

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
COMMISSIONER'S OFFICE

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June 13, 2012

Mr. Bud Cribley  
NPR-A Planning Team Leader  
Bureau of Land Management  
222 West Seventh Avenue, No. 13  
Anchorage, AK 99513-7599

RE: Integrated Activity Plan (IAP) Draft Environmental Impact Statement (DEIS) for the  
National Petroleum Reserve-Alaska (NPR-A)

Dear Mr. Cribley,

The State supports the overall intent of this planning process to provide further opportunities for oil and gas exploration and development in the National Petroleum Reserve – Alaska (NPR-A); however, we continue to have serious concerns about certain aspects of the plan. The statement of purpose and need for the Integrated Activity Plan (IAP)/Environmental Impact Statement (EIS) includes determining the appropriate management of all Bureau of Land Management (BLM)-managed lands in the NPR-A “*in a manner consistent with existing statutory direction,*” yet the plan selectively disregards congressional direction provided under the Naval Petroleum Reserves Production Act of 1976 (Production Act), as amended; the Alaska National Interest Lands Conservation Act (ANILCA); and the Federal Land Policy and Management Act of 1976 (FLPMA); and inappropriately applies administrative policy to the NPR-A. Instead of planning for the NPR-A for the purpose for which it was established – as a Petroleum Reserve – the draft plan implies the area should instead be managed as a conservation system unit.

The State opposes the creation of deferral areas for oil and gas leasing with indeterminate durations. In regard to the North Teshepuk and Kasegaluak Lagoon deferrals, the DEIS says that lands in these deferral areas will become available for leasing in the given year 2014 or 2018, respectively. If history is a guide, the future availability of these deferred lands is anything but certain. It appears just as likely that future planning alternatives might deem these areas permanently off-limits for surface activities, or that future oil and gas lease sales will not encompass the entire planning area, and will simply offer portions of the NPR-A not included in these long-deferred lands. Thus, this amounts to a constructive deferral beyond the areas’ expiration dates. We expect these deferred areas to be included in BLM’s annual Call for Lease Area Nominations for NPR-A immediately after the deferral period ends.

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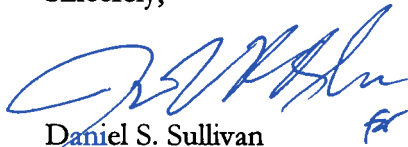
The State of Alaska continues to encourage BLM to incorporate a thorough assessment of potential pipeline corridors that would deliver Outer Continental Shelf (OCS) oil and gas resources through NPR-A and to market. The DEIS must provide more specific provisions for onshore infrastructure to transport oil and gas to the Trans Alaska Pipeline System (TAPS). Restrictive surface protection measures, Special Area designations, and stipulations must not prevent the transport of Chukchi oil and gas to market.

These are just a few examples where the Draft NPR-A IAP DEIS will discourage – not encourage – accessing and developing abundant hydrocarbon reserves within the NPR-A, and restricts the ability of meeting President Obama’s goal of reducing oil imports by one third by 2025. The State of Alaska fully endorses this goal – Governor Parnell also set a priority goal of increasing TAPS throughput to one million barrels of oil production per day within a decade. However, we must have a federal government that welcomes exploration and development by enforcing timely decision-making and permitting within its authority to allow access to the NPR-A, as just one example where abundant hydrocarbon resources await critical exploration and development.

The U.S. Geological Survey estimates 896 million barrels of conventional, undiscovered oil and 53 trillion cubic feet of conventional, undiscovered non-associated gas within NPR-A and adjacent State waters. Developing these resources will help stimulate Alaska’s economy as well as contribute to the nation’s energy needs. The NPR-A IAP DEIS should be developed to allow oil and gas development within NPR-A, and should not be subject to unnecessary restrictions or deferrals.

As a cooperating agency on the NPR-A DEIS, we look forward to continue working with BLM and other cooperating agencies throughout the remainder of the NEPA process. We hope that the issues we have raised from scoping and throughout the development of the DEIS will not be disregarded, but incorporated into the Final EIS to help achieve the stated purpose of this EIS and to follow the statutory direction provided in the Naval Petroleum Reserves Production Act of 1976. The State has been a strong participant in past NPR-A planning processes and has a vested interest in an IAP that encompasses 23 million acres of the North Slope, addressing a wide variety of issues including oil and gas activities, wildlife, subsistence, access, and the potential for mineral development. The comments enclosed with this letter represent the consolidated views of the State’s resource agencