinion as void;

D. Enter preliminary and permanent injunctive relief as needed to prevent irreparable harm from implementation of the oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge until Defendants comply with NEPA, the National Wildlife Refuge Administration Act, the APA, and the ESA; and

E. Grant such other relief as the Court considers just and proper, including plaintiffs' costs of this action and such reasonable attorneys' fees as they are entitled to.

Respectfully submitted this 24th day of August, 2020,

s/ Nathaniel SW Lawrence

Nathaniel S.W. Lawrence (Wash. Bar No. 30847)

(*pro hac vice pending*)

Garett R. Rose (D.C. Bar No. 1023909) (*pro hac vice pending*)

Jared E. Knicley (D.C. Bar No. 1027257) (*pro hac vice pending*)

NATURAL RESOURCES DEFENSE COUNCIL

s/ Erik Grafe

Erik Grafe (Alaska Bar No. 0804010)

Eric P. Jorgensen (Alaska Bar No. 8904010)

Katharine Glover (Alaska Bar No. 0606033)

EARTHJUSTICE

*Attorneys for Plaintiffs National Audubon Society,
Natural Resources Defense Council, Center for
Biological Diversity, and Friends of the Earth*

UNITED STATES DISTRICT COURT

for the

District of Alaska

NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, CENTER FOR BIOLOGICAL DIVERSITY, and FRIENDS OF THE EARTH,

Plaintiff

v.

DAVID BERNHARDT, in his official capacity as Secretary of the Interior, BUREAU OF LAND MANAGEMENT, and UNITED STATES FISH AND WILDLIFE SERVICE,

Defendant

Civil Action No. 3:20-cv-00205-TMB

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) David Bernhardt, Secretary of the Interior United States Department of the Interior 1849 C Street, NW Washington, DC 20240

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nathaniel S.W. Lawrence NATURAL RESOURCES DEFENSE COUNCIL 3723 Holiday Drive, SE Olympia, WA 98501

Garett R. Rose Jared E. Knicley NATURAL RESOURCES DEFENSE COUNCIL 1152 15th St. NW Washington, DC 20005

Erik Grafe EARTHJUSTICE 441 W 5th Avenue, Suite 301 Anchorage, AK 99501

Eric P. Jorgensen Katharine Glover EARTHJUSTICE 325 Fourth Street Juneau, AK 99801

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:20-cv-00205-TMB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Alaska

NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, CENTER FOR BIOLOGICAL DIVERSITY, and FRIENDS OF THE EARTH,

Plaintiff

v.

DAVID BERNHARDT, in his official capacity as Secretary of the Interior, BUREAU OF LAND MANAGEMENT, and UNITED STATES FISH AND WILDLIFE SERVICE,

Defendant

Civil Action No. 3:20-cv-00205-TMB

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Bureau of Land Management 1849 C Street, NW Rm. 5665 Washington, DC 20240

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nathaniel S.W. Lawrence NATURAL RESOURCES DEFENSE COUNCIL 3723 Holiday Drive, SE Olympia, WA 98501

Garett R. Rose Jared E. Knicley NATURAL RESOURCES DEFENSE COUNCIL 1152 15th St. NW Washington, DC 20005

Erik Grafe EARTHJUSTICE 441 W 5th Avenue, Suite 301 Anchorage, AK 99501

Eric P. Jorgensen Katharine Glover EARTHJUSTICE 325 Fourth Street Juneau, AK 99801

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:20-cv-00205-TMB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
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UNITED STATES DISTRICT COURT

for the

District of Alaska

NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, CENTER FOR BIOLOGICAL DIVERSITY, and FRIENDS OF THE EARTH,

Plaintiff

v.

DAVID BERNHARDT, in his official capacity as Secretary of the Interior, BUREAU OF LAND MANAGEMENT, and UNITED STATES FISH AND WILDLIFE SERVICE,

Defendant

Civil Action No. 3:20-cv-00205-TMB

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) United States Fish and Wildlife Service 1849 C Street, NW Washington, DC 20240

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nathaniel S.W. Lawrence NATURAL RESOURCES DEFENSE COUNCIL 3723 Holiday Drive, SE Olympia, WA 98501

Garett R. Rose Jared E. Knicley NATURAL RESOURCES DEFENSE COUNCIL 1152 15th St. NW Washington, DC 20005

Erik Grafe EARTHJUSTICE 441 W 5th Avenue, Suite 301 Anchorage, AK 99501

Eric P. Jorgensen Katharine Glover EARTHJUSTICE 325 Fourth Street Juneau, AK 99801

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CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Alaska

NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, CENTER FOR BIOLOGICAL DIVERSITY, and FRIENDS OF THE EARTH,

Plaintiff

v.

DAVID BERNHARDT, in his official capacity as Secretary of the Interior, BUREAU OF LAND MANAGEMENT, and UNITED STATES FISH AND WILDLIFE SERVICE,

Defendant

Civil Action No. 3:20-cv-00205-TMB

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) William Barr, Attorney General United States Department of Justice 950 Pennsylvania Avenue NW Washington, DC 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nathaniel S.W. Lawrence NATURAL RESOURCES DEFENSE COUNCIL 3723 Holiday Drive, SE Olympia, WA 98501

Garett R. Rose Jared E. Knicley NATURAL RESOURCES DEFENSE COUNCIL 1152 15th St. NW Washington, DC 20005

Erik Grafe EARTHJUSTICE 441 W 5th Avenue, Suite 301 Anchorage, AK 99501

Eric P. Jorgensen Katharine Glover EARTHJUSTICE 325 Fourth Street Juneau, AK 99801

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

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Signature of Clerk or Deputy Clerk

Civil Action No. 3:20-cv-00205-TMB

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Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Alaska

NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, CENTER FOR BIOLOGICAL DIVERSITY, and FRIENDS OF THE EARTH,

Plaintiff

v.

DAVID BERNHARDT, in his official capacity as Secretary of the Interior, BUREAU OF LAND MANAGEMENT, and UNITED STATES FISH AND WILDLIFE SERVICE,

Defendant

Civil Action No. 3:20-cv-00205-TMB

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Bryan Schroder, U.S. Attorney for the District of Alaska 222 W 7th Avenue, Room 253 #9 Anchorage, AK 99513

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nathaniel S.W. Lawrence NATURAL RESOURCES DEFENSE COUNCIL 3723 Holiday Drive, SE Olympia, WA 98501

Garett R. Rose Jared E. Knicley NATURAL RESOURCES DEFENSE COUNCIL 1152 15th St. NW Washington, DC 20005

Erik Grafe EARTHJUSTICE 441 W 5th Avenue, Suite 301 Anchorage, AK 99501

Eric P. Jorgensen Katharine Glover EARTHJUSTICE 325 Fourth Street Juneau, AK 99801

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

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Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:20-cv-00205-TMB

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_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

From: Small, Jeffrey D <jeffrey_small@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: ANWR Comms for Monday
To: "Knudson, Kip C (GOV)" <kip.knudson@Alaska.gov>
CC: "Renkes, Gregg D" <gregg_renkes@ios.doi.gov> "Turner, Jeff W (GOV)" <jeff.turner@alaska.gov>
Sent: Wed, 12 Aug 2020 15:30:26 -0400 (Wed, 12 Aug 2020 19:30:26 GMT)
Great. Thanks Kip and Jeff!

Sincerely,

Jeff Small
Senior Advisor to the Secretary
U.S. Department of the Interior
Intergovernmental Affairs/External Affairs/Communications
1849 C Street NW
Office 6217
Washington D.C. 20240
202-208-6649 (direct)
202-344-5532 (work cell)
jeffrey_small@ios.doi.gov

Note: Every email and text I send or receive is subject to public release under the Freedom of Information Act.

From: Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>
Sent: Wednesday, August 12, 2020 2:15 PM
To: Small, Jeffrey D <jeffrey_small@ios.doi.gov>
Cc: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Turner, Jeff W (GOV) <jeff.turner@alaska.gov>
Subject: [EXTERNAL] Re: ANWR Comms for Monday

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

All good to go from our perspective.

Kip Knudson
Director, State/Federal Affairs
Alaska Governor Michael Dunleavy
907-382-0219

From: Small, Jeffrey D <jeffrey_small@ios.doi.gov>
Sent: Wednesday, August 12, 2020 9:40:21 AM
To: Knudson, Kip C (GOV) <kip.knudson@Alaska.gov>
Cc: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Subject: Fw: ANWR Comms for Monday

Hi Kip,

Good speaking with you yesterday. Sounds like the ANWR ROD is going Monday now. Attached is the draft release

which is embargoed until released by BLM.

The draft release already includes a quote from the Governor. Let us know if you all have any updates to the quotes but if we don't here back we will assume it is good to go as is.

Sincerely,

Jeff Small
Senior Advisor to the Secretary
U.S. Department of the Interior
Intergovernmental Affairs/External Affairs/Communications
1849 C Street NW
Office 6217
Washington D.C. 20240
202-208-6649 (direct)
202-344-5532 (work cell)
jeffrey_small@ios.doi.gov

Note: Every email and text I send or receive is subject to public release under the Freedom of Information Act.

From: [Houseknecht, David W](#)
Subject: USGS Western North Slope Assessment - Public Geology Review Talk
Date: Friday, October 30, 2020 5:36:59 PM
Attachments: [AGS November 2020 Special Edition.pdf](#)

FYI, I will be giving a webinar talk hosted by the Alaska Geological Society on Thursday, November 5 from 4:00 to 5:00 pm eastern time - see attached. The presentation will focus on the Western North Slope - the areas WEST of NPRA - although certain aspects of western NPRA will be discussed for context. Attendance is open at no charge to anyone interested in the scientific foundation on which the assessment will be conducted.

AGS webinars use the Google Meet application (not Zoom as implied in the announcement) and, in my experience, there can be a problem connecting through Microsoft Outlook, especially from within the USGS. To access a positive connection, I recommend booting Google Chrome and pasting the "Zoom link" into the url address line - that has worked for me.

The Google Meet link: <https://meet.google.com/kbm-stvd-jvw?hs=122&authuser=0>

Please consider supporting the Alaska Geological Society by becoming a member at:
www.alaskageology.org

Dave Houseknecht
U.S. Geological Survey
12201 Sunrise Valley Drive
Room 4B-314; MS-954
Reston, Virginia 20192
(703) 648-6466
dhouse@usgs.gov

ALASKA GEOLOGY

Special Edition Newsletter of the
Alaska Geological Society



U.S. Geological Survey Public Assessment Review: Western North Slope

David W. Houseknecht
U.S. Geological Survey, Reston, VA
dhouse@usgs.gov

The USGS is conducting an assessment of undiscovered technically recoverable oil and gas resources of the Western North Slope (west of NPRA) and adjacent State waters. This assessment will not include the Nanushuk and Torok Formations west of NPRA, which were assessed in 2017. In preparation for the upcoming assessment, a public geology review talk will be presented by Dave Houseknecht as a webinar on Thursday November 5, 2020. Primary objectives are to (1) present the geological framework on which the assessment will be based and (2) solicit feedback from the geological community regarding the geology and interpretations that represent the foundation of the assessment.

Normally, the USGS asks the Alaska Geological Society to host an in-person geology review meeting as was done in November 2019 for the Nanushuk-Torok-NPRA assessment and in November 2020 for the Central North Slope assessment. However, in this "year of COVID-19" it was decided that a seminar-style talk delivered as a webinar would be an appropriate substitute. A normal Q&A time will follow the talk but the afternoon break-out session that typically follows USGS assessment public review meetings is not planned. Anyone interested in a more in-depth conversation is welcome to contact Houseknecht by email in the days following the talk.

Please consider supporting AGS by becoming a member: <http://www.alaskageology.org/membership.html>

AGS Special Meeting

Date & Time: Thursday, November 5; 12:00 to 1:00 pm; email discussion after presentation
Program: U.S. Geological Survey Public Assessment Review: Western North Slope
Speaker: David W. Houseknecht, U.S. Geological Survey, Reston, VA
Place: Virtual online presentation
Reservations: Reservations are not required
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About the Speaker:

Dave Houseknecht is a senior research geologist with the U.S. Geological Survey (USGS) in Reston, Virginia with a focus on basin analysis, geological controls of petroleum resource occurrence, and petroleum resource assessment. This work mainly is concentrated in Arctic Alaska and adjacent regions. He frequently represents the USGS scientific perspective on petroleum resources in the Arctic National Wildlife Refuge, National Petroleum Reserve in Alaska, other areas of Alaska, and the global Arctic to the Administration and Congress. Dave joined the USGS in 1992, serving as Energy Program Manager through 1998 and then moving to a research position. Previously, Houseknecht was a professor of geology at the University of Missouri (1978-1992) and consultant to the oil industry, working on domestic and international projects. He received geology degrees from Penn State University (Ph.D. 1978, B.S. 1973) and Southern Illinois University (M.S. 1975).



Figure 1. Surprise Creek Anticline, view to west. High-standing ridge that defines anticline comprises sandstone in the Mount Kelly Graywacke. Strata in core of anticline include imbricates of Shublik (Otuk) Formation and Kingak Shale. Geologists with orange vests for scale.



Figure 2. Rib of Shublik (Otuk) Formation exposed in Surprise Creek Anticline.



Figure 3. Outcrop of friable, oil-saturated sandstone in Nanushuk Formation on Kokolik River in westernmost NPRA. Oil charge likely originated in Western North Slope, west of NPRA.



Figure 4. Fissile shale and interbeds of siltstone and bentonite in pebble shale unit and gamma-ray zone of Hue Shale at Redwul section, Western North Slope. Shale includes petroleum source rocks with total organic carbon ranging up to 11.2 weight percent (Mull and Kirkham, unpublished DGGs report).

From: City Of Kaktovik - City Administrator <admin@cityofkaktovik.org>
Subject: [EXTERNAL] REFERENCE: CERD/EWUAP/101st Session/2020/USA/JP/is
To: "(b) (6)" <(b) (6)>
CC: "registry@onchr.org" <registry@onchr.org>
"Bernhardt, David L" <dwbernhardt@ios.doi.gov>
"Renkes, Gregg D" <gregg_renkes@ios.doi.gov>
"teresa.imm@inupiatvoice.org" <teresa.imm@inupiatvoice.org>
Sent: Mon, 26 Oct 2020 15:59:22 -0400 (Mon, 26 Oct 2020 19:59:22 GMT)
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To: [Cason, James E](#); [Renkes, Gregg D](#); [OS \(Margaret_Everson@ios.doi.gov\)](#); [Willens, Todd D](#); [Lawkowski, Gary M](#); [MacGregor, Katharine S](#); [Tahsuda, John](#); [Monson, Lesia](#); [Wackowski, Stephen M](#); [Taylor, Sara M](#); [Weaver, Kiel P](#); [Vassar, Lori Y](#); [Delaplaine, Bruce](#); [DiPaolo, Nancy K](#); [Barkin, Pamela](#); [Rojewski, Cole J](#); [Salotti, Christopher](#); [Playforth, Taylor G](#); [Galloway, Duane](#); [Vander Voort, Faith C](#); [Hall, Amanda L](#); [Thiele, Aaron J](#); [Cosby, Bryan C](#); [Howarth, Robert G](#); [Modrich, Jennifer A](#); [Flanagan, Denise A](#); [Mills, Katie E](#); [Cameron, Scott J](#); [Freeman, Michael T](#); [Moss, Adrienne](#); [Brown, Ryan D](#); [TAYLOR, TIFFANY](#); [Lockwood-Shabat, Eugene](#); [Murray, David P](#); [Paslawski, Christopher S](#); [Buckner, Shawn M](#); [Simon, Benjamin M](#); [Smith, Hilary A](#); [Capers, Melvin N](#); [Milli, Shirley J](#); [Hansen, Timothy J](#); [Lesensee, Eldred E](#); [Appel, Elizabeth K](#); [Grounds, Katherin](#); [Myers, Richard G](#); [Freihage, Jason E](#); [Carroll, Quinton U](#); [Sweeney, Tara M](#); [Cruz, Mark A](#); [Foster, Maureen D](#); [Fink, Wendy R](#); [Gustavson, Angela](#); [Jones, Lisa M](#); [Kodis, Martin](#); [Helfrich, Devin B](#); [Hausman, Alyssa B](#); [Joseph, Jennifer A](#); [Kuckro, Melissa](#); [Laudner, Charles A](#); [Gamble, Sarah](#); [Moran, Jill C](#); [Hammond, Casey B](#); [Royal, Pamela R](#); [Macdonald, Cara Lee](#); [Holmes, William E](#); [Gins, Meagan A](#); [Conklin, Caralee S](#); [Moran, Jill C](#); [Ralston, Jill A](#); [Kaster, Amanda E](#); [Caminiti, Mariagrazia](#); [Relat, Hubbel R](#); [Zerzan, Gregory P](#); [Murphy, Timothy E](#); [Brown, Laura B](#); [de la Vega, Scott A](#); [Williams, Lawrence D](#); [Brown, Lamont S](#); [Shepard, Eric N](#); [Cooper, Renee D](#); [Moody, Aaron G](#)
Cc: [Quinn, Matthew J](#); [Nevils, Joseph](#)
Subject: LEGISLATIVE REFERRAL: (DUE 11/6/20 @ 5 PM) MISC #163 - INTERIOR Request for Views Re: S. ___, Alaska Native Claims Settlement Act Fulfillment Act of 2020
Date: Wednesday, November 4, 2020 12:32:51 PM
Attachments: [KEN20278.pdf](#)

DEADLINE: FRIDAY, NOVEMBER 6, 2020 @ 5 PM

**DEPARTMENT OF THE INTERIOR
LEGISLATIVE COUNSEL REFERRAL**

Date: November 4, 2020
To: Legislative Liaison
From: Matt Quinn (208-3146)
Contact: Joe Nevils (208-4580)

Subject: MISC #163 - INTERIOR Request for Views
Re: S. ___, Alaska Native Claims Settlement Act Fulfillment Act of 2020

Note to Reviewers:

Please review the attached draft bill to amend the Alaska Native Claims Settlement Act. This bill is likely to be included on the docket of a Senate Energy and Natural Resources Committee hearing in November; BLM-drafted testimony will likely circulate early in the week of November 9, 2020.

Please send agency comments or respond with a "no comment" to [Matthew Quinn@ios.doi.gov](mailto:Matthew.Quinn@ios.doi.gov) and [Joseph Nevils@ios.doi.gov](mailto:Joseph.Nevils@ios.doi.gov) by the deadline above.

Attachment(s): 1

Joseph Nevils

Correspondence Control Specialist
Legislative Assistant
Office of Congressional and
Legislative Affairs
Office: 202-208-4580

116TH CONGRESS
2D SESSION

S. _____

To amend the Alaska Native Claims Settlement Act to increase the dividend exclusion, to exclude certain payments to Alaska Native elders for determining eligibility for certain programs, to provide that Village Corporations shall not be required to convey land in trust to the State of Alaska for the establishment of Municipal Corporations, and to provide for the recognition of certain Alaska Native communities and the settlement of certain claims under that Act, to require the Secretary of the Interior to convey certain interests in land in the State of Alaska, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Alaska Native Claims Settlement Act to increase the dividend exclusion, to exclude certain payments to Alaska Native elders for determining eligibility for certain programs, to provide that Village Corporations shall not be required to convey land in trust to the State of Alaska for the establishment of Municipal Corporations, and to provide for the recognition of certain Alaska Native communities and the settlement of certain claims under that Act, to require the Secretary of the Interior to convey certain interests in land in the State of Alaska, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alaska Native Claims
5 Settlement Act Fulfillment Act of 2020”.

6 **SEC. 2. DIVIDEND EXCLUSION INCREASE.**

7 Section 29(c)(A) of the Alaska Native Claims Settle-
8 ment Act (43 U.S.C. 1626(c)(A)) is amended by striking
9 “exceed \$2,000 per individual per annum;” and inserting
10 the following: “exceed—

11 “(i) for any calendar year preceding 2020,
12 \$2,000 per individual per annum; and

13 “(ii) for calendar year 2020 and all subse-
14 quent calendar years, \$5,000 per individual per
15 annum, to be adjusted for inflation in calendar
16 year 2025, and every 5 years thereafter, by in-
17 creasing the amount provided under this sub-
18 paragraph for the preceding year by the per-
19 centage increase in the Consumer Price Index
20 for All Urban Consumers, as published by the
21 Bureau of Labor Statistics, during the pre-
22 ceding 5-year period;”.

23 **SEC. 3. ELIGIBILITY FOR CERTAIN PROGRAMS.**

24 Section 29(c) of the Alaska Native Claims Settlement
25 Act (43 U.S.C. 1626(c)) is amended—

1 (1) in subparagraph (D) following the undesig-
2 nated matter following paragraph (3), by striking
3 “and” at the end;

4 (2) in subparagraph (E) following the undesig-
5 nated matter following paragraph (3), by striking
6 the period at the end and inserting “; and”; and

7 (3) by adding at the end the following:

8 “(F) an amount distributed or benefit pro-
9 vided by a Settlement Trust to a Native or de-
10 scendant of a Native who is 65 years of age or
11 older.”.

12 **SEC. 4. CANYON VILLAGE.**

13 (a) CONVEYANCE.—Notwithstanding section
14 2653.3(e) of title 43, Code of Federal Regulations (or suc-
15 cessor regulations), or the withdrawal made by section
16 303(2)(A) of the Alaska National Interest Lands Con-
17 servation Act (Public Law 96–487; 94 Stat. 2390), the
18 Secretary of the Interior (referred to in this section as
19 the “Secretary”) shall convey to Kian Tr’ee Corporation,
20 for the Native Village of Canyon Village, the surface estate
21 in the land selected by the Kian Tr’ee Corporation pursu-
22 ant to section 14(h)(2) of the Alaska Native Claims Settle-
23 ment Act (43 U.S.C. 1613(h)(2)).

24 (b) LIMITATION.—The conveyance under subsection
25 (a) shall not exceed 6,400 acres.

1 (c) SUBSURFACE ESTATE.—

2 (1) IN GENERAL.—Unless Doyon, Limited,
3 elects to receive conveyance under paragraph (2),
4 the Secretary shall convey to Doyon, Limited, the
5 subsurface estate in the land conveyed under sub-
6 section (a).

7 (2) ALTERNATE SELECTION.—At the option of
8 Doyon, Limited, in lieu of accepting the conveyance
9 under paragraph (1)—

10 (A) Doyon, Limited, may receive a convey-
11 ance from existing selections on land withdrawn
12 pursuant to section 11(a)(3) of the Alaska Na-
13 tive Claims Settlement Act (43 U.S.C.
14 1610(a)(3)) that is equal in acreage to the sub-
15 surface that would otherwise be conveyed under
16 paragraph (1);

17 (B) Doyon, Limited, shall notify the Sec-
18 retary (acting through the Alaska State Office
19 of the Bureau of Land Management) of the
20 preference of Doyon, Limited, not later than 90
21 days after the date of enactment of this Act;
22 and

23 (C) the Secretary shall convey to Doyon,
24 Limited, the subsurface estate selected under
25 subparagraph (A).

1 **SEC. 5. KAKTOVIK INUPIAT CORPORATION.**

2 In order to fulfill the legal and moral obligation of
3 the United States to convey certain land to the Alaska
4 Native Corporations for the community of Kaktovik, Alas-
5 ka, in fulfillment of aboriginal land claims and to clarify
6 land ownership patterns within the Coastal Plain of the
7 Arctic National Wildlife Refuge, notwithstanding section
8 1302(h)(2) of the Alaska National Interest Lands Con-
9 servation Act (16 U.S.C. 3192(h)(2)), the Secretary of the
10 Interior shall convey—

11 (1) to the Kaktovik Inupiat Corporation the
12 surface estate of the land described in paragraph 1
13 of Public Land Order 6959 (58 Fed. Reg. 14323),
14 to the extent necessary to fulfill the entitlement of
15 the Corporation under section 12 of the Alaska Na-
16 tive Claims Settlement Act (43 U.S.C. 1611) in ac-
17 cordance with the terms and conditions of the
18 Agreement between the Department of the Interior,
19 the United States Fish and Wildlife Service, the Bu-
20 reau of Land Management, and the Kaktovik
21 Inupiat Corporation, effective January 22, 1993;
22 and

23 (2) to the Arctic Slope Regional Corporation
24 the remaining subsurface estate to which the Cor-
25 poration is entitled pursuant to the Agreement be-

1 tween the Arctic Slope Regional Corporation and the
2 United States of America dated August 9, 1983.

3 **SEC. 6. REVERSION OF CERTAIN LAND CONVEYED IN**
4 **TRUST TO STATE OF ALASKA.**

5 Section 14(c) of the Alaska Native Claims Settlement
6 Act (43 U.S.C. 1613(c)) is amended—

7 (1) by redesignating paragraphs (1) through
8 (5) as subparagraphs (A) through (E), respectively,
9 and indenting appropriately;

10 (2) in the matter preceding subparagraph (A)
11 (as so redesignated), by striking “(c) Each patent”
12 and inserting the following:

13 “(c) CONVEYANCE OF CERTAIN LAND BY VILLAGE
14 CORPORATION.—

15 “(1) IN GENERAL.—Each patent”;

16 (3) in paragraph (1) (as so designated), in the
17 undesigned matter following subparagraph (E) (as
18 so redesignated), in the first sentence—

19 (A) by striking “section 14(c) of this Act”
20 and inserting “this subsection”; and

21 (B) by striking “There is authorized” and
22 inserting the following:

23 “(2) TECHNICAL ASSISTANCE.—

24 “(A) IN GENERAL.—There are author-
25 ized”;

1 (4) in paragraph (2)(A) (as so redesignated), in
2 the second sentence, by striking “The Secretary”
3 and inserting the following:

4 “(B) FORM OF FUNDING.—The Sec-
5 retary”; and

6 (5) in paragraph (1) (as so designated)—

7 (A) in each of subparagraphs (A) and (B)
8 (as so redesignated)—

9 (i) by striking “the” the first place it
10 appears and inserting “The”; and

11 (ii) by striking the semicolon at the
12 end and inserting a period;

13 (B) in subparagraph (D) (as so redesign-
14 ated), by striking “the” the first place it ap-
15 pears and inserting “The”;

16 (C) by striking “existed as of” in subpara-
17 graph (D) (as so redesignated) and all that fol-
18 lows through “for” in subparagraph (E) (as so
19 redesignated) and inserting the following: “ex-
20 isted as of December 18, 1971.

21 “(E) For”; and

22 (D) in subparagraph (C) (as so redesign-
23 ated)—

24 (i) by striking the semicolon at the
25 end and inserting a period;

1 (ii) by striking “in trust: *Provided*
 2 *however*, That the word” and all that fol-
 3 lows through “sentence,” and inserting the
 4 following: “in trust.

5 “(II) DEFINITION OF SALE.—

6 For purposes of subclause (I), the
 7 term ‘sale’”;

8 (iii) by striking “one thousand two
 9 hundred and eighty acres: *Provided further*,
 10 That any net” and inserting the following:
 11 “1,280 acres.

12 “(iii) NET REVENUES.—

13 “(I) IN GENERAL.—Any net”;

14 (iv) by striking “community needs:
 15 *Provided*, That the” and inserting the fol-
 16 lowing: “community needs.

17 “(ii) MINIMUM ACREAGE.—The”;

18 (v) by striking “(C) the Village Cor-
 19 poration” and inserting the following:

20 “(C) CONVEYANCE TO MUNICIPAL COR-
 21 PORATION OR STATE IN TRUST.—

22 “(i) IN GENERAL.—The Village Cor-
 23 poration”; and

24 (vi) by adding at the end the fol-
 25 lowing:

1 “(iv) CASES IN WHICH CONVEYANCE
2 SHALL NOT BE REQUIRED.—

3 “(I) IN GENERAL.—Notwith-
4 standing any other provision of this
5 subparagraph, if a Village Corpora-
6 tion, prior to the date of enactment of
7 the Alaska Native Claims Settlement
8 Act Fulfillment Act of 2020, conveyed
9 to the State in trust all or a portion
10 of the acreage of land required to be
11 conveyed under this subparagraph for
12 the establishment of a Municipal Cor-
13 poration in the future, and a Munic-
14 ipal Corporation has not been estab-
15 lished as of that date of enactment,
16 on formal resolution by the Village
17 Corporation and the residents of the
18 Native village requesting dissolution
19 of the trust, the trust shall be dis-
20 solved and title to the land shall re-
21 vert to the Village Corporation, sub-
22 ject to subclause (III).

23 “(II) ADDITIONAL LAND.—Not-
24 withstanding any other provision of
25 this subparagraph, as of the date of

1 enactment of the Alaska Native
2 Claims Settlement Act Fulfillment Act
3 of 2020, a Village Corporation shall
4 not be required to convey any addi-
5 tional land in trust under this sub-
6 paragraph for the establishment of a
7 Municipal Corporation in the future.

8 “(III) REQUIREMENTS.—In ac-
9 cordance with subsection (g)—

10 “(aa) the reversion of land
11 to a Village Corporation pursuant
12 to subclause (I) shall be subject
13 to—

14 “(AA) valid existing
15 rights, including valid exist-
16 ing rights created by the ap-
17 plicable trust; and

18 “(BB) any existing
19 easements, rights-of-way
20 necessary for public roadway
21 access, or rights-of-way for
22 access of holders of valid ex-
23 isting rights; and

24 “(bb) the Village Corpora-
25 tion shall assume the obligations

1 of the applicable trust with re-
2 spect to any lease or other use
3 agreement applicable to the land
4 on reversion of the land to the
5 Village Corporation pursuant to
6 subclause (I).”.

7 **SEC. 7. RECOGNITION AND COMPENSATION OF UNRECOG-**
8 **NIZED NATIVE COMMUNITIES IN SOUTHEAST**
9 **ALASKA.**

10 (a) PURPOSE.—The purpose of this section is to re-
11 dress the omission of the southeastern Alaska commu-
12 nities of Haines, Ketchikan, Petersburg, Tenakee, and
13 Wrangell from eligibility under the Alaska Native Claims
14 Settlement Act (43 U.S.C. 1601 et seq.) by authorizing
15 the Alaska Natives enrolled in those communities—

16 (1) to form Urban Corporations for the commu-
17 nities of Haines, Ketchikan, Petersburg, Tenakee,
18 and Wrangell under the Alaska Native Claims Set-
19 tlement Act (43 U.S.C. 1601 et seq.); and

20 (2) to receive certain settlement land pursuant
21 to that Act.

22 (b) ESTABLISHMENT OF ADDITIONAL NATIVE COR-
23 PORATIONS.—Section 16 of the Alaska Native Claims Set-
24 tlement Act (43 U.S.C. 1615) is amended by adding at
25 the end the following:

1 “(e) NATIVE VILLAGES OF HAINES, KETCHIKAN, PE-
2 TERSBURG, TENAKEE, AND WRANGELL, ALASKA.—

3 “(1) IN GENERAL.—The Native residents of
4 each of the Native Villages of Haines, Ketchikan,
5 Petersburg, Tenakee, and Wrangell, Alaska, may or-
6 ganize as Urban Corporations.

7 “(2) EFFECT ON ENTITLEMENT TO LAND.—
8 Nothing in this subsection affects any entitlement to
9 land of any Native Corporation established before
10 the date of enactment of this subsection pursuant to
11 this Act or any other provision of law.”.

12 (c) SHAREHOLDER ELIGIBILITY.—Section 8 of the
13 Alaska Native Claims Settlement Act (43 U.S.C. 1607)
14 is amended by adding at the end the following:

15 “(d) NATIVE VILLAGES OF HAINES, KETCHIKAN,
16 PETERSBURG, TENAKEE, AND WRANGELL.—

17 “(1) IN GENERAL.—The Secretary shall enroll
18 to each of the Urban Corporations for Haines,
19 Ketchikan, Petersburg, Tenakee, or Wrangell those
20 individual Natives who enrolled under this Act to the
21 Native Villages of Haines, Ketchikan, Petersburg,
22 Tenakee, or Wrangell, respectively.

23 “(2) NUMBER OF SHARES.—Each Native who
24 is enrolled to an Urban Corporation for Haines,
25 Ketchikan, Petersburg, Tenakee, or Wrangell pursu-

1 ant to paragraph (1) and who was enrolled as a
2 shareholder of the Regional Corporation for South-
3 east Alaska shall receive 100 shares of Settlement
4 Common Stock in the respective Urban Corporation.

5 “(3) NATIVES RECEIVING SHARES THROUGH IN-
6 HERITANCE.—If a Native received shares of stock in
7 the Regional Corporation for Southeast Alaska
8 through inheritance from a decedent Native who
9 originally enrolled to the Native Village of Haines,
10 Ketchikan, Petersburg, Tenakee, or Wrangell and
11 the decedent Native was not a shareholder in a Vil-
12 lage Corporation or Urban Corporation, the Native
13 shall receive the identical number of shares of Settle-
14 ment Common Stock in the Urban Corporation for
15 Haines, Ketchikan, Petersburg, Tenakee, or
16 Wrangell as the number of shares inherited by that
17 Native from the decedent Native who would have
18 been eligible to be enrolled to the respective Urban
19 Corporation.

20 “(4) EFFECT ON ENTITLEMENT TO LAND.—
21 Nothing in this subsection affects entitlement to
22 land of any Regional Corporation pursuant to sec-
23 tion 12(b) or 14(h)(8).”.

1 (d) DISTRIBUTION RIGHTS.—Section 7 of the Alaska
2 Native Claims Settlement Act (43 U.S.C. 1606) is amend-
3 ed—

4 (1) in subsection (j)—

5 (A) in the third sentence, by striking “In
6 the case” and inserting the following:

7 “(3) THIRTEENTH REGIONAL CORPORATION.—
8 In the case”;

9 (B) in the second sentence, by striking
10 “Not less” and inserting the following:

11 “(2) MINIMUM ALLOCATION.—Not less”;

12 (C) by striking “(j) During” and inserting
13 the following:

14 “(j) DISTRIBUTION OF CORPORATE FUNDS AND
15 OTHER NET INCOME.—

16 “(1) IN GENERAL.—During”; and

17 (D) by adding at the end the following:

18 “(4) NATIVE VILLAGES OF HAINES, KETCH-
19 IKAN, PETERSBURG, TENAKEE, AND WRANGELL.—
20 Native members of the Native Villages of Haines,
21 Ketchikan, Petersburg, Tenakee, and Wrangell who
22 become shareholders in an Urban Corporation for
23 such a Native Village shall continue to be eligible to
24 receive distributions under this subsection as at-

1 large shareholders of the Regional Corporation for
2 Southeast Alaska.”; and

3 (2) by adding at the end the following:

4 “(s) EFFECT OF AMENDATORY ACT.—The Alaska
5 Native Claims Settlement Act Fulfillment Act of 2020 and
6 the amendments made by that Act shall not affect—

7 “(1) the ratio for determination of revenue dis-
8 tribution among Native Corporations under this sec-
9 tion; or

10 “(2) the settlement agreement among Regional
11 Corporations or Village Corporations or other provi-
12 sions of subsection (i) or (j).”.

13 (e) COMPENSATION.—The Alaska Native Claims Set-
14 tlement Act (43 U.S.C. 1601 et seq.) is amended by add-
15 ing at the end the following:

16 **“SEC. 43. URBAN CORPORATIONS FOR HAINES, KETCHIKAN,
17 PETERSBURG, TENAKEE, AND WRANGELL.**

18 “(a) DEFINITION OF URBAN CORPORATION.—In this
19 section, the term ‘Urban Corporation’ means each of the
20 Urban Corporations for Haines, Ketchikan, Petersburg,
21 Tenakee, and Wrangell.

22 “(b) CONVEYANCES OF LAND.—

23 “(1) AUTHORIZATION.—

24 “(A) CONVEYANCES TO URBAN CORPORA-
25 TIONS.—Subject to valid existing rights and

1 paragraphs (3), (4), (5), and (6), the Secretary
2 shall convey—

3 “(i) to the Urban Corporation for
4 Haines, the surface estate in 12 parcels of
5 Federal land comprising approximately
6 23,040 acres, as generally depicted on the
7 maps entitled ‘Haines Selections’, num-
8 bered 1 and 2, and dated October 26,
9 2020;

10 “(ii) to the Urban Corporation for
11 Ketchikan, the surface estate in 8 parcels
12 of Federal land comprising approximately
13 23,040 acres, as generally depicted on the
14 maps entitled ‘Ketchikan Selections’, num-
15 bered 1 through 4, and dated October 26,
16 2020;

17 “(iii) to the Urban Corporation for
18 Petersburg, the surface estate in 11 par-
19 cels of Federal land comprising approxi-
20 mately 23,040 acres, as generally depicted
21 on the maps entitled ‘Petersburg Selec-
22 tions’, numbered 1 through 3, and dated
23 October 26, 2020;

24 “(iv) to the Urban Corporation for
25 Tenakee, the surface estate in 13 parcels

1 of Federal land comprising approximately
2 23,040 acres, as generally depicted on the
3 maps entitled ‘Tenakee Selections’, num-
4 bered 1 through 3, and dated October 26,
5 2020; and

6 “(v) to the Urban Corporation for
7 Wrangell, the surface estate in 13 parcels
8 of Federal land comprising approximately
9 23,040 acres, as generally depicted on the
10 maps entitled ‘Wrangell Selections’, num-
11 bered 1 through 5, and dated October 26,
12 2020, 2020.

13 “(B) CONVEYANCES TO REGIONAL COR-
14 PORATION FOR SOUTHEAST ALASKA.—Subject
15 to valid existing rights, on the applicable date
16 on which the surface estate in land is conveyed
17 to an Urban Corporation under subparagraph
18 (A), the Secretary shall convey to the Regional
19 Corporation for Southeast Alaska the sub-
20 surface estate for that land.

21 “(C) CONGRESSIONAL INTENT.—It is the
22 intent of Congress that the Secretary convey
23 the surface estates described in subparagraph
24 (A) not later than the date that is 2 years after

1 the applicable date of incorporation under sec-
2 tion 16(e)(1) of an Urban Corporation.

3 “(2) WITHDRAWAL.—

4 “(A) IN GENERAL.—Subject to valid exist-
5 ing rights, the Federal land described in para-
6 graph (1) is withdrawn from all forms of—

7 “(i) entry, appropriation, or disposal
8 under the public land laws;

9 “(ii) location, entry, and patent under
10 the mining laws;

11 “(iii) disposition under all laws per-
12 taining to mineral and geothermal leasing
13 or mineral materials; and

14 “(iv) selection under Public Law 85-
15 508 (commonly known as the ‘Alaska
16 Statehood Act’) (48 U.S.C. note prec. 21).

17 “(B) TERMINATION.—The withdrawal
18 under subparagraph (A) shall remain in effect
19 until the date on which the Federal land is con-
20 veyed under paragraph (1).

21 “(3) TREATMENT OF LAND CONVEYED.—Ex-
22 cept as otherwise provided in this section, any land
23 conveyed to an Urban Corporation under paragraph
24 (1)(A) shall be—

1 “(A) considered to be land conveyed by the
2 Secretary under section 14(h)(3); and

3 “(B) subject to all laws (including regula-
4 tions) applicable to entitlements under section
5 14(h)(3), including section 907(d) of the Alaska
6 National Interest Lands Conservation Act (43
7 U.S.C. 1636(d)).

8 “(4) PUBLIC EASEMENTS.—

9 “(A) IN GENERAL.—The conveyance and
10 patents for the land under paragraph (1)(A)
11 shall be subject to the reservation of public
12 easements under section 17(b).

13 “(B) TERMINATION.—No public easement
14 reserved on land conveyed under paragraph
15 (1)(A) shall be terminated by the Secretary
16 without publication of notice of the proposed
17 termination in the Federal Register.

18 “(C) RESERVATION OF EASEMENTS.—In
19 the conveyance and patents for the land under
20 paragraph (1)(A), the Secretary shall reserve
21 the right of the Secretary to amend the convey-
22 ance and patents to include reservations of pub-
23 lic easements under section 17(b) until the com-
24 pletion of the easement reservation process.

1 “(5) HUNTING, FISHING, RECREATION, AND AC-
2 CESS.—

3 “(A) IN GENERAL.—Any land conveyed
4 under paragraph (1)(A), including access to the
5 land through roadways, trails, and forest roads,
6 shall remain open and available to subsistence
7 uses, noncommercial recreational hunting and
8 fishing, and other noncommercial recreational
9 uses by the public under applicable law—

10 “(i) without liability on the part of the
11 Urban Corporation, except for willful acts
12 of the Urban Corporation, to any user as
13 a result of the use; and

14 “(ii) subject to—

15 “(I) any reasonable restrictions
16 that may be imposed by the Urban
17 Corporation on the public use—

18 “(aa) to ensure public safe-
19 ty;

20 “(bb) to minimize conflicts
21 between recreational and com-
22 mercial uses;

23 “(cc) to protect cultural re-
24 sources;

1 “(dd) to conduct scientific
2 research; or

3 “(ee) to provide environ-
4 mental protection; and

5 “(II) the condition that the
6 Urban Corporation post on any appli-
7 cable property, in accordance with
8 State law, notices of the restrictions
9 on use.

10 “(B) EFFECT.—Access provided to any in-
11 dividual or entity under subparagraph (A) shall
12 not—

13 “(i) create an interest in any third
14 party in the land conveyed under para-
15 graph (1)(A); or

16 “(ii) provide standing to any third
17 party in any review of, or challenge to, any
18 determination by the Urban Corporation
19 with respect to the management or devel-
20 opment of the land conveyed under para-
21 graph (1)(A), except as against the Urban
22 Corporation for the management of public
23 access under subparagraph (A).

24 “(6) MISCELLANEOUS.—

25 “(A) SPECIAL USE AUTHORIZATIONS.—

1 “(i) IN GENERAL.—On the conveyance
2 of land to an Urban Corporation under
3 paragraph (1)(A)—

4 “(I) any guiding or outfitting
5 special use authorization issued by the
6 Forest Service for the use of the con-
7 veyed land shall terminate; and

8 “(II) as a condition of the con-
9 veyance and consistent with section
10 14(g), the Urban Corporation shall
11 issue the holder of the special use au-
12 thorization terminated under sub-
13 clause (I) an authorization to continue
14 the authorized use, subject to the
15 terms and conditions that were in the
16 special use authorization issued by the
17 Forest Service, for—

18 “(aa) the remainder of the
19 term of the authorization; and

20 “(bb) 1 additional consec-
21 utive 10-year renewal period.

22 “(ii) NOTICE OF COMMERCIAL ACTIVI-
23 TIES.—The Urban Corporation, and any
24 holder of a guiding or outfitting authoriza-
25 tion under this subparagraph, shall have a

1 mutual obligation, subject to the guiding
2 or outfitting authorization, to inform the
3 other party of any commercial activities
4 prior to engaging in the activities on the
5 land conveyed to the Urban Corporation
6 under paragraph (1)(A).

7 “(iii) NEGOTIATION OF NEW
8 TERMS.—Nothing in this paragraph pre-
9 cludes the Urban Corporation and the
10 holder of a guiding or outfitting authoriza-
11 tion from negotiating a new mutually
12 agreeable guiding or outfitting authoriza-
13 tion.

14 “(iv) LIABILITY.—Neither the Urban
15 Corporation nor the United States shall
16 bear any liability, except for willful acts of
17 the Urban Corporation or the United
18 States, regarding the use and occupancy of
19 any land conveyed to the Urban Corpora-
20 tion under paragraph (1)(A), as provided
21 in any outfitting or guiding authorization
22 under this paragraph.

23 “(B) ROADS AND FACILITIES.—

24 “(i) IN GENERAL.—The Secretary of
25 Agriculture shall negotiate in good faith

1 with the Urban Corporation to develop a
2 binding agreement for—

3 “(I) the use of National Forest
4 System roads and related transpor-
5 tation facilities by the Urban Corpora-
6 tion; and

7 “(II) the use of the roads and re-
8 lated transportation facilities of the
9 Urban Corporation by the Forest
10 Service and designees of the Forest
11 Service.

12 “(ii) TERMS AND CONDITIONS.—The
13 binding agreement under clause (i)—

14 “(I) shall provide that the State
15 (including entities and designees of
16 the State) shall be authorized to use
17 the roads and related transportation
18 facilities of the Urban Corporation on
19 substantially similar terms as are pro-
20 vided to the Forest Service;

21 “(II) shall include restrictions on,
22 and fees for, the use of the National
23 Forest System roads and related
24 transportation facilities, as necessary,
25 that are reasonable and comparable to

1 the restrictions and fees imposed by
2 the Forest Service for the use of the
3 roads and related transportation fa-
4 cilities as of the date of enactment of
5 this section; and

6 “(III) shall not restrict or limit
7 any access to the roads and related
8 transportation facilities of the Urban
9 Corporation or the Forest Service that
10 may be otherwise provided by valid ex-
11 isting rights and agreements in exist-
12 ence as of the date of enactment of
13 this section.

14 “(iii) INTENT OF CONGRESS.—It is
15 the intent of Congress that the agreement
16 under clause (i) shall be entered into as
17 soon as practicable after the date of enact-
18 ment of this section and in any case by not
19 later than 1 year after the date of incorpo-
20 ration of the Urban Corporation.

21 “(iv) CONTINUED ACCESS.—Begin-
22 ning on the date on which the land is con-
23 veyed to the Urban Corporation under
24 paragraph (1)(A) and ending on the effec-
25 tive date of a binding agreement entered

1 into under clause (i), the Urban Corpora-
2 tion shall provide and allow administrative
3 access to roads and related transportation
4 facilities on the land under substantially
5 similar terms as are provided by the For-
6 est Service as of the date of enactment of
7 this section.

8 “(C) EFFECT ON OTHER LAWS.—

9 “(i) IN GENERAL.—Nothing in this
10 section delays the duty of the Secretary to
11 convey land to—

12 “(I) the State under Public Law
13 85–508 (commonly known as the
14 ‘Alaska Statehood Act’) (48 U.S.C.
15 note prec. 21); or

16 “(II) a Native Corporation
17 under—

18 “(aa) this Act; or

19 “(bb) the Alaska Land
20 Transfer Acceleration Act (43
21 U.S.C. 1611 note; Public Law
22 108–452).

23 “(ii) STATEHOOD ENTITLEMENT.—

24 “(I) IN GENERAL.—Statehood se-
25 lections under Public Law 85–508

1 (commonly known as the ‘Alaska
2 Statehood Act’) (48 U.S.C. note prec.
3 21) are not displaced by the parcels of
4 land described in clauses (i) through
5 (v) of paragraph (1)(A).

6 “(II) BOUNDARY ADJUST-
7 MENTS.—In the event of a dispute be-
8 tween an area selected as a Statehood
9 selection and a parcel of land referred
10 to in subclause (I), the Secretary shall
11 work with the Urban Corporation and
12 the State in good faith to adjust the
13 boundary of the parcel to exclude any
14 area selected as a Statehood selection.

15 “(iii) CONVEYANCES.—The Secretary
16 shall promptly proceed with the conveyance
17 of all land necessary to fulfill the final en-
18 titlement of all Native Corporations in ac-
19 cordance with—

20 “(I) this Act; and

21 “(II) the Alaska Land Transfer
22 Acceleration Act (43 U.S.C. 1611
23 note; Public Law 108–452).

24 “(iv) FISH AND WILDLIFE.—Nothing
25 in this section enlarges or diminishes the

1 responsibility and authority of the State
2 with respect to the management of fish
3 and wildlife on public land in the State.

4 “(D) MAPS.—

5 “(i) AVAILABILITY.—Each map re-
6 ferred to in paragraph (1)(A) shall be
7 available in the appropriate offices of the
8 Secretary and the Secretary of Agriculture.

9 “(ii) CORRECTIONS.—The Secretary,
10 in consultation with the Secretary of Agri-
11 culture, may make any necessary correc-
12 tion to a clerical or typographical error in
13 a map referred to in paragraph (1)(A).

14 “(c) CONVEYANCE OF ROADS, TRAILS, LOG TRANS-
15 FER FACILITIES, LEASES, AND APPURTENANCES.—

16 “(1) IN GENERAL.—The Secretary, without
17 consideration or compensation, shall convey to each
18 Urban Corporation, by quitclaim deed or patent, all
19 right, title, and interest of the United States in all
20 roads, trails, log transfer facilities, leases, and ap-
21 purtenances on or related to the land conveyed to
22 the Urban Corporation under subsection (b)(1)(A).

23 “(2) VALID EXISTING RIGHTS.—The convey-
24 ance under paragraph (1) shall be subject to all
25 valid existing rights, including any reciprocal rights-

1 of-way, easements, or agreements for the use of the
2 roads, trails, log transfer facilities, leases, and ap-
3 purtenances conveyed under that paragraph.

4 “(3) CONTINUATION OF AGREEMENTS.—

5 “(A) IN GENERAL.—On or before the date
6 on which land is conveyed to an Urban Cor-
7 poration under subsection (b)(1)(A), the Sec-
8 retary shall provide to the Urban Corporation
9 all reciprocal rights-of-way, easements, and
10 agreements for use of the roads, trails, log
11 transfer facilities, leases, and appurtenances on
12 or related to the land in existence as of the date
13 of enactment of this section.

14 “(B) REQUIREMENT.—Any right-of-way,
15 easement, or agreement described in subpara-
16 graph (A) shall continue in perpetuity, unless
17 the right-of-way, easement, or agreement—

18 “(i) expires under its own terms; or

19 “(ii) is mutually renegotiated by the
20 Urban Corporation and beneficiary of the
21 right-of-way, easement, or agreement.

22 “(d) SETTLEMENT TRUST.—

23 “(1) IN GENERAL.—Each Urban Corporation
24 may establish a settlement trust in accordance with
25 section 39 for the purposes of promoting the health,

1 education, and welfare of the trust beneficiaries, and
2 preserving the Native heritage and culture, of the
3 community of Haines, Ketchikan, Petersburg,
4 Tenakee, or Wrangell, as applicable.

5 “(2) PROCEEDS AND INCOME.—The proceeds
6 and income from the principal of a trust established
7 under paragraph (1) shall—

8 “(A) first be applied to the support of
9 those enrollees, and the descendants of the en-
10 rollees, who are elders or minor children; and

11 “(3) thereafter to the support of all other en-
12 rollees.

13 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
14 is authorized to be appropriated to the Secretary
15 \$12,500,000, to be used by the Secretary to provide 5
16 grants in the amount of \$2,500,000 each, to be used only
17 for activities that support the implementation of this sec-
18 tion, including planning and development.”.

From: [Goodwin, Nicholas R](#)
To: [Bernhardt, David L](#); [Willens, Todd D](#); [Renkes, Gregg D](#); [MacGregor, Katharine S](#); [Rojewski, Cole J](#); [Williams, Timothy G](#); [Small, Jeffrey D](#); [Lawkowski, Gary M](#); [Hammond, Casey B](#); [Pendley, William P](#); [Kaster, Amanda E](#)
Cc: [Goldey, Benjamin H](#); [Handzlik, Craig E](#); [Swanson, Conner D](#)
Subject: WaPo: Biden vowed to ban new drilling on public lands. It won't be easy.
Date: Thursday, November 19, 2020 11:02:46 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Biden vowed to ban new drilling on public lands. It won't be easy.

Climate pledge to halt federal drilling permits faces legal and political obstacles

<https://www.washingtonpost.com/climate-environment/2020/11/19/biden-climate-change-drilling/>

One of Joe Biden's [boldest campaign pledges](#) was to ban "new oil and gas permitting on public lands and waters," part of a sweeping agenda aimed at curbing greenhouse gases that are warming the planet and threatening life on Earth.

Transforming that promise into reality, however, will be tough.

The incoming administration will face several legal and political hurdles if it seeks to halt new oil and gas permits on federal land and waters, given existing laws and the enormous sums that drilling royalties generate for the federal and state governments — including Democratic-leaning states such as New Mexico and Colorado. But failure to do so is sure to become a flash point with environmental and youth activists within the Democratic Party, who helped elect him and have made climate a priority.

Meanwhile, the Trump administration, in a bid to help its allies in the oil and gas business before it leaves office, has embarked on an 11th-hour leasing spree to help those companies lock in rights to drill. It offered up 79 million acres of leases in the Gulf of Mexico on Wednesday, [selling](#) nearly 518,000 acres. And it is rushing to auction off rights [to drill in the Arctic National Wildlife Refuge](#) by Jan. 20, Inauguration Day.

In a recent interview, Interior Secretary David Bernhardt said that Biden would not be able to halt new drilling on public lands and waters until his first term ends. "If their intention is to end all leasing and permitting, they will find that that's rife with conflicts, opposed by Democratic governors, and not perpetually legally sustainable."

But Michael Brune, head of the Sierra Club, one of the nation's oldest and most influential environmental groups, said his members expect nothing less than a ban from the candidate they helped elect.

"The Biden campaign made a clear and unequivocal campaign promise to end fossil fuel leasing on public land." Brune said. "That's a big reason why we had Sierra Club members write more than a million letters to undecided voters, make more than 5 million phone calls to undecided voters and send 20 million text messages."

There is little question that energy development on public lands and waters represents a significant share of America's global warming pollution. The fossil fuels that are extracted there and eventually burned to run cars, heat homes, operate factories and generate electricity account for nearly a quarter of U.S. carbon dioxide emissions, according to [a 2018 U.S. Geological Survey study](#).

[Despite catastrophic climate change, Trump officials push to expand drilling on Alaska's North Slope](#)

Still, lawmakers from both parties have welcomed drilling as a source of jobs and revenue for decades. President Barack Obama worked to curtail U.S. coal production on public land, but he praised natural gas production as an important bridge to clean energy. The Trump administration has moved aggressively to expand oil and gas drilling across the country, scaling back protected areas, offering more leases and accelerating federal approval for pipelines and other drilling-related projects.

Fossil fuel gas activity on federal and tribal land and offshore last year [generated \\$11.7 billion](#) in tax revenue, according to the Interior Department's Office of Natural Resources Revenue. Of that total, the U.S. Treasury kept \$4.9 billion, more than \$2.4 billion went to state and local governments and the rest funded tribes, restoration, conservation and other projects.

But as climate projections have become dire, Democrats have embraced a "keep it in the ground" strategy aimed at ending this activity altogether without the help of a sharply divided Congress. According to [a Washington Post survey](#), every 2020 Democratic presidential candidate pledged to ban fossil fuel leasing with the exception of Montana Gov. Steve Bullock and Sen. Michael F. Bennet (Colo.), both of whom hail from energy-producing states.

Biden repeatedly brought up the issue on the campaign trail, saying that he would shift the nation away from fossil fuels [while allowing fracking to continue](#) on private land in places like Pennsylvania, which happened to be a swing state pivotal to his victory.

At a town hall in New Hampshire in February, he [said](#) he opposed drilling in the Arctic National Wildlife Refuge, given the impacts of climate change on Alaska, before adding, "And by the way, no more drilling on federal lands, period. Period, period, period." The crowd clapped enthusiastically.

[Biden is poised to embed climate change throughout the U.S. government](#)

Frank Macchiarola, the American Petroleum Institute's senior vice president for policy, economics and regulatory affairs, said in an interview that his group is well aware of Biden's pledge. "But we also recognize that that was a campaign proposal, and campaigning is often different from governing," he said.

"Our first order of business is to tell the story of the value of oil and gas production in the United States," Macchiarola said. He added that if Biden sought to impose a leasing ban, "we think there are a significant number of impediments to that, and we would challenge it vigorously."

Legal experts from across the political spectrum said it will be easier to stop issuing new leases than to halt drilling permits linked to existing leases. Two primary laws govern leasing — the Mineral Leasing Act (MLA) and the Outer Continental Shelf Lands Act (OSCLA) — and both call for auctions at regular intervals. But the Obama administration

suspended leasing both onshore and off at times, and the president has the right to remove offshore areas from leasing altogether.

It is much harder to deny a company the right to drill on a tract that is already leased. And it can take decades to cancel leases outright: Lawyers [have been fighting for nearly 40 years](#) over whether the U.S. government has the right to cancel oil leases that the Ronald Reagan administration awarded on land sacred to Montana's Blackfeet Nation.

The Trump administration has offered more than 100 million acres in onshore and offshore leases since taking office. More than 4 million acres have been sold in the Lower 48, and another 1 million on Alaska's North Slope.

"They're trying to lock in as many leases and as much climate pollution as they can before the Biden administration takes control," said Taylor McKinnon, a public lands campaigner for the Center for Biological Diversity, an advocacy group.

Some experts have begun to outline how the Biden administration could achieve "net-zero emissions" even if it continued to allow some oil and gas drilling.

Nada Culver, senior policy counsel at the National Audubon Society, recently co-authored a [law review article](#) that noted that Interior's Bureau of Land Management is required by law to protect "atmospheric values," and the agency could use that to impose new requirements on leases and permits.

Alex Daue, assistant director for energy and climate at [The Wilderness Society Action Fund](#), said these requirements could include plugging up abandoned wells that are leaking greenhouse gases and financing restoration projects that could absorb carbon from the atmosphere and store it. "Public lands represent one of the Biden administration's best opportunities to tackle climate change," he said.

When it comes to curbing new leasing, New Mexico may pose the biggest challenge for the new administration. The Democratic-leaning state accounts for 57 percent of oil production on federal land and nearly a third of onshore gas extraction, according to a recent [industry analysis](#), which projected New Mexico could lose \$1 billion a year in federal revenue if all drilling activity ceased. Pumpjacks bobbing across the desert landscape funnel money to local governments and school districts through royalty payments and other drilling fees, even as politicians cite heat waves and prolonged drought as reasons to tackle climate change.

Gov. Michelle Lujan Grisham (D), a Biden ally, said this summer [she would ask for an exemption](#) from any leasing ban. Three New Mexico Democrats — Rep. Deb Haaland and Sens. [Tom Udall](#) and Martin Heinrich — [are all in the running to be Biden's interior secretary](#), and they have differing views on whether to prohibit new drilling on public lands and waters.

Both Udall and Heinrich have expressed reservations about a total ban. In a recent interview, Udall called for setting a goal of "carbon-neutral" public lands, where the emissions from fossil fuel extraction could be offset by reforestation and other activities that remove carbon from the atmosphere. "That's where we should be headed," he said.

"Go into the departments that have the expertise and have the scientists and tell them this is your goal," Udall added. "How do we get there? What do we need to do? And then you can reapproach this in a concrete way and get it done."

But Haaland, who would be the first Native American to run the department that oversees

federal and tribal lands, is more open to a straightforward ban. In September, she told reporters, “We don’t need drilling everywhere.”

Methane, a greenhouse gas that can be more than 80 times more potent than carbon dioxide, frequently escapes from oil patches in New Mexico and elsewhere. Haaland was referring to methane leaks when she added: “If I had my way, it’d be great to stop all gas and oil leasing on federal and public lands, because those lands belong to all of us; they don’t just belong to one sector.”

Regardless of who Biden selects to chart the nation’s policies on fossil fuels, the intraparty fissures are already on display. The Biden team faced swift reprisal from environmental activists this week after naming Rep. Cedric L. Richmond (D-La.), his campaign co-chair, as a senior White House adviser.

The oil and gas industry has viewed Richmond as one its chief advocates within Biden’s inner circle.

Mike Sommers, head of the American Petroleum Institute, said before the election that the Biden campaign had been “pretty closed off to outside organizations” but that Richmond had “helped communicate messages” from the petroleum industry.

But Varshini Prakash, head of the youth-led Sunrise Movement that campaigned for Biden, said in a statement that hiring the Gulf Coast congressman who has raised money from oil and gas interests for a White House job “feels like a betrayal.”

“Biden assured our movement he understands the urgency of this crisis; now, it’s time for him to act like it.”

Nicholas Goodwin
Communications Director
Office of the Secretary
Department of the Interior
(202) 412-2249



From: [Mullen, Steven M](#)
 To: [Willens, Todd D](#); [MacGregor, Katharine S](#); [Jorjani, Daniel H](#); [Mashburn, Lori K](#); [Renkes, Gregg D](#); [Bockmier, John M](#); [Goodwin, Nicholas R](#); [Hall, Amanda L](#); [Eisenman, Theresa M](#); [Everson, Margaret E](#); [Cohen, Sheila](#); [Abernathy, Justin R](#); [Cardinale, Richard](#); [Trebbsch, Margaret A](#); [Gallagher, Sean P](#); [Patnaik, Bivan R](#); [Lawkowski, Gary M](#); [Weaver, Kiel P](#); [Baptiste, Thomas P](#)
 Subject: Cleared Today for Federal Register Publication
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Cleared Today for Federal Register Publication

Date: 12/01/2020

Records: 4

DCN	Bureau	Title	Synopsis	Type	Approved
REG0011144	BLM	Notice of Public Meetings: Southeast Oregon Resource Advisory Council	The Southeast Oregon Resource Advisory Council (RAC) will meet on January 13-14, 2021 in Hines, Oregon and April 29-30, 2021 in Lakeview, Oregon. If public health restrictions remain in place, the meetings will be held virtually.	Notice	12/01/2020
REG0011146	BLM	Call for Nominations: Utah Resource Advisory Council		Notice	12/01/2020
REG0011159	BLM	Notice of 2021 Coastal Plain Alaska Oil and Gas Lease Sale and Notice of Availability of the Detailed Statement of Sale DTS# BLMR003344	The Bureau of Land Management (BLM) Alaska State Office will hold an oil and gas lease sale bid opening for tracts in the Coastal Plain of the Arctic National Wildlife Refuge.	Notice	12/01/2020
REG0011153	FWS	Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization for Polar Bears in the Arctic National Wildlife Refuge, Alaska	We, the U.S. Fish and Wildlife Service, have received a request under the Marine Mammal Protection Act of 1972 from the Kaktovik Inupiat Corporation (KIC), for authorization to take by harassment small numbers of polar bears incidental to seismic survey and associated activities scheduled to occur between January 21, 2021, and September 30, 2021. KIC has requested this authorization for incidental take of polar bears that may result from three-dimensional (3D) seismic surveys in the Marsh Creek East Program Area of the Arctic National Wildlife Refuge. The project will consist of activities such as over-flights for aerial infrared surveys in January 2021 and February 2021 to look for maternal polar bear dens; staging and mobilization of vehicles and equipment; small crew surveys for hazards, ice integrity, and snow depth assessment; seismic surveys via a sled camp with rubber-tracked vibrator trucks; camp setup and mobilization; aerial activities for crew and supply transport; digital elevation modeling for river-crossing slope analysis; and cleanup activities during the summer of 2021. We estimate that this project may result in the nonlethal incidental take of up to three polar bears. This proposed authorization, if finalized, will be for take of three polar bears by Level B harassment only. No take by injury or death to polar bears is likely and therefore such take is not included in this proposed authorization.	Notice	12/01/2020

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 Office of the Executive Secretariat and Regulatory Affairs

From: [Mullen, Steven M](#)
To: [Willens, Todd D](#); [MacGregor, Katharine S](#); [Jorjani, Daniel H](#); [Mashburn, Lori K](#); [Renkes, Gregg D](#); [Bockmier, John M](#); [Goodwin, Nicholas R](#); [Hall, Amanda L](#); [Eisenman, Theresa M](#); [Everson, Margaret E](#); [Cohen, Sheila](#); [Abernathy, Justin R](#); [Cardinale, Richard](#); [Treibsch, Margaret A](#); [Gallagher, Sean P](#); [Patnaik, Bivan R](#); [Lawkowski, Gary M](#); [Weaver, Kiel P](#); [Baptiste, Thomas P](#)
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Date: 11/10/2020

Records: 1

DCN	Bureau	Title	Synopsis	Type	Approved
REG0011063	BLM	Call for Nominations and Comments for the Coastal Plain Alaska Oil and Gas Lease Sale BLMR002768	The Bureau of Land Management (BLM), pursuant to 43 CFR 3131.2, is issuing this call for nominations and comments on tracts within the Coastal Plain (CP) of the Arctic National Wildlife Refuge that may be offered for lease in the upcoming CP Oil and Gas Lease Sale. The BLM also requests comments on tracts which should receive special concern and analysis as well as the size of the tracts and, specifically, whether the sizes of any tracts should be reduced.	Notice	11/10/2020

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Date: 12/10/2020

Records: 11

DCN	Bureau	Title	Synopsis	Type	Approved
REG0011173	BIA	Proposed Rule - Updates to American Indian Probate Regulations	This proposed rule updates regulations governing probate of property that the United States holds in trust or restricted status for American Indians. Since the regulations were last revised in 2008, the Department identified opportunities for improving the probate process. These proposed revisions would allow the Office of Hearings and Appeals (OHA) to adjudicate probate cases more efficiently by, among other things, establishing an expedited process for small, funds-only estates, reorganizing the purchase-at-probate process so that estates may be closed more quickly, streamlining notice to co-owners who are potential heirs, and specifying which reasons justify reopening of closed probate estates. The proposed revisions would also enhance OHA's processing by adding certainty as to how estates should be distributed when certain circumstances arise that are not addressed in the statute.	Proposed Rule	12/10/2020
REG0011181	BIA	Kiowa Gaming Application	This notice announces that the AS-IA made a final agency determination to acquire in trust 11 33 acres, more or less, of land in the City of Hobart, Kiowa County, Oklahoma, (Site) for the Kiowa Indian Tribe of Oklahoma (Tribe) for gaming and other purposes.	Notice	12/10/2020
REG0011152	BLM	Forest Management Decision Protest Process and Timber Sale Administration DTS# BLMR003279	Through this final rule, the Bureau of Land Management (BLM) is amending its regulations governing protests of forest management decisions and administration of the timber sale process. This final rule will streamline the process for active forest management by the BLM. The BLM has promulgated this final rule to address poorly defined, repetitive, and burdensome regulatory requirements. This final rule will improve the BLM's ability to conduct active forest management, while reducing burdens to the public and the administration of BLM-managed lands.	Final Rule	12/10/2020
REG0011172	BLM	Notice of Availability for Seismic Exploration within the Coastal Plain of ANWR DTS #BLMR003343	In accordance with the National Environmental Policy Act of 1969, as amended, and the Tax Cuts and Jobs Act of 2017, which requires the Secretary of the Interior, acting through the Bureau of Land Management (BLM), to establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain area within the Arctic National Wildlife Refuge (ANWR), the BLM, Arctic District Office, has prepared an Environmental Assessment (EA) and Draft Finding of No New Significant Impact (FONNSI) for proposed 3-dimensional seismic exploration in the Coastal Plain of the ANWR. This Federal Register notice announces the availability of and solicits public comments for the EA and FONNSI.	Notice	12/10/2020
REG0011168	FWS	Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 7 Species in the Mountain-Prairie Region	We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews of 7 species under the Endangered Species Act of 1973, as amended. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review of the species.	Notice	12/10/2020
REG0011169	FWS	Notice of Receipt of Right-of-Way Application for Natural Gas Pipeline crossing San Bernard National Wildlife Refuge	The U.S. Fish and Wildlife Service has received two applications for 30-year right-of-way permits from Baymark Pipeline LLC and South Texas NGL Pipeline LLC, respectively. The U.S. Fish and Wildlife Service will open the National Wildlife Refuge System lands, allowing for this infrastructure, under the authority of the National Wildlife Refuge System Administration Act. The U.S. Fish and Wildlife Service requests public comment on the permit applications and associated documents.	Notice	12/10/2020
REG0011174	FWS	Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 76 Species in California and Nevada	We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews of 76 species in California and Nevada under the Endangered Species Act. A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review.	Notice	12/10/2020
REG0011180	FWS	Endangered and Threatened Wildlife and Plants; Reclassification of the Endangered June Sucker to Threatened With a Section 4(d) Rule	We, the U.S. Fish and Wildlife Service (Service), are reclassifying the June sucker (<i>Chasmistes liorus</i>) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act), due to substantial improvements in the species' overall status since its original listing as endangered in 1986. This action is based on a thorough review of the best scientific and commercial data available, which indicates that the June sucker no longer meets the definition of an endangered species under the Act. The June sucker will remain protected as a threatened species under the Act. We are also finalizing a rule under section 4(d) of the Act that provides for the conservation of the June sucker.	Final Rule	12/10/2020
			We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Recovery Plan for Nipomo Mesa		

REG0011182	FWS	Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Nipomo Mesa lupine (<i>Lupinus nipomensis</i>)	lupine (<i>Lupinus nipomensis</i>) for public review and comment. The draft recovery plan includes objective, measurable criteria, and site-specific management actions as may be necessary to ameliorate threats such that the species can be removed from the Federal List of Endangered and Threatened Plants.	Notice	12/10/2020
REG0011166	NPS	Notice of Intent to Extend Concession Contracts and Award Temporary Concession Contracts	The National Park Service gives public notice that it proposes to extend each concession contract listed in the Table 1 below until the date shown in the "Extension Expiration Date" column or until the effective date of a new contract, whichever comes first. The National Park Service also gives public notice that it proposes to award the temporary concession contracts listed in Table 2 below.	Notice	12/10/2020
REG0011178	NPS	Gulf Islands National Seashore; Personal Watercraft Proposed Rule	The National Park Service proposes to revise special regulations governing the use of personal watercraft at Gulf Islands National Seashore. The proposed rule would reduce the distance of flat wake speed zones from certain shorelines and prohibit the landing of personal watercraft anywhere on the islands of Horn and Petit Bois, which have been designated as wilderness.	Proposed Rule	12/10/2020

From: [Goodwin, Nicholas R](#)
To: [Bernhardt, David L](#); [Willens, Todd D](#)
Subject: FW: [EXTERNAL] new study
Date: Wednesday, October 21, 2020 12:48:20 PM
Attachments: [Managing-Public-Lands-Under-the-Trump-Administration-and-Beyond.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Response to the attached study below. If you want us to take this in a different direction, please let me know.

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Swanson, Conner D <conner_swanson@ios.doi.gov>
Sent: Wednesday, October 21, 2020 11:51 AM
To: Michael Doyle <mdoyle@eenews.net>
Cc: Interior Press <interior_press@ios.doi.gov>
Subject: Re: [EXTERNAL] new study

Mike-

This is nothing more than erroneous, partisan propaganda. The American people are not fooled by the likes of so-called Harvard elites who seek to disparage and misrepresent the Trump Administration's historic record of accomplishments.

Background

Here are just some of our notable accomplishments at Interior, the list goes on....

- 4 million acres newly opened or newly accessible to hunting and fishing at national wildlife refuges and national fish hatcheries.
- Expanded access for people of all abilities by permitting e-bikes.
- Nearly 80 million trees planted since 2017.
- Offshore production safer since 2016:
 - 46% increase in OCS inspections
 - Increase of enrollment in the BSEE SafeOCS program for operators responsible for 3% of oil production to 85% of OCS production.
 - In the first year of the 2019 Well Control Rule implementation, loss of well control incidents decreased 67% compared to the prior year time frame.
- Approved the largest solar project in the United States. (Gemini Solar Project)
- Relocated BLM HQ from DC to Grand Junction, CO.
- Improved water delivery reliability with multiple title transfers of Western water facilities.
- Established the African American Civil Rights Network and the Reconstruction Era National Historic Network.
- Established missing and murdered American Indian and Alaska Native cold case offices around the country
 - Tracking and investigating missing Native persons under the U.S. National Missing and Unidentified Persons System
- Improved education standards and created new innovative construction opportunities for

- school facilities, such as at the Gila Crossing Community School
- Combating the scourge of opioid addiction in Indian Country - launched the first-ever Joint Law Enforcement Task Force on Opioids – more than 5,800 pounds of illegal narcotics seized.
 - Nearly doubled disbursements from federal energy development since 2016 to ~\$12B., while leasing the LEAST amount of land since the data was first tracked in 1985.
 - U.S. #1 oil & natural gas producer in the world (FY 18).
 - Increased visitation on public lands: 486 million in FY18 (up from 473 million in FY16).
 - Interior Supported more than \$315 billion in economic activity and \$1.8 million jobs (FY 18).
 - Active fuels management treatments increased over 30% since FY 2016., totaling nearly 5 million acres treated between FY17-20.
 - Zero ethics recommendations from the OGE for the Department’s ethics program – a first in DOI history
 - Nearly tripled the number of ethics staff in comparison to the previous admin.
 - Significantly increased funding for western big game migration corridors and established 22 projects across 8 states
 - Distributed \$3.2 billion in Pittman-Robertson and Dingell-Johnson funds to states
 - Launched the Bison Conservation Initiative
 - Recovered twice as many endangered species as the previous admin and more than any administration in their first term in history.
 - Designated 620 miles of wild and scenic rivers
 - Designated 4 new national monuments
 - Designated more than 1.3 million acres of new wilderness
 - Withdrew offshore oil & gas leasing from FL, GA, SC, and NC

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
Cell #: [\(202\) 340-6295](tel:2023406295)

From: Michael Doyle <mdoyle@eenews.net>
Sent: Wednesday, October 21, 2020 5:59:41 AM
To: Interior Press <interior_press@ios.doi.gov>
Subject: [EXTERNAL] new study

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Good morning:
Care to comment on attached study?
Michael Doyle
E&E News
202-302-4694
www.eenews.net



Managing Public Lands Under the Trump Administration and Beyond

Laura Bloomer, Peter Daniels, Eric Wriston, & Joseph Goffman^{a1}
Harvard Law School Environmental & Energy Law Program
Oct. 2020

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Introduction

Since early 2017, political leadership at the Department of Interior (“DOI” or “Interior”) has diminished the agency’s capacity to carry out its environmental responsibilities and has instead implemented the Trump administration’s “energy dominance” program.¹ Interior has rolled back regulations designed to protect endangered and threatened species as well as grazing and land use reforms.² The administration has offered unprecedented areas of public lands for oil and gas development³ while attempting to shrink and weaken protections for national monuments.⁴ These actions undermine Interior’s conservation mission, impair its ability to address climate change, and subject our public lands to uses that aren’t sustainable. They also significantly impact local communities, including Indigenous communities who have spiritual and cultural connections to the lands.

The Trump administration has diminished Interior’s ability to manage public lands⁵ and make decisions according to science, the guidance of career employees, and input from stakeholders. They’ve accomplished this by undermining four often-overlapping components:

1. Institutional capacity;
2. Science-informed decision making;
3. Public accountability and engagement; and
4. Nation-to-nation relationships with tribal nations⁶.

Sustainable management of the 480 million acres of public lands the Department of the Interior oversees for us requires investing in all of these components. DOI and its many state and local offices need qualified leadership and structures in place to effectively manage the varied uses of these areas. Interior must be transparent in its actions, seek out external expert input, and address the public’s concerns in meaningful ways. To carry out DOI’s conservation and use missions, decision making should be rooted in science. Interior must honor tribal sovereignty and meaningfully engage with tribes.

If President Trump is reelected, we expect to see continued political interference in public lands management. A second-term administration would likely further politicize science and minimize public input in order to increase extractive uses of public lands, and would probably not work with tribal governments to improve consultation, collaboration, and observance of tribal sovereignty. If a Biden administration takes office, DOI will need to reverse some of the Trump administration’s management decisions in order to back away from the energy dominance agenda and restore Interior’s capacities. This will include prioritizing conservation and science-based decision making, accelerating clean energy projects, and restoring the US’s relationship with tribal nations.⁷

In this report we analyze what’s happened during the Trump administration and offer a suggested path forward for a Biden administration. For each component listed above, we describe how land management has changed, how a second-term Trump administration likely would build on these efforts, and we make recommendations for restoring Interior’s capacity and approach to carrying out its public lands mission if a Biden administration takes office.

We start by discussing changes at Interior headquarters that have affected all public lands managers. We then divide the report by bureau, as each office has distinct statutory authority and obligations for the lands it manages. While many offices within Interior deal with public lands, we focus on the three that manage the vast majority of land: the Bureau of Land Management (BLM), the Fish and Wildlife Service (FWS), and the National Park Service (NPS). We don’t address offshore activities managed by the Department of Interior.

This report is based on our own research as well as 25 interviews with former DOI career staff, former political appointees, and natural resources and American Indian law experts. The recommendations to an incoming administration aren’t intended to supplant advice from career staff or Indigenous communities.



Department of the Interior Highlights

Mission: “Conserves and manages the Nation’s natural resources and cultural heritage for the benefit and enjoyment of the American people, provides scientific and other information about natural resources and natural hazards to address societal challenges and create opportunities for the American people, and honors the Nation’s trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities to help them prosper.”

Institutional Capacity

Trump Admin. Actions to Date:

- Reorganized DOI and centralized decision making among political leadership
- Left important positions vacant and reassigned senior career staff
- Involved political staff – often in acting capacities – in more decisions

Biden Admin. Recommendations:

- Establish new clearing processes for decisions that involve the secretary only when needed
- Fill science and other critical position vacancies
- Ask career staff what resources they need and listen to their input
- Reverse reorganizations

Science-Informed Decision Making

Trump Admin. Actions to Date:

- Politicized science and intimidated scientists
- Ignored climate change and minimizes role of science in decision making

Biden Admin. Recommendations:

- Convene DOI scientists and managers to assess urgent priorities
- Elevate role of science through independent science advisors or other mechanisms
- Reform and recommit to scientific integrity policy and add accountability measures

Public Accountability and Engagement

Trump Admin. Actions to Date:

- Minimized public input through NEPA regulations and categorical exclusions
- Revised FOIA regulations and increased political awareness review
- Flouted ethics rules

Biden Admin. Recommendations:

- Reform NEPA implementation to ensure meaningful public input
- Hire more FOIA officers to cut backlog; return political review to awareness only
- Enforce ethical standards and disclosure requirements

Nation-to-Nation Relationship With Tribal Nations

Trump Admin. Actions to Date:

- Hasn’t affirmed government-to-government relationship and ended annual Tribal Leaders Summit
- Engaged in minimal consultation with tribal nations
- Lack of action on cooperative management of public lands

Biden Admin. Recommendations:

- Work with White House to reaffirm government-to-government relationship
- Strengthen White House Council on Native American Affairs
- Require meaningful consultation and direct offices to seek cooperative or co-management opportunities



Department of the Interior-Wide Changes

The Department of Interior is a multifaceted agency with enormous obligations. Its mission includes conserving and managing natural resources and cultural heritage, providing scientific information to the public, and carrying out the government's commitment to American Indians, Alaska Natives, and island territories.⁸ Within the Department, there are nine bureaus serving a range of specific purposes. Public land management is only one part of the story, but it's a critical part of Interior's mission.

Institutional Capacity

Interior-managed public lands range from active mining sites to popular national parks, wildlife refuges, and undeveloped backcountry. A handful of bureaus within DOI manage these lands for differing purposes, and many of their staff work in regional, state, and local offices across the US DOI leadership historically has delegated decision-making authority to field offices, because one-size-fits-all answers to public lands management are rare.

Trump Administration Actions

The Trump administration has reduced Interior's overall institutional capacity by centralizing decision making to a limited number of political appointees and diminishing the role of career staff. It has managed DOI in a top-down manner by establishing review processes that afford top political appointees final decision-making authority on a large swath of Department actions. For example, in April 2018, then-Deputy Secretary Bernhardt issued an order inserting his office, as well as the Solicitor's office, into the internal review of National Environmental Policy Act (NEPA) environmental impact statements.⁹

Like many actions during the Trump administration, this order allegedly continued the Department's "streamlining" efforts, but, in reality, it added an unnecessary step to the process. The NEPA procedures aren't unique; centralized decision making has impacted all three bureaus and often comes at the expense of public accountability and science. As noted below, Interior political appointees are playing an outsized role in reviewing documents to be made public in response to Freedom of Information Act requests.¹⁰ They've also intervened in the publication of scientific findings and grant-making decisions.¹¹ This additional layer of approval decreases trust and accountability within the Department, creates significant bottlenecks, and often results in politicized changes to documents or plans that are intended to be based on expert analysis.¹²

The Trump administration's management tactics at Interior have caused a loss of institutional knowledge and low staff morale. At the beginning of the administration, Secretary Zinke promised to cut at least 4,000 Department employees,¹³ and our interviewees agreed that the Department remains understaffed. Zinke also reassigned 27 senior career staff to positions unsuited for their skillset in a politically motivated and potentially unlawful move.¹⁴ By leaving important leadership positions vacant or filling open positions with non-Senate-confirmed political appointees, the secretary is exercising unprecedented authority over the individual bureaus, which we discuss in the bureau-specific sections. Interviewees also stated that political appointees entered office uninterested in career staff's opinions or perspectives.

Trump Second Term Trajectory

The Trump administration has hamstrung DOI and is likely to keep damaging DOI's capacity if elected to a second term. Because positions remain vacant and decision making is centralized in the secretary's office, decisions have languished and inaction has become more common in some policy areas. Interviewees projected that if President Trump is re-elected, many more career staff would leave DOI, resulting in political appointees operating with less accountability and more latitude to pursue political objectives.



Recommendations for a Biden Administration

A Biden administration will need to focus first on reintegrating and valuing the work of career staff, increasing staffing levels, filling positions with qualified people, and rebuilding trust, morale, and expertise. As one interviewee noted, the competing purposes of Interior's bureaus means that Interior must value planning, consideration, and diverse input when making decisions. The incoming secretary and other political appointees should invite meaningful input from career staff, including identifying what internal reforms are needed.

Another interviewee emphasized that the next administration could also reform the Executive Resources Board (ERB), which assists in managing many of the Department's senior employees and was responsible for the reassignments of senior career officials at the beginning of the Trump administration.¹⁵ The ERB Secretary Zinke convened had six political appointees as voting members and one non-voting career advisor.¹⁶ The ERB actions have been the subject of investigations by the Inspector General and congressional oversight. While some adjustments have been made, the ERB's membership majority is still political appointees. DOI officials could consider permanently requiring that the ERB's membership be balanced between career employees and political appointees as well as institutionalizing greater representation of the various bureaus.

The political leadership will need to establish well-defined review and clearance processes that appropriately delegate decision-making authority. Any secretarial orders that are issued, whether related to internal structures or directions from executive orders, should include accountability mechanisms to ensure they're followed. Changes that were made through secretarial orders and incorporated in the Departmental Manual¹⁷ during the Trump administration will be more difficult to undo than changes initiated through guidance documents. The Biden administration should review the Departmental Manual agency by agency to understand what's happened and develop a plan to finalize needed changes.

Science-Informed Decision Making

DOI officials must make land-management decisions fully informed by the best available science to ensure healthy ecosystems and sustainable use for current and future generations. The United States Geological Service (USGS) is the leading scientific agency within DOI, although they don't manage public lands. In this report we focus on how research from the USGS and others informs policy and decision making within Interior's public lands bureaus.

Trump Administration Actions

The Trump administration's attacks on science have been continuous and widespread, resulting in reduced capacity and credibility.¹⁸ As most interviewees noted, science isn't playing an adequate role in decision making. Since the initial months of the administration, political appointees have interfered in DOI scientists' projects and communication. Career experts have been routinely sidelined, and some scientists report low morale.¹⁹ In December 2017, the deputy secretary issued a Secretarial Order that rescinded important science-based climate and conservation programs.²⁰ The Trump DOI also requires that a political appointee review most proposed grant approvals to ensure they align with the Trump administration's priorities – creating the risk that grants will not be judged solely on the basis of their scientific merits.²¹

In addition, DOI is taking steps to limit the science it uses in decision making. In 2018, then-Deputy Secretary Bernhardt signed Secretarial Order 3369,²² *Promoting Open Science*.²³ Rather than deferring to Interior's scientists to determine what qualifies as the best available science, Order 3369 directs them to "utilize and prioritize" publicly available science.²⁴ The order also includes a provision authorizing the deputy secretary, a political appointee, to waive this public availability requirement. Both provisions reduce scientific integrity by politicizing scientific decision making.²⁵ And as a letter to Secretary Zinke from members of



Congress points out, “requiring all scientific data to be public in order to be used for decision making could have dire consequences for sacred Native American spaces, archaeological sites, and endangered species.”²⁶

Trump Second Term Trajectory

A second-term for the Trump administration would allow the current political leadership to continue to stall climate change research and limit the role of science in decision making by, for example, finalizing the “open science” regulations. It’s also likely that career scientists would continue to leave DOI in the second term. These actions would have significant impacts on DOI’s ability to fulfill its conservation and multiple-use mandates, which are grounded in interdisciplinary science. But decisions by the courts could force Interior to change its current trajectory. For example, a district court recently invalidated the Trump administration’s rescission of regulations regarding methane waste on federal and Indian lands, partially because the administration didn’t adequately consider scientific findings.²⁷

Recommendations for a Biden Administration

A Biden administration would need to reinvest in career scientists and reinstate the role of objective science in departmental decision making. Senior officials need to bring together scientists from across DOI to better understand what’s happened, communicate political leadership’s commitment to objective science, and detail how the Biden administration will incorporate scientific research in its actions. Directives that allowed for political interference in science, including the open science secretarial order and the changes to grant approvals, should be revoked.

The secretary should also take steps towards improving Interior’s scientific capacity. Two interviewees suggested enhancing the role of the science advisor. A Biden DOI could request funding to ensure all of the directors of the land management bureaus have their own independent science advisor unassociated with internal scientific programs. As noted by one interviewee, this will help ensure their advice is not biased towards any programmatic interests. DOI could also consider investing more heavily in the Office of Policy Analysis or creating science-based advisory committees. One interviewee emphasized the importance of strategic planning, suggesting that the individual bureaus create three-year plans.²⁸ The plans could identify the biggest challenges facing the bureaus, strategies for overcoming them, and measures to hold the bureaus accountable.²⁹ Other recommendations from interviewees include increasing partnerships with organizations and universities, ensuring funding for peer review, and reinforcing scientific integrity policies. One interviewee noted that scientific integrity officers could be Intergovernmental Personnel Act appointees to bolster their independence.³⁰

Public Accountability and Engagement

Interior’s accountability mechanisms are both principles of sound governance and legal requirements. Laws like the National Environmental Policy Act (NEPA),³¹ the Administrative Procedures Act (APA),³² and the Freedom of Information Act (FOIA)³³ require agencies to provide the public with information and help hold agencies accountable. Public oversight requirements in NEPA and the APA compel agencies to be rigorous in their analysis and decision making. Public engagement outside of these legal structures is also instrumental to DOI’s mission, especially in relation to visitor experience on public lands.

Trump Administration Actions

The Trump administration has eroded long-standing public engagement processes in order to limit public input and transparency.³⁴ Interior has worked to shield itself from Congressional oversight while its actions have engendered conflict of interest concerns.

The Trump DOI has evaded public input on environmental reviews and generally complied with laws requiring public participation in form only. In 2017, Secretary Bernhardt issued Secretarial Order 3355



directing bureaus to explore options for new categorical exclusions, limit most environmental reviews to 100 pages, and complete environmental impact statements within a year.³⁵ Categorical exclusions preclude public input by excluding projects from NEPA review, while the timing and length restrictions limit meaningful public engagement.³⁶

The Trump administration has frequently established short comment periods that are insufficient for meaningful engagement,³⁷ including allowing the public only 15 days to comment on a review of the Bears Ears National Monument.³⁸ Interviewees highlighted Interior's changes to public hearings, including limiting the number of hearings and holding hearings in inconvenient locations. Given extractive industries' greater ability to respond to short comment periods and private access to Interior officials, these changes tilt the input Interior receives towards them and other well-funded interests.

Additionally, through multiple guidance memos,³⁹ a Secretarial Order,⁴⁰ and a final regulation,⁴¹ Interior updated its FOIA review processes to restrict public access to information, delay FOIA responses, and politicize decisions. These changes are inimical to FOIA's purpose: to promote a transparent government and uphold the public's statutory right to information. Interior pointed to the large increase in FOIA requests to justify its actions,⁴² but Department officials added delays to the process and didn't hire more FOIA officers who could help with the increased requests. A 2018 memo, later updated in 2019, codified "political awareness" review – a process where political appointees are made aware of upcoming FOIA productions that include their name.⁴³ Though giving political appointees a heads up isn't unique to the Trump administration, Interior political appointees used this review to question FOIA staff's decisions, leading to delays in production and fewer pages being made publicly available.⁴⁴

Interior officials have also routinely ignored Congressional oversight requests, resulting in the House Natural Resources Committee threatening them with subpoenas.⁴⁵ The administration's resistance to answering Congressional inquiries comes at a time when senior leadership is flouting ethics rules, despite Secretary Bernhardt's added emphasis on reforming DOI's ethics program.⁴⁶ As one interviewee stated, previous administrations ensured not only that Department officials obeyed ethics requirements but that there was never an appearance of a conflict of interest, as that would diminish the Department's public credibility. This administration seems indifferent to losing credibility with the general public and has relied on technicalities to avoid complying with ethics requirements beyond the minimum extent required.

Trump Second Term Trajectory

If the Trump administration's goal is to disempower Interior's public lands management offices, reducing public input and Interior's own credibility is an effective strategy. The lack of transparency enables the administration to further its energy dominance agenda by avoiding oppositional comments that could prevent DOI from finalizing its plans. If there's a second term, there's little reason to think these actions will change. Despite the COVID-19 crisis, Interior has continued to hold lease sales and issue regulations, carrying on its strategy of accelerated action at a time when the public has significant barriers to commenting.⁴⁷ However, the courts will help determine public accountability in a second term. Interior is facing lawsuits challenging some regulations and lease sales on the basis of procedural flaws, including insufficient opportunities for public input.⁴⁸ The outcome of these lawsuits could encourage a second-term Trump administration to abide by the procedural requirements for public input.

Recommendations for a Biden Administration

A Biden administration could begin restoring accountability at Interior by resetting requirements for public input during planning, working to establish strict ethics guidelines, and properly responding to Congressional inquiries. The secretary could issue a statement that transparency is valued and public input is welcomed and will be easier to provide. They could order bureaus to extend any comment periods currently open and routinely hold longer comment periods and more public hearings for complex proposals. A Biden administration could consider larger reforms to public commenting as well. One interviewee emphasized the



need for flexibility in reopening comment periods and a for a comment process that adapts to more complex projects by having multiple rounds of comments focused on specific issues. Another suggested increasing the use of virtual public engagement to make the process more accessible, though an administration would need to ensure that virtual meetings are complements to other methods that will ensure all voices are heard.⁴⁹ As mentioned below in the BLM section, Interior could also explore strategies for conducting collaborative, landscape-level planning.

DOI should also work with the administration to repair NEPA processes and ground any changes in NEPA's original purpose of providing information to and involving the public. Reforming FOIA regulations will likely be less of a priority, but the secretary should hire more career staff to clear the backlog and reduce the influence of political appointees in the FOIA process.

Nation-to-Nation Relationship With Tribal Nations

The entire United States was once Native land, and much of our public lands remain important to Indigenous groups, containing sacred and culturally significant sites, and/or bordering lands owned by tribal nations. There are 574 federally-recognized American Indian and Alaska Native tribes. Tribal governments, and individual members, have diverse and sometimes conflicting perspectives on policy matters, including public lands management. We discuss consultation and collaboration at a general level, but recognize there is no one-size-fits-all policy option for tribal inclusion in land use decisions.

The legal requirements for DOI to engage with tribal nations are rooted in the United States' obligations to tribes created by the US Constitution and treaties, which serve as the foundation for the government-to-government relationships and DOI's consultation requirements.⁵⁰ Yet the government has limited these requirements by its policies and interpretation of its fiduciary duties to tribes.⁵¹ At a minimum, all agencies, including Interior, must consult with sovereign tribal governments on a nation-to-nation basis before undertaking actions that may affect tribal lands or cultural heritage. Consultation is required under law, most notably in regulations implementing Section 106 of the National Historic Preservation Act (NHPA)⁵² and NEPA.⁵³ DOI's consultation policy provides consultation guidelines, requires annual reports to the secretary to hold bureaus accountable, and includes a provision for developing departmental trainings on consultation and the federal-tribe relationship.⁵⁴ The consultation requirements are mostly procedural, however, and the laws don't provide meaningful pathways for tribes to seek enforcement of consultation obligations.⁵⁵ DOI's land management offices have general authority to enter into cooperative agreements with outside entities, The Tribal Self Governance Act specifically allows DOI to enter into funding agreements with tribal nations to authorize the tribes to carry out certain functions on public lands.⁵⁶ Implementation of the law has been slow, however, and the scope of such management agreements is limited.

Trump Administration Actions

Although the Trump administration has worked with and garnered the support of some tribal governments,⁵⁷ our interviewees unanimously agreed that – in general – the Trump administration's relationship with tribal nations has backtracked significantly. Executive Order 13175 reaffirms the federal government's government-to-government relationship with recognized tribes and directs federal agencies to create processes for consultation with tribes.⁵⁸ President Trump has departed from precedent by not reaffirming Executive Order 13175 and ended the White House's annual nation-to-nation summits with tribal nations.⁵⁹ As interviewees noted, this lack of a foundational recognition of tribal sovereignty and the importance of nation-to-nation relationships undermines consultation and collaborative efforts. Multiple interviewees emphasized the lack of power that Indigenous communities have in the Trump administration and in DOI specifically.

Political leadership at DOI sets the tone for public lands management by the extent to which they prioritize Interior's obligations to Indigenous communities, respect tribal sovereignty, and engage with tribes on a government-to-government basis. Because the status quo doesn't provide tribes with a meaningful role in managing public lands and sacred sites, inaction has significant consequences. Under the Trump



administration, Interior's leadership has failed to lead and to address existing shortcomings. For example, towards the end of the Obama administration, Secretary Sally Jewel issued a directive encouraging more partnerships with tribes.⁶⁰ The Trump administration hasn't furthered this effort beyond publishing the legally-required list of opportunities for tribes to enter into funding agreements with DOI.⁶¹ It also hasn't issued lands-related policies aimed at improving Interior's relationships with tribal nations. Interviewees also noted that Interior leadership has allowed individual bureaus to minimize consultation with tribal nations, reducing it to little more than a formalistic exercise. DOI also seems to have stalled working towards co-management agreements. We discuss both in more detail in the bureau-specific sections.

Trump Second Term Trajectory

It remains unlikely Interior will prioritize meaningful engagement with tribal nations in a second term. After three years of inaction, however, the White House recently reinstated the White House Council on Native American Affairs.⁶² A second term could allow the Council to play a prominent role, though DOI hasn't indicated that this will happen.⁶³ Despite changes to its overall approach to tribal engagement, a second-term Trump administration would likely continue to work with tribal governments that are supportive of its policy goals.

Recommendations for a Biden Administration

If Biden wins, the White House will need to take the lead on reaffirming the federal relationship with tribal nations, and commit to recognizing tribal sovereignty. The Interior secretary, in allegiance with other federal government leaders, should commit DOI to work to restore trust and to seek progress beyond the status quo. As a first step, the Biden DOI could work with the White House to re-empower the Council on Native American Affairs, and re-initiate annual meetings between federal leadership, including the President, and tribal leaders.⁶⁴ One interviewee noted that these meetings served as accountability mechanisms for cabinet members, because agencies presented on progress made in the previous year. The Biden DOI should also engage in meaningful face-to-face listening sessions with tribes and appoint Indigenous people to leadership positions at Interior.

With over 500 federally recognized tribes, each with their own unique relationship to the US government, Interior won't be able to develop one policy that will work in all instances. Still, leadership can issue policy guidance, develop new training for employees, and encourage the bureaus toward cooperative management and returning lands to tribal nations to manage. Good relationships between DOI employees and tribes are necessary for successful formal agreements. A Biden administration should encourage employees to engage with local tribal governments to begin building those relationships and work to ensure that DOI staff have a better understanding of tribes' capacity and unique fitness to manage natural resources. As one interviewee noted, there are many examples of successful inclusive management with tribes at the state level.⁶⁵ DOI could look to the states as examples of what works, lessons learned, and as inspiration for federal land managers.

The incoming administration should consider how agencies can meaningfully comply with consultation requirements and what those requirements really mean. One interviewee recommended that Interior develop a new approach to consultation that better meets tribes' expectations and that the 2017 Government Accountability Office report on consultation could serve as a starting point for this task.⁶⁶ A new administration should also ensure Interior follows its current policy and habitually engages with tribes early in the process and at the appropriate level.⁶⁷ This may require providing additional resources, whether in the forms of grants or staff support, to the tribal nations that lack the resources to fully engage on all issues. At least two interviewees recommended that Interior re-establish a formal process to engage with tribes at the regional and state level. And some interviewees thought that legislation is necessary to create meaningful consultation and better protect cultural resources.



Bureau of Land Management Highlights

Mission: “To sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.”

Institutional Capacity

Trump Admin. Actions to Date:

- Appointed person with record of opposing public lands as *de facto* acting director
- Moved headquarters to Colorado and transferred staff to regional/state offices
- Required secretary’s office approval for many actions
- Prioritized and accelerated oil and gas permitting process

Biden Admin. Recommendations:

- Move headquarters and appropriate staff back to Washington, DC⁶⁸
- Appoint a director committed to multiple-use and sustained-yield mission with training and a background in natural resources management
- Re-prioritize restoration and reclamation responsibilities for staff
- Increase communication and coordination between regions

Science-Informed Decision Making

Trump Admin. Actions to Date:

- Didn’t account for climate change impacts in lease sales and planning documents
- Scattered NEPA staff and centralized NEPA decision making

Biden Admin. Recommendations:

- Integrate climate change into NEPA reviews
- Require updated science before proceeding with an environmental assessment

Public Accountability and Engagement

Trump Admin. Actions to Date:

- Diminished multi-stakeholder collaborative approach to land management
- Eliminated reforms for increased public input on land-use planning and lease sales
- Suspended and reformed Resource Advisory Councils (RACs)

Biden Admin. Recommendations:

- Revive collaborative planning when possible
- Find innovative ways to increase public engagement beyond minimum required by law
- Reconstitute and strengthen RACs
- Establish a Climate Crisis Advisory Committee

Nation-to-Nation Relationship With Tribal Nations

Trump Admin. Actions to Date:

- Reduced or avoided consultation with tribal governments
- Shrank Bears Ears National Monument and abolished Bears Ears Inter-Tribal Coalition

Biden Admin. Recommendations:

- Require early and meaningful consultation with tribal governments
- Work with DOI and other agencies to reform consultation
- Undo changes to Bears Ears and seek more collaborative management arrangements for monuments



Bureau of Land Management

The Bureau of Land Management (BLM) administers 245 million acres of public land, or one-tenth of the United States' landmass, and 700 million acres of subsurface minerals.⁶⁹ BLM manages those lands and minerals based on the agency's mission – “to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.”⁷⁰ The Federal Land Policy and Management Act of 1976 (FLPMA)⁷¹ directs the agency to balance two mandates: 1) to manage public lands for multiple uses, such as energy development, livestock grazing, mining, timber harvest, and recreation, and for sustained yield; and 2) to protect the quality of resources, including ecological, historical, and cultural resources, within those lands.⁷² This dual mandate creates conflict and tension in the lands BLM oversees and significant pendulum swings between administrations' policy priorities. The Trump administration has focused almost exclusively on extractive uses of land, including an unprecedented increase in oil and gas leasing. Its attacks on the bureau's core competencies have enabled this outcome, and the Biden administration will need to restore those capacities if it seeks better balance in achieving BLM's multiple use and conservation missions.

Institutional Capacity

BLM has historically struggled to realize the capacity needed to accomplish its full multiple-use mission.⁷³ Many of the agency's functions are decentralized to state, district, and field offices where 97% of BLM staff work.⁷⁴ While this structure has fostered trust between BLM field staff and the communities where they live, often advancing local conservation and sustained-yield objectives, it does make coordination difficult and in some instances opens those offices to the pressure of local extractive interests seeking to further capitalize on current political leadership's inclination to favor those interests. It also has one of the smallest budgets of any federal land management agency.⁷⁵

Trump Administration Actions

The Trump administration has taken significant steps to weaken BLM's institutional capacity. First, the administration moved BLM headquarters from Washington, DC to Grand Junction, CO, where the agency will share a building with oil and gas companies.⁷⁶ Under this plan, most positions moved to Grand Junction, and a number of positions were relocated to other state and regional offices.⁷⁷ Of 179 employees who received notice to relocate to Grand Junction, only 90 accepted reassignments.⁷⁸ This move demoralized the civil service, eroded significant expertise at BLM, and will make coordination across the agency more difficult.⁷⁹ The move hinders agency input on policy, budget, legislation, and coordination with other public land management agencies that have headquarters in DC.⁸⁰

At the same time, the Trump administration centralized decision-making authority in Interior's political offices, even though BLM hasn't had a Senate-confirmed director for the duration of Trump's term. Interviewees noted that decisions normally left to state and field offices, including individual permit and environmental review decisions, are now directly overseen by often-unconfirmed political appointees. And William Perry Pendley, a well-known advocate for selling federal lands, is *de facto* acting director of BLM.⁸¹ Secretary Bernhardt extended Pendley's authority repeatedly,⁸² and Pendley himself signed the order extending the appointment indefinitely.⁸³ Two non-profits,⁸⁴ as well as Montana Governor Steve Bullock,⁸⁵ have filed lawsuits contesting the unprecedented – and, they argue, illegal – nature of Interior's delegation of responsibilities to Pendley. Although the Trump administration did formally nominate Pendley for Senate confirmation in 2020, the White House later withdrew the nomination.⁸⁶ On September 25, the federal District Court for the District of Montana found that Pendley had been serving unlawfully and ordered his removal.⁸⁷ Taken together, these actions and developments have destabilized BLM and given DOI political leadership more control over the agency.



Trump Second Term Trajectory

A second Trump administration could be very consequential for BLM, as Pendley has retained his leadership position, despite Congressional opposition to his formal nomination.⁸⁸ Some critics fear that the scattering of headquarters' staff could be a first step in the dissolution of BLM as a federal agency, or the abdication of BLM land management to states or private buyers.⁸⁹ The move would likely reduce Congressional oversight and make BLM more responsive to state interests. With a second term, the Trump administration may eliminate positions in the civil service that have remained unfilled, and could eliminate the capacity of BLM staff to conduct important land management activities such as environmental reviews, rulemakings, or land management planning. The result would be more consolidation of decision-making authority with the political appointees at Interior, who could use that authority to promote the energy dominance agenda at the risk of other public lands management priorities. How much influence Pendley continues to have on the bureau may depend on litigation outcomes, but his current role demonstrates that BLM isn't honoring its multiple-use, sustained-yield mandate.

Recommendations for a Biden Administration

Many of Biden's clean energy goals require an empowered, innovative BLM, and institutional capacity will be key to determining whether Biden can meet those goals. The president could nominate for Senate confirmation a BLM director who is committed to BLM's multiple-use and sustained-yield mandate, favoring people with training and backgrounds in natural resource management. The administration should move the headquarters back to Washington, DC, along with key staff whose positions would benefit from being in DC, such as budgetary, congressional relations, and rulemaking staff. Political leadership should delegate to the field offices decisions that have been centralized in this administration, and listen to career staff to ensure their expert views inform decision making. Finally, the new administration will need to engage in a substantial hiring effort to fill the many open positions across the agency.

Science and Multiple-Use Planning

Most projects on public lands require environmental reviews under NEPA. Additionally, FLPMA §202(c) calls on BLM to “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences.”⁹⁰

Trump Administration Actions

The Trump BLM has decentralized NEPA review staff while centralizing the decision-making process. With its headquarters move, BLM scattered its in-house NEPA staff to state and regional offices, making coordination of NEPA review cumbersome.⁹¹ At the same time, Interior centralized the review of environmental assessment drafts with political staff at the department.⁹² This allows Interior political officials to influence environmental assessments.

BLM has also ignored climate change in the review processes and has not insisted on updating outdated environmental reviews before starting new projects. Although court decisions direct the agency to consider climate impacts when conducting NEPA reviews for permits,⁹³ the Trump administration has consistently failed to account for these impacts in its oil and gas leasing decisions.⁹⁴ The Trump administration's revised NEPA regulations – which affect all agencies – remove a requirement to consider cumulative and long-term impacts.⁹⁵ Additionally, one interviewee noted that the Obama administration attempted to perform new environmental reviews to ensure climate change and other changes to the natural resources were considered before a project proceeded. The Trump administration has taken the opposite approach – prioritizing speed over the incorporation of new scientific information into environmental reviews.⁹⁶ Such an approach risks irreversible harming public lands.



Trump Second Term Trajectory

As a result of the Trump administration's minimization of science, several non-profit groups have successfully sued to cancel and delay oil and gas development across the west.⁹⁷ A second term Trump administration could react to these lawsuits and better incorporate climate change science into its environmental reviews. But testimony by Secretary Bernhardt demonstrates that he doesn't believe FLPMA requires BLM to manage land in a way that mitigates climate change.⁹⁸ Taken together with Trump's energy dominance agenda, it's unlikely the Trump BLM would integrate scientific considerations beyond what is formally required.

Recommendations for a Biden Administration

A Biden administration would need to take significant steps to re-center and elevate science at BLM. The administration could reorganize the NEPA review staff into a single centrally-located office and revoke any administrative actions intended to ignore the impact of climate change. It should ensure that resource management plans are grounded in the best available science, including climate change science. BLM could consider chartering expert scientific panels to assist with planning. One interviewee noted that the panels could provide information to tribal governments as well regarding how projects would impact tribal lands.

Public Accountability and Engagement

Because BLM manages lands for multiple-use purposes, which often are incompatible with each other, public engagement with diverse stakeholders is frequently contentious. Developing processes and reaching solutions that appropriately balance these competing needs is foundational to BLM successfully meeting its mission. FLPMA also requires BLM to establish resource advisory committees (RACs), which are intended to incorporate local expertise into its decisions.⁹⁹

Trump Administration Actions

The Trump administration has backtracked on BLM's previous efforts to meet its multi-use mission through broad stakeholder engagement and science-driven planning processes. Three projects exemplify how the Obama administration established precedent for BLM (in partnership with other agencies) to engage in collaborative landscape-level planning: the greater sage-grouse plans,¹⁰⁰ the Desert Renewable Energy Conservation Plan,¹⁰¹ and oil and gas master leasing plans.¹⁰² Rather than creating individual management plans, these projects streamlined the process in areas with significant competing interests and brought diverse stakeholders to the table to develop long-term, comprehensive plans that balance conservation and energy development. The Trump administration has undermined all three – long before they could be fully implemented.¹⁰³

Additionally, the Trump administration and Congress have dismantled public accountability mechanisms at BLM.¹⁰⁴ In March 2017, Congress passed a resolution under the Congressional Review Act disapproving BLM's Planning 2.0 rule, and the president signed the resolution, repealing the rule.¹⁰⁵ The Planning 2.0 rule would have enhanced public engagement by involving more stakeholders earlier in the planning process, and it also emphasized using best available science.¹⁰⁶ In early 2018, BLM issued an instruction memorandum removing a requirement for a 30-day comment period when a lease sale is announced and reducing the public protest period for the sales.¹⁰⁷ In 2020, a judge for the Northern District of Idaho invalidated the 2018 instruction memo as applied to oil and gas leasing in sage-grouse habitat, but the decision didn't apply to all lease sales.¹⁰⁸ BLM has also rushed many regulatory changes¹⁰⁹ and changed processes for sharing scoping comments with the public.¹¹⁰



As part of Interior’s secretarial review of any policies that might “potentially burden” energy development, the Trump BLM suspended 37 RACs, which are legally required under FLPMA to meet annually.¹¹¹ While some RACs eventually began to meet, the Trump administration altered their individual charters to focus primarily on accelerating oil and gas leasing, deregulation, and expanding recreation opportunities.¹¹² As one interviewee commented, these narrow charters resulted in non-representative membership.

Trump Second Term Trajectory

In a second term, the Trump administration would likely continue to limit public accountability. For example, Pendley announced an initiative to disempower BLM federal law enforcement and instead defer to local law enforcement on federal public lands.¹¹³ Although these policies have not yet changed, the effort has been denounced as empowering right-wing extremists who seek to misuse federal public lands with impunity. BLM has also proposed to end the longstanding practice allowing official written protests to forest logging plans at BLM,¹¹⁴ and there are reports that the administration is planning to change NEPA review requirements for land use plans.¹¹⁵

Recommendations for a Biden Administration

BLM should seek input on how to best return to collaborative, science-driven planning. Candidate Biden has pledged to increase renewable energy development on public lands, which will require agreement among many stakeholders, making it necessary to engage with the relevant parties early in the planning process. BLM also should re-form the RACs and establish new ways to engage with the public and interested groups early in the planning process.¹¹⁶ The Biden administration should look to the Planning 2.0 rule as a starting place. Because the Congressional Review Act blocks an agency from implementing a rule that is “substantially the same,” a Biden BLM will need to be careful when crafting the new regulations.¹¹⁷ The Biden administration could consider creating specialized panels or land-unit based advisory councils that could incorporate broader constituencies in land management planning.

Nation-to-Nation Relationship With Tribal Nations

The lands BLM oversees are the former lands of Indigenous communities, and they remain important economic, cultural, historical, religious, and spiritual sites for these communities. BLM, like every federal agency, has a legal and ethical responsibility to authentically engage tribal nations in land management decisions. BLM’s policy manual expresses a commitment to “building and sustaining an ongoing relationship with Indian tribes...founded upon consultation...as well as long-term personal and institutional relationships resulting from collaborative and cooperative programs of mutual interest...”¹¹⁸

Trump Administration Actions

Interviewees noted that the Trump BLM has complied with the requirement to consult with tribal nations only to the extent legally required, and sometimes not at all. One of the most well-known instances of this administration’s failure to properly consult with tribes is the shrinking of and management changes to Bears Ears National Monument.¹¹⁹ The monument represented successful efforts led by a coalition of tribes to work with President Obama and DOI,¹²⁰ but the Trump administration reduced the size of the monument by more than 1.1 million acres.¹²¹ Though Secretary Zinke recommended that Congress authorize co-management with the tribes of areas within the monument, the Trump administration didn’t pursue it further.¹²²

Rather than directly consulting with the tribes affected by these changes, the administration created an advisory committee whose members were to be selected by the secretary of the Interior. The advisory committee ultimately didn’t include anyone who had originally supported the monument.¹²³ The



administration reserved seats to represent tribal interests and filled them with two people who were members of the only chapter of the Navajo Nation that had originally opposed the monument.¹²⁴

There are also reports that BLM is downplaying the historical significance of archaeological sites on proposed oil and gas sites to avoid consultation under the NHPA.¹²⁵ As part of an Office of the Inspector General investigation into incidents in New Mexico, one employee reported that “management seems more concerned about facilitating the approval and movement of industry projects than protecting cultural and/or archaeological sites.”¹²⁶ BLM has also discontinued the Obama administration’s practice of holding public hearings in the tribal nations affected by land management and leasing decisions. Interviewees noted that BLM instead has opted for limited written input from tribal nation leadership. Gwich’in tribes are also challenging BLM’s plans to open the Arctic National Wildlife Refuge’s coastal plain, an area that is sacred to the Gwich’in people, to oil and gas development.¹²⁷ Finally, many tribes have felt that efforts to consult digitally during the COVID-19 pandemic have not been meaningful.¹²⁸

Trump Second Term Trajectory

If the Trump administration serves a second term, it’s likely consultation with tribal nations will remain minimal. Despite Zinke’s original recommendation, there’s little reason to think the Trump administration would work towards co-management of lands under BLM’s jurisdiction. BLM’s exclusion of tribal governments in land management decisions could create lasting harm to BLM’s already diminished stature among tribal nations, could lead to the destruction of important cultural and religious resources, and will continue the centuries of injustices imposed by the federal government against Indigenous people.

Recommendations for a Biden Administration

Under a Biden administration, BLM could reengage with tribal nations through traditional and innovative methods. Traditional methods would include re-implementation of government-to-government outreach and hosting public forums in Indigenous communities (particularly when remote or rural). BLM’s policy manual calls for early consultation enhanced by regular communication with tribal nations.¹²⁹ As BLM sites new projects, it should work with tribal nations to identify sacred and culturally important sites that require protection.¹³⁰ The Biden administration should ensure employees are well trained and recognize the importance of consultation policies.

Consultation itself should not be the goal. Rather, the Biden administration could aim to create new methods of engagement and collaboration at each stage of the public land management process.¹³¹ For example, creating land unit-based advisory councils like the Bears Ears Commission would encourage input from the tribal nations that have a stake in decisions. BLM should expand management agreements with tribal nations and could seek input on areas that would be suitable for co-management agreements.¹³²



National Park Service Highlights

Mission: “Preserves unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations.”

Institutional Capacity

Trump Admin. Actions to Date:

- Hasn’t confirmed a director and acting director doesn’t have NPS experience
- Politicized decision making and reduced superintendents’ authority by restructuring
- Reassigned senior officials

Biden Admin. Recommendations:

- Consider appointing career employee as director
- Re-empower superintendents and restore the management structures that prevent political interference in park management

Science-Informed Decision Making

Trump Admin. Actions to Date:

- Revoked Director’s Order 100
- Interfered with NPS’ scientists’ work and censors discussions of climate change
- Ended emphasis on climate change in park planning

Biden Admin. Recommendations:

- Reissue and potentially strengthen Director’s Order 100
- Require consideration of climate change in park management and General Management Plans
- Involve scientists in use of Great American Outdoors Act projects

Public Accountability and Engagement

Trump Admin. Actions to Date:

- Reformed NEPA, which minimizes opportunity for public input in park planning
- Suspended advisory board and convened industry-packed boards
- Stalled efforts to make NPS more inclusive

Biden Admin. Recommendations:

- Broaden stories told at parks and make NPS more inclusive through additional units and hiring
- Strengthen advisory board and balance membership
- Explore ways to better involve public in planning process

Nation-to-Nation Relationship With Tribal Nations

Trump Admin. Actions to Date:

- Weakened local relationships with tribal nations by moving and disempowering superintendents
- Hasn’t prioritized cooperative management
- Revoked guidance for increased incorporation of natural and cultural resource stewardship (Director’s Order 100)

Biden Admin. Recommendations:

- Encourage and authorize superintendents to enter into access and management agreements with affiliated tribal nations
- Better incorporate traditional ecological knowledge into management and planning
- Undertake a model program for parks that are ripe for co-management



National Park Service

The National Park Service (NPS) manages over 400 sites in the national park system under a two-pronged mission to conserve and provide for public enjoyment “the scenery, natural and historic objects, and wildlife in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”¹³³ This is commonly referred to as a “perpetuity mission.” Historically, NPS has been less susceptible to the changes in administration, largely because of the bipartisan support that national parks receive. But the Trump administration has interfered with NPS, and at times made it more challenging for NPS to carry out its mission.

Institutional Capacity

Pursuant to statutory requirements, NPS is run by a Senate-confirmed director, who “shall have substantial experience and demonstrated competence in land management and natural or cultural resource conservation.”¹³⁴ NPS is the largest public lands bureau with around 20,000 employees.¹³⁵ Despite this number, understaffing at NPS is a perennial problem, with the number of full-time employees declining over the past decade.¹³⁶

Trump Administration Actions

The Trump DOI has disempowered NPS staff and centralized decision making by not appointing a Senate-confirmed director, changing the management structure to increase the secretary’s influence on park superintendents, and reassigning senior staff while leaving other positions vacant. NPS has been without a Senate-confirmed director for the entire Trump administration, and the current *de facto* acting director had never worked for NPS and lacks the statutorily required park management experience to serve in that position.¹³⁷ The former DOI employees we interviewed all identified the absence of an NPS director as the largest challenge facing NPS. The presence of acting directors has decreased accountability and steered the Service away from its core mission of preserving the parks.¹³⁸ Similar to BLM and FWS, interviewees commented that the level of centralized decision making at NPS is unprecedented. Because of legal restrictions on acting officials, Secretary Bernhardt has retained decision-making authority that would typically be delegated to a director.¹³⁹ According to some accounts, he’s used this authority to politicize NPS.¹⁴⁰

The Trump administration also reorganized Interior into 12 regions.¹⁴¹ As part of the reorganization, Secretary Bernhardt created a new position of “Field Special Assistants” who are appointed by and report directly to the secretary.¹⁴² As one interviewee noted, this reorganization removes middle managers who previously created a buffer between the political appointees in Washington D.C. and the park superintendents. Under the new system, requests go directly from the secretary to superintendents, increasing political influence in park management. They pointed to the reopening of parks during the COVID-19 crisis as an example of how the secretary exercises greater authority over decisions that usually would be made by superintendents working with their NPS supervisors.¹⁴³

Finally, at the beginning of the Trump administration, DOI reassigned or attempted to reassign senior career employees, including the superintendent of Yellowstone, a widely venerated position in NPS.¹⁴⁴ Critics argue that DOI leadership carried out these reassignments to demonstrate the authority they planned to exercise over NPS. Additionally, many senior positions remain vacant nearly four years after President Trump’s inauguration, and other positions have been filled by people who lack park management qualifications.¹⁴⁵

Trump Second Term Trajectory

Environmental NGOs have sued DOI alleging that the continued use of acting directors is illegal.¹⁴⁶ Whether or not Bernhardt chooses to nominate a director to avoid further litigation, it’s likely that he will continue to



exert significant control over NPS in a second term. While interviewees noted that there aren't yet long-term impacts from the past four years, they feared that an additional four years of politicized management could lead to more career staff departures and significant policy changes that would be detrimental to parks. For example, the Trump administration is attempting to expand recreation and opportunities for the private sector to operate services in parks. The current centralized management system would facilitate these changes if President Trump is reelected.

Recommendations for a Biden Administration

A Biden administration should nominate a strong director who can guide NPS back to its stewardship mission. Some interviewees noted that nominating a career employee could signal that the Biden administration is committed to restoring the relationship between political leadership and career staff; others noted the value of a political appointment who could balance credibility with NPS professionals and responsiveness to Department-wide initiatives. The NPS director should immediately speak to staff about a renewed focus on preservation and following the law. The director should also work with the DOI secretary to undo the regional reorganization and restore a management structure that will better insulate park-specific decision making from politics.

Science and Preservation

NPS must be able to use rigorous science to accomplish its perpetuity mission. The secretary is also statutorily required to “ensure that management of System units is enhanced by the availability and utilization of a broad program of the highest quality science and information.”¹⁴⁷ NPS scientists conduct research that supports park management and will help NPS and the United States address the impacts of climate change.

Trump Administration Actions

The Trump administration has decreased the role of science-informed decision making at NPS by revoking an Obama-era resource management directive and interfering with scientists' work. At the end of the Obama administration, NPS Director Jon Jarvis issued Director's Order 100, *Resource Stewardship for the 21st Century*.¹⁴⁸ The order was based on a National Park System Advisory Board's Science Committee report that recommended updated resource management goals and policies for NPS.¹⁴⁹ Director's Order 100 “[reaffirmed] that resource stewardship is a preeminent duty of the NPS” and elevated the role of science in national park management.¹⁵⁰ It also included a provision seeking to increase the use of traditional ecological knowledge (TEK) in resource stewardship.¹⁵¹ The Trump NPS, at the direction of Secretary Zinke, rescinded Director's Order 100 in August 2017.¹⁵² The rescission left NPS without clear science-based principles for park management as threats to the park system increase.

The Trump administration's actions to censor discussions of climate change have also impacted employees at NPS. Early in the administration, Secretary Zinke reprimanded the superintendent of Joshua Tree National Park for his tweets about how climate change is affecting the park.¹⁵³ According to a survey by the Union of Concerned Scientists,¹⁵⁴ scientists at NPS were more likely than employees at other agencies to report climate change censorship. In an interview with the New York Times, NPS's chief climate change scientist discussed feeling intimidated after receiving a warning from superiors following his congressional testimony about climate change.¹⁵⁵

Trump Second Term Trajectory

The Trump administration is not expected to change course if given a second term, and four more years of scientists being sidelined would likely lead to more scientists leaving NPS. Many national parks are in areas



susceptible to climate change impacts, such as wildfire-prone regions and seashores. Failing to account for climate change in planning decisions could be detrimental to those units.

Recommendations for a Biden Administration

NPS should develop an updated Director's Order 100 to ground park management in science-informed decision making and reintegrate climate change into management planning and other decisions. The NPS director should incorporate TEK and Indigenous Knowledge (this is the term used by Alaska Natives and others) into resource management efforts and work with colleagues at Interior to make that a more widespread practice. A Biden administration could revisit efforts to increase scientific training for all park staff. One interviewee recommended requiring that park superintendents have a certain level of scientific literacy.¹⁵⁶

Congress recently passed the Great American Outdoors Act, which provides NPS with additional funds over the next five years to address its maintenance backlog.¹⁵⁷ One interviewee noted that NPS needs to incorporate input from the scientific community when deciding which projects to undertake and how. Interior could expand NPS' Development Advisory Board to include a scientist who could help review projects for climate change concerns and other scientific considerations.

Public Accountability and Engagement

NPS is a uniquely public-facing agency with a statutory obligation to educate the public and raise public awareness of the natural resources in the national park system.¹⁵⁸ Like other agencies, it also engages in land management planning and NEPA processes that require public input.

Trump Administration Actions

One of the core public engagement mechanisms at NPS is the development of general management plans (GMPs) for park units and the accompanying NEPA processes that require public input. GMPs are supposed to be updated at least every 20 years, but lack of funding has resulted in most parks operating under plans that haven't been updated in more than 20 years.¹⁵⁹ Although the problem isn't new to the Trump administration, the Trump administration's NEPA policies that limit the time and length of environmental reviews make it more difficult to meaningfully engage with the public.¹⁶⁰ Similarly, the removal of the requirement to consider cumulative impacts poses a distinctive dilemma for NPS, whose mission includes preserving park resources for public benefit "in perpetuity."¹⁶¹

The Trump administration has also diminished public accountability at NPS by disrupting advisory committees. After Secretary Zinke temporarily suspended Interior's advisory committees, DOI didn't convene the statutorily-mandated National Park System Advisory Board¹⁶² until August 2019.¹⁶³ Ten of the Board's 12 members had resigned before the August 2019 meeting, stating that their requests to meet with Interior's leadership had been ignored.¹⁶⁴ Together, both secretaries neglected for three-and-a-half years the Board's express statutory responsibility to review and recommend National Historic Landmarks; the Subcommittee charged with leading the effort did not meet until late summer of 2020.

Interviewees noted that Secretary Zinke and Secretary Bernhardt also abolished all NPS park unit advisory committees. Meanwhile in 2018, DOI established the "Made in America" Outdoor Recreation Advisory Committee and privately convened an advisory committee to discuss electric bicycle (e-bike) use on public lands.¹⁶⁵ Both committees were dominated by industry, raised legal concerns regarding whether they complied with the Federal Advisory Committee Act, and were ultimately disbanded.¹⁶⁶



Additionally, interviewees noted that the Trump administration has stalled efforts to ensure NPS and the programming it provides are representative of the US – efforts that are long overdue given the historic racism and continued lack of racial diversity at NPS.¹⁶⁷ While these problems aren't unique to NPS, NPS can play a large role in the national conversation because it manages sites of cultural significance and has an education mandate. Interviewees noted that the Obama administration began efforts to diversify park units and increase access, but the Trump administration has slowed this progress. For example, early in the Trump administration, NPS withdrew funding for a research project on the legacy of the Black Panther Party.¹⁶⁸ More recently, the park police's involvement in a White House-directed operation to disperse peaceful protestors around Lafayette Square during the Black Lives Matter protests in Washington, DC has led to an investigation by Interior's Office of Inspector General.¹⁶⁹

Trump Second Term Trajectory

Given recently adopted changes to NEPA regulations that aim to shorten environmental reviews and limit which projects require a comprehensive environmental impact statement,¹⁷⁰ it will be difficult for the Trump NPS to undertake a planning process that prioritizes public engagement. The Trump administration's current rhetoric and methods for protecting national monuments indicates that a second-term Trump administration wouldn't prioritize building a more inclusive national parks system and NPS.¹⁷¹ Instead, NPS will more likely focus on increasing public-private partnerships for public lands management and other strategies for increasing private sector involvement in national parks, as recommended by industry-dominated advisory groups.¹⁷² NPS also recently proposed changes to regulations governing contracts with concessionaires,¹⁷³ which could lead to an increase in privatized management of park services.¹⁷⁴

Recommendations for a Biden Administration

NPS should work to serve the broader public. The director could create a more inclusive NPS, through the units it manages, the history explained at those units, and hiring decisions. Reinvigorated NPS advisory committees could assist NPS in meeting these goals. The administration should also ensure that the process for revising GMPs involves robust public engagement. As one interviewee noted, designing a system that allows for meaningful public input on GMPs will require a creative leader; additional money won't be enough.

Nation-to-Nation Relationship With Tribal Nations

Indigenous communities historically lived, hunted, fished, gathered plants, developed medicines, and held spiritual ceremonies on land that is now within the National Park System. Many national parks encompass spiritually and culturally significant sites for Indigenous communities. The NPS Management Policies states that "The formal legal rationale for the relationship between the National Park Service and tribes is augmented by the historical, cultural, and spiritual relationships that American Indian tribes have with park lands and resources."¹⁷⁵ Yet, generally speaking, NPS permits tribal members to engage in very limited activities within park boundaries,¹⁷⁶ especially in parks in the lower 48 states.¹⁷⁷ The strength of the tribal-NPS relationship differs by park, and superintendents work with tribal nations to varying degrees through traditional consultation processes,¹⁷⁸ regular meetings,¹⁷⁹ and cooperative management agreements under the Tribal Self Governance Act (TSGA).¹⁸⁰

Trump Administration Actions

The Trump administration's diminishment of institutional capacity directly impacts tribal governments. As one interviewee explained, when the Trump administration moved around superintendents with deep connections to the parks, tribes lost those established relationships – relationships that often take a long time to build. Furthermore, the centralization of decision making and the many employees who are only serving in



“acting” capacities mean that the park superintendents no longer have the authority to answer tribes’ requests. The interviewee noted that as a result of this, everything has stalled.

Efforts to reach co-management and contract agreements between specific park units and local tribal nations have stalled. NPS hasn’t ever fully taken advantage of opportunities afforded by the TSGA to work effectively with tribal nations.¹⁸¹ While talks progressed under the Obama administration regarding a co-management plan with the Oglala Sioux and the south unit of Badlands National Park,¹⁸² it was never finalized, and it has stalled under the Trump administration. Additionally, Director’s Order 100 sought to enhance integration of natural and cultural resource stewardship and collaboration with tribal nations beyond the legally-required consultation.¹⁸³ While these policy goals represented only initial steps, the Trump administration undermined these efforts by rescinding Director’s Order 100.

Trump Second Term Trajectory

Given the Trump administration’s actions and failure to reaffirm the nation-to-nation relationship with tribal governments, it’s unlikely authentic engagement on co-management opportunities with tribal nations will occur during a second term. While consultation – whether formal or informal – between superintendents and tribal nations at the individual park level may continue, the destabilization of the leadership structure could impact whether those conversations have lasting effects.

Recommendations for a Biden Administration

As mentioned above, the Biden NPS should reinstate, and ideally strengthen, Director’s Order 100. Although consultation between park superintendents and tribal nations with connections to the park lands happens organically at some units, a Biden administration could further institutionalize expectations of regular meetings. NPS should enhance efforts to reach cooperative management agreements with tribes. NPS could determine which park units are most suitable for co-management with tribes and work with Congress to enter into agreements for those units. Multiple interviewees noted the importance of highlighting good examples of inclusive management to encourage more park superintendents to try it in their parks. This type of information sharing and a commitment to training NPS employees should complement any policy developments. Many interviewees emphasized that a change in attitude towards tribes’ capacity to manage resources is necessary before co-management can succeed.

The Biden administration should work to increase access, especially for cultural ceremonies, for members of tribal nations with geographic connections to the parks. NPS could explore areas where plant gathering regulations could be extended to allow hunting, fishing, or other activities. One interviewee noted that the gathering rules were too complicated, however, and recommended that the Biden administration explore ways to give more authority to local superintendents to enter into unit-specific agreements with tribal governments.



US Fish and Wildlife Service Highlights

Mission: “Work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people.”

Institutional Capacity

Trump Admin. Actions to Date:

- Confirmed a director who lacks a commitment to conservation or scientific background
- Involved political staff – often in acting capacities – in more decisions
- Restricted FWS’ enforcement capacity

Biden Admin. Recommendations:

- Appoint a director committed to FWS’ conservation mandate
- Delegate authority back to refuge managers and refrain from reassignments to retain refuge-specific knowledge
- Strengthen enforcement capacity

Science-Informed Decision Making

Trump Admin. Actions to Date:

- Interfered with scientists’ work
- Rolled back compensatory mitigation policies, Endangered Species Act regulations, and protections for migratory birds
- Attempted to defund Landscape Conservation Cooperatives (LCCs)

Biden Admin. Recommendations:

- Issue statement about importance of science-informed decision making and reinstate independent science
- Undo changes to and strengthen science-based policies
- Support funding for LCCs

Public Accountability and Engagement

Trump Admin. Actions to Date:

- Reduced transparency through changes to FOIA guidance
- Expanded hunting and fishing at unprecedented levels

Biden Admin. Recommendations:

- Reform FOIA to re-establish presumption of openness
- Ensure recreation expansions only occur when compatible with refuges’ purposes

Nation-to-Nation Relationships With Tribal Nations

Trump Admin. Actions to Date:

- Backtracked on returning the National Bison Range to the Confederated Salish and Kootenai Tribes
- Hasn’t made progress on expanding access to or entering into cooperative management agreements at refuges

Biden Admin. Recommendations:

- Explore opportunities for co-management, including at National Bison Range
- Increase access for subsistence activities
- Increase collaboration with tribal members for interpretation at refuges
- Provide for consideration of Indigenous knowledge input to decisions
- Provide for consideration of Indigenous knowledge input to decisions



US Fish and Wildlife Service

The US Fish and Wildlife Service (FWS) has a clear conservation mandate. FWS manages over 150 million acres, including national wildlife refuges and fish hatcheries, for the “conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”¹⁸⁴ Thus, the agency is tasked with protecting vulnerable species and habitats above all else, though it has multiple secondary goals, including expanding recreational opportunities, public access, and scientific research.

Under previous administrations, FWS was increasingly emphasizing actions to address climate change, anticipating impacts of adaptation of fish and water systems, and expanding the refuge system.¹⁸⁵ The Trump FWS has changed the agency’s relationship to the laws at the core of its conservation mandate: NEPA, the Endangered Species Act (ESA), the Migratory Bird Treaty Act (MBTA), and others.

Institutional Capacity

FWS’ ability to fulfill its conservation mission depends in large part on its approximately 9,000 employees spread across the nation.¹⁸⁶ Traditionally, and according to statute, FWS is led by a Senate-confirmed director and small cadre of political appointees who manage the much larger group of career staff. FWS is one of two main federal agencies tasked with enforcing the Endangered Species Act, which requires significant research and enforcement efforts.¹⁸⁷

Trump Administration Actions

The Trump Administration has decreased FWS’ institutional capacity through actions similar to those taken at NPS and BLM. FWS didn’t have a confirmed director for nearly two years until the confirmation of Aurelia Skipwith, a Monsanto alumna known to be hostile to the Service’s mission.¹⁸⁸ Despite this lack of Senate-confirmed leadership, interviewees noted that decisions previously made by career staff with little or no political input were increasingly referred to Interior’s headquarters. For example, Steve Wackowski, an Interior political appointee, was instrumental in the Trump Administration’s attempts to open the Arctic National Wildlife Refuge to oil and gas drilling.¹⁸⁹ While such an action would usually be considered and designed in large part by career staff based on the agency’s scientific reports, Wackowski regularly clashed with FWS scientists and expedited the environmental review associated with the potential drilling.¹⁹⁰

Additionally, the Trump Administration has restricted FWS’ enforcement capacity. Congress charged FWS with enforcing the ESA, which prohibits the “taking” (e.g., harming or harassing) of endangered or threatened species.¹⁹¹ This prohibition requires significant on-the-ground enforcement efforts to monitor, record, mitigate, and prevent such actions. FWS has traditionally trained some refuge managers as “dual-function officers,” empowered as both administrators and law enforcement officers equipped with a firearm. In September 2018, the agency announced that dual-function officers would lose their law enforcement officer status.¹⁹² This decision was made soon after then-Secretary Zinke expanded access to sportsmen and recreationists on refuges.¹⁹³ The agency stated that these decommissioned officers would be replaced with new staffing,¹⁹⁴ but this has yet to happen.

Trump Second Term Trajectory

Interviewees noted how the centralization of decision making and loss of institutional expertise could threaten the health of refuges, because refuge-specific decisions are now less common and less informed, and continued lack of enforcement capacity will put protected species at risk. Like at NPS, these shifts also impact FWS’ relationship with local tribes, as relationship-building is more difficult when management changes.



Recommendations for a Biden Administration

A Biden administration could nominate a director with a strong conservation and scientific background to bolster career staff's confidence in their leadership's commitment to FWS' mission. The director could issue an internal memorandum emphasizing the centrality of conservation values, science-based decision making, and the depoliticization of agency actions. The new director should empower career staff and follow up with substantive actions enacting those values. The administration should delegate significant decision-making authority back to career staff, especially at the individual refuge or fishery level. FWS should also refrain from reassignments when possible to allow for the retention of refuge-specific knowledge.

To improve enforcement, a new administration could recommission refuge managers as dual-function officers tasked specifically with enforcing those statutes and policies of the individual refuges. Giving these officers narrow law enforcement missions will allow them to continue to fulfill the goals of FWS while not interfering with a new administration's efforts to address policing and policing reform more broadly.

Science and Conservation

Rigorous, unbiased science is important at FWS, because of its science-based conservation mission. FWS also serves as a sort of scientific consulting body for other federal agencies when federal actions may impact threatened or endangered species.¹⁹⁵

Trump Administration Actions

The Trump Administration has minimized the efficacy and role of scientists at FWS. In a survey of FWS scientists conducted by the Union of Concerned Scientists early in the Trump Administration, 69% of respondents "noted the level of consideration of political interests as a burden to science-based decision-making."¹⁹⁶ FWS scientists specifically noted hiring freezes, shifting of resources away from politically contentious work, lack of professional development opportunities, and budget cuts all as factors weighing against their efficacy.¹⁹⁷

These cultural changes are reflected in policy changes as well that undermine FWS' conservation mandate. In 2018, FWS revoked policies requiring companies to offset damage to fish, wildlife, and plants caused by their use of public lands.¹⁹⁸ The Trump administration also revised the implementing regulations of the ESA.¹⁹⁹ The revised regulations streamline the process for delisting species, while allowing the agency to downplay or ignore the biodiversity threats of climate change and to take into account economic factors when considering listing a species. Critics have pointed out that despite the regulations' continued use of the term "best available science," they may transfer control of the listing process away from scientists and into the hands of political appointees.²⁰⁰ Further, FWS published an Office of the Solicitor a legal opinion²⁰¹ and later a proposed rule²⁰² that reinterprets the MBTA and prohibits the prosecution of incidental takes (killing) of migratory birds.²⁰³ This move makes a large portion of the MBTA's conservation mandates voluntary.²⁰⁴

Secretary Zinke also attempted to defund or eliminate the Landscape Conservation Cooperative (LCC) Network.²⁰⁵ LCCs have existed since the George W. Bush Administration, and support private and governmental conservation efforts for multiple agencies within the Department. LCCs have been particularly influential in climate and sage-grouse research. Critics viewed defunding as part of the larger attempt to minimize the role of climate science in public lands decision-making.²⁰⁶ The move has been sharply rebuked, including by Congressional Republicans.²⁰⁷



Trump Second Term Trajectory

In a second term, science at FWS would likely remain diminished. A second term would bring clarity on FWS' intentions behind the wording change in the revised ESA regulations, but it is unlikely the Trump administration will meaningfully consider climate change effects in its ESA decisions. Meanwhile, the Trump administration is taking more steps to increase the role that economic impacts play in endangered species regulations. In 2020, the Trump administration has proposed two changes to critical habitat regulations. The first rule proposes a regulatory definition of “critical habitat,”²⁰⁸ and the second proposal would give industry more influence in the economic impacts FWS considers when determining critical habitat.²⁰⁹ Additionally, despite judicial setbacks, FWS will likely finalize the rule reinterpreting the MBTA.²¹⁰

The Trump administration may also continue to interfere with science-based management of the refuge system. For example, since 2019, the Trump Administration has attempted to turn over control of most of the 1.6-million-acre Desert National Wildlife Refuge in Nevada to the Air Force.²¹¹ Such change would deprive FWS of the chance to fulfill its congressionally-mandated duty to conserve the species in the refuge.

Recommendations for a Biden Administration

FWS and its scientists would benefit from a clear statement from Senate-confirmed leadership regarding the primacy of science at FWS, along with concrete steps taken to support scientists and scientific research. Specifically, the director should reiterate the FWS' policy on the communication of scientific work²¹² and provide adequate resources to scientists including time, materials, and professional development opportunities. The director should also reprioritize LCCs, elevate the role of science in ESA listing, delisting, and habitat designation decisions, and reduce wherever possible political influence on decisions that can be based primarily on scientific considerations, such as the listing of species and critical habitat designation.

To further bolster the agency's fulfillment of its conservation mission, future administrations should focus on leveraging the unique bipartisan support of FWS as well as opportunities for collaboration with local groups and tribal governments to reprioritize conservation of vulnerable species and habitats. A Biden administration should rely on the staff that have dedicated careers to a conservation-oriented agency to enact those values. Doing so will ensure that decisions meant to be made by the agency — including recreation and conservation actions on federal lands — remain in the hands of FWS.²¹³

Public Accountability and Engagement

Although the refuges are managed principally for conservation, they attract tens of millions of visitors each year.²¹⁴ The law allows FWS to authorize certain “wildlife-dependent recreational activities” on refuges if they are compatible with a refuge's purpose.²¹⁵ Hunting and fishing are included in the statute as two potential uses.²¹⁶ FWS is also required to get public input when making decisions about refuge management that invoke NEPA and when updating each refuge's “comprehensive conservation plan” every fifteen years.²¹⁷

Trump Administration Actions

The Trump FWS has prioritized expanded recreational access to wildlife refuges and has inadequately involved the public in its decision making. For three years, FWS has opened unprecedented acres of refuges and hatcheries to hunting and fishing.²¹⁸ Critics worry that such large-scale openings don't adequately consider each refuge's specific purpose, and whether the additional recreational opportunities are compatible with that purpose. Secretary Bernhardt has also attempted to permit the construction of a 12-mile gravel road through the Izembek National Wildlife Refuge in Alaska without fully engaging the public.²¹⁹ After the action was blocked by a federal court in March of 2019,²²⁰ Secretary Bernhardt revised the agreement to facilitate the



necessary land swap without giving the public notice.²²¹ The Department of Justice then dropped its appeal to the Ninth Circuit weeks later.²²²

Additionally, the Trump administration reduced FWS' transparency by changing how the agency processes FOIA requests. In September 2018, the agency circulated an internal memo from the Department of Justice intended to reduce the number of documents released related to ESA implementation, specifically for the purpose of withholding documents that might be detrimental during litigation.²²³ The new guidance creates extra steps if a FOIA officer initially determines that a document doesn't need to be withheld from the public, which ultimately prevents some documents from being released. This reverses prior policy that instructed FOIA officers to work from the presumption of openness with such records.²²⁴ These changes, combined with updated regulations²²⁵ and secretarial orders,²²⁶ have hamstrung hindered the public's ability to access accurate information regarding governmental decision making, defeating the core purpose of FOIA.²²⁷

Trump Second Term Trajectory

A Trump second term will probably continue to prioritize recreational use at the refuges over advancing FWS' conservation mission. And, while a federal judge in Alaska again blocked the agreement for the land swap in Alaska,²²⁸ the Department of Justice has appealed the decision.²²⁹

Recommendations for a Biden Administration

A Biden FWS, working with the Department of Justice and DOI political staff, should issue a rule to replace the new 2019 FOIA guidance and return to a presumption of openness. A Biden administration should also allow for meaningful public comment when revising refuge plans. For example, FWS could involve stakeholders and the public in revisiting the hunting and fishing designations to ensure they are in balance with each refuge's conservation mission.

Nation-to-Nation Relationship With Tribal Nations

As with the other bureaus in the Department, FWS has continuing relationships with federally-recognized Indian tribes. In 2016, FWS updated its Native American policy for the first time in decades.²³⁰ The policy “[included] guidance on co-management, access to and use of cultural resources, capacity development, law enforcement, and education.”²³¹ Yet little has come of that update, and FWS has been slow to enter into agreements with tribal governments under the TSGA.²³²

Trump Administration Actions

In managing the National Wildlife Refuge System, the Trump DOI has sidelined or stalled collaborative opportunities. For example, as part of a push to emphasize tribal co-management and collaborative opportunities,²³³ the Obama administration proposed to put the Bison Range under the management of the Confederated Salish and Kootenai Tribes.²³⁴ The Bison Range is located wholly within the Flathead Indian Reservation in Montana.²³⁵ Secretary Zinke reneged on this proposal, stating “[the Range] is a critical part of our past, present, and future, which is why I have changed course.”²³⁶

The Trump administration's ESA implementation also affects tribal nations. For example, tribes have been involved in litigation challenging ESA decisions by the Trump administration, including the delisting of Yellowstone grizzly bears.²³⁷



Trump Second Term Trajectory

It's unlikely a second term Trump administration would prioritize inclusive management and expanded access of refuges for tribal members, unless relationships are strengthened at the local level. The administration continues to diminish ESA protections, which could lead to tribal nations filing additional lawsuits to protect important species.

Recommendations for a Biden Administration

The Biden FWS should reprioritize the government-to-government relationships with tribal nations, and should direct FWS to identify and pursue available opportunities to incorporate tribal stakeholders in managing lands within the National Wildlife Refuge System. The administration should re-initiate the planning process for the National Bison Range and strategically engage with FWS employees and the public to address opponents' concerns.²³⁸ FWS should also explore opportunities to incorporate tribes as co-managers in other Refuges, or through incorporation in Landscape Conservation Cooperatives. FWS should including tribes as collaborative partners whenever possible (rather than opponents in litigation) in species conservation and listing efforts, especially for sensitive species such as wolves, grizzly bears, and polar bears.



Conclusion

The Trump administration has systematically diminished the Department of the Interior as an agency that is meant to conserve our public lands and balance competing uses. Each public lands agency within DOI has strayed from Congress' statutory mandates – whether it's multiple use and sustained yield at BLM, preservation and public enjoyment at NPS, or conservation at FWS. We hope that by describing what DOI and its land management agencies have done during the Trump administration, a future administration can use this information to restore Interior's capabilities, elevate the role of science, better involve the public in decision making, and meaningfully engage with tribal nations.



Appendix I: Recommendations

The following is a list of all the recommendations from our interviewees, in alphabetical order by topic. Many of the Department-Wide recommendations also apply to individual agencies, and we have not repeated them in those sections.

Department-Wide Recommendations

Institutional Capacity

Decision-Making Structure

- Establish new clearing processes for documents/decisions, including for NEPA reviews
- Only require clearance by the secretary when necessary
- Undo the centralization of decision making
- Undo the reorganization efforts

General Management/Running DOI

- Ask staff what resources they need; don't make assumptions
- Build accountability mechanisms (including deadlines) into any secretarial orders
- Build and use teams
- Engage in inter-bureau coordination at regional and national levels; Set up structures that will enable inter-bureau coordination
- Enhance training about how the agency functions and program administration
- Increase training opportunities
- Issue a statement of purpose that seeks career input and reorients DOI towards addressing pressing challenges like biodiversity crises and climate change
- Make Solicitor's Office independent from bureaus by increasing budget
- Reset the mission
- Restore confidence through good management
- Strengthen leadership structures

Regulatory Actions

- Consult the Solicitor's Office (as well as other offices) about what's already been tried
- Bolster the rulemaking resource office
- Improve the regulatory writing process
- Have two teams: one focused on policy and one on processes and mechanics

Review Changes from the Past Four Years

- Identify all Secretary's Orders and Department Manual Changes made under Trump administration that will need to be rescinded or revised
- Pause decisions to review for consistency with incoming administration
- Determine whether any interim procedures need to be put in place for NEPA or regulatory reviews to handle immediate issues and/or until guidance from WH
- Revise the regulatory agenda

Staffing Decisions

- Appoint career officials to senior positions
- ERB: Balance the political and career representation



- ERB: Require representation of all agencies
- Increase staffing – hire more mid-level people (potentially political appointees)
- Review current staffing and determine reassignments if appropriate

Public Accountability and Engagement

Collaboration/Coordination

- Develop site-specific collaborative structures
- Ensure the opinions of stakeholders that aren't part of the multi-stakeholder conversations are still being heard
- Leadership should push collaborative approaches forward
- Request funding from Congress for collaborative efforts

Ethics

- Enforce ethical standards and disclosure requirements
- Hire a reputable person to lead ethics reform
- Reform Inspector General's Office to restore its independence
- Review and strengthen ethics requirements as needed

FOIA

- Consult FOIA staff about what's needed to eliminate the backlog
- Halt existing political awareness review process and replace with process focused on giving a heads up
- Hire more FOIA officers
- Require more staff rotate through FOIA duties
- Work with DOJ to more reasonably use exemptions

Public Involvement

- Implement a more iterative process of comments
- Innovate with public comment opportunities
- Issue an "ethic memo" about atmosphere of accountability
- Reform NEPA to allow for more public input (undo restrictions put into place by Trump administration)

Science-Informed Decision Making

Addressing Scientists at DOI

- Convene DOI scientists and managers to assess what's happened
- Issue statement of principles regarding commitment to science
- Repair relationships with scientific staff; Listen to career staff about how their work should be incorporated
- Undo efforts to censor scientists

Expert Committees

- Consider convening advisory science panels
- Reconstitute advisory committees and boards



Hiring

- Equip Human Resources Department with standards for hiring scientists
- Hire a career employee as science advisor
- Increase overall hiring of scientists

NEPA

- Incorporate climate change into NEPA reviews
- Issue strong climate change guidance for NEPA reviews

Scientific Integrity

- Appoint scientific integrity officers through Intergovernmental Personnel Act
- Improve DOI's scientific capacity to respond to crises
- Recommit to scientific integrity policy; Reform scientific integrity to ensure it isn't politicized

Structural Suggestions

- Strengthen the Office of Policy Analysis
- Don't reorganize USGS; commission a narrow study to recommend a structure for 21st century
- Establish role of science advisor for each agency, and appoint person who is independent and doesn't have a stake in Interior's science programs
- Facilitate peer review – either by including in budget or creating a peer-review management team
- Improve system for processing cooperative agreements with external partners
- Provide funding for scientists to publish, partner with outside research entities, and share scientific knowledge
- Restore funding for climate adaptation centers
- Require each agency to develop three-year science plans

Nation-to-Nation Relationship With Tribal Nations

Consultation

- Lead an interagency effort to reform consultation
- Establish regional tribal advisory councils (EO 13,754, *North Bering Sea Climate Resilience*)
- Work with other agencies and offices within DOI to streamline consultation requests
- Issue an Instruction Memorandum reiterating responsibilities of land managers
- Formalize the consultation process further
- Require meaningful consultation

Cooperative Management/Co-Management

- Highlight successful cooperative management; look to state models for examples
- Increase grant funding for cooperative management

Internal Management

- Appoint Native American people to leadership positions at DOI
- Build in accountability mechanisms for consultation by regional and local directors
- Hire leaders who recognize tribal capacity
- Hire local or regional tribal liaisons

Interior-White House Coordination

- Strengthen White House Council on Native American Affairs



- Issue a new executive order emphasizing highest level of commitment to sovereignty and self-determination
- Reaffirm government-to-government relationship (EO 13,175)
- Re-initiate annual tribal leaders summits
- Work towards legislative fix to honor and incorporate Indigenous knowledge into decisions (going beyond consultation)
- Work towards legislative fix to engagement with tribal nations that goes beyond consultation

Leadership Actions

- Build trust and invest in repairing relationships
- Issue a statement about importance of cultural resources and sacred sites
- Lead by example on tribal engagement
- Make expert panels accessible to tribal governments
- Require that staff attend training on DOI policies relating to tribal nations and about Indigenous culture and history
- Reverse executive orders/proclamations that signaled decreased protection for cultural resources (e.g. Bears Ears reduction and Dakota Access Pipeline approval)
- Use intergovernmental contracts for temporary assignment of DOI staff to tribal nations and vice versa
- Work with Congress to better protect cultural resources
- Work with other agencies to make sure reform isn't just at Interior

Bureau of Land Management

Institutional Capacity

- Director should take a listening tour to hear what staff say
- Increase communication and coordination between regions
- Move headquarters back to DC (field office remains in Grand Junction)
- Move only staff that need to be in DC (including those that went to state and regional offices during reorganization)
- Reverse delegations
- Strengthen the planning shop at headquarters to help with resource management plan updates
- Transfer people who are in positions that don't fit their skillsets
- Work with legislature to prevent this type of move from happening again

Public Accountability and Engagement

- Bring in stakeholders early in the process
- Change name to show a symbolic restart
- Digitize plans to allow for more public input
- Enforcement capacity:
 - Issue guidance about valuing relationships with local sheriffs
 - Return to cooperative agreements with local sheriffs
 - Send high profile BLM staffer to Western Sheriffs Organization
- Engage with more groups in one-on-one meetings
- Go beyond what the law requires for public notice and comment
- Reconstitute RACs, return to former charters, and ensure diverse representation
- Revisit Planning 2.0 for methods to ensure more public input



- Review all systems for public input to ensure they're accessible and easy to use

Science and Multiple-Use Plans

- Appoint scientists to advisory committees
- Integrate climate change into NEPA reviews
- Look for landscape-scale planning or scientific information-sharing opportunities

Nation-to-Nation Relationship With Tribal Nations

- Incorporate trust relationship into FLPMA decision making
- Reform NEPA to encourage earlier consultation with other agencies and stakeholders
- Use Bears Ears as an example of cooperative management structure
- Work with Congress to reset planning and emphasize collaboration

National Park Service

Institutional Capacity

- Appoint acting directors that demonstrate the values of the new administration
- Change the regional structure to undo politicization of decision making
- Delegate decisions to superintendents/regional career staff
- Don't rush to fill senior positions; see what's needed
- Hold staff accountable for completing actions
- Reiterate that the laws and regulations matter
- Refrain from big reassignments to assuage concerns about transfers

Public Accountability and Engagement

- Broaden the stories and history taught at parks
- Continue support for Every Kid Outdoors initiative (previously Every Kid in a Park)
- Explore innovative ways to better engage public in planning process
- Fund planning office
- Invest in training to improve interpretation
- Review concessionaire proposed regulations to ensure it's an adequate fix
- Support diversity in accessibility and attractiveness of national parks
- Work with county and local governments to plan for increased visitation

Science and Preservation

- Address scientists and signal NPS plans to respect their work
- Appoint a scientist to the Development Board
- Create an inventory for recreation figures at each park unit
- Emphasize science-informed decision making for park management
- Follow advice of *Revisiting Leopold Report*
- Involve scientists in decisions regarding projects funded by the Great American Outdoors Act
- Reissue Director's Order 100 (or an updated version) and emphasize role of science
- Require that General Management Plans consider climate change
- Require that superintendents have a minimum level of science literacy
- Use interdisciplinary science to think through visitation challenges



Nation-to-Nation Relationship With Tribal Nations

- Address staff's potential biases towards tribal land management capacity
- Better incorporate traditional ecological knowledge into management and planning
- Build on plant-gathering regulations to allow for more access by members of tribal nations
- Consult with tribal governments early in the environmental review process
- Create a pilot program for returning some lands in the federal estate for co-management
- Emphasize to superintendents the need to engage in meaningful consultation
- Enter into more cooperative management agreements with tribal nations affiliated with specific parks; delegate more authority to superintendents to enter into agreements with tribal governments
- Highlight units that are successfully working with tribal nations
- Increase collaboration with tribal members for interpretation at parks
- Increase funding for Historic Preservation Fund Grants
- Inventory units that are ripe for co-management
- Re-initiate conversations about transferring Badlands South Unit
- Work with other bureaus to improve consultation

Fish and Wildlife Service

Institutional Capacity

- Appoint a director with a strong conservation background
- Delegate decision-making authority to refuge managers
- Orient FWS towards conservation mandate to empower staff
- Provide a restatement of purpose
- Rebuild leadership structures
- Refrain from reassignments when possible
- Strengthen enforcement capacity

Public Accountability and Engagement

- Allow expanded recreation, unless incompatible
- Revise FOIA guidance

Science and Conservation

- Enhance compensatory mitigation policies
- Issue memorandum emphasizing importance of conservation and science-informed decision making
- Restore conservation focus
- Revise science-based policies that have been rolled back, like ESA and MBTA regulations
- Support funding for Landscape Conservation Cooperatives

Nation-to-Nation Relationship With Tribal Nations

- Address staff's potential biases towards tribal land management capacity
- Explore options for cooperative management at refuges
- Increase access for compatible subsistence activities
- Increase collaboration with tribal members for interpretation at refuges



Appendix II: List of Interviewees

Thank you to all of the people who graciously spent time talking with us. We couldn't have done this project without the following people, as well as ten others who wish to remain anonymous:

Robert T. Anderson
Oneida Indian Nation Visiting Professor, Harvard Law School
Associate Solicitor, Indian Affairs (1995-1997); Counselor to the Secretary (1997-2001)

Jamie Rappaport Clark
President and CEO, Defenders of Wildlife
Director, US Fish and Wildlife Service (1997-2001)

Joel Clement
Senior Fellow, Harvard Belfer Center for Science and International Affairs
Director of Office of Policy Analysis at DOI (2011-2017)

George Frampton
Board Chair, Partnership for Responsible Growth
Assistant Secretary for Fish, Wildlife and Parks (1993-97)

David J. Hayes
Executive Director, State Energy & Environmental Impact Center at the NYU School of Law
DOI Deputy Secretary and Chief Operating Officer (2009-2013); DOI Deputy Secretary (1999-2001)

Jonathan B. Jarvis
18th Director of the National Park Service (2009-2017)

T. Destry Jarvis
President, Outdoor Recreation & Park Services, LLC
Assistant Director, NPS (1993-2000)

Sam Kalen
Centennial Distinguished Professor of Law and Associate Dean, University of Wyoming College of Law
DOI Office of the Solicitor (1994-1996)

Linda Lance
Senior Advisor, Partnership for Responsible Growth.
Deputy Director, Bureau of Land Management (2013-2017)

Amanda Leiter,
Senior Associate Dean for Faculty and Academic Affairs, American University Washington College of Law.
Deputy Assistant Secretary for Land and Minerals Management (2015-2017)

John D. Leshy
Distinguished Professor Emeritus, U.C. Hastings College of the Law
DOI Solicitor (1993-2001); Associate Solicitor (1977-1980)

Dr. Gary Machlis
University Professor of Environmental Sustainability, Clemson University
Science Advisor to the NPS Director (2009-2017)



Renee Stone
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⁴¹ Thank you to Joe Goffman for his guidance on this project, James Pollack and Elizabeth Melampy for their research, and Robin Just for her excellent editing.

¹ Fact Sheet, The White House, President Donald J. Trump Is Unleashing American Energy Dominance (May 14, 2019), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-unleashing-american-energy-dominance/>.

² HARV. L. SCHOOL ENVTL. AND ENERGY L. PROGRAM: REGULATORY ROLBACK TRACKER, <https://eelp.law.harvard.edu/2017/09/mercury-and-air-toxics-standards/> (last visited Sept. 18, 2020).

³ *Onshore Extractive Leasing*, HARV. L. SCHOOL ENVTL. AND ENERGY L. PROGRAM: REGULATORY ROLBACK TRACKER (June 11, 2020) <https://eelp.law.harvard.edu/2019/03/onshore-extractive-energy-leasing/>.

⁴ *National Monuments*, HARV. L. SCHOOL ENVTL. AND ENERGY L. PROGRAM: REGULATORY ROLBACK TRACKER (Feb. 10, 2020) <https://eelp.law.harvard.edu/2017/09/national-monuments-marine-national-monuments-and-marine-sanctuaries/>.

⁵ This report only discusses onshore public lands management. We use the term “public lands” throughout the report as shorthand for onshore public lands.

⁶ We use the term “tribal nations” or “tribes” to refer to federally-recognized American Indian and Alaska Native tribes. At times, we use the term “Indigenous communities” to refer to both recognized and non-recognized tribes.

⁷ *The Biden Plan for a Clean Energy Revolution and Environmental Justice*, <https://joebiden.com/climate-plan/> (last visited Sept. 18, 2020).

⁸ *About Interior*, U.S. DEP’T OF INTERIOR, <https://www.doi.gov/about> (last visited Sept. 18, 2020)

⁹ See Secretarial Order No. 3355, Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807 (Aug. 31, 2017), https://www.doi.gov/sites/doi.gov/files/elips/documents/3355_-_streamlining_national_environmental_policy_reviews_and_implementation_of_executive_order_13807_establishing_discipline_and_accountability_in_the_environmental_review_and_permitting_process_for.pdf.

¹⁰ See e.g. Memo from Cindy Cafaro, Departmental FOIA Officer, Dep’t of the Interior, to Assistant Secretaries, Dep’t of the Interior (May 24, 2018) https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_final.pdf; Memo from Cindy Cafaro, Departmental FOIA Officer, Dep’t of the Interior, to Assistant Secretaries, Dep’t of the Interior (Feb. 28, 2019) https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf.

¹¹ See Memo from Scott J. Cameron, Principal Deputy Assistant Secretary for Policy, Management, and Budget, Dep’t of the Interior, to Assistant Secretaries (Dec. 28, 2017), <https://apps.washingtonpost.com/g/documents/national/interior-guidance-for-fiscal-2018-grants/2698/>.

¹² See Heidi Kitrosser, *Accountability in the Deep State*, 65 U.C.L.A. L. REV. 1532, 1544 (2018) (“[U]nfettered political control of civil servants can defeat accountability by enabling political actors to manipulate the information that emerges from the executive branch.”).

¹³ Lisa Rein, *Interior chief want to shed 4,000 employees in department shake-up*, THE WASHINGTON POST (June 21, 2017), https://www.washingtonpost.com/powerpost/interior-chief-wants-to-shed-4000-employees-in-department-shake-up/2017/06/21/791cadd0-56a7-11e7-a204-ad706461fa4f_story.html.

¹⁴ See DEP’T OF INTERIOR OFFICE OF INSPECTOR GENERAL, RE. NO. 2017-ER-061, REASSIGNMENT OF SENIOR EXECUTIVES AT THE U.S. DEP’T OF THE INTERIOR (April 2018); See also Joel Clement, *I’m a scientist. I’m blowing the whistle on the Trump administration.*, The Washington Post (July 19, 2017), <https://www.washingtonpost.com/opinions/im-a-scientist-the-trump-administration-reassigned-me-for-speaking-up-about-climate-change/2017/07/19/389b8dce-6b12->



[11e7-9c15-177740635e83_story.html](#) (Joel Clement, a senior career official working on climate change’s impacts on the arctic, resigned and blew the whistle about his reassignment).

¹⁵ See DEP’T OF INTERIOR OFFICE OF INSPECTOR GENERAL, RE. NO. 2017-ER-061, REASSIGNMENT OF SENIOR EXECUTIVES AT THE U.S. DEP’T OF THE INTERIOR 4 (April 2018), https://www.doioig.gov/sites/doioig.gov/files/FinalEvaluation_SESReassignments_Public.pdf (Documenting the reassignments).

¹⁶ See DEP’T OF INTERIOR OFFICE OF INSPECTOR GENERAL, RE. NO. 2017-ER-061, REASSIGNMENT OF SENIOR EXECUTIVES AT THE U.S. DEP’T OF THE INTERIOR 10 fig. 3 (April 2018), https://www.doioig.gov/sites/doioig.gov/files/FinalEvaluation_SESReassignments_Public.pdf.

¹⁷ The Departmental Manual “is the authorized means of documenting and issuing instructions, policies, and procedures that have general and continuing applicability to Departmental activities, or that are important to the management of the Department.” DEP’T OF THE INTERIOR, DEPARTMENTAL MANUAL 011 DM 1 (Aug. 3, 2018), https://www.doi.gov/sites/doi.gov/files/elips/documents/chapter_1_purpose_and_structure.pdf.

¹⁸ See generally COLUMBIA L. SCHOOL SABIN CENTER FOR CLIMATE CHANGE LAW, SILENCING SCIENCE TRACKER, <https://climate.law.columbia.edu/Silencing-Science-Tracker> (last visited Sept. 18, 2020) (filter results to DOI); UNION OF CONCERNED SCIENTISTS, ATTACKS ON SCIENCE, <https://www.ucsusa.org/resources/attacks-on-science> (last visited Sept. 18, 2020).

¹⁹ UNION OF CONCERNED SCIENTISTS, SCIENCE UNDER TRUMP: VOICES OF SCIENTISTS ACROSS 16 FEDERAL AGENCIES 5–6 (2018), <https://www.ucsusa.org/sites/default/files/images/2018/08/science-under-trump-report.pdf>.

²⁰ Secretarial Order No. 3360, Rescinding Authorities Inconsistent with Secretary's Order 3349, ‘American Energy Independence’ (Dec. 22, 2017), <https://assets.documentcloud.org/documents/4343673/3360-20-20Rescinding-20Authorities.pdf>; see also *Department of the Interior’s Compensatory Mitigation Policies*, HARV. L. SCHOOL ENVTL. AND ENERGY L. PROGRAM: REGULATORY ROLLBACK TRACKER, <https://eelp.law.harvard.edu/2020/03/compensatory-mitigation-at-the-department-of-the-interior/> (last visited Sept. 18, 2020).

²¹ See Memo from Scott J. Cameron, Principal Deputy Assistant Secretary for Policy, Management, and Budget, Dep’t of the Interior, to Assistant Secretaries (Dec. 28, 2017), <https://apps.washingtonpost.com/g/documents/national/interior-guidance-for-fiscal-2018-grants/2698/>.

²² Secretarial Order 3369, “Promoting Open Science” (Sept. 28, 2018), https://www.doi.gov/sites/doi.gov/files/elips/documents/so_3369_promoting_open_science.pdf.

²³ The order is currently in effect, and the Department of Interior (DOI) sent a proposed rule intended to further implement the order to the White House for pre-publication review in early 2020. *Promoting Open Science in the Regulatory System*, RIN No. 1090-AB20 (Published in Fall 2019 Regulatory Agenda).

²⁴ Secretarial Order 3369, Promoting Open Science (Sept. 28, 2018), https://www.doi.gov/sites/doi.gov/files/elips/documents/so_3369_promoting_open_science.pdf.

²⁵ While Interior officials promote the initiative as improving transparency, it’s well documented – based on similar actions at EPA – that the intention is to restrict science. See generally EELP Staff, *Legal Shortcomings in EPA’s So-Called ‘Secret Science’ Proposed Rule*, HARV. L. SCHOOL ENVTL. AND ENERGY L. PROGRAM: EPA MISSION TRACKER (May 1, 2018), <https://eelp.law.harvard.edu/2018/05/changing-what-science-the-epa-will-consider-part-2/>.

²⁶ Letter from Raúl Grijalva, Ranking Member, H. Comm. on Nat. Res., et al., to The Hon. Ryan Zinke, Interior Sec’y (Oct. 11, 2018), <https://naturalresources.house.gov/imo/media/doc/Letter%20on%20DOI%20Science%20Policy%20October%2011%202018.pdf>.



²⁷ *California v. Bernhardt*, Docket No. 4:18-cv-05712-YGR, slip. op. at 1 (N.D. Cal. July 15, 2020); *see also* Christy Goldfuss, Sally Hardin, & Marc Rehmann, *12 Climate Wins from the National Environmental Policy Act*, CTR. FOR AMERICAN PROGRESS (May 29, 2019), <https://www.americanprogress.org/issues/green/news/2019/05/29/470374/12-climate-wins-national-environmental-policy-act/>.

²⁸ USGS completes a five-year strategic science plan. *See Office of Budget, Planning, and Integration (BPI): Strategic Planning*, U.S. GEOLOGICAL SURV., <https://www.usgs.gov/about/organization/science-support/budget/strategic-planning> (last visited Sept. 18, 2020).

²⁹ The interviewee emphasized that these plans should include preparations for a future pandemic.

³⁰ Groups like the Union of Concerned Scientists and Public Employees for Environmental Responsibility also have robust lists of recommendations that Department officials could work to implement. *See* UNION OF CONCERNED SCIENTISTS, PRESIDENTIAL RECOMMENDATIONS FOR 2020 (Jan. 29, 2020) <https://www.ucsusa.org/resources/presidential-recommendations-2020>; PUBLIC EMPLOYEES FOR ENV'T'L RESPONSIBILITY, RESTORING SCIENCE, PROTECTING THE PUBLIC: 43 STEPS FOR THE NEXT PRESIDENTIAL TERM (June 2020), <https://www.peer.org/wp-content/uploads/2020/06/6-11-2020-Restoring-Science-Protecting-the-Public.pdf>.

³¹ 42 U.S.C. §§ 4321-4370.

³² 5 U.S.C. §500 et seq.

³³ 5 U.S.C. §552.

³⁴ *See generally* Andre F. Miller, *Cutting the Public Out of Public Lands*, WESTWISE (Jan. 13, 2020), <https://medium.com/westwise/cutting-the-public-out-of-public-lands-b032c4cc01c2>.

³⁵ Secretarial Order No. 3355, Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807 (Aug. 31, 2017), https://www.doi.gov/sites/doi.gov/files/elips/documents/3355_-_streamlining_national_environmental_policy_reviews_and_implementation_of_executive_order_13807_establishing_discipline_and_accountability_in_the_environmental_review_and_permitting_process_for.pdf. The Trump administration later finalized NEPA regulations that similarly direct agencies to shorten timelines and limit page lengths. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020)(To be codified at 40 C.F.R. §§1500-08; 1515-18).

³⁶ For more information on the use of categorical exclusions, *see* Marcilynn A. Burke, *Streamlining or Steamrolling: Oil and Gas Reform on Federal Public Lands in the Trump Administration*, 91 U. Colo. L. Rev. 453, 463, 469, 493-497 (2020).

³⁷*Cf.* Exec. Order No. 12,866, 54 Fed. Reg. 51,735 (Oct. 4, 1993) (“Each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.”).

³⁸ Review of Certain National Monuments Established Since 1996, 82 Fed. Reg. 22,016 (May 11, 2017).

³⁹ Memo from Cindy Cafaro, Departmental FOIA Officer, Dep’t of the Interior, to Assistant Secretaries, Dep’t of the Interior (May 24, 2018) https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_final.pdf; Memo from Cindy Cafaro, Departmental FOIA Officer, Dep’t of the Interior, to Assistant Secretaries, Dep’t of the Interior (Feb. 28, 2019) https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf.

⁴⁰ Secretarial Order 3371, The Department of the Interior Freedom of Information Act Program (Nov. 20, 2018), https://www.doi.gov/sites/doi.gov/files/uploads/so_3371.pdf.

⁴¹ Freedom of Information Regulations, 84 Fed. Reg. 61,820 (Nov. 14, 2019) (to be codified at 43 C.F.R. pt. 2).



⁴² See *Testimony of Rachel Spector, Acting Deputy Chief, FOIA Officer, Department of the Interior, Hearing of Committee on Oversight and Reform*, 116th Cong. (2019), https://fas.org/irp/congress/2019_hr/foia.pdf (Stating that incoming FOIA requests have increased 30% since Fiscal Year 2016, and 210% for the Office of the Secretary).

⁴³ Memo from Cindy Cafaro, Departmental FOIA Officer, Dep't of the Interior, to Assistant Secretaries, Dep't of the Interior (May 24, 2018) https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_final.pdf; Memo from Cindy Cafaro, Departmental FOIA Officer, Dep't of the Interior, to Assistant Secretaries, Dep't of the Interior (Feb. 28, 2019) https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf.

⁴⁴ See DEP'T OF INTERIOR OFFICE OF INSPECTOR GENERAL, REP. NO. 20-0388

ALLEGED INTERFERENCE IN FOIA LITIGATION PROCESS (Aug. 2020); see also WESTERN VALUES PROJECT, RECENT ANALYSIS OF NATIONAL PARK SERVICE DOCUMENTS SHOW FOIA REQUESTS FROM MAJOR MEDIA AND WATCHDOG ORGANIZATIONS WERE SUBJECTED TO THE INTERIOR DEPARTMENT'S POLITICAL "AWARENESS REVIEW" PROCESS (June 2019), <https://westernvaluesproject.org/wp-content/uploads/2019/06/WVP-Analysis-Political-Awareness-Review-Affected-Media-Watchdog-FOIA-Requests.pdf>.

⁴⁵ See e.g. Letter from Raúl Grijalva, Ranking Member, H. Comm. on Nat. Res., et al., to The Hon. David Bernhardt, Interior Sec'y (Mar. 9, 2020), <https://naturalresources.house.gov/imo/media/doc/2020-03-09%20Chair%20Grijalva%20to%20Sec%20Bernhardt%20Final%20Request%20for%20Documents.pdf>; see also Benjamin J. Hulac, *Grijalva gets broadened subpoena power over GOP objections*, ROLL CALL (Feb. 12, 2020), <https://www.rollcall.com/2020/02/12/grijalva-gets-broadened-subpoena-power-over-gop-objections/>.

⁴⁶ Press Release, Dep't of the Interior, Secretary Bernhardt Transforms Interior's Ethics Program (Aug. 14, 2019), <https://www.doi.gov/pressreleases/secretary-bernhardt-transforms-interiors-ethics-program>.

⁴⁷ See Dino Grandoni, *The Energy 202: Trump administration continues oil and gas leasing during price drop and coronavirus pandemic*, THE WASHINGTON POST (Mar. 23, 2020), <https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2020/03/23/the-energy-202-trump-administration-continues-oil-and-gas-leasing-during-coronavirus-pandemic/5e752cba88e0fa101a74ec1a/>; Jennifer Yachnin & Michael Doyle, *Coronavirus won't slow lease sales, rulemakings*, GREENWIRE (Mar. 17, 2020), <https://www.eenews.net/greenwire/stories/1062629183/>.

⁴⁸ See e.g. *Western Watersheds Project v. Zinke*, No. 1:18-cv-00187-REB, slip op. at 3 (N.D. Idaho Feb. 27, 2020).

⁴⁹ Cf. Dino Grandoni, *The Energy 202: Public hearings on Zoom have Native Americans worried they won't be heard on oil projects*, THE WASHINGTON POST (May 18, 2020), <https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2020/05/18/the-energy-202-public-hearings-on-zoom-have-native-americans-worried-they-won-t-be-heard-on-oil-projects/5ec15672602ff11bb1183c87/>; Heather Richards, *'The would not unmute me.' Inside BLM's virtual meetings*, ENERGYWIRE (May 7, 2020), <https://www.eenews.net/energywire/stories/1063068097/>.

⁵⁰ See generally 1 COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 5.04(3) (2019) (describing the U.S. trust responsibility to tribes).

⁵¹ See, e.g., Jeanette Wolfley, *Reclaiming a Presence in Ancestral Lands: The Return of Native Peoples to the National Parks*, 56 NAT. RES. J. 55, 66–70 (2016) (describing how current NPS policy inadequately meets federal trust obligations).

⁵² 54 U.S.C. § 302706.

⁵³ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-19-22, TRIBAL CONSULTATION: ADDITIONAL FEDERAL ACTIONS NEEDED FOR INFRASTRUCTURE PROJECTS 8-11 (2019).

⁵⁴ Policy on Consultation with Indian Tribes, 76 Fed. Reg. 28,446 (May 17, 2011).



⁵⁵ For a list of additional sources of consultation obligations, see U.S. General Services Administration, Tribal Consultation, www.gsa.gov/tribalconsultation (last visited Sept. 18, 2020).

⁵⁶ 25 U.S.C. §§458aa-hh (2006). For more information on implementation of the law, see Mary Ann King, *Co-Management or Contracting? Agreements between Native American Tribes and the U.S. National Parks Service Pursuant to the 1994 Tribal Self-Governance Act*, 31 HARV. ENVTL. L. REV. 475 (2007).

⁵⁷ See e.g. Aliyah Chavez, *Crow Tribal Chairman endorses Trump campaign*, INDIAN COUNTRY TODAY (Sept. 15, 2020), <https://indiancountrytoday.com/news/crow-tribal-chairman-endorses-trump-campaign-0XWBbrkBP0KzVwQnkjQo3A>.

⁵⁸ Exec. Order. No. 13,175, 65 Fed. Reg. 67,249 (Nov. 9, 2000).

⁵⁹ See Acee Agoyo, Tribal consultation policies still lacking amid challenges in Trump era, INDIANZ.COM (April 23, 2019), <https://www.indianz.com/News/2019/04/23/tribal-consultation-policies-still-lacki.asp>.

⁶⁰ Secretarial Order No. 3342, Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources (Oct. 21, 2016), https://www.doi.gov/sites/doi.gov/files/uploads/so3342_partnerships.pdf.

⁶¹ See e.g. List of Programs Eligible for Inclusion in Funding Agreements Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs and Fiscal Year 2020 Programmatic Targets, 85 Fed. Reg. 12,326 (March 2, 2020).

⁶² Press Release, Dep't of the Interior, White House Re-Establishes Council on Native American Affairs to Support Continued Inter-Agency Coordination with Indian Country (Apr. 28, 2020), <https://www.doi.gov/pressreleases/white-house-re-establishes-council-native-american-affairs-support-continued-inter>; National Congress of American Indians called for the establishment of such a council in 2009, and its creation was seen as a significant step forward for the government-to-government relationship between the federal government and tribal nations.

⁶³ Because the administration moved the Council's new executive director from the White House to DOI, some tribal leaders questioned whether its transition should be seen as a demotion. See Acee Agoyo, *'He got demoted': Trump administration moves Indian Country official out of White House*, INDIANZ.COM (Apr. 29, 2020), <https://www.indianz.com/News/2020/04/29/he-got-demoted-trump-administration-move.asp>.

⁶⁴ See *Joe Biden's Commitment to Indian Country*, <https://joebiden.com/joe-bidens-commitment-to-indian-country/> (last visited Sept. 18, 2020).

⁶⁵ The state of Oregon has many collaborative and management agreements with state and federally recognized tribes. See OREGON DEP'T OF FISH AND WILDLIFE, ODFW AND TRIBAL PARTNERSHIPS IN 2019 (Dec. 2019), [https://www.oregonlegislature.gov/cis/GovToGovReports/2019%20\(ODFW\).pdf](https://www.oregonlegislature.gov/cis/GovToGovReports/2019%20(ODFW).pdf). Tribal nations associated with the Great Lakes have played a large role in management the lakes and fisheries. See Jacqueline Pehlan Hand, *Protecting the World's Largest Body of Fresh Water: The Often Overlooked Role of Indian Tribes' Co-Management of the Great Lakes*, 47 NAT. RESOURCES J. 815 (2007). Many other states are also increasingly using co-management agreements.

⁶⁶ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-19-22, TRIBAL CONSULTATION: ADDITIONAL FEDERAL ACTIONS NEEDED FOR INFRASTRUCTURE PROJECTS 8-11 (2019).

⁶⁷ See Hilary Tompkins, *Tribes, Courts, & Consultation*, American Bar Association Section of Environment, ENERGY, AND RESOURCES, <https://www.hoganlovells.com/en/publications/tribes-courts-consultation> (“[Engagement] with tribes early in the decision-making process, beyond what is offered to the general public, can pay dividends later.”).

⁶⁸ While some interviewees felt strongly that BLM needed to move its headquarters back to DC, other interviewees thought that, if necessary for political reasons, it could be possible to move only the appropriate staff back to DC.



⁶⁹ *What We Manage*, BUREAU OF LAND MGMT., <https://www.blm.gov/about/what-we-manage/national> (last visited Sept. 18, 2020).

⁷⁰ *Our Mission*, BUREAU OF LAND MGMT., <https://www.blm.gov/about/our-mission> (last visited Sept. 18, 2020).

⁷¹ 43 U.S.C. §§ 1701–1787 (1976)

⁷² *See* 43 U.S.C. § 1701(a) (1976)

⁷³ *See* MARK H. DESANTIS, CONG. RSCH. SERV., R45480, U.S. DEPARTMENT OF THE INTERIOR: AN OVERVIEW 4, FIG. 10 (March 2019).

⁷⁴ *See* Heather Hansman, *The Problem with the BLM Moving to the West*, OUTSIDE (Nov. 21, 2019), <https://www.outsideonline.com/2405827/blm-move-grand-junction-colorado-problem>.

⁷⁵ *See* MARK H. DESANTIS, CONG. RSCH. SERV., R45480, U.S. DEPARTMENT OF THE INTERIOR: AN OVERVIEW 24, fig. 4 (March 2019).

⁷⁶ *See* Heather Hansman, *The Problem with the BLM Moving to the West*, OUTSIDE (Nov. 21, 2019), <https://www.outsideonline.com/2405827/blm-move-grand-junction-colorado-problem>.

⁷⁷ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-20-397R, BUREAU OF LAND MANAGEMENT: AGENCY'S REORGANIZATION EFFORT DID NOT SUBSTANTIALLY ADDRESS KEY PRACTICES FOR EFFECTIVE REFORMS 3 (2020); *BLM Disorganization: Examining the Proposed Reorganization and Relocation of the Bureau of Land Management Headquarters to Grand Junction, Colorado before the H. Comm. on Natural Res.*, 116th Cong. (2019) (Testimony of William Perry Pendley, Deputy Dir., Policy and Programs, Bureau of Land Mgmt.), <https://www.doi.gov/ocl/blm-reorganization>.

⁷⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-20-397R, BUREAU OF LAND MANAGEMENT: AGENCY'S REORGANIZATION EFFORT DID NOT SUBSTANTIALLY ADDRESS KEY PRACTICES FOR EFFECTIVE REFORMS 4 (2020); *BLM Disorganization: Examining the Proposed Reorganization and Relocation of the Bureau of Land Management Headquarters to Grand Junction, Colorado before the H. Comm. on Natural Res.*, 116th Cong. (2019) (Testimony of William Perry Pendley, Deputy Dir., Policy and Programs, Bureau of Land Mgmt.), <https://www.doi.gov/ocl/blm-reorganization>.

⁷⁹ Mike Spies & J. David McSwane, *Inside the Trump Administration's Chaotic Dismantling of the Federal Land Agency*, PROPUBLICA (Sept. 20, 2019), <https://www.propublica.org/article/inside-the-trump-administrations-chaotic-dismantling-of-the-federal-land-agency>.

⁸⁰ *Cf. BLM Disorganization: Examining the Proposed Reorganization and Relocation of the Bureau of Land Management Headquarters to Grand Junction, Colorado before the H. Comm. on Natural Res.*, 116th Cong. (2019) (Testimony of William Perry Pendley, Deputy Dir., Policy and Programs, Bureau of Land Mgmt.), <https://www.doi.gov/ocl/blm-reorganization> (“Under the BLM’s implementation plan, the Deputy Director of Policy and Programs will remain in Washington, D.C., along with 60 staff who will continue to perform functions in the Main Interior Building that are inherently and logically located in Washington. For example, a majority of the Bureau’s staff who directly inform and perform duties tied to its budgetary responsibilities will continue to remain in Washington, D.C. as will a majority of the staff performing functions in its Legislative Affairs, Regulatory Affairs, Public Affairs, and Freedom of Information Act divisions.”).

⁸¹ Pendley’s title is, “Deputy Director, Policy and Programs, exercising the delegated authority of the Director, Bureau of Land Management.” *See* Memo from William Perry Pendley, Deputy Director, Policy and Programs, to Casey Hammond, Principal Deputy Assistant Secretary (May 22, 2020), https://www.enews.net/assets/2020/08/19/document_gw_03.pdf.

⁸² *See* Steven Mufson, *Interior secretary extends the tenure of federal lands chief — without a presidential nomination*, THE WASHINGTON POST (Jan. 2, 2020), https://www.washingtonpost.com/climate-environment/interior-secretary-extends-the-tenure-of-federal-lands-chief---without-nominating-him/2020/01/02/0facd6fe-2da0-11ea-9b60-817cc18c173_story.html.



⁸³ Memo from William Perry Pendley, Deputy Director, Policy and Programs, to Casey Hammond, Principal Deputy Assistant Secretary (May 22, 2020), https://www.eenews.net/assets/2020/08/19/document_gw_03.pdf.

⁸⁴ *Public Employees for Env'tl. Responsibility v. Bernhardt*, No. 1:20-cv-01224 (D.D.C. May 11, 2020).

⁸⁵ *Bullock v. Bureau of Land Management*, No. 4:20-cv-00062-BMM (D. Mont. July 20, 2020).

⁸⁶ Press Release, The White House, President Donald J. Trump Announces Intent to Nominate and Appoint Individuals to Key Administration Posts (June 26, 2020), <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-appoint-individuals-key-administration-posts-43/> (sending the nomination of Pendley to the Senate); Press Release, The White House, Eleven Nominations and Three Withdrawals Sent to the Senate (Sept. 8, 2020), <https://www.whitehouse.gov/presidential-actions/eleven-nominations-three-withdrawals-sent-senate/> (withdrawing Pendley's nomination).

⁸⁷ *Bullock v. Bureau of Land Management*, No. 4:20-cv-00062-BMM (D. Mont. Sept. 25, 2020).

⁸⁸ See Perrin Stein, *Pendley BLM nomination pulled; groups continue to push for removal*, BOZEMAN DAILY CHRON. (Aug. 18, 2020), https://www.bozemandailychronicle.com/news/pendley-blm-nomination-pulled-groups-continue-push-for-removal/article_713bbf89-3a7f-5762-94cc-8faaf3f4a0f3.html.

⁸⁹ See Bob Moore, *Guest Commentary: Don't dismantle the BLM by moving its headquarters to Grand Junction*, THE DENVER POST (Dec. 13, 2019), <https://www.denverpost.com/2019/12/13/dont-dismantle-the-blm-headquarters-move-grand-junction/>; Dana Milbank, *This is how the Trump administration quietly incapacitates the government*, The Washington Post (Sept. 10, 2019), https://www.washingtonpost.com/opinions/this-is-how-the-trump-administration-quietly-incapacitates-the-government/2019/09/10/109a54c0-d412-11e9-9610-fb56c5522e1c_story.html.

⁹⁰ 43 U.S.C. § 1712(a).

⁹¹ Rebecca Beitsch, *BLM move would split apart key public lands team*, THE HILL (Oct. 14, 2019), <https://thehill.com/policy/energy-environment/465687-blm-move-would-fragment-environmental-team-that-vets-development-of>.

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⁹³ See e.g. *Wildearth Guardians v. Zinke*, 368 F.Supp.3d 41, 59 (D.D.C. 2019); See also Christy Goldfuss, Sally Hardin, & Marc Rehmann, *12 Climate Wins from the National Environmental Policy Act*, CTR. FOR AMERICAN PROGRESS (May 29, 2019), <https://www.americanprogress.org/issues/green/news/2019/05/29/470374/12-climate-wins-national-environmental-policy-act/>.

⁹⁴ See Christy Goldfuss, Sally Hardin, & Marc Rehmann, *12 Climate Wins from the National Environmental Policy Act*, CTR. FOR AMERICAN PROGRESS (May 29, 2019), <https://www.americanprogress.org/issues/green/news/2019/05/29/470374/12-climate-wins-national-environmental-policy-act/>.

⁹⁵ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) (To be codified at 40 C.F.R. §§1500-08; 1515-18).

⁹⁶ See generally Marcilynn A. Burke, *Streamlining or Steamrolling: Oil and Gas Reform on Federal Public Lands in the Trump Administration*, 91 U. Colo. L. Rev. 453, 467-481(2020); see also e.g. Niina H. Farah, *BLM halts leases after sage grouse, climate legal brawl*, ENERGYWIRE (Nov. 14, 2019), <https://www.eenews.net/stories/1061543717>; but see *NAEC v. DOI*, No. 19-



35008 (9th Cir. July 9, 2020)(Finding that BLM did not violate the National Environmental Protection Act by relying on its 2012 Environmental Impact Statement for the National Petroleum Reserve-Alaska to conduct lease sales in 2017).

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¹⁰⁰ *BLM Greater Sage-Grouse Plans*, BUREAU OF LAND MGMT., <https://www.blm.gov/programs/fish-and-wildlife/sagegrouse/blm-sagegrouse-plans> (last visited Sept. 18, 2020).

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¹⁰² See BUREAU OF LAND MGMT., INSTRUCTION MEMORANDUM NO. 2013-101, OIL AND GAS LEASING REFORM – MASTER LEASING PLANS (April 12, 2013), <https://www.blm.gov/policy/im-2013-101-0>.

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¹⁰⁴ See generally Michael C. Blumm & Olivier Jamin, *The Trump Public Lands Revolution: Redefining “The Public” In Public Lands*, 48 ENVTL. L. 311 (Spring 2018).

¹⁰⁵ Public Law 115-12, 131 Stat. 76 (2017).

¹⁰⁶ Resource Management Planning, 81 Fed. Reg. 89,580 (Dec. 12, 2016) (Codified at 43 C.F.R. pt. 1600).

¹⁰⁷ BUREAU OF LAND MGMT., INSTRUCTION MEMORANDUM NO. 2018-034, UPDATING OIL AND GAS LEASING REFORM – LAND USE PLANNING AND LEASE PARCEL REVIEWS (Feb. 1, 2018), <https://www.blm.gov/policy/im-2018-034>.

¹⁰⁸ *Western Watersheds Project v. Zinke*, No. 1:18-cv-00187-REB, slip op. at 3 (N. D. Idaho Feb. 27, 2020).

¹⁰⁹ See generally Michael C. Blumm, Olivier Jamin, *The Trump Public Lands Revolution: Redefining “The Public” In Public Lands*, 48 ENVTL. L. 311 (Spring 2018).

¹¹⁰ See Bobby Magill, *When Public Comments Aren’t Public: Land Agency Holding Records*, BLOOMBERG LAW (June 24, 2020), <https://news.bloomberglaw.com/environment-and-energy/when-public-comments-arent-public-land-agency-holding-records>.

¹¹¹ 43 U.S.C. §1739.

¹¹² See e.g. Bureau of Land Mgmt., Mojave-Southern Great Basin Resource Advisory Council Charter §4 (2018), <https://www.blm.gov/sites/blm.gov/files/documents/files/Nevada-2018-MOSO%20signed%20charter.pdf>



¹¹³ See William Perry Pendley, Commentary: Building trust with Westerners, *LAS VEGAS REVIEW-JOURNAL* (Nov. 16, 2019), <https://www.reviewjournal.com/opinion/commentary-building-trust-with-westerners-1894676/> (“Rangers...partner with local law enforcement, while recognizing that counties are a governmental-arm of sovereign states. Maintaining that deference is essential to making BLM a truly productive and valued partner to Western communities.”).

¹¹⁴ Forest Management Decision Protest Process and Timber Sale Administration, 85 Fed. Reg. 35,049 (proposed June 8, 2020).

¹¹⁵ See Bobby Magill, *Land Bureau May Exempt Plans from Environmental Review*, *BLOOMBERG LAW* (Feb. 4, 2020), <https://news.bloomberglaw.com/environment-and-energy/trumps-land-agency-may-exempt-plans-from-environmental-review>.

¹¹⁶ See generally Mark Squillace, *Rethinking Public Land Use Planning*, 43 *HARV. ENVTL. L. REV.* 415, 459-463 (2019).

¹¹⁷ 5 U.S.C. §801(b)(2) (“A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.”).

¹¹⁸ BUREAU OF LAND MGMT., *BLM MANUAL, MS-1780-TRIBAL RELATIONS*, 1-13 blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf.

¹¹⁹ Proclamation No. 9681, Modifying the Bears Ears National Monument, 82 Fed. Reg. 58,081 (Dec. 8, 2017). Other occurrences include the closely related shrinking of Grand Staircase-Escalante, Colin Dwyer, *Trump Administration Finalizes Plans to Allow Development on Downsized Monuments*, *NPR* (February 6, 2020), <https://www.npr.org/2020/02/06/803467297/trump-administration-finalizes-plans-to-allow-development-on-downsized-monuments>, the opening up of Chaco Culture National Historical Park to energy development, Kendra Chamberlain, *BLM Will Move Forward on Greater Chaco Drilling Proposal While Communities Grapple with COVID-19 Surge*, *THE N.M. POLITICAL REPORT* (May 2, 2020), <https://nmpoliticalreport.com/2020/05/02/blm-will-move-forward-on-greater-chaco-drilling-proposal-while-communities-grapple-with-covid-19-surge/>, and the expansion of drilling near the Ruby Mountains, Tiffany Higgins, *Te-Moak Tribe Decries Lack of Consultation on Drilling Plans*, *THE REVELATOR* (April 3, 2019), <https://www.indianz.com/News/2019/04/03/the-revelator-temoak-tribe-decries-lack.asp>.

¹²⁰ See Tim Peterson, *Tribes Celebrate Designation of National Monument at Bears Ears*, *INDIANZ.COM* (Jan. 9, 2017), <https://www.indianz.com/News/2017/01/09/tribes-celebrate-designation-of-national.asp>.

¹²¹ Proclamation No. 9681, Modifying the Bears Ears National Monument, 82 Fed. Reg. 58,081 (Dec. 8, 2017).

¹²² Memorandum from The Sec’y of the Interior Ryan Zinke to the President, 10 (Aug. 24, 2017) (“You should request congressional authority to enable tribal co-management of designated cultural areas within the revised [Bears Ears National Monument] boundaries.”).

¹²³ See Brian Maffly, *Feds Stack Bears Ears Advisory Group With Critics of Southern Utah Monument*, *THE SALT LAKE TRIB.* (Apr. 23, 2019), <https://www.sltrib.com/news/environment/2019/04/23/feds-stack-bears-ears/>.

¹²⁴ See Salt Lake Trib. Editorial Board, *Tribune Editorial: Bears Ears committee is a monument to bad intentions*, *THE SALT LAKE TRIB.* (April 27, 2019), <https://www.sltrib.com/opinion/editorial/2019/04/27/tribune-editorial-bears/>.

¹²⁵ See Heather Richards, *Tribes Accuse BLM of Shutting Them Out on Drilling Decisions*, *E&E NEWS* (July 16, 2019), <https://www.eenews.net/stories/1060744797>.

¹²⁶ U.S. DEP’T OF THE INTERIOR, OFF. OF THE INSPECTOR GEN., *ALLEGED WILLFUL VIOLATION OF REGULATIONS BY BLM OFFICIAL*, Case No. OI-OG-18-0347-I, Attachment 4, 2 (2018), <https://www.documentcloud.org/documents/6186975-Wiles-2019-00049-Responsive-Documents.html>.



¹²⁷ *Gwich'in Steering Committee v. Bernhardt*, No. 3:20-cv-00204 (D. Alaska Aug. 24, 2020); *Native Village of Venetie Tribal Government v. Bernhardt*, No. 3:20-cv-00223 (D. Alaska Sept. 9, 2020). Members of the Iñupiat tribe are generally more supportive of leasing in the Arctic National Wildlife Refuge. See VOICE OF THE ARCTIC IÑUPIAT, <https://voiceofthearcticinupiat.org/about/> (listing development of the North Slope as the organization's third priority).

¹²⁸ See Anna V. Smith, *Tribal Leaders Oppose Online Consultations with The U.S. During the Pandemic*, HIGH COUNTRY NEWS (May 27, 2020), <https://www.hcn.org/articles/covid19-indigenous-affairs-tribal-leaders-oppose-online-consultations-with-the-us-during-the-pandemic> (tribal leaders say that consultation with BLM has not been meaningful during the COVID-19 pandemic); see also Susan Montoya Bryan, *Pueblos, lawmakers seek pause on Chaco plan*, ASSOCIATED PRESS (Aug. 29, 2020), <https://www.abqjournal.com/1491587/pueblos-seek-pause-on-chaco-plan.html>.

¹²⁹ BUREAU OF LAND MGMT., BLM MANUAL, MS-1780-TRIBAL RELATIONS, 1-1 to 1-2 (2016), <https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>.

¹³⁰ Tribal governments are often hesitant to provide the location of sacred or culturally important sites because of Interior's confidentiality policies. For more information, see Jeanette Wolfley, *Reclaiming a Presence in Ancestral Lands: The Return of Native Peoples to the National Parks*, 56 NAT. RESOURCES J. 55, 78-80 (Winter 2016).

¹³¹ One interviewee noted the possibility of integrating the government's trust relationship with tribal nations into FLPMA decision-making, which would create a policy lever for ensuring development doesn't harm native communities.

¹³² For a discussion on co-management with BLM, see Brett Kenney, *Tribes as Managers of Federal Lands*, 27-SUM. NAT. RESOURCES & ENV'T 47, 49-50 (2012).

¹³³ 54 U.S.C. §100101(a).

¹³⁴ 54 U.S.C. § 100302(a)(2).

¹³⁵ See MARK H. DESANTIS, CONG. RSCH. SERV., R45480, U.S. DEPARTMENT OF THE INTERIOR: AN OVERVIEW 13 (March 2019). (The number fluctuates because NPS relies on a large number of seasonal and part-time employees).

¹³⁶ Press Release, Public Employees for Env't'l Responsibility, *Evaporating National Park Staff Levels* (Nov. 5, 2019), <https://www.peer.org/evaporating-national-park-staff-levels/>.

¹³⁷ Secretary Bernhardt allowed Deputy Director David Vela to "[exercise] the authority of the Director" for 10 months, including an order extending his term indefinitely. Two environmental organizations have filed a lawsuit arguing that these actions violate the Federal Vacancies Reform Act. See *Public Employees for Env't'l. Responsibility v. Bernhardt*, No. 1:20-cv-01224 (D.D.C. May 11, 2020). Following Vela's retirement, Secretary Bernhardt authorized Margaret Everson "to Exercise the Delegable Authority of the Director of the [NPS]" rather than make her the acting director. See Press Release, Dep't of the Interior, Secretary Bernhardt Designates Margaret Everson to Exercise the Delegable Authority of the Director of the National Park Service (Aug. 7, 2020), <https://www.doi.gov/pressreleases/secretary-bernhardt-designates-margaret-everson-exercise-delegable-authority-director>.

¹³⁸ See Theresa Pierno & Phil Francis, *No one at the helm of America's national parks*, THE HILL (Feb. 17, 2020), <https://thehill.com/opinion/energy-environment/483173-no-one-at-the-helm-of-americas-national-parks>.

¹³⁹ See generally Interior Secretary David Bernhardt's Autocratic Power Grab, PEER (Aug. 3, 2020), <https://www.peer.org/david-bernhardts-autocratic-power-grab/>.

¹⁴⁰ See Mark Kaufman, *How Trump bent the National Park Service to do his bidding*, MASHABLE (Aug. 14, 2020), <https://mashable.com/article/national-park-service-no-leader/?europa=true>; see also Letter from The Coalition to Protect America's National Parks to Margaret Everson, Counselor to the Sec'y, Dep't of the Interior (Aug. 17, 2020), <https://protectnps.org/2020/08/17/coalition-objects-to-using-parks-as-campaign-stops/> (Arguing that "it is inappropriate for the NPS to permit partisan political campaign events to be conducted in parks.").



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- ¹⁴¹ See *generally Interior Reorganization*, U.S. DEP'T OF THE INTERIOR, <https://www.doi.gov/employees/reorg>.
- ¹⁴² Memorandum from David Bernhardt, Sec'y of the Interior to Assistant Secretaries (July 15, 2019), https://www.doi.gov/sites/doi.gov/files/migrated/secretarys_memo_implementation_and_standardization_of_the_unified_regions_2019-07-16.pdf.
- ¹⁴³ See Morgan Chalfant & Rachel Frazin, *Trump says national parks to start reopening as states lax coronavirus restrictions*, THE HILL (April 22, 2020), <https://thehill.com/policy/energy-environment/494107-trump-says-national-parks-to-start-reopening-as-states-relax>.
- ¹⁴⁴ Press Release, N'tl Park Serv., Retirement Date for Superintendent of Yellowstone Dan Wenk (July 19, 2018), <https://www.nps.gov/yell/learn/news/07092018.htm>.
- ¹⁴⁵ For example, the superintendent of the Grand Canyon is a lawyer who has served at DOI for decades but does not have experience managing parks. This choice is not unanimously opposed by interested groups. See Kurt Repanshek, *Incoming Grand Canyon Superintendent Brings Deep Background to Challenging Job*, NATIONAL PARKS TRAVELER (Apr. 9, 2020), <https://www.nationalparks.traveler.org/2020/04/incoming-grand-canyon-superintendent-brings-deep-background-challenging-job>.
- ¹⁴⁶ *Public Employees for Env'tl. Responsibility v. Bernhardt*, No. 1:20-cv-01224 (D.D.C. May 11, 2020).
- ¹⁴⁷ 54 USC §100702.
- ¹⁴⁸ Director's Order No. 100, Resource Stewardship for the 21st Century §4 (Dec. 20, 2016) (Rescinded Aug. 16, 2017), https://www.nps.gov/policy/DOrders/DO_100.htm.
- ¹⁴⁹ N'TL PARK SYSTEM ADVISORY BOARD SCIENCE COMM., REVISITING LEOPOLD: RESOURCE STEWARDSHIP IN THE NATIONAL PARKS (2012), https://www.nps.gov/calltoaction/pdf/leopoldreport_2012.pdf.
- ¹⁵⁰ Director's Order No. 100, Resource Stewardship for the 21st Century §4 (Dec. 20, 2016) (Rescinded Aug. 16, 2017), https://www.nps.gov/policy/DOrders/DO_100.htm.
- ¹⁵¹ Director's Order No. 100, Resource Stewardship for the 21st Century, §4 (Dec. 20, 2016) (Rescinded Aug. 16, 2017), https://www.nps.gov/policy/DOrders/DO_100.htm.
- ¹⁵² See Elizabeth Shogren, *These Emails Show Exactly How Science was Wiped Out at the Department of the Interior*, MOTHER JONES (July 30 2018), <https://npca.s3.amazonaws.com/images/11407/7599ec61-f335-449e-9b3d-23ff67b0cf21-original.jpg?1504121992>.
- ¹⁵³ See Timothy Cama, *Zinke reprimanded park head after climate tweets*, THE HILL (Dec. 15, 2017), <https://thehill.com/policy/energy-environment/364994-zinke-reprimanded-park-head-after-climate-tweets>
- ¹⁵⁴ UNION OF CONCERNED SCIENTISTS, SCIENCE UNDER TRUMP (2018), <https://www.ucsusa.org/sites/default/files/images/2018/08/science-under-trump-report.pdf>
- ¹⁵⁵ See Brad Plumer & Coral Davenport, *Science Under Attack: How Trump is Sidelineing Researchers and their Work*, N.Y. TIMES (Dec. 28, 2019), <https://www.nytimes.com/2019/12/28/climate/trump-administration-war-on-science.html>.
- ¹⁵⁶ Director's Order 100 included a provision requiring that superintendents possess and demonstrate scientific literacy. Director's Order No. 100, Resource Stewardship for the 21st Century §9 (Dec. 20, 2016) (Rescinded Aug. 16, 2017) (“Ensuring Scientific Literacy for Superintendents”).
- ¹⁵⁷ Great American Outdoors Act, 54 U.S.C. §§ 200401-03 (2020).
- ¹⁵⁸ 52 U.S.C. §§ 100801-04



¹⁵⁹ See Scott Streater, *Major parks ‘rudderless’ with outdated management plans – report*, GREENWIRE (June 30, 2016), <https://www.eenews.net/greenwire/stories/1060039684/>.

¹⁶⁰ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) (To be codified at 40 C.F.R. §§1500-08; 1515-18); Secretarial Order No. 3355, Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807 (Aug. 31, 2017), https://www.doi.gov/sites/doi.gov/files/elips/documents/3355_-_streamlining_national_environmental_policy_reviews_and_implementation_of_executive_order_13807_establishing_discipline_and_accountability_in_the_environmental_review_and_permitting_process_for.pdf.

¹⁶¹ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) (To be codified at 40 C.F.R. §§1500-08; 1515-18).

¹⁶² The Board was established in 1935 to provide advice to the secretary and is required to meet at least twice a year. See *Committee Detail: National park System Advisory Board – Agency Authority*, FACA DATABASE, <https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzocAAA>.

¹⁶³ *Advisory Board Meetings*, N^{tl.} PARK SERV., <https://www.nps.gov/resources/advisoryboard150.htm>.

¹⁶⁴ See Juliet Eilperin, *Nearly all members of the National Park Service advisory panel resign in frustration*, THE WASHINGTON POST (Jan. 17, 2018), https://www.washingtonpost.com/national/health-science/nearly-all-members-of-national-park-service-advisory-panel-resign-in-frustration/2018/01/16/b322ef5e-fae3-11e7-ad8c-ecbb62019393_story.html.

¹⁶⁵ Press Release, Dep’t of the Interior, Secretary Zinke Selects Members of Newly Created “Made in America” Outdoor Recreation Advisory Committee (March 26, 2018), <https://www.doi.gov/pressreleases/secretary-zinke-selects-members-newly-created-made-america-outdoor-recreation-advisory>; Complaint at 19, *Public Employees for Envt’l Responsibility v. N’tl. Park Serv.*, 1:19-cv-03629 (D.D.C. Dec 04, 2019).

¹⁶⁶ See *‘Made in America’ Outdoor Recreation Advisory Committee*, N^{tl.} Park Serv., <https://www.nps.gov/orgs/1892/made-in-america-rac.htm> (last visited Sept. 18, 2020) (Noting that the committee was terminated on Nov. 1, 2019); Rob Hotakainen, *NPS axes industry-dominated advisory group amid legal fears*, E&E NEWS (Dec. 17, 2019), <https://www.eenews.net/stories/1061836483>.

¹⁶⁷ See Jeremy P. Jacobs & Rob Hotakainen, *Racist roots, lack of diversity haunt national parks*, E&E NEWS (June 25, 2020), <https://www.eenews.net/stories/1063447583>.

¹⁶⁸ See Matthew Daly, *National Park Service drops funding for Black Panther Party project*, PBS NEWSHOUR (Oct. 30, 2017), <https://www.pbs.org/newshour/politics/national-park-service-drops-funding-for-black-panther-party-project>.

¹⁶⁹ See Benjamin J. Hulac, *Interior watchdog to probe Park Police clash with demonstrators*, ROLL CALL (June 22, 2020), <https://www.rollcall.com/2020/06/22/interior-watchdog-to-probe-park-police-clash-with-demonstrators/>.

¹⁷⁰ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) (To be codified at 40 C.F.R. §§1500-08; 1515-18).

¹⁷¹ See e.g. Exec. Order 13,934, 85 Fed. Reg. 41,165 (July 3, 2020).

¹⁷² Letter from Bill Yeargin, Chair, Outdoor Recreation Advisory Committee to the Hon Ryan Zinke, Sec’y of the Dep’t of the Interior (Oct. 10, 2019), https://www.nps.gov/orgs/1892/upload/ORAC_recommendations_letter_to_DOI-Oct102019.pdf (Recommendations attached to the letter).

¹⁷³ Commercial Visitor Services; Concession Contracts, 85 Fed. Reg. 43,775 (to be codified at 36 C.F.R. pt. 51) (Proposed on July 20, 2020).



¹⁷⁴ see Brett French, *National Park Service proposes changes to concession contracts*, THE BILLINGS GAZETTE (July 26, 2020), https://billingsgazette.com/lifestyles/recreation/national-park-service-proposes-changes-to-concession-contracts/article_ac143e01-4b6b-5a8d-a961-2047f076d2e7.html.

¹⁷⁵ N^oTL PARK SERV., MANAGEMENT POLICIES §1.11 (2006), https://www.nps.gov/policy/MP_2006.pdf.

¹⁷⁶ See Jeanette Wolfley, *Reclaiming a Presence in Ancestral Lands: The Return of Native Peoples to the National Parks*, 56 NAT. RESOURCES J. 55, 78-80 (Winter 2016).

¹⁷⁷ Section 804 of the Alaska National Interest Lands Conservation Act (ANILCA) includes a priority for subsistence uses of fish and wildlife on federal public lands. 16 U.S.C. §3114 (“Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes.”). This affords Alaska Native communities subsistence hunting and fishing rights on public lands in Alaska that tribal nations in the lower 48 states generally lack.

¹⁷⁸ Secretarial Order No. 3317, Department of the Interior Policy on Consultation with Indian Tribes (2011), <https://www.fws.gov/nativeamerican/pdf/secretarial-order-3317.pdf>.

¹⁷⁹ See N^oTL PARK SERV., MANAGEMENT POLICIES §8.5 (2006), https://www.nps.gov/policy/MP_2006.pdf. (“Superintendents will establish and maintain consulting relationships with potentially affected American Indian tribes or traditionally associated groups.”).

¹⁸⁰ 25 U.S.C. §§ 458aa-hh(2006). The TGSA allows tribes to enter into contracts (called Annual Funding Agreements) with bureaus within the Department of Interior whereby the bureaus delegate limited management responsibility to the tribes.

¹⁸¹ The National Congress of American Indians called on the Obama administration to study and find solutions for the lack of finalized funding agreements. See THE NATIONAL CONGRESS OF AMERICAN INDIANS, RESOL. #PHX-16-020 (2016), (http://www.ncai.org/attachments/Resolution_UUnNhTjnAYiVMTNNySVhAObuojWHvIZwyWoRoUyaRcZdkROgNID_PHX-16-020%20final.pdf).

¹⁸² Caron Walker, *Tribes may gain control of the South Unit of Badlands*, THE HOUSTON CHRONICLE (Aug. 3, 2008), <https://www.chron.com/news/nation-world/article/Tribes-may-gain-control-of-South-Unit-of-Badlands-1780930.php>

¹⁸³ Director’s Order No. 100, Resource Stewardship for the 21st Century §4 (Dec. 20, 2016)(Rescinded Aug. 16, 2017) (“Integrating Natural and Cultural Resource Stewardship”).

¹⁸⁴ 16 U.S.C. §668dd(a)(2).

¹⁸⁵ This description is based on interviews. See also

¹⁸⁶ See MARK H. DESANTIS, CONG. RSCH. SERV., R45480, U.S. DEPARTMENT OF THE INTERIOR: AN OVERVIEW 14 (March 2019).

¹⁸⁷ NOAA Fisheries is responsible for marine and anadromous species. *Endangered Species Conservation*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/topic/endangered-species-conservation> (last visited Sept. 18, 2020).

¹⁸⁸ See Press Release, Dep’t of the Interior, U.S. Senate Confirms Aurelia Skipwith as Director of U.S. Fish and Wildlife Service, (Dec. 12, 2019), <https://www.doi.gov/pressreleases/us-senate-confirms-aurelia-skipwith-director-us-fish-and-wildlife-service>; Michael Doyle, *Skipwith Confirmed as Fish and Wildlife Service Director*, GREENWIRE (Dec. 12, 2019), <https://www.eenews.net/greenwire/stories/1061793089>.

¹⁸⁹ See Heather Richards, *Bernhardt’s Alaska, ANWR drilling adviser*, E&E NEWS (Sept. 11, 2020), <https://www.eenews.net/eenewspm/2020/09/11/stories/1063713527>.



¹⁹⁰ See Adam Federman, *The Man Determined to Deliver Trump's Alaskan Oil Promise*, POLITICO (Aug. 8, 2020), <https://www.politico.com/news/magazine/2020/08/08/trump-alaska-oil-wildlife-refuge-388548>.

¹⁹¹ See *id.* § 9, 16 U.S.C. § 1538.

¹⁹² See Miranda Green, *Trump Administration Abruptly Ends Key Law Enforcement Program at Wildlife Refuges*, THE HILL (Oct. 2, 2018), <https://thehill.com/policy/energy-environment/409455-trump-administration-ends-key-law-enforcement-program-at-wildlife>.

¹⁹³ Press Release, Secretary Zinke Expands Hunting and Fishing Opportunities at 30 of America's National Wildlife Refuges, U.S. Fish & Wildlife Serv. (Sept. 7, 2018), https://www.fws.gov/news/ShowNews.cfm?ref=secretary-zinke-expands-hunting-and-fishing-opportunities-at-30-of-&_ID=36311.

¹⁹⁴ See Eric Katz, *Trump Administration Promises to Staff Up Police on Public Lands After Announcing Major Cuts*, GOV'T EXECUTIVE (Oct. 4, 2018), <https://www.govexec.com/management/2018/10/trump-administration-promises-staff-police-public-lands-after-announcing-major-cuts/151817/>.

¹⁹⁵ Section 7(a)(2) of the ESA requires all federal agencies to consult with the Secretary of the Interior (i.e., through FWS) prior to taking any agency action that may threaten or harm a protected species or designated critical habitat. 16 U.S.C. § 1536(a)(2).

¹⁹⁶ Ctr. for Science & Democracy, *Surveying the US Fish and Wildlife Service*, UNION OF CONCERNED SCIENTISTS 2 (Aug. 2018), <https://www.ucsusa.org/sites/default/files/2019-09/science-under-trump-fws.pdf>.

¹⁹⁷ Ctr. for Science & Democracy, *Surveying the US Fish and Wildlife Service*, UNION OF CONCERNED SCIENTISTS 2 (Aug. 2018), <https://www.ucsusa.org/sites/default/files/2019-09/science-under-trump-fws.pdf>.

¹⁹⁸ U.S. Fish and Wildlife Service Mitigation Policy, 83 Fed. Reg. 36,472 (July 30, 2018)(codified at 50 C.F.R. ch. I).

¹⁹⁹ Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45,020 (Aug. 27, 2019) (to be codified at 50 C.F.R. pt. 424).

²⁰⁰ See Kiona M. Smith, *Trump Administration Announces Changes to Endangered Species Act Rules*, ARS TECHNICA (Aug. 31, 2019, 11:12 AM) <https://arstechnica.com/science/2019/08/whats-changing-about-endangered-species-act-enforcement-and-what-it-means/>.

²⁰¹ Office of the Solicitor, M-37050, *The Migratory Bird Treaty Act Does Not Prohibit Incidental Take*, DEP'T OF THE INTERIOR (Dec. 22, 2017), <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>.

²⁰² Regulations Governing Take of Migratory Birds, 85 Fed. Reg. 5915 (Feb. 3, 2020) (to be codified at 50 C.F.R. pt. 10).

²⁰³ U.S. Fish and Wildlife Service Solicits Public Input on Proposed Rule and Environmental Impact Statement for Migratory Bird Treaty Act, DEP'T OF THE INTERIOR (Jan. 30, 2020), https://www.fws.gov/news/ShowNews.cfm?_ID=36517.

²⁰⁴ Lisa Friedman, *A Trump Policy 'Clarification' All but Ends Punishment for Bird Deaths*, N.Y. TIMES (Apr. 24, 2019), <https://www.nytimes.com/2019/12/24/climate/trump-bird-deaths.html>; see also Darryl Fears & Juliet Eilperin, *A Controversial Trump Legal Opinion Weakened a Law to Protect Birds. Now It Might Be Made Permanent*, WASH. POST (Jan. 30, 2020, 4:58 PM), <https://www.washingtonpost.com/climate-environment/2020/01/30/controversial-trump-legal-opinion-weakened-law-protect-birds-now-they-want-make-it-permanent/>; Laura Lundquist, *Trump Admin Orders Fish and Wildlife to Eliminate Fines for Killing Migratory Birds*, MISSOULA CURRENT (Jan. 31, 2020), <https://missoulacurrent.com/outdoors/2020/01/fines-migratory-birds/>.

²⁰⁵ See Adam Aton, *Agency Targets Conservation Co-ops to Avoid Climate Rules*, CLIMATEWIRE (June 6, 2018), <https://www.eenews.net/climatewire/stories/1060083623/>.



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- ²⁰⁶ See Brittany Patterson, *Order Scrapping Climate Plans Could Hurt National Parks*, CLIMATEWIRE (Jan. 8, 2018), <https://www.eenews.net/climatewire/stories/1060070325>.
- ²⁰⁷ See Adam Aton, *Department Draws GOP Heat for Cuts to Climate Program*, CLIMATEWIRE (Sept. 30, 2019), <https://www.eenews.net/climatewire/stories/1061181953>.
- ²⁰⁸ Regulations for Designating Critical Habitat, 85 Fed. Reg. 47,333 (proposed Aug. 5, 2020) (to be codified at 50 C.F.R. pt. 424).
- ²⁰⁹ Regulations for Designating Critical Habitat, 85 Fed. Reg. 55,398 (proposed Sept. 8, 2020)(to be codified at 50 C.F.R. pt. 17).
- ²¹⁰ See Pamela King & Michael Doyle, *Judge Restores Migratory Bird Protections*, GREENWIRE (Aug. 12, 2020), <https://www.eenews.net/greenwire/stories/1063711523>.
- ²¹¹ See Jennifer Yachnin, *Military Seeks Authority over Refuge to Expand Test Range*, GREENWIRE (Nov. 4, 2019), <https://www.eenews.net/greenwire/stories/1061461749>.
- ²¹² See Ctr. for Science & Democracy, UNION OF CONCERNED SCIENTISTS, *Surveying the US Fish and Wildlife Service*, UNION OF CONCERNED SCIENTISTS 3 (Aug. 2018), <https://www.ucsusa.org/sites/default/files/2019-09/science-under-trump-fws.pdf>.
- ²¹³ For a discussion on the legal framework for state and federal decision making for wildlife management on federal lands, see Martin Nie, et al., *Fish and Wildlife Management on Federal Lands: Debunking State Supremacy*, 47 *Env'tl. L.* 797, 819-838 (2017).
- ²¹⁴ See e.g. Press Release, Dep't of the Interior, *Visitor Spending at National Wildlife Refuges Boosts Local Economies by \$3.2 Billion*, Dep't of the Interior (June 27, 2019), <https://www.doi.gov/pressreleases/visitor-spending-national-wildlife-refuges-boosts-local-economies-32-billion>.
- ²¹⁵ 16 U.S.C. §668dd(a)(3)(A).
- ²¹⁶ E.g. 16 U.S.C. §668dd(a)(4)(K) (“In administering the System, the Secretary shall [...] provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting....”).
- ²¹⁷ 16 U.S.C. §668dd(e).
- ²¹⁸ See Press Release, Secretary Zinke Expands Hunting and Fishing Opportunities at 30 of America’s National Wildlife Refuges, U.S. Fish & Wildlife Serv. (Sept. 7, 2018), https://www.fws.gov/news/ShowNews.cfm?ref=secretary-zinke-expands-hunting-and-fishing-opportunities-at-30-of-&_ID=36311; 2019-2020 Station-Specific Hunting and Sport Fishing Regulations, 84 Fed. Reg. 47,640 (Sept. 10, 2019)(to be codified at 50 C.F.R. §§ 26,32,36,71); 2020-2021 Station-Specific Hunting and Sport Fishing Regulations, 85 Fed. Reg. 54,076 (Aug. 31, 2020)(to be codified at 50 C.F.R. §§ 32,36,71).
- ²¹⁹ See Michael Doyle and Pamela King, *Zinke OKs Land Swap Allowing Road Through Alaska Refuge*, GREENWIRE (Jan. 22, 2018), <https://www.eenews.net/greenwire/stories/1060071575>.
- ²²⁰ *Friends of Alaska Nat'l Wildlife Refuges v. Bernhardt*, 381 F. Supp. 3d 1127 (D. Alaska 2019).
- ²²¹ See Scott Streater, *Bernhardt Secretly Signs Land Swap for Alaska Refuge Road*, E&E NEWS PM (July 24, 2019), <https://www.eenews.net/eenewspm/stories/1060783877>.
- ²²² See Scott Streater, *DOJ Drops Izembek Appeal*, E&E NEWS PM (July 22, 2019), <https://www.eenews.net/eenewspm/stories/1060774913>.



²²³ See DEP'T OF JUSTICE, GUIDANCE FOR APPLYING DELIBERATIVE PROCESS PRIVILEGE IN PROCESSING ECOLOGICAL SERVICES FOIA REQUESTS: COORDINATION WITH THE OCTOBER 20, 2017, DOJ MEMORANDUM ON ADMINISTRATIVE RECORDS (Sept. 6, 2018), https://www.biologicaldiversity.org/news/press_releases/2018/FOIA-and-Skinny-AR-Guidance.pdf.

²²⁴ See Southern Env'tl. Law Center, Comment on the Department of the Interior's Proposed Freedom of Information Act Regulations, 83 Fed. Reg. 67,175, 9 (Dec. 28, 2018) (to be codified at 43 C.F.R. pt. 2).

²²⁵ Freedom of Information Act Regulations, 84 Fed. Reg. 61,820 (Nov. 14, 2019) (codified at 43 C.F.R. pt. 2).

²²⁶ Secretarial Order No. 3378, Improving the Department of the Interior Freedom of Information Act Program (Jan. 7, 2020), https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3378-signed-508_0.pdf.

²²⁷ *Nat'l Archives & Records Admin. v. Favis*, 541 U.S. 157, 172-73 (2004) (internal citation omitted).

²²⁸ See *Friends of Alaska Nat'l Wildlife Refuges v. Bernhardt*, No. 3:19-CV-00216 JWS, 2020 WL 2892221 (D. Alaska June 1, 2020).

²²⁹ See Scott Streater, *Bernhardt Tries to Revive Alaska Refuge Land Swap*, GREENWIRE (Aug. 17, 2020), <https://www.eenews.net/greenwire/stories/1063711847>.

²³⁰ Native American Policy for the U.S. Fish and Wildlife Service, 81 Fed. Reg. 4638 (Jan. 27, 2016).

²³¹ Native American Policy for the U.S. Fish and Wildlife Service, 81 Fed. Reg. 4638 (Jan. 27, 2016).

²³² The first agreement was signed in 2004 – a decade after the passage of the act. See *Alaska tribes sign agreement for refuge system*, Indianz.com (May 3, 2004), <https://www.indianz.com/News/archive/002031.asp>. For more information, see Brian Upton, *Returning to a Tribal Self-Governance Partnership at The National Bison Range Complex: Historical, Legal, and Global Perspectives*, 35 PUB. LAND & RESOURCES L. REV. 51 (2014). FWS has entered into agreements with tribal nations for endangered species protection. See Brett Kenney, *Tribes as Managers of Federal Lands*, 27-SUM. NAT. RESOURCES & ENV'T 47, 49-50 (2012).

²³³ See Secretarial Order No. 3342, Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources (Oct. 21, 2016), https://www.doi.gov/sites/doi.gov/files/uploads/so3342_partnerships.pdf.

²³⁴ See Kim Briggeman, *Proposal Gives Most National Bison Range Management to CSKT*, MISSOULIAN (Aug. 6, 2014), https://missoulian.com/news/local/proposal-gives-most-national-bison-range-management-to-cskt/article_6c3cbe06-1ced-11e4-8def-0019bb2963f4.html.

²³⁵ *National Bison Range: Operating Hours*, FWS, https://www.fws.gov/refuge/national_bison_range/plan_your_visit/operating_hours.html (updated Aug. 12, 2020).

²³⁶ See Corbin Hiar, *In About-face, Zinke Opposes Giving Bison Range to Tribes*, Greenwire (Apr. 13, 2017), <https://www.eenews.net/greenwire/stories/1060053061>.

²³⁷ See, e.g., Ellen M. Gilmer, *Court Must Protect Yellowstone Grizzlies — Advocates*, GREENWIRE (Aug. 6, 2019), <https://www.eenews.net/greenwire/stories/1060866645>; Scott Sonner, *Navy Review Backs Planned Expansion of Nevada Bombing Range*, ASSOCIATED PRESS (Jan. 16, 2020), <https://apnews.com/ce5ec3c98b886587c9e0556d9f3168a8>.

²³⁸ See Alex Sakariassen, *The problem of precedent: National Bison Range transfer sparks opposition and concern*, MONT. FREE PRESS (Feb. 23, 2020), https://www.bozemandailychronicle.com/news/the-problem-of-precedent-national-bison-range-transfer-sparks-opposition-and-concern/article_db58dead-1893-52c2-b798-9723ec7e8878.html.

From: [Willens, Todd D](#)
To: [Tahsuda, John](#); [Cruz, Mark A](#)
Subject: FW: [EXTERNAL] Re: Alaska Reconnection and request for a meeting
Date: Tuesday, December 1, 2020 11:25:00 AM

fyi

Todd Willens

COS/DOI

From: Jason Osborne <jason@turnberrysolutionsllc.com>
Sent: Tuesday, December 1, 2020 12:19 PM
To: Sweeney, Tara M <Tara_Sweeney@ios.doi.gov>; Willens, Todd D <todd_willens@ios.doi.gov>
Subject: [EXTERNAL] Re: Alaska Reconnection and request for a meeting

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Tara,

I hope you had a good holiday. I wanted to follow up on the below request. Please let me know when you are able. Thanks Jason

Jason Osborne
Partner, Turnberry Solutions LLC
202-744-0639 cell
jason@turnberrysolutionsllc.com

On Nov 18, 2020, at 2:17 PM, Jason Osborne <jason@turnberrysolutionsllc.com> wrote:

Tara,

I'm not sure if you remember me but we met years and years ago during my time with Senator Stevens. My mom was also very active with ANWR and Arctic Power given her job at BP in Alaska.

Anyway, I wanted to reach out and see if you would have some time to meet with the Chairwoman of the Muwekma Tribe from California. The Muwekmas are seeking reaffirmation and have spent the last two years working with Christine Grabowski to put together a comprehensive report outlining the case for reaffirmation. The information Christine put together addresses a number of issues that BAR had with the tribe when they came to present their case before.

Please find attached a formal request letter to meet from Chairwoman Charlene Nijmeh. She would be available to meet virtually or in person whichever is easier. We would greatly appreciate this opportunity to present their side of the story in more detail in the hopes that you or Secretary Bernhardt would help them achieve what they rightly deserve.

Thank you again,

Jason

<LetterASIA.pdf>

Jason Osborne

Partner, Turnberry Solutions LLC
202-744-0639 cell
jason@turnberrysolutionsllc.com

From: [Willens, Todd D](#)
To: [Renkes, Gregg D](#); [Cardinale, Richard](#)
Subject: FW: [EXTERNAL] RE: For Review: Draft Presidential Memo on Polar Bear Viewing (near-final)
Date: Friday, October 9, 2020 7:18:00 AM
Attachments: [2020PolarBear.mem.clerkredits - clean.docx](#)

Gregg,

I have cc'd Rich to this. Do you want Exec Sec to circulate this morning? Or are you good with this as is and feel DOI has completed its work?

Todd Willens

COS/DOI

From: Staff Secretary <(b) (6)>
Sent: Thursday, October 8, 2020 5:58 PM
To: DL Chief of Staff Office <(b) (6)> Philbin, Patrick F. EOP/WHO
<(b) (6)> Rollins, Brooke L. EOP/WHO <(b) (6)>
Kudlow, Larry A. EOP/WHO <(b) (6)> Kushner, Jared C. EOP/WHO
<(b) (6)> Hicks, Hope C. EOP/WHO <(b) (6)> Gilmartin, Kayleigh M.
EOP/WHO <(b) (6)> Farah, Alyssa A. EOP/WHO
<(b) (6)> Liddell, Christopher P. EOP/WHO
<(b) (6)> Miller, Stephen EOP/WHO <(b) (6)>
Pataki, Tim A. EOP/WHO <(b) (6)> Hoelscher, Douglas L. EOP/WHO
<(b) (6)> Jack, Brian T. EOP/WHO <(b) (6)> Short,
Marc T. EOP/OVP <(b) (6)> Nevins, Kristan K. EOP/WHO
<(b) (6)> Swonger, Amy H. EOP/WHO <(b) (6)>
Vought, Russell T. EOP/OMB <(b) (6)> Neumayr, Mary B. EOP/CEQ
<Mary.B.Neumayr@ceq.eop.gov>; Willens, Todd D <todd_willens@ios.doi.gov>; Levi, William (OAG)
<William.Levi@usdoj.gov>
Cc: Staff Secretary <(b) (6)>
Subject: [EXTERNAL] RE: For Review: Draft Presidential Memo on Polar Bear Viewing (near-final)

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Attached is a near-final version of the PM.

Please review and send any **critical edits** to Staff Sec **by 2:00pm tomorrow (Friday, 10/9)**.

Thanks,

Staff Sec.

From: Staff Secretary
Sent: Thursday, June 11, 2020 5:11 PM
To: DL Chief of Staff Office <(b) (6)> Philbin, Patrick F. EOP/WHO
<(b) (6)> Rollins, Brooke L. EOP/WHO <(b) (6)> Kudlow,
Larry A. EOP/WHO <(b) (6)> Kushner, Jared C. EOP/WHO
<(b) (6)> Hicks, Hope C. EOP/WHO <(b) (6)> Gilmartin, Kayleigh M.
EOP/WHO <(b) (6)> Farah, Alyssa A. EOP/WHO
<(b) (6)> Liddell, Christopher P. EOP/WHO
<(b) (6)> Miller, Stephen EOP/WHO <(b) (6)>

Navarro, Peter K. EOP/WHO <(b) (6)> Pataki, Tim A. EOP/WHO
<(b) (6)> Hoelscher, Douglas L. EOP/WHO
<(b) (6)> Jack, Brian T. EOP/WHO <(b) (6)> Short,
Marc T. EOP/OVP <(b) (6)> Nevins, Kristan K. EOP/WHO
<(b) (6)> Neumayr, Mary B. EOP/CEQ <Mary.B.Neumayr@ceq.eop.gov>
Cc: Staff Secretary <(b) (6)>

Subject: For Review: Draft Presidential Memo on Polar Bear Viewing

Attached for your review is a draft Presidential Memo on Polar Bear Viewing in the Arctic National Wildlife Refuge (ANWR).

Affirmative clearance is requested from **WHCO, DPC, and IGA**. All other feedback is welcome.

Please send edits/clearances to Staff Sec. by **5:00pm on Tuesday, June 16**. Reach out directly with questions.

Thank you,

Staff Sec.

From: [Willens, Todd D](#)
To: [Wea, sr, KJd E](#)
Subject: FW: [EXTERNAL] RE: my email
Date: Wednesday, September 2, 2020 7:54:00 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

FYA

Todd Willens
COS/DOI

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>

Sent: Tuesday, September 1, 2020 10:26 PM

To: MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>

Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>; Willens, Todd D <todd_willens@ios.doi.gov>; Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>

Subject: FW: [EXTERNAL] RE: my email

Kate—

FYA, please see below. Here's our response:

"For far too long, critically important infrastructure, energy and other economic development projects have been needlessly paralyzed by federal red tape. The Trump Administration has taken significant steps to improve the federal government's decision-making process, while also ensuring that the environmental consequences of proposed projects are thoughtfully analyzed."

Any issues, please let us know.

Thanks,

Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Swanson, Conner D <conner_swanson@ios.doi.gov>

Sent: Tuesday, September 1, 2020 6:02 PM

To: mbrown_contact <mbrown@ap.org>

Cc: Interior Press <interior_press@ios.doi.gov>

Subject: Re: [EXTERNAL] RE: my email

Matt-

Received.



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JUL 15 2020

The Honorable Larry Kudlow
Assistant to the President for Economic Policy
Director, National Economic Council
1650 Pennsylvania Avenue NW
Washington, DC 20502

Dear Mr. Kudlow:

I am responding on behalf of the Department of the Interior (Department) to the initial reporting requirement in Executive Order (E.O.) 13927 "On Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities." I am pleased to report that the Department has developed multiple mechanisms for reducing the time required for environmental reviews on all projects where we are either the lead or a cooperating agency, including activities that will promote economic recovery during the COVID-19 pandemic.

The Department's efforts to streamline environmental reviews have been underway since the start of the Trump Administration. Executive Order 13807 "On Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," dated August 15, 2017, provided our initial blueprint. On August 31, 2017, the Department issued Secretary's Order (S.O.) 3355, which sets page and time limits and provides additional guidelines to reduce needless paperwork, focuses on important environmental consequences, ensures that reviews under the National Environmental Policy Act (NEPA) meet their original goal of providing relevant information to decision makers to inform Federal decisions, and promotes internal accountability. Since the implementation of these policies, the average time and page length required to complete an environmental impact statement (EIS) has been reduced from more than 5 years and 850 pages to 1.5 years and 145 pages. This reduction has ensured that projects stay on track, decision makers have a more useful product, and taxpayers pay less to complete NEPA reviews.

The Department is also working with the Council on Environmental Quality to develop new categorical exclusions (CE) from further NEPA review for multiple activities that historically have been analyzed under an environmental assessment (EA). Such EAs typically take months to prepare. By our examination of the NEPA record, these activities have always resulted in a "Finding of No Significant Impact." We are examining these actions to determine if they may be eligible for CE. Those CEs will allow our field-based staff to focus on economically productive project activity rather than constant reanalysis of the same land and the same uses.

In response to section 5 of E.O. 13927, we are enclosing a list of infrastructure, energy, environmental, and natural resource projects that are within the authority of the Secretary of the Interior to perform or advance. As a result of Department initiatives, including S.O. 3355, that set a new baseline for completing project reviews expeditiously, many of these project reviews are already on shorter schedules. The Department will further examine these and other qualifying projects for additional expedited review. All of these projects will assist in the Nation's economic recovery.

The Department continues to adopt existing NEPA analysis and use existing CEs, where appropriate, to eliminate the need for additional environmental reviews. For example, since the start of the COVID-19 response, the Bureau of Safety and Environmental Enforcement and the Bureau of Ocean Energy Management (BOEM) have used CEs for conventional energy development and maintenance; reviews of exploration and development plans; and reviews of certain pipeline applications. Also, these Bureaus are following NEPA guidelines to adopt previous NEPA analysis to conduct oil and gas lease sales and to permit new energy development. In addition, the Bureau of Indian Affairs has existing authority that allows for the waiver of regulations for leasing and rights-of-way that has been used recently for infrastructure and energy projects on Indian lands.

In 2018, the Department published clarifying guidance on adhering to NEPA during emergencies where immediate response is required. In response to sections 2 and 6, this guidance was disseminated again to all subunits of the Department to facilitate response to the COVID-19 emergency. These emergency procedures have been used in the past in response to weather-related emergencies and wildland fire management. The Department's Bureaus have been advised that they could be used again for things such as requisitioning space for a deployment by the Federal Emergency Management Agency (FEMA) or assisting an American Indian Tribe experiencing a COVID-19 outbreak.

Further, the Department has used virtual meetings and other tools to engage with stakeholders, State governments, partner agencies, and the public to continue public scoping for EISs and maintain project schedules for activities proposed by the National Park Service (NPS), Bureau of Land Management (BLM), BOEM, and Bureau of Reclamation.

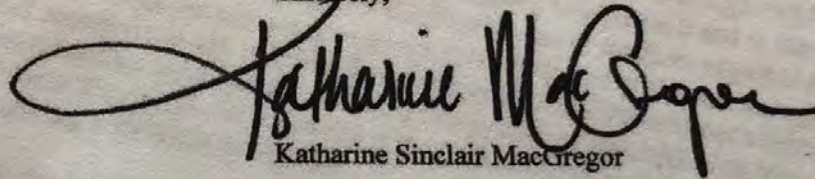
Finally, the Department will continue to make our resources and facilities available to our partners in response to the emergency. For example, BLM's Jupiter Inlet Lighthouse in Florida is using bunkrooms to house local emergency response professionals, and NPS permitted the New York City Transit Authority to use Floyd Bennet Field for activities supporting COVID-19 response. The Department will continue to share our facilities with emergency responders and support response efforts without delay for issuance of authorizations or permits.

In response to section 7 of E.O. 13927, the U.S. Fish and Wildlife Service (FWS) has coordinated closely with FEMA to respond expeditiously to the COVID-19 pandemic.

On March 13, 2020, FEMA contacted FWS regarding options for complying with the Endangered Species Act (ESA) as they considered how to respond to the pandemic. The FWS and FEMA agreed that emergency consultation, pursuant to 50 C.F.R Part 402.05, was appropriate, and developed an agreed-upon approach to minimizing potential effects to ESA-listed species and critical habitat. The FWS documented the agreement in a March 23, 2020, letter to FEMA. On May 27, 2020, FEMA reported to FWS that none of the more than 250 projects they had approved as part of the COVID-19 response (consisting of FEMA providing of more than \$1.5 billion in grant funding) thus far would affect ESA-listed species or critical habitat. Considering this, FEMA and FWS agreed to continue implementing the previously agreed-upon approach and reassess benefits and outcomes after another 60 days.

The Department continues to look for and implement efficiencies that will help strengthen the economy and return Americans to work, while providing appropriate protections for public health and safety, natural resources, and the environment. The enclosed table will be updated and shared with you monthly throughout the duration of the COVID-19 pandemic and associated economic recovery.

Sincerely,



Katharine Sinclair MacGregor

Enclosure

cc:

The Honorable Russell Vought
Acting Director, Office of Management and Budget
Eisenhower Executive Office Building
725 17th Street NW
Washington, DC 20503

The Honorable Mary Neumayr
Chairman, Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20506

Environmental Impact Statements Being Expedited During the COVID-19 Emergency
(March 13, 2020 to January 31, 2021)

Project Title	Lead Agency (Cooperating DOI Agency)	Document Status	State/Location	Project Focus
Coeur d'Alene Silver and Gold Mine Plan	BLM	Completed	NV	Mining
Three Bars Ecosystem and Landscape Restoration Project	BLM	Completed	NV	Habitat Restoration, Invasive Species Removal
Programmatic EIS for Fuel Breaks in the Great Basin	BLM	Completed	CA	Wildland Fire Management
Campano Wind Energy Project	BIA	Completed	CA	Renewable Energy
Dairy Syncline Phosphate Mine Project EIS	BLM	Completed	CA	Mining
Long-Term Water Transfers	BOR	Completed	CA	Water Delivery
Haiwee Geothermal Leasing Area Supplemental EIS and Land Use Plan Amendment	BLM	Completed	CA	Renewable Energy
Tucker Hill Perlite Mine Expansion	BLM	Completed	OR	Mining
Tri-State Fuel Breaks Project	BLM	Completed	ID	Wildland Fire Management
Gemini Solar Project-F41	BLM	Completed	NV	Renewable Energy
Upper Santa Ana River Wash Habitat Conservation Plan	FWS	In Progress	CA	Water Conservation, Aggregate Mining, Recreation, Flood Control, Other Public Services
Converse County Oil and Gas Project	BLM	In Progress	WY	Oil and Gas Development
Moneta Divide Natural Gas and Oil Development Project	BLM	In Progress	WY	Oil and Gas Development
Gunnison Field Office Domestic Sheep Grazing Permit Renewals EIS	BLM	In Progress	CO	Livestock Grazing, Wildlife
Point Reyes National Seashore General Management Plan Amendment	NPS	In Progress	CA	Livestock Grazing, Wildlife
Blackrock Land Exchange	BLM	In Progress	ID	Mining
Parkdale Competitive Mineral Materials Sale Environmental Impact Statement	BLM	In Progress	CO	Mining
Proposed East Smoky Panel Phosphate Mine Project	BLM	In Progress	ID	Mining
National Petroleum Reserve in Alaska Integrated Activity Plan	BLM	In Progress	AK	Oil and Gas Development
Placer Habitat Conservation Plan/Natural Community Conservation Plan/County Aquatic Resources Plan	FWS	In Progress	CA	Development Certainty, Water Resources
Borderlands Wind Project	BLM	In Progress	NM	Renewable Energy
Osage County Oil and Gas Development	BIA	In Progress	OK	Oil and Gas Development
Willow Master Development Plan Environmental Impact Statement	BLM	In Progress	AK	Oil and Gas Development
Columbia River System Operations EIS	BOR	In Progress	CA	Water Delivery
Crimson Solar Project	BLM	In Progress	CA	Renewable Energy
Paradox Valley Unit EIS	BOR	In Progress	CO	Water Quality, Desalination
Yellow Pine Solar-F41	BLM	In Progress	NV	Renewable Energy
Programmatic EIS for Fuels Reduction and Rangeland Restoration in the Great Basin	BLM	In Progress	ID	Wildland Fire Management
Friant-Kern Canal Middle Reach Capacity Correction Project	BOR	In Progress	CA	Water Delivery
Truckee Canal Extraordinary Maintenance	BOR	In Progress	NV	Water Delivery
Eastern North Dakota Alternate Water Supply (ENDAWS)	BOR	In Progress	ND	Water Delivery
Wyoming Pipeline Corridor Initiative	BLM	In Progress	WY	Oil and Gas Development
Tejon Indian Tribe's Proposed Trust Acquisition and Casino Project	BIA	In Progress	CA	Gaming
Louse Canyon Geographic Management Area Rangeland Health Management Actions Environmental Impact Statement	BLM	In Progress	OR	Livestock Grazing, Wildlife
East Collier Multi-Species Habitat Conservation Plan	FWS	In Progress	FL	Development Certainty
Farmington Mancos-Gallup RMP Amendment	BLM	In Progress	NM	Oil and Gas Development
New Mexico Unit	BOR	In Progress	NM	Water Delivery
Vineyard Wind, LLC's Proposed Wind Energy Facility Offshore Massachusetts	BOEM	In Progress	OCS Offshore Massachusetts	Renewable Energy
Thacker Pass Lithium Mine project	BLM	In Progress	NV	Mining
Lakeview Resource Management Plan Amendment	BLM	In Progress	OR	Livestock Grazing, Wildland Fire Management
Whitewater River Groundwater Replenishment Facility	BLM	In Progress	CA	Water Resources
Lake Powell Pipeline	BOR	In Progress	UT	Water Delivery
Northern Corridor Highway Right-of-Way, Issuance of an Incidental Take Permit, and Resource Management Plan Amendments, Washington County, Utah	BLM	In Progress	UT	Transportation
Arrow Canyon Solar Project	BIA	In Progress	NV	Renewable Energy
Coastal Plain Oil and Gas Leasing and Development Plan (ANWR)	BLM	In Progress	AK	Oil and Gas Development
Road to Ambler/Ambler Mining District Industrial Road Access	BLM	In Progress	AK	Mining
Alaska Liquefied Natural Gas Project	FERC (FWS, NPS, BLM)	In Progress	AK	Natural Gas
Cardinal-Hickory Creek 345 kV Transmission Line Project	USDA (FWS)	In Progress	LA	Energy Transmission
Gulf Liquefied Natural Gas Liquefaction Project	FERC (FWS)	In Progress	MS	Natural Gas
Jordan Cove Liquefied Natural Gas Terminal and Pacific Connector Gas Pipeline	FERC (FWS, BLM)	In Progress	OR	Natural Gas

Mid-Barataria Sediment Diversion	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance
Mid-Ireton Sediment Diversion	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance
Port of Corpus Christi Authority Channel Deepening Project	DOD-USACE (FWS)	In Progress	FL	Waterway Construction and Maintenance
Swan Lake North Pumped Storage	FERC (FWS, BLM, BOR)	In Progress	OR	Energy Storage
Venture Global Calcasieu Pass Terminal and TransCameron Pipeline Project	FERC (FWS)	In Progress	LA	Natural Gas
Amite River and Tributaries-East of the Mississippi River, Louisiana, Flood Risk Management Feasibility Study	DOD-USACE (FWS)	In Progress	LA	Storm Management
Collier County Coastal Storm Risk Management Project	DOD-USACE (BOEM, FWS)	In Progress	FL	Storm Management
Coos Bay, Oregon Section 408/204(f) Channel Modification	DOD-USACE (FWS)	In Progress	OR	Waterway Construction and Maintenance
Florida Keys Coastal Storm Risk Management Project	DOD-USACE (FWS)	In Progress	FL	Storm Management
I-285 Top End Express Lanes	DOT-FHWA (FWS)	In Progress	GA	Transportation
I-495/I-270 Managed Lanes Study	DOT-FHWA (NPS, FWS)	In Progress	MD	Transportation
I-526 Lowcountry Corridor West Improvements	DOT-FHWA (FWS, NPS)	In Progress	SC	Transportation
Lake Pontchartrain and Vicinity, Louisiana General Re-evaluation Report	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance
Mountain Valley Pipeline Southgate CP19-14	FERC (FWS)	In Progress	VA	Natural Gas
McClellanville 115 kV Transmission Line Project	USDA-RUS (FWS)	In Progress	SC	Energy Transmission
Miami-Dade County Back-Bay Coastal Storm Risk Management Project	DOD-USACE (FWS)	In Progress	FL	Storm Management
Mineville Energy Storage Project	FERC (FWS)	In Progress	NY	Energy Storage
New Jersey Back Bays Coastal Storm Risk Management Feasibility Study	DOD-USACE (FWS)	In Progress	NJ	Storm Management
Pier B On-Dock Rail Support Facility	DOT (FWS)	In Progress	NY	Transportation
Surry-Skiffes Creek-Wheaton Aerial Transmission Line	DOD-USACE (NPS)	In Progress	VA	Energy Transmission
U.S. Route 58/220 Bypass to North Carolina State Line Limited-Access Study	DOT-FHWA (FWS)	In Progress	NC	Transportation
US 275 West Point to Scribner	DOD-USACE (FWS)	In Progress	NE	Transportation
Upper Barataria Basin Feasibility Study	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance
West Bank and Vicinity, Louisiana General Re-evaluation Report	DOD-USACE (FWS)	In Progress	LA	Waterway Construction and Maintenance

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
202-340-6295

From: Brown, Matthew <MBrown@ap.org>
Sent: Tuesday, September 1, 2020 5:57:59 PM
To: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: [EXTERNAL] RE: my email

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

From: Brown, Matthew
Sent: Tuesday, September 01, 2020 2:50 PM
To: Interior Press <interior_press@ios.doi.gov>; Tollefson, Christopher J <ctollefson@blm.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>; Goodwin, Nicholas <nicholas_goodwin@ios.doi.gov>; Press, BLM <BLM_Press@blm.gov>
Subject: AP query-Projects undergoing expedited environmental review
Greetings-We were provided attached document from Asst Sec. MacGregor (under advocacy group FOIA) that lists 50+ projects for expedited review under Trump's executive order. Excuse the late notice but hoping to get answers today. Here are some questions and I would welcome any additional remarks the agency has about expediting projects.

Can you please tell me

--how and in what way are projects being expedited generally?

--any specific examples that the agency can provide of how projects have been expedited?

--are environmental reviews being curtailed/limited in some way? Speeded up by using more staff?

--which projects listed here as "in progress" have since been completed?

--ANWR for example is listed as in progress; is that one that the administration pushed through on an accelerated timeline as per the president's order?

ALSO document says some projects already on shortened timeline; any details on that much appreciated.

406 896 1528 if someone is available to talk about it directly. Is Assistant Secretary MacGregor available for an interview?

Thanks for all help-

Matthew Brown

Associated Press Correspondent

mbrown@ap.org

office-406 896 1528

mobile-406 696 4213

fax-406 896 8117

[Want to send news tips, documents, etc. securely and confidentially to AP? https://securedrop.ap.org/](https://securedrop.ap.org/)

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>

Sent: Tuesday, September 01, 2020 3:43 PM

To: Brown, Matthew <MBrown@ap.org>

Subject: my email

[EXTERNAL]

Nicholas Goodwin
Communications Director
Office of the Secretary
Department of the Interior
(202) 412-2249



The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Associated Press immediately by telephone at +1-212-621-1500 and delete this email. Thank you.

From: [Willens, Todd D](#)
To: [Patterson, Andrew M](#); [Hebert, Samantha T](#)
Subject: Fwd: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Date: Monday, September 7, 2020 7:17:07 PM

Looks like you will have some press for tomorrow night. Not sure on time though. I asked them for that.

Todd D. Willens
Chief of Staff, Office of the Secretary
U.S. Department of the Interior
Office: 202-208-3437

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>

Sent: Monday, September 7, 2020 8:14:26 PM

To: Willens, Todd D <todd_willens@ios.doi.gov>

Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>

Subject: Fwd: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8

See request below. Association of this event with fox business is minimal but doable. Lou Dobbs would be better. (b) (5) Likely to get asked about things beyond the FL event such as o/g announcement, ANWR and broader energy initiatives during pandemic and first term. These last minute requests are common FYA. 4-5 min segment and would need to go into local FL studio.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Lovett, Kasey L. EOP/WHO <(b) (6)>

Sent: Monday, September 7, 2020 8:07 PM

To: Swanson, Conner D

Cc: Daravi, Roma S. EOP/WHO; Goodwin, Nicholas R; Weeks, Emily C. EOP/WHO

Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8

Conner,

Regarding our chat, y'all can go ahead and proceed to pitch to Evening Edit. We would recommend (b) (5)

(b) (5)

Let me know if you have any other questions!

Kasey Lovett
Broadcast Media Advisor
White House Office of Communications
C: (b) (6)

On Sep 7, 2020, at 6:24 PM, Swanson, Conner D
<conner_swanson@ios.doi.gov> wrote:

He is not available to do the show Wednesday as he will be traveling back from FL commercial. We have Tuesday evening available if able.

Happy to work with anything.

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
202-340-6295

From: [Willens, Todd D](#)
To: [Patterson, Andrew M](#)
Cc: [Hebert, Samantha T](#)
Subject: Fwd: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Date: Monday, September 7, 2020 7:18:18 PM

Andrew,

Does this give him time to breath before doing the media hit?

Todd D. Willens
Chief of Staff, Office of the Secretary
U.S. Department of the Interior
Office: 202-208-3437

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Monday, September 7, 2020 8:17:16 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Already cleared with Sam with schedule availability. Their show is 6-7. Lou is 7-8.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Willens, Todd D <todd_willens@ios.doi.gov>
Sent: Monday, September 7, 2020 8:16:02 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
See topic and outlet. I dont see times.

Todd D. Willens
Chief of Staff, Office of the Secretary
U.S. Department of the Interior
Office: 202-208-3437

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Monday, September 7, 2020 8:14:26 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Fwd: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
See request below. Association of this event with fox business is minimal but doable. Lou Dobbs would be better. (b) (5) Likely to get asked about things beyond the FL event such as o/g announcement, ANWR and broader energy initiatives during pandemic and first term. These last minute requests are common FYA. 4-5 min segment and would need to go into local FL studio.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Lovett, Kasey L. EOP/WHO <(b) (6)>
Sent: Monday, September 7, 2020 8:07 PM
To: Swanson, Conner D
Cc: Daravi, Roma S. EOP/WHO; Goodwin, Nicholas R; Weeks, Emily C. EOP/WHO
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Conner,

Regarding our chat, y'all can go ahead and proceed to pitch to Evening Edit. We would recommend (b) (5)

Let me know if you have any other questions!

Kasey Lovett
Broadcast Media Advisor
White House Office of Communications
C: (b) (6)

On Sep 7, 2020, at 6:24 PM, Swanson, Conner D
<conner_swanson@ios.doi.gov> wrote:

He is not available to do the show Wednesday as he will be traveling back from FL commercial. We have Tuesday evening available if able.

Happy to work with anything.

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
202-340-6295

From: [Willens, Todd D](#)
To: [Goodwin, Nicholas R](#)
Subject: RE: [EXTERNAL] Fwd: Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules
Date: Monday, December 7, 2020 2:59:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

10-4. No questions here.

Todd Willens

COS/DOI

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Monday, December 7, 2020 3:35 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Subject: FW: [EXTERNAL] Fwd: Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules
FYA – Can explain if need be.
Nicholas Goodwin
Office of the Secretary
Department of the Interior
(202) 412-2249



From: Goodwin, Nicholas R
Sent: Monday, December 7, 2020 3:34 PM
To: Padgett, Chad B <cpadgett@blm.gov>; Ellis-Wouters, Lesli J <lellis@blm.gov>
Cc: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>; Buffington, Matthew C <mbuffington@blm.gov>; Krauss, Jeff <jkrauss@blm.gov>; Hammond, Casey B <casey_hammond@ios.doi.gov>; Kaster, Amanda E <akaster@blm.gov>
Subject: RE: [EXTERNAL] Fwd: Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules

Chad,

There is nothing inappropriate about staff following the departmental manual (<https://www.doi.gov/elips/browse>) and our standard operating procedures. There has not been a change in policy, and I am always available if you or any other staff member has questions about press responses or other communications. My number is below. Feel free to call me if you're unclear about this.

Thank you,

Nicholas Goodwin

Office of the Secretary

Department of the Interior

(202) 412-2249



From: Padgett, Chad B <cpadgett@blm.gov>

Sent: Monday, December 7, 2020 3:26 PM

To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Ellis-Wouters, Lesli J <lellis@blm.gov>

Cc: Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>; Buffington, Matthew C <mbuffington@blm.gov>; Krauss, Jeff <JKrauss@blm.gov>

Subject: RE: [EXTERNAL] Fwd: Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules

Nick,

This is inappropriate. I will not tolerate this kind of yelling by email at my staff. You can handle press from here on out if you wish to make these kinds of comments.

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>

Sent: Monday, December 7, 2020 11:05 AM

To: Ellis-Wouters, Lesli J <lellis@blm.gov>

Cc: Padgett, Chad B <cpadgett@blm.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>; Buffington, Matthew C <mbuffington@blm.gov>; Krauss, Jeff <JKrauss@blm.gov>

Subject: RE: [EXTERNAL] Fwd: Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules

Lesli,

It is my understanding that this response was agreed upon by everyone on a call earlier today that you were a part of. If you had any concerns with the statement that would have been the time to voice said concerns.

Given this, the statement (and any others we send that have been approved) are not to be edited or changed when responding to the press. This should not happen again.

Thank you,

Nicholas Goodwin

Office of the Secretary

Department of the Interior

(202) 412-2249



From: Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>

Sent: Monday, December 7, 2020 12:14 PM

To: Ellis-Wouters, Lesli J <lellis@blm.gov>

Cc: Interior Press <interior_press@ios.doi.gov>; Press, BLM <BLM_Press@blm.gov>; Padgett, Chad B <cpadgett@blm.gov>; Pendergast, Kevin J <kpendergast@blm.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Subject: Fw: [EXTERNAL] Fwd: Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules

Lesli-

Please issue this approved statement, Rachel's deadline is 2:00 PM EDT:

"Despite Chairman Grijalva's erroneous claims, all comments and nominations regarding the lease tracts to be offered will be considered. The BLM has the right to withdraw tracts from leasing after nominations and comments are received and bids will not be accepted until after the nomination and comment period closes. The Call for Nominations period closes December 17th and bids will be accepted between December 21st and December 31st. BLM can

withdraw tracts at any time, including after bids are opened on the sale date of January 6, 2021 and until leases are issued. The Department is one step closer to fulfilling our Congressionally mandated obligation to hold a lease sale in ANWR."

From: Rachel Frazin <rfrazin@thehill.com>
Sent: Monday, December 7, 2020 10:52 AM
To: Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>
Subject: Re: [EXTERNAL] Fwd: Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules
2 p.m. today. Thanks!

On Mon, Dec 7, 2020 at 10:52 AM Goldey, Benjamin H <benjamin_goldey@ios.doi.gov> wrote:

What is your deadline?

From: Rachel Frazin <rfrazin@thehill.com>
Sent: Monday, December 7, 2020 10:43 AM
To: Interior Press <interior_press@ios.doi.gov>; Press, BLM <BLM_Press@blm.gov>
Subject: [EXTERNAL] Fwd: Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi everyone,
Do you all want to comment on this assertion that the ANWR lease sale timeline is against BLM's rules?
Best,
Rachel
Rachel Frazin
Energy and Environment Reporter, The Hill
561-212-2815

----- Forwarded message -----

From: Sarvana, Adam <Adam.Sarvana@mail.house.gov>
Date: Mon, Dec 7, 2020 at 10:10 AM
Subject: Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules
To:



NATURAL RESOURCES
COMMITTEE
CHAIR RAÚL M. GRIJALVA

December 7, 2020

Media Contacts: Adam Sarvana

(202) 225-6065 or (202) 578-6626 mobile

Keith Higginbotham (Lowenthal)

Keith.Higginbotham@mail.house.gov

Mary Hurrell (Huffman)

Mary.Hurrell@mail.house.gov

Chair Grijalva, Subcommittee Chairs Slam Rush to Lease Arctic Refuge Coastal Plain Before Biden Inauguration – Accelerated Timeline Violates BLM Rules

Washington, D.C. – Chair Raúl M. Grijalva (D-Ariz.) and Reps. Jared Huffman (D-Calif.), chair of the Subcommittee on Water, Oceans, and Wildlife, and Alan Lowenthal (D-Calif.), chair of the Subcommittee on Energy and Mineral Resources, [wrote to](#) Interior Secretary David Bernhardt today seeking an explanation of how the Department of the Interior can move forward with a lease sale in the Coastal Plain of the Arctic National Wildlife Refuge when it would be cutting short a comment period and requiring bids to be finalized sooner than the minimum time required under Bureau of Land Management (BLM) regulations. Today’s letter notes that the Coastal Plain lease sale, like many other rushed and poorly justified Trump administration actions, is open to swift reversal should it face a court challenge.

As the letter, available online at <https://bit.ly/3mWq26z>, notes, under relevant BLM rules, “The publication [of the notice of sale] in the Federal Register” – which took place today – “shall be at least 30 days prior to the date of the sale.” However, today’s notice states that BLM must receive all sealed bids by 4 p.m. Alaska time on Dec. 31, which is only 23 days from publication.

“BLM appears to be pretending to adhere to the regulation by waiting until January 6, 2021, to open the bids, but simply saying that is the date of ‘the lease sale’ defies common sense and almost certainly violates the regulation,” the lawmakers write.

Just as seriously, today's Notice of Sale comes one week before the end of a comment period that is supposed to inform the terms under which the Notice of Sale is issued.

The letter underscores the clearly political nature of the lease sale – which is designed to lock in private drilling rights before the beginning of the Biden administration – and warns any companies that may be tempted to participate in the lease sale that its results will almost certainly not remain binding: “Any company interested in bidding on these leases should understand that the chances of drilling a single well in the Arctic Refuge are exceedingly slim, in no small part due to the mismanagement, political interference, and flagrant violations of law that are the hallmark of the Trump administration.”

In September of 2019, the House [passed](#) Rep. Huffman's Arctic Cultural and Coastal Plain Protection Act, which prohibits BLM from administering an oil and gas leasing program in the Coastal Plain and establishes an offshore oil and gas drilling fee to be deposited into a new Ocean Energy Safety Fund. The Republican Senate majority, in keeping with its preferential treatment for oil and gas drilling and its indifference to environmental quality, has failed to take any action on the bill.

###

Stay in touch with Democrats on the House Natural Resources Committee

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From: [Willens, Todd D](#)
To: [Swanson, Conner D](#); [Goodwin, Nicholas R](#)
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Date: Monday, September 7, 2020 8:01:19 PM

Ok to go take to DB and move forward.

Todd D. Willens
Chief of Staff, Office of the Secretary
U.S. Department of the Interior
Office: 202-208-3437

From: Swanson, Conner D <conner_swanson@ios.doi.gov>
Sent: Monday, September 7, 2020 8:42:23 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Willens, Todd D <todd_willens@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Great. Thank you. Do you have a contact at Evening Edit?

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
202-340-6295

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Monday, September 7, 2020 8:17:16 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Already cleared with Sam with schedule availability. Their show is 6-7. Lou is 7-8.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Willens, Todd D <todd_willens@ios.doi.gov>
Sent: Monday, September 7, 2020 8:16:02 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
See topic and outlet. I dont see times.

Todd D. Willens
Chief of Staff, Office of the Secretary
U.S. Department of the Interior
Office: 202-208-3437

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>

Sent: Monday, September 7, 2020 8:14:26 PM

To: Willens, Todd D <todd_willens@ios.doi.gov>

Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>

Subject: Fwd: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8

See request below. Association of this event with fox business is minimal but doable. Lou Dobbs would be better. (b) (5) Likely to get asked about things beyond the FL event such as o/g announcement, ANWR and broader energy initiatives during pandemic and first term. These last minute requests are common FYA. 4-5 min segment and would need to go into local FL studio.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Lovett, Kasey L. EOP/WHO (b) (6)

Sent: Monday, September 7, 2020 8:07 PM

To: Swanson, Conner D

Cc: Daravi, Roma S. EOP/WHO; Goodwin, Nicholas R; Weeks, Emily C. EOP/WHO

Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8

Conner,

Regarding our chat, y'all can go ahead and proceed to pitch to Evening Edit. We would recommend (b) (5)

Let me know if you have any other questions!

Kasey Lovett
Broadcast Media Advisor
White House Office of Communications
C: (b) (6)

On Sep 7, 2020, at 6:24 PM, Swanson, Conner D
<conner_swanson@ios.doi.gov> wrote:

He is not available to do the show Wednesday as he will be traveling back from FL commercial. We have Tuesday evening available if able.

Happy to work with anything.

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
202-340-6295

From: [Willens, Todd D](#)
To: [Goodwin, Nicholas R](#)
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Date: Monday, September 7, 2020 8:16:13 PM

I dont expect any of you to know what questions and details I want to know with each request.

Todd D. Willens
Chief of Staff, Office of the Secretary
U.S. Department of the Interior
Office: 202-208-3437

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Monday, September 7, 2020 9:12 PM
To: Willens, Todd D
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Did you not believe that Conner already spoke to Sam and Andrew about this?

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Willens, Todd D <todd_willens@ios.doi.gov>
Sent: Monday, September 7, 2020 8:57 PM
To: Swanson, Conner D; Goodwin, Nicholas R
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
I'm waiting to hear from Schedule team.

Todd D. Willens
Chief of Staff, Office of the Secretary
U.S. Department of the Interior
Office: 202-208-3437

From: Swanson, Conner D <conner_swanson@ios.doi.gov>
Sent: Monday, September 7, 2020 8:56:19 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Willens, Todd D <todd_willens@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Wrong thread. Todd is this good with you for a time 6-7 tomorrow?

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
202-340-6295

From: Swanson, Conner D <conner_swanson@ios.doi.gov>
Sent: Monday, September 7, 2020 8:42:23 PM

To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Willens, Todd D <todd_willens@ios.doi.gov>

Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Great. Thank you. Do you have a contact at Evening Edit?

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
202-340-6295

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Monday, September 7, 2020 8:17:16 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Already cleared with Sam with schedule availability. Their show is 6-7. Lou is 7-8.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Willens, Todd D <todd_willens@ios.doi.gov>
Sent: Monday, September 7, 2020 8:16:02 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
See topic and outlet. I dont see times.

Todd D. Willens
Chief of Staff, Office of the Secretary
U.S. Department of the Interior
Office: 202-208-3437

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Monday, September 7, 2020 8:14:26 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Cc: Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Fwd: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
See request below. Association of this event with fox business is minimal but doable. Lou Dobbs would be better. (b) (5) Likely to get asked about things beyond the FL event such as o/g announcement, ANWR and broader energy initiatives during pandemic and first term. These last minute requests are common FYA. 4-5 min segment and would need to go into local FL studio.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: Lovett, Kasey L. EOP/WHO <(b) (6)>
Sent: Monday, September 7, 2020 8:07 PM
To: Swanson, Conner D
Cc: Daravi, Roma S. EOP/WHO; Goodwin, Nicholas R; Weeks, Emily C. EOP/WHO
Subject: Re: [EXTERNAL] Re: Sec Bernhardt on ANR 9/8
Conner,

Regarding our chat, y'all can go ahead and proceed to pitch to Evening Edit. We would recommend (b) (5)

Let me know if you have any other questions!

Kasey Lovett
Broadcast Media Advisor
White House Office of Communications
C: (b) (6)

On Sep 7, 2020, at 6:24 PM, Swanson, Conner D
<conner_swanson@ios.doi.gov> wrote:

He is not available to do the show Wednesday as he will be traveling back from FL commercial. We have Tuesday evening available if able.

Happy to work with anything.

Conner Swanson
Office of the Secretary
U.S. Department of the Interior
202-340-6295

From: [Willens, Todd D](#)
To: [Renkes, Gregg D](#); [Cardinale, Richard](#); [Patnaik, Bivan R](#)
Subject: Re: ANWR Coastal Plain Lease Sale Call for Nominations
Date: Friday, November 6, 2020 9:57:56 AM

Thanks Greg and Bivan. I confirm this.

Todd D. Willens
Chief of Staff
U.S. Department of the Interior
202-208-3437 - office
202-706-9041 - mobile

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Friday, November 6, 2020 10:55:41 AM
To: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>; Patnaik, Bivan R <bivan_patnaik@ios.doi.gov>; Willens, Todd D <todd_willens@ios.doi.gov>
Subject: ANWR Coastal Plain Lease Sale Call for Nominations

Bivan, Todd has verbally cleared the Call For Nominations federal register notice and the Secretary has signed the delegation memo. I'll bring the package to you so that BLM can get it sent to OFR.

Thanks, Gregg

Gregg D. Renkes

Deputy Chief of Staff/Senior Counselor

Office of the Secretary

U.S. Department of the Interior

(202) 208-4043 (O)

(202) 774-4833 (C)

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From: [Willens, Todd D](#)
To: [Cardinale, Richard](#)
Subject: RE: ANWR Lease Decision Documents
Date: Friday, January 15, 2021 11:59:00 AM

No. It can go to DB.

Todd Willens
COS/DOI

From: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>
Sent: Friday, January 15, 2021 12:57 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Subject: FW: ANWR Lease Decision Documents
Importance: High

Todd,

From your perspective, do I need to get anyone's surname on this before bringing it down?

Rich

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Friday, January 15, 2021 12:55 PM
To: Cardinale, Richard <Richard_Cardinale@ios.doi.gov>
Subject: ANWR Lease Decision Documents
Importance: High

Rich, Attached is the first of two ANWR lease approval documents to be signed today. Since BLM Ak doesn't expect the second until after 4pm our time can you move this one and then we will see what happens. Thanks, Gregg

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: Padgett, Chad B <cpadgett@blm.gov>

Sent: Friday, January 15, 2021 12:49 PM

To: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Cc: Moody, Aaron G <Aaron.Moody@sol.doi.gov>

Subject: Regenerate Lease Decision Documents

Importance: High

Hi Gregg,

Attached, please find the decision documents for the Regenerate Lease.

From: [Willens, Todd D](#)
To: [Goodwin, Nicholas R](#); [Renkes, Gregg D](#)
Subject: RE: ANWR Op Ed
Date: Friday, August 14, 2020 9:02:00 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

10-4

Todd Willens

COS/DOI

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>

Sent: Thursday, August 13, 2020 9:15 PM

To: Willens, Todd D <todd_willens@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Subject: ANWR Op Ed

Thought about this more and am going to pitch the piece to the Financial Times. (b) (5).

Nicholas Goodwin

Communications Director

Office of the Secretary

Department of the Interior

(202) 412-2249



From: [MacGregor, Katharine S](#)
To: [Goodwin, Nicholas R](#); [Willens, Todd D](#); [Renkes, Gregg D](#); [Rojewski, Cole J](#); [Williams, Timothy G](#); [Zerzan, Gregory P](#); [Jorjani, Daniel H](#); [Hammond, Casey B](#); [Kaster, Amanda E](#)
Cc: [Goldey, Benjamin H](#); [Handzlik, Craig E](#)
Subject: Re: Coastal Plain Release and Comms - 10am ET Tomorrow
Date: Wednesday, December 2, 2020 10:03:01 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Padgett is the only statement?

Deputy Secretary
U.S. Department of the Interior

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Wednesday, December 2, 2020 5:05:41 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>; Rojewski, Cole J <cole_rojewski@ios.doi.gov>; Williams, Timothy G <timothy_williams@ios.doi.gov>; Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>; Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; Hammond, Casey B <casey_hammond@ios.doi.gov>; Kaster, Amanda E <amanda_kaster@ios.doi.gov>
Cc: Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>; Handzlik, Craig E <craig_handzlik@ios.doi.gov>
Subject: Coastal Plain Release and Comms - 10am ET Tomorrow

All—

Plan is for this to be issued at 10am ET tomorrow by BLM-AK.

Any concerns, please let us know.

Thank you,

Nicholas Goodwin

Communications Director

Office of the Secretary

Department of the Interior

(202) 412-2249



From: [Goodwin, Nicholas R](#)
To: [MacGregor, Katharine S](#); [Willens, Todd D](#); [Renkes, Gregg D](#); [Rojewski, Cole J](#); [Williams, Timothy G](#); [Zerzan, Gregory P](#); [Jorjani, Daniel H](#); [Hammond, Casey B](#); [Kaster, Amanda E](#)
Cc: [Goldey, Benjamin H](#); [Handzlik, Craig E](#)
Subject: Re: Coastal Plain Release and Comms - 10am ET Tomorrow
Date: Wednesday, December 2, 2020 10:04:13 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Correct. Same as call for noms. Sec is aware.

Nick Goodwin
Office of the Secretary
Department of the Interior

From: MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>
Sent: Wednesday, December 2, 2020 11:02:59 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; Willens, Todd D <todd_willens@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Rojewski, Cole J <cole_rojewski@ios.doi.gov>; Williams, Timothy G <timothy_williams@ios.doi.gov>; Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>; Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; Hammond, Casey B <casey_hammond@ios.doi.gov>; Kaster, Amanda E <amanda_kaster@ios.doi.gov>
Cc: Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>; Handzlik, Craig E <craig_handzlik@ios.doi.gov>
Subject: Re: Coastal Plain Release and Comms - 10am ET Tomorrow
Padgett is the only statement?

Deputy Secretary
U.S. Department of the Interior

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Wednesday, December 2, 2020 5:05:41 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>; Rojewski, Cole J <cole_rojewski@ios.doi.gov>; Williams, Timothy G <timothy_williams@ios.doi.gov>; Zerzan, Gregory P <gregory.zerzan@sol.doi.gov>; Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; Hammond, Casey B <casey_hammond@ios.doi.gov>; Kaster, Amanda E <amanda_kaster@ios.doi.gov>
Cc: Goldey, Benjamin H <benjamin_goldey@ios.doi.gov>; Handzlik, Craig E <craig_handzlik@ios.doi.gov>

Subject: Coastal Plain Release and Comms - 10am ET Tomorrow

All—

Plan is for this to be issued at 10am ET tomorrow by BLM-AK.

Any concerns, please let us know.

Thank you,

Nicholas Goodwin

Communications Director

Office of the Secretary

Department of the Interior

(202) 412-2249



From: [Boulton, Caroline H](#)
To: [Baptiste, Thomas P](#); [Everson, Margaret E](#); [Jorjani, Daniel H](#); [Lawkowski, Gary M](#); [MacGregor, Katharine S](#); [Renkes, Gregg D](#); [Tahsuda, John](#); [Weaver, Kiel P](#); [Willens, Todd D](#)
Subject: RE: Decision Memo: Coastal Plain Lease
Date: Friday, December 18, 2020 12:26:13 PM

All,

The Secretary has also approved the CP lease. This decision has been transmitted to ASLM.

Thanks,

Caroline

From: Boulton, Caroline H

Sent: Friday, December 18, 2020 12:44 PM

To: Baptiste, Thomas P <thomas_baptiste@ios.doi.gov>; Everson, Margaret E <margaret_e_everson@nps.gov>; Jorjani, Daniel H <daniel.jorjani@sol.doi.gov>; Lawkowski, Gary M <gary_lawkowski@ios.doi.gov>; MacGregor, Katharine S <katharine_macgregor@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Tahsuda, John <john_tahsuda@ios.doi.gov>; Weaver, Kiel P <kiel_weaver@ios.doi.gov>; Willens, Todd D <todd_willens@ios.doi.gov>

Subject: Decision Memo: Coastal Plain Lease

All,

Please see the attached decision memo from ASLM/BLM requesting approval of the CP lease. This memo will be transmitted to the Secretary shortly.

Best,

Caroline

Caroline Boulton

Special Assistant to the Secretary

Immediate Office of the Secretary

U.S. Department of the Interior

202.208.5403

From: [Willens, Todd D](#)
To: [Goodwin, Nicholas R](#); [Hebert, Samantha T](#)
Subject: RE: Deputy Secretary Approval Form _ Alaska January 2021
Date: Monday, December 7, 2020 3:00:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

They may have to adjust to avoid overlap.

Todd Willens

COS/DOI

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Monday, December 7, 2020 2:50 PM
To: Hebert, Samantha T <samantha_hebert@ios.doi.gov>; Willens, Todd D <todd_willens@ios.doi.gov>
Subject: FW: Deputy Secretary Approval Form _ Alaska January 2021
Todd—

Are you good with this? Sam – Isn't the Sec going to be traveling at the same time?

Nicholas Goodwin

Office of the Secretary

Department of the Interior

(202) 412-2249



From: White, Katherine M <katherine_white@ios.doi.gov>
Sent: Monday, December 7, 2020 2:44 PM
To: Eisenman, Theresa M <theresa_eisenman@ios.doi.gov>; Williams, Timothy G <timothy_williams@ios.doi.gov>; Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>; OS, OIEA <OIEA@ios.doi.gov>
Subject: Deputy Secretary Approval Form _ Alaska January 2021

Hello,

I've attached a speaking engagement form for a trip the Deputy Secretary is planning to Alaska for the ANWR lease sale on January 6, 2021. Please feel free to let me know if you have any questions.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: [Willens, Todd D](#)
To: [Dixon, Shandria Y](#)
Subject: Re: Pre-Approval for Review- Thomas Baptiste
Date: Tuesday, December 29, 2020 10:56:06 AM

Okay. I give my approval on this request.

Todd D. Willens
Chief of Staff
U.S. Department of the Interior
202-208-3437 - office
202-706-9041 - mobile

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Sent: Tuesday, December 29, 2020 11:45:15 AM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Subject: Re: Pre-Approval for Review- Thomas Baptiste
Katie just confirmed that no one else will be staffing Kate for this trip.

Shandria Dixon

Staff Assistant to Secretary David Bernhardt
Immediate office of the Secretary
(202) 208-5035

From: Willens, Todd D <todd_willens@ios.doi.gov>
Sent: Tuesday, December 29, 2020 11:40 AM
To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Subject: Re: Pre-Approval for Review- Thomas Baptiste
That last sentence was meant to be a question. Not a statement.

Todd D. Willens
Chief of Staff
U.S. Department of the Interior
202-208-3437 - office
202-706-9041 - mobile

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Sent: Tuesday, December 29, 2020 10:58:24 AM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Subject: Re: Pre-Approval for Review- Thomas Baptiste
Will do.

Shandria Dixon

Staff Assistant to Secretary David Bernhardt

Immediate office of the Secretary
(202) 208-5035

From: Willens, Todd D <todd_willens@ios.doi.gov>
Sent: Tuesday, December 29, 2020 10:55 AM
To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Subject: Re: Pre-Approval for Review- Thomas Baptiste
Please confirm that Thomas is the only staffer needed to support her trip. There will be no other staff travel requests (i.e. coms,intergovernmental,etc)

Todd D. Willens
Chief of Staff
U.S. Department of the Interior
202-208-3437 - office
202-706-9041 - mobile

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Sent: Tuesday, December 29, 2020 10:47:52 AM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Subject: Pre-Approval for Review- Thomas Baptiste
From: White, Katherine M <katherine_white@ios.doi.gov>
Sent: Monday, December 28, 2020 10:52 AM
To: Myers, Gregory <Gregory_Myers@ios.doi.gov>; Jane Kim <jane.kim@dtigov.com>
Cc: Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>
Subject: Travel Pre-Approval - Thomas Baptiste - Alaska January 2021

Good morning,

This is a pre-approval request for Thomas Baptiste to staff Kate MacGregor on the Alaska trip, January 5, 2021-January 9, 2021.

- a. Name of traveler: Thomas Baptiste
- b. Dates of travel: January 5, 2021 – January 9, 2021 (traveler will depart AK Jan 8, and flight lands Jan 9, 2021)
- c. Per Diem location: Jan 5-7: Anchorage, AK; January 7-8: Denali, AK; Jan 8-9: traveling from AK to DC (overnight travel)
- d. Justification/Purpose: Staffing the Deputy Secretary, who is traveling to Alaska to attend the Arctic National Wildlife Refuge (ANWR) Lease Sale event, which is scheduled for January 6, 2021. He will also staff the Deputy Secretary on her site visit to Denali National Park & Preserve on January 7th – 8th. The Deputy Secretary is visiting Denali to observe the site's winter housing and conditions.
- e. Cost of travel: \$1305.60
- f. Source of payment: DOI
- g. Does travel include attending/participating in a non-DOI/bureau event?: No

- h. Will the traveler be speaking or presenting to a non-DOI/bureau audience?: Possibly – a media event may be planned for the lease event, depending on Covid restrictions.
- i. Is any portion of the traveler’s trip open to the press/media?: Yes, the media event at the lease signing/announcement
- j. There is a deviation in the booking – Thomas Baptiste recently transferred to the Dep Sec hallway and so does not yet have a travel card. We are requesting Greg Myers book the flights and lodgings with the diminishing account card. I have included the flight and lodgings information below:

Flights: January 5, 2021 – Depart DCA 3:25pm – Delta flight 3765

Depart MSP 6:10pm – Delta flight 477

January 8, 2021 – Depart ANC 10:44pm – Delta flight 2098 (note, this is an overnight flight)

Depart MSP 10:40am – Delta flight 3669 (note, this flight departs Jan 9.)

Lodgings: January 5 – 7, 2021:

Sheraton Anchorage Hotel & Spa, 401 E Sixth Ave, Anchorage, AK 99501

January 7-8, 2021:

Staff lodgings at Denali National Park. No reservations need to be made, and no cost to the traveler/government because the staff lodgings are free of charge to employees there on business. NPS has arranged the booking.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

Shandria Dixon

Staff Assistant to Secretary David Bernhardt

Immediate office of the Secretary

(202) 208-5035

From: [Renkes, Gregg D](#)
To: [Bernhardt, David L](#); [Goodwin, Nicholas R](#)
Cc: [Willens, Todd D](#); [Swanson, Conner D](#)
Subject: RE: Script for Tomorrow's ANWR Call
Date: Sunday, August 16, 2020 4:26:24 PM
Attachments: [ANWR Coastal Plain Secretary Bernhardt Script Final.docx](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

I have added the attachment I last cleared for Nick.

From: Bernhardt, David L <dwbernhardt@ios.doi.gov>
Sent: Sunday, August 16, 2020 5:23 PM
To: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Cc: Willens, Todd D <todd_willens@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Re: Script for Tomorrow's ANWR Call
There's no attachment. But, I wrote out my remarks this afternoon.
Get [Outlook for iOS](#)

From: Goodwin, Nicholas R <nicholas_goodwin@ios.doi.gov>
Sent: Sunday, August 16, 2020 4:58:16 PM
To: Bernhardt, David L <dwbernhardt@ios.doi.gov>
Cc: Willens, Todd D <todd_willens@ios.doi.gov>; Renkes, Gregg D <gregg_renkes@ios.doi.gov>; Swanson, Conner D <conner_swanson@ios.doi.gov>
Subject: Script for Tomorrow's ANWR Call

Sir—

Here's the script for tomorrow's press call. Gregg has reviewed and concurred. It's 95% the language from your op ed. Please read this as we will use the audio recording for other press purposes.

Questions – please let me know.

Thanks,

Nicholas Goodwin
Communications Director
Office of the Secretary
Department of the Interior
(202) 412-2249



Secretary Bernhardt's Script for ANWR Press Call (+ Anticipated Q&A)
August 17, 2020

In April of 1987, after six years of energy and environmental study, former Secretary of the Interior Donald Hodel recommended to Congress that the so called "Coastal Plain" of the Arctic National Wildlife Refuge (ANWR) should be available for oil and gas exploration, development and transportation. Congress had created the 19.3 million-acre ANWR in 1980 setting aside eight percent of the refuge, a 1.56 million-acre area along the Arctic Ocean Beaufort Sea coast, for study of its energy potential. Secretary Hodel's recommendations were never implemented. President Trump's bold leadership brought more than three decades of inaction to an end when he signed the Tax Cuts and Jobs Act of 2017, requiring these vast energy resources be developed, contributing to America's future economic prosperity and energy security.

This is no ordinary oil and gas program on the public lands. This is a mandated energy production program of significant national importance. The new law settles the question of whether the leasing, exploration and development of oil and gas will occur on a small portion of ANWR. It requires an oil and gas development program that delivers energy to the nation and revenue to the treasury. The law makes oil and gas development one of the purposes of the refuge, clearly directing me, acting through the Bureau of Land Management, to carry out an aggressive, competitive exploration and development program for the potentially energy rich Coastal Plain.

Congress mandated that Coastal Plain leaseholders get the necessary rights-of-way, easements and land areas for production and support facilities they need to find and develop the area's oil and gas resources. Understanding that limitations on access to land and facilities had restricted oil and gas development in other Arctic federal areas, Congress acted decisively to ensure that ANWR leaseholders will receive the tools needed to economically and expeditiously realize these energy resources for the American people.

Congress also wanted the program to proceed without delay, knowing the time between discovery and production in ANWR could be as long as 10 years. The law requires at least two lease sales of 400,000 acres each to be held within the first seven years, with the first sale to take place before December 22, 2021 and the second lease sale before December 22, 2024. To this end, I have signed and we have issued our decision for how the required oil and gas program will be accomplished in a manner that responsibly develops this national energy resource and uses the best available science to mitigate the impact to the surrounding landscape and wildlife.

The U.S. Geological Survey considers the ANWR Coastal Plain to be the largest conventional onshore prospect in North America. President Trump's ANWR oil and gas program could create thousands of new jobs and generate tens of billions of dollars in new revenues, all the while emboldening our national security by furthering American energy independence. Material, services and infrastructure needed for oil production in the Coastal Plain will create high-paying jobs nationwide, from building oil tankers in Louisiana to constructing steel used to build pipelines in Pennsylvania. If oil is found, the Coastal Plain development and production required by the law could begin in about 8 to 10 years and deliver economic and national security benefits for 50 years or more.

The positive, local economic impact would be significant and is recognized by the Inupiat people of the Arctic and residents of the village of Kaktovik, nestled in and surrounded by the ANWR Coastal Plain, who support development. Development of these important energy resources will provide the Inupiat communities who live there with jobs and keep the lights on for future generations – providing the basic infrastructure and opportunity so many of us take for granted – schools, roads, stores, community centers, running water, and basic sanitation systems. These are the people who find cultural and life-giving sustenance from the whale, walrus, seal, polar bear and caribou. They know that their reliance on the Arctic's natural bounty can coexist with responsible energy development as has been demonstrated for the past forty years on the Alaska North Slope.

It goes without saying but is important to note that leases offered will be subject to stipulations and required operating procedures based on extensive experience with Arctic oil and gas development and robust analysis in the environmental review process. All activities will be in compliance with the Endangered Species Act and the Marine Mammal Protection Act. They are also designed to protect subsistence harvest opportunities, wildlife and the environment. The environmental impact statement conducted for his ROD underwent a significant two-year analysis costing early \$4 million and provides an appropriate regulatory balance between the development of critical energy resources of national importance and continued local conservation and use of fish, wildlife and other natural resources, including protections for caribou calving areas. There are timing limitations encompassing the Porcupine Caribou Herd's primary calving area which suspend major construction activities for a month each year during the calving period (May 20-June 20).

These regulatory measures were developed with extensive public comment and expert advice. There are areas subject to no surface occupancy (NSO) near waterways, specifically along the coast and streams in order to minimize impacts to floodplain

and riparian areas; fish habitat; cultural and paleontological resources; and impacts on subsistence use areas and activities.

All in all, the environmental review involved more than 70 employees from across federal and state agencies including contracted personnel and 30,000 hours of work. Nearly two million public comments were received that informed the final decision.

Harnessing the energy potential of ANWR's Coastal Plain marks a long-overdue, new chapter in American energy independence. Under President Trump's leadership, the open questions about the future of Coastal Plain oil and gas reserves have been answered; years of inaction have given way to an informed and determined plan to responsibly tap ANWR's energy potential for the American people for generations to come.

With that, I'm happy to take your questions.

Questions

- *Democrats have disputed the legitimacy of the EIS. See Huffman statement. Response?*
 - **RESPONSE:** The Coastal Plain Oil and Gas Leasing Program environmental review involved more than 70 employees from across federal and state agencies including contracted personnel. Nearly two million public comments were received that informed the final decision. This robust analysis and subsequent decision provide an appropriate regulatory balance between the development of critical energy resources of national importance and continued local conservation and use of fish, wildlife and other natural resources, including protections for caribou calving areas.

- *What protections are in place for polar bears, caribou and other animals in the ANWR?*
 - **RESPONSE:** Leases offered will be subject to stipulations and required operating procedures designed to protect subsistence harvest opportunities, wildlife and the environment. These regulatory measures were developed with extensive public comment and expert advice. Further all activities will comply with the Endangered Species Act and the Marine Mammal Protection Act.
 - There are timing limitations encompassing the Porcupine Caribou Herd's primary calving area which suspend major construction activities, but not drilling, for a month each year during the calving period (May 20-June 20).
 - There are areas subject to no surface occupancy (NSO) near waterways, specifically along the coast and streams in order to minimize impacts to floodplain and riparian areas; fish habitat; cultural and paleontological resources; and impacts on subsistence use areas and activities. NSO generally means no permanent oil and gas facilities.

- *A number of major banks, including Morgan Stanley, Goldman Sachs, JPMorgan Chase and Wells Fargo, have already pledged not to finance any drilling in ANWR. How can these leases be viable?*
 - **RESPONSE:** Their actions are ignoring the voices of the local indigenous people and our national energy security.

- The Arctic Inupiat support responsible resource development. The Inupiat of Kaktovik, the only Native village entirely within the ANWR Coastal Plain, depend on marine mammals and caribou for food and culture and on oil development for money to build schools, construct safe water infrastructure, and provide health services, among other basic necessities.
 - These Alaska Natives know firsthand that the Caribou herds can be protected, and in fact have thrived, alongside production of oil.
 - Keeping the TransAlaska Pipeline flowing with U.S. oil 10, 15 and 20 years from now is important to continued independence from middle east oil and our national security.
 - The Department of Treasury is taking a hard look at this issue. <https://thehill.com/policy/energy-environment/509367-trump-administration-blasts-banks-that-refuse-to-fund-arctic>
 - “Oil is the most actively traded commodity in the world,” Brian Brooks, acting comptroller of the currency at the Treasury Department, wrote to Sen. Dan Sullivan (R-Alaska). “Given the industry’s importance and ubiquity in our daily lives, I am skeptical of claims that the sector poses a ‘reputational risk’ to the banks that serve it.”
- *Study finds that aerial infrared misses polar dens more than half the time, how can the development not impact polar bears?*
 - **RESPONSE:** Detecting and avoiding polar bear dens when conducting exploration and development activities does not rely solely on one remote sensing technique. Reports on this study and others like it fail to acknowledge that the effectiveness of the forward-looking infrared radar increases with multiple applications and is affected by the weather. Further, remote sensing by air is augmented by remote sensing on the ground, the use of special dog teams to sniff out dens and trained scouts that search the areas far in advance of any activity.
 - <https://www.washingtonpost.com/climate-environment/2020/02/27/polar-bears-drilling-anwr/>
- *Status of NPR-A lease sale?*
 - **RESPONSE:** The FEIS was published June 26th. Public comment review and consultation under the ESA are ongoing. We expect to have a record of decision issued sometime this fall with a lease possibly

occurring within 3 months following that decision.

- *Joe Balash leaving have any impact on the delay in completing the ROD?*
 - **RESPONSE:** No. The time taken in issuing the ROD reflects the careful thought and analysis being given to this very important congressionally mandated program to ensure where and under what conditions leases are issued reflects our responsibilities to the environment, the local people and the development of the oil and gas resources as required by the law.

- *Did the BLM Relocation impact the ROD being delayed? If not, what caused the delay?*
 - **RESPONSE:** No. This is an important decision. The U.S. Geological Survey considers the ANWR Coastal Plain to be the largest conventional onshore prospect in North America. President Trump's ANWR oil and gas program could create thousands of new jobs and generate tens of billions of dollars in new revenues, all the while emboldening our national security by furthering American energy independence. Material, services and infrastructure needed for oil production in the Coastal Plain will create high-paying jobs nationwide, from building oil tankers in Louisiana to constructing steel used to build pipelines in Pennsylvania. If enough oil is found, the Coastal Plain development required by the law could deliver economic and national security benefits for 50 years or more.
 - (You told the Washington Post in January that the delay was to strengthen the legal case for the lease sale - <https://www.adn.com/business-economy/energy/2020/01/14/trump-administration-delays-arctic-refuge-oil-leasing-to-strengthen-legal-case/>)
 - "I want to make sure that record of decision is a record that can be well defended," Bernhardt said. "There have been issues raised during the development of that I want to make sure that I feel very confident that we've adequately addressed." -Sec, Bernhardt

- *Response to environmentalists that say you have prioritized oil and gas development over other forms of energy like wind and solar?*
 - **RESPONSE:** We approved the largest solar project (Gemini) in US history. We look at all projects individually and on their merits to

balance the multiple use and sustained yield mission of the department.

- *Joe Biden has said he is opposed to drilling in ANWR. Response?*
 - **RESPONSE:** He can be opposed to anything he wants, but it doesn't change the fact that the law requires us to conduct an oil and gas program in the Coastal Plain of the Arctic National Wildlife Refuge. This oil and gas program is one of the purposes of the refuge and two lease sales, covering at least 400,000 acres each, must be held by December 22, 2024, with the first being held before December 22, 2021.

- *For nearly three years, environmental groups, Native American tribes and Democratic attorneys general have often prevailed in their legal challenges against the Trump administration's energy and environmental agenda. EarthJustice claims to have won 33 of 39 cases about the Trump admin as they rush projects through. Response?*
 - **RESPONSE:** Laughable. Couple of notable wins:
 - **Fracking Ban Rescission** (*Calif. v. BLM*, N.D.Cal.): Court upheld BLM decision to reverse Obama administration's ban on hydraulic fracturing, citing "reasoned explanation" for the change in position.
 - **Lifting the Coal Moratorium** (*Cit. for Clean Energy v. DOI*, D. Mont.): Court recently denied plaintiffs' request for injunctive relief.
 - **Examples of Particular Oil & Gas Activities:**
 - **NPR-A Exploration** (NPR-A) (*Native Vill of Nuiqsut*, D. Alaska): Court upheld BLM approval of Conoco's O&G exploration activity in the Willow region of NPR-A.
 - **NPR-A Lease Sales** (*Northern Alaska Env. Ctr v. DOI; NRDC v. Zinke*, D. Alaska): Court rejected these 2 challenges to BLM O&G lease sales citing the adequacy of the NEPA analysis.

- *Trump officials decided to restrict the analysis of its environmental impact statement, [which was filed in September](#), to only the leasing stage of development. David J. Hayes, the former Interior deputy secretary under both Bill Clinton and Barack Obama, noted the 2017 law directs the department to conduct a program that covers "the leasing,*

development, production and transportation.” In that same environmental impact statement, the administration claims its plan would only damage 2,000 acres of the refuge. “It’s fairly ludicrous that you can open up the entire area to drilling and only disturb 2,000 acres,” Hayes added.

- **RESPONSE:** The EIS analyzes an oil and gas program for the Coastal Plain of ANWR that includes exploration, development, production and transportation. Based on our experience at the nearby National Petroleum Reserve – Alaska, the analyzed reasonably foreseeable development program would utilize 2,000 acres for production and support facilities. This is an extremely small portion of the 19.3-million-acre refuge.
- *Climate change has made the area more delicate as melting ice has driven threatened polar bears to spend more time in dens along the refuge’s coastal plain. How can you think this doesn’t exacerbate the problem?*
 - **RESPONSE:** First, oil and gas development and polar bears have coexistent on the North Slope of Alaska for four decades without any significant impact on bears. In fact, the Alaska polar bear population, and the number of bears hunted and harvested for subsistence purposes, has increased over that time. Further, there is no indication that changing sea ice conditions will change this experience in any way.
 - Energy development and conservation are not mutually exclusive, in fact conservation is largely contingent on energy development royalties, which are used to improve our environment. Congress’ deliberate actions to require that we take this action and hold lease sales will make our economy stronger and safer by being independent from unreliable foreign nations like Russia, China and Saudi Arabia who all by the way have more lax environmental restrictions than the US.
- *Environmentalists allege that the department is anti-wildlife with this plan and the fact that you recently finalized another rule that would allow hunting tactics that make it easier to kill bear cubs and wolf pups in Alaska. The rule, finalized in June, ends a five-year ban on baiting hibernating bears from their dens, shining a flashlight into wolf dens to cause them to scurry, targeting animals from airplanes or snowmobiles*

and shooting swimming caribou from boats. Response?

- **RESPONSE:** Congress created national preserves in Alaska to be open to hunting, fishing and trapping under federal and state law. Except for subsistence activities provided for under federal law, national parks in Alaska are closed to hunting and trapping by law. This rule makes no changes in that regard, and federal subsistence regulations are also not affected by the final regulation.
- “The previous rule was implemented without adequate tribal consultation, in disregard to rural Alaska's dependence on wild food resources,” stated **Victor Joseph, Chief and Chairman, Tanana Chiefs Conference (TCC)**. “The previous limitations enacted in 2015, threatened our way of life and our centuries long sustainable management practices. Tanana Chiefs Conference supports these revisions.” (*TCC represents 42 member tribes that comprise 37% of the interior of Alaska.*)

From: [Willens, Todd D](#)
To: [Dixon, Shandria Y](#)
Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
Date: Wednesday, December 9, 2020 12:18:35 PM

Approved.

Todd D. Willens
Chief of Staff
U.S. Department of the Interior
202-208-3437 - office
202-706-9041 - mobile

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Sent: Wednesday, December 9, 2020 1:12:12 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Subject: Fw: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
Good Afternoon-

For your approval. FYI Kate will purchase the ticket from Denver, CO to Alaska on her own. We will only purchase her return flight back to WDC.

Thanks,

Shandria Dixon

Staff Assistant to Secretary David Bernhardt
Immediate office of the Secretary
(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>
Sent: Tuesday, December 8, 2020 3:21 PM
To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>
Subject: RE: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Hello,

Here is an updated pre-approval request for the Deputy Secretary for travel to Anchorage, AK, January 5, 2021 – January 8, 2021.

- a. Name of traveler: Katharine MacGregor
- b. Dates of travel: January 5, 2021 – January 8, 2021
- c. Per Diem location: Anchorage, AK
- d. Justification/Purpose: The Deputy Secretary is traveling to Alaska to attend the Arctic National Wildlife Refuge (ANWR) Lease Sale event, which is scheduled for January 6, 2021.
- e. Cost of travel: \$1925.70

- f. Source of payment: DOI
- g. Does travel include attending/participating in a non-DOI/bureau event?: No
- h. Will the traveler be speaking or presenting to a non-DOI/bureau audience?: Possibly – a media event may be planned for the lease event, depending on Covid restrictions.
- i. Is any portion of the traveler’s trip open to the press/media?: Yes, the media event at the lease signing/announcement
- j. This request includes a travel deviation: The traveler will begin travel outside of her Duty Station. The traveler had (b) (6) leave planned in Montana up until January 5th. The ANWR lease sale has since been scheduled for January 6th (pending final confirmation in accordance with Covid restrictions), after the (b) (6) leave was already booked. The traveler will fly from Denver to Anchorage, because it is not possible to fly back to DC and then to Anchorage in time for the lease sale.
The Deputy Secretary’s (b) (6) leave plans, before the lease sale was scheduled for January 6, was scheduled to end on January 5 and she would’ve driven to the Denver airport and flown home from her (b) (6) leave from Denver to DC. Since the lease sale has been scheduled for January 6, she was now hoping (pending approval) to end her (b) (6) leave/begin her travel status at the Denver airport. She doesn’t plan to include her drive from Montana to the Denver airport on the TA because she considers that part of her (b) (6) leave and that she’ll start her official travel in Anchorage. Since she plans to fly with United Airlines from Denver to Anchorage, which is not the contract carrier for DC to Anchorage, the Deputy Secretary plans to buy her own one-way ticket from Denver to Anchorage, and will begin her TA when she arrives in Alaska.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>

Sent: Tuesday, December 8, 2020 3:11 PM

To: White, Katherine M <katherine_white@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Okay please update the original pre-approval to reflect this new information.

Thanks

Shandria Dixon

Staff Assistant to

Secretary David Bernhardt

Immediate Office of the Secretary

(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>

Sent: Tuesday, December 8, 2020 1:45:43 PM

To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: RE: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

That's great, thanks for the info. The Deputy Secretary will plan to book her own flight to Anchorage on January 5. Let me know when you can if the trip is approved and I'll work with Jane to finalize the TA.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>

Sent: Tuesday, December 8, 2020 1:19 PM

To: White, Katherine M <katherine_white@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

- The TA would begin the date she arrives to Alaska.
- She is only able to claim lodging and M&IE for the approved per diem location.
- You would note in the trip purpose that the traveler was on (b) (6) and traveled from a non-duty station (Denver, CO). Traveler arrived in Anchorage, AK at no expense to the government.
- Her itinerary will show that she didn't travel from her duty station, so we want to document in the trip purpose what took place.
- Jane cannot book the United Flight. She would have to book this on her own as if it was for a personal trip.
- Jane will be able to book the one-way Delta flight for her return to DC using her GOVcc.

Keep in mind that this trip is mixing personal travel with Official Government travel. We are only responsible for handling the Official portion of the trip.

Thanks,

Shandria Dixon

Staff Assistant to Secretary David Bernhardt

Immediate office of the Secretary

(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>

Sent: Tuesday, December 8, 2020 12:47 PM

To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: RE: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Hi Shandria,

The Deputy Secretary looked at the Delta options this morning. She's going to decide whether she'll use one of those, or if she'll just be able to book the United flight on her own (with her own funds.)

What's the process if she decides to book and pay for her own one-way flight? Would the TA then just start when she is in Alaska, and only include the lodging and M&IE in Alaska, and then her return flight to DC (booked just as a one-way from Anchorage to DC)? Or would the United flight still be booked through Jane & Concur as usual, and she is billed for the cost of the Denver-Anchorage flight?

Her (b) (6) leave plans, before the lease sale was scheduled for January 6, was scheduled to end on January 5 and she would've driven to the Denver airport and flown home from her (b) (6) leave from Denver to DC. Since the lease sale has been scheduled for January 6, she was now hoping (pending approval) to end her (b) (6) leave/begin her travel status at the Denver airport. When I spoke with her, she doesn't plan to include her drive from Montana to the Denver airport on the TA because she considers that part of her (b) (6) leave and that she'll start her official travel when she flies to Anchorage.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>

Sent: Tuesday, December 8, 2020 12:25 PM

To: White, Katherine M <katherine_white@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Hey Katie,

I just got off the phone with Jane Kim to confirm the airfare-

- Jane can do an exchange on the Public fare flight from Denver, CO to Anchorage, AK but it will have to be a Delta flight only and would be at no additional charge to the government nor the traveler.
- If she chooses to fly United Airlines she would have to book and pay for that flight in full using her personal funds for that one-way flight.
- Also, how will she be getting from Montana to Denver? (You state that she will be in Montana but don't state that she is requesting to travel from Denver. Departing from Denver isn't on the pre-approval) Please update.

Thanks,

Shandria Dixon

Staff Assistant to Secretary David Bernhardt

Immediate office of the Secretary

(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>

Sent: Monday, December 7, 2020 4:43 PM

To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: FW: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Looping in Hannah. Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: White, Katherine M

Sent: Monday, December 7, 2020 3:02 PM

To: Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Dixon, Shandria Y <shandria_dixon@ios.doi.gov>

Subject: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Hello,

This is a pre-approval request for the Deputy Secretary for travel to Anchorage, AK, January 5, 2021 – January 8, 2021.

- a. Name of traveler: Katharine MacGregor
- b. Dates of travel: January 5, 2021 – January 8, 2021
- c. Per Diem location: Anchorage, AK
- d. Justification/Purpose: The Deputy Secretary is traveling to Alaska to attend the Arctic National Wildlife Refuge (ANWR) Lease Sale event, which is scheduled for January 6, 2021.
- e. Cost of travel: \$1925.70
- f. Source of payment: DOI
- g. Does travel include attending/participating in a non-DOI/bureau event?: No
- h. Will the traveler be speaking or presenting to a non-DOI/bureau audience?: Possibly – a media event may be planned for the lease event, depending on Covid restrictions.
- i. Is any portion of the traveler's trip open to the press/media?: Yes, the media event at the lease signing/announcement
- j. This request includes a travel deviation: The traveler will begin travel outside of her Duty Station. The traveler had (b) (6) leave planned in Montana up until January 5th. The ANWR lease sale has since been scheduled for January 6th (pending final confirmation in accordance with Covid restrictions), after the (b) (6) leave was already booked. The traveler will fly from Denver to Anchorage, because it is not possible to fly back to DC and then to Anchorage in time for the lease sale. The cost comparison form is attached.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary
Rm 6117
202-208-6411
katherine_white@ios.doi.gov

From: [Willens, Todd D](#)
To: [Cooke, Hannah S](#)
Cc: [Dixon, Shandria Y](#)
Subject: RE: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
Date: Thursday, December 17, 2020 8:32:00 AM

Approved.

Todd Willens
COS/DOI

From: Cooke, Hannah S <hannah_cooke@ios.doi.gov>
Sent: Wednesday, December 16, 2020 4:03 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Cc: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Subject: FW: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
Hi Todd, please see the updated memo attached and let us know if this is approved. Thank you!

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Sent: Wednesday, December 16, 2020 3:14 PM
To: Cooke, Hannah S <hannah_cooke@ios.doi.gov>
Subject: Fwd: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
You can pass this along to Todd.

Thanks

Shandria Dixon
Staff Assistant to
Secretary David Bernhardt
Immediate Office of the Secretary
(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>
Sent: Wednesday, December 16, 2020 2:04:56 PM
To: Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>
Subject: RE: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
Thanks, Shandria. Please see attached.

-Katie

Katie White
Administrative Assistant
Office of the Deputy Secretary
Rm 6117
202-208-6411
katherine_white@ios.doi.gov

From: Cousins, Debbie <Debbie_Cousins@ios.doi.gov>
Sent: Wednesday, December 16, 2020 10:50 AM
To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; White, Katherine M <katherine_white@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>
Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
Thanks Shandria
Debbie Cousins

Director of Administrative Services
Immediate Office of the Secretary
Room 6027
(office)202-208-7664
(cell) 202-340-9960

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>

Sent: Wednesday, December 16, 2020 10:49:07 AM

To: White, Katherine M <katherine_white@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Good Morning Katie,

The COS would like for you to add at the bottom of your memorandum, "The traveler has been informed and understands that the non-contract carrier portion of this trip is non-refundable. The traveler has been informed and understands that if any changes are made to this flight the traveler will be responsible for using her own funds for all associated fees that are incurred"

Thanks

Shandria Dixon

Staff Assistant to Secretary David Bernhardt

Immediate office of the Secretary

(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>

Sent: Tuesday, December 15, 2020 9:36 AM

To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: RE: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Hello,

Here is an updated pre-approval request for the Deputy Secretary for travel to Anchorage, AK, January 5, 2021 – January 8, 2021.

- a. Name of traveler: Katharine MacGregor
- b. Dates of travel: January 5, 2021 – January 8, 2021
- c. Per Diem location: Anchorage, AK; Denali, AK
- d. Justification/Purpose: The Deputy Secretary is traveling to Alaska to attend the Arctic National Wildlife Refuge (ANWR) Lease Sale event, which is scheduled for January 6, 2021.
- e. Cost of travel: \$1305.60
- f. Source of payment: DOI
- g. Does travel include attending/participating in a non-DOI/bureau event?: No
- h. Will the traveler be speaking or presenting to a non-DOI/bureau audience?: Possibly – a media event may be planned for the lease event, depending on Covid restrictions.
- i. Is any portion of the traveler's trip open to the press/media?: Yes, the media event at the lease signing/announcement

j. This request includes a travel deviation: The traveler will begin travel outside of her Duty Station. The traveler had (b) (6) leave planned in Montana up until January 5th. The ANWR lease sale has since been scheduled for January 6th (pending final confirmation in accordance with Covid restrictions), after the (b) (6) leave was already booked. The traveler will travel to Denver airport and then fly from Denver to Anchorage, because it is not possible to fly back to DC and then to Anchorage in time for the lease sale.

Secondly, the Deputy Secretary requests to use a United Airlines flight instead of Delta. The contract carrier for DC to Anchorage is Delta Airlines. However, the timing of the Delta flight from Denver to Anchorage doesn't work with the official travel itinerary. Additionally, the cost of the United flight from Denver is cheaper than the Delta flight from DC.

A memo and cost comparison are attached for reference.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: [Dixon, Shandria Y](#)
To: [Willens, Todd D](#)
Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
Date: Wednesday, December 9, 2020 12:23:49 PM

Thanks!

Shandria Dixon

Staff Assistant to Secretary David Bernhardt
Immediate office of the Secretary
(202) 208-5035

From: Willens, Todd D <todd_willens@ios.doi.gov>
Sent: Wednesday, December 9, 2020 1:18 PM
To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
Approved.

Todd D. Willens
Chief of Staff
U.S. Department of the Interior
202-208-3437 - office
202-706-9041 - mobile

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>
Sent: Wednesday, December 9, 2020 1:12:12 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Subject: Fw: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor
Good Afternoon-

For your approval. FYI Kate will purchase the ticket from Denver, CO to Alaska on her own. We will only purchase her return flight back to WDC.

Thanks,

Shandria Dixon

Staff Assistant to Secretary David Bernhardt
Immediate office of the Secretary
(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>
Sent: Tuesday, December 8, 2020 3:21 PM
To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>
Subject: RE: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Hello,

Here is an updated pre-approval request for the Deputy Secretary for travel to Anchorage, AK, January 5, 2021 – January 8, 2021.

- a. Name of traveler: Katharine MacGregor
- b. Dates of travel: January 5, 2021 – January 8, 2021
- c. Per Diem location: Anchorage, AK
- d. Justification/Purpose: The Deputy Secretary is traveling to Alaska to attend the Arctic National Wildlife Refuge (ANWR) Lease Sale event, which is scheduled for January 6, 2021.
- e. Cost of travel: \$1925.70
- f. Source of payment: DOI
- g. Does travel include attending/participating in a non-DOI/bureau event?: No
- h. Will the traveler be speaking or presenting to a non-DOI/bureau audience?: Possibly – a media event may be planned for the lease event, depending on Covid restrictions.
- i. Is any portion of the traveler’s trip open to the press/media?: Yes, the media event at the lease signing/announcement
- j. This request includes a travel deviation: The traveler will begin travel outside of her Duty Station. The traveler had (b) (6) leave planned in Montana up until January 5th. The ANWR lease sale has since been scheduled for January 6th (pending final confirmation in accordance with Covid restrictions), after the (b) (6) leave was already booked. The traveler will fly from Denver to Anchorage, because it is not possible to fly back to DC and then to Anchorage in time for the lease sale.

The Deputy Secretary’s (b) (6) leave plans, before the lease sale was scheduled for January 6, was scheduled to end on January 5 and she would’ve driven to the Denver airport and flown home from her (b) (6) leave from Denver to DC. Since the lease sale has been scheduled for January 6, she was now hoping (pending approval) to end her (b) (6) leave/begin her travel status at the Denver airport. She doesn’t plan to include her drive from Montana to the Denver airport on the TA because she considers that part of her (b) (6) leave and that she’ll start her official travel in Anchorage. Since she plans to fly with United Airlines from Denver to Anchorage, which is not the contract carrier for DC to Anchorage, the Deputy Secretary plans to buy her own one-way ticket from Denver to Anchorage, and will begin her TA when she arrives in Alaska.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>

Sent: Tuesday, December 8, 2020 3:11 PM

To: White, Katherine M <katherine_white@ios.doi.gov>; Cousins, Debbie

<Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Okay please update the original pre-approval to reflect this new information.

Thanks

Shandria Dixon

Staff Assistant to

Secretary David Bernhardt

Immediate Office of the Secretary

(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>

Sent: Tuesday, December 8, 2020 1:45:43 PM

To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cousins, Debbie

<Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: RE: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

That's great, thanks for the info. The Deputy Secretary will plan to book her own flight to Anchorage on January 5. Let me know when you can if the trip is approved and I'll work with Jane to finalize the TA.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>

Sent: Tuesday, December 8, 2020 1:19 PM

To: White, Katherine M <katherine_white@ios.doi.gov>; Cousins, Debbie

<Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

- The TA would begin the date she arrives to Alaska.
- She is only able to claim lodging and M&IE for the approved per diem location.
- You would note in the trip purpose that the traveler was on (b) (6) and traveled from a non-duty station (Denver, CO). Traveler arrived in Anchorage, AK at no expense to the government.
- Her itinerary will show that she didn't travel from her duty station, so we want to document in the trip purpose what took place.
- Jane cannot book the United Flight. She would have to book this on her own as if it was for a personal trip.
- Jane will be able to book the one-way Delta flight for her return to DC using her GOVcc.

Keep in mind that this trip is mixing personal travel with Official Government travel. We are only responsible for handling the Official portion of the trip.

Thanks,

Shandria Dixon

Staff Assistant to Secretary David Bernhardt
Immediate office of the Secretary
(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>

Sent: Tuesday, December 8, 2020 12:47 PM

To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: RE: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Hi Shandria,

The Deputy Secretary looked at the Delta options this morning. She's going to decide whether she'll use one of those, or if she'll just be able to book the United flight on her own (with her own funds.)

What's the process if she decides to book and pay for her own one-way flight? Would the TA then just start when she is in Alaska, and only include the lodging and M&IE in Alaska, and then her return flight to DC (booked just as a one-way from Anchorage to DC)? Or would the United flight still be booked through Jane & Concur as usual, and she is billed for the cost of the Denver-Anchorage flight?

Her (b) (6) leave plans, before the lease sale was scheduled for January 6, was scheduled to end on January 5 and she would've driven to the Denver airport and flown home from her (b) (6) leave from Denver to DC. Since the lease sale has been scheduled for January 6, she was now hoping (pending approval) to end her (b) (6) leave/begin her travel status at the Denver airport. When I spoke with her, she doesn't plan to include her drive from Montana to the Denver airport on the TA because she considers that part of her (b) (6) leave and that she'll start her official travel when she flies to Anchorage.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>

Sent: Tuesday, December 8, 2020 12:25 PM

To: White, Katherine M <katherine_white@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: Re: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Hey Katie,

I just got off the phone with Jane Kim to confirm the airfare-

- Jane can do an exchange on the Public fare flight from Denver, CO to Anchorage, AK but it will have to be a Delta flight only and would be at no additional charge to the government nor the traveler.
- If she chooses to fly United Airlines she would have to book and pay for that flight in full using her personal funds for that one-way flight.

- Also, how will she be getting from Montana to Denver? (You state that she will be in Montana but don't state that she is requesting to travel from Denver. Departing from Denver isn't on the pre-approval) Please update.

Thanks,

Shandria Dixon

Staff Assistant to Secretary David Bernhardt

Immediate office of the Secretary

(202) 208-5035

From: White, Katherine M <katherine_white@ios.doi.gov>

Sent: Monday, December 7, 2020 4:43 PM

To: Dixon, Shandria Y <shandria_dixon@ios.doi.gov>; Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Cooke, Hannah S <hannah_cooke@ios.doi.gov>

Subject: FW: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Looping in Hannah. Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: White, Katherine M

Sent: Monday, December 7, 2020 3:02 PM

To: Cousins, Debbie <Debbie_Cousins@ios.doi.gov>; Dixon, Shandria Y <shandria_dixon@ios.doi.gov>

Subject: Travel pre-approval - Alaska January 2021 - Deputy Secretary MacGregor

Hello,

This is a pre-approval request for the Deputy Secretary for travel to Anchorage, AK, January 5, 2021 – January 8, 2021.

- a. Name of traveler: Katharine MacGregor
- b. Dates of travel: January 5, 2021 – January 8, 2021
- c. Per Diem location: Anchorage, AK
- d. Justification/Purpose: The Deputy Secretary is traveling to Alaska to attend the Arctic National Wildlife Refuge (ANWR) Lease Sale event, which is scheduled for January 6, 2021.
- e. Cost of travel: \$1925.70
- f. Source of payment: DOI
- g. Does travel include attending/participating in a non-DOI/bureau event?: No
- h. Will the traveler be speaking or presenting to a non-DOI/bureau audience?: Possibly – a media event may be planned for the lease event, depending on Covid restrictions.
- i. Is any portion of the traveler's trip open to the press/media?: Yes, the media event at the lease signing/announcement
- j. This request includes a travel deviation: The traveler will begin travel outside of her Duty

Station. The traveler had (b) (6) leave planned in Montana up until January 5th. The ANWR lease sale has since been scheduled for January 6th (pending final confirmation in accordance with Covid restrictions), after the (b) (6) leave was already booked. The traveler will fly from Denver to Anchorage, because it is not possible to fly back to DC and then to Anchorage in time for the lease sale. The cost comparison form is attached.

Thanks,

-Katie

Katie White

Administrative Assistant

Office of the Deputy Secretary

Rm 6117

202-208-6411

katherine_white@ios.doi.gov

From: [Willens, Todd D](#)
To: [Renkes, Gregg D](#)
Subject: Re: Update on priority items
Date: Monday, November 9, 2020 7:33:31 AM

10-4

Todd D. Willens
Chief of Staff
U.S. Department of the Interior
202-208-3437 - office
202-706-9041 - mobile

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>
Sent: Sunday, November 8, 2020 5:33:12 PM
To: Willens, Todd D <todd_willens@ios.doi.gov>
Subject: Update on priority items
ESA 4(b)(2): Final rule surnamed and ready to send to OIRA COB Friday 11/6.
ESA Habitat Definition: Final rule surnamed and ready to send to OIRA COB Friday 11/6.
Section 7 Consultation Handbook: The draft handbook was submitted to OIRA to initiate interagency review on 10/29. Deemed significant requiring 90 day review. Will need to press OIRA to complete sooner.
MBTA: Final rule and EIS surnamed and ready to send to OIRA COB Friday 11/6.
Northern Spotted Owl Critical Habitat Exclusion: Back in FWS Region to answer questions. This needs attention if it is to move.
Cottonwood II: Submitted to OIRA for interagency review on 10/8.
Concessions Regs: Final rule draft preamble and regs to be completed by 11/13. Surname party 11/16 and send to OIRA.
ANWR 1002 Lease Sale: Call for Nominations ready to send to OFR COB 11/6.

Gregg D. Renkes
Deputy Chief of Staff/Senior Counselor
Office of the Secretary
U.S. Department of the Interior
(202) 208-4043 (O)
(202) 774-4833 (C)

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From: [Willens, Todd D](#)
To: [Hebert, Samantha T](#)
Subject: RE: Wednesday meeting
Date: Monday, January 4, 2021 9:47:00 AM

10-4

Todd Willens

COS/DOI

From: Hebert, Samantha T <samantha_hebert@ios.doi.gov>

Sent: Monday, January 4, 2021 9:51 AM

To: Willens, Todd D <todd_willens@ios.doi.gov>

Subject: Fw: Wednesday meeting

Samantha Hebert

Director of Scheduling, Advance, and Operations

Immediate Office of the Secretary

United States Department of the Interior

Office: 202-208-4025

Cell: 202-412-6142

Please note all emails to and from this address are subject to FOIA

From: Renkes, Gregg D <gregg_renkes@ios.doi.gov>

Sent: Monday, January 4, 2021 9:49 AM

To: Hebert, Samantha T <samantha_hebert@ios.doi.gov>

Subject: Wednesday meeting

Sam, Can you put a meeting on the Secretary's schedule for 4:00 pm on Wednesday regarding the ANWR lease sale? Also include Todd, Casey Hammond and Nick Goodwin. Thanks, Gregg

Gregg D. Renkes

Deputy Chief of Staff/Senior Counselor

Office of the Secretary

U.S. Department of the Interior

(202) 208-4043 (O)

(202) 774-4833 (C)

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From: Hebert, Samantha T <samantha_hebert@ios.doi.gov>

Sent: Monday, January 4, 2021 9:43 AM

To: Hebert, Samantha T <samantha_hebert@ios.doi.gov>

Subject: All Meetings/Calls moved to 5160

Good Morning,

If you are in MIB for a meeting with Secretary Bernhardt today the meeting will take place in 5160.

If you are calling in the information to dial in is on the invite.

Thanks,

Sam

Samantha Hebert

Director of Scheduling, Advance, and Operations

Immediate Office of the Secretary

United States Department of the Interior

Office: 202-208-4025

Cell: 202-412-6142

Please note all emails to and from this address are subject to FOIA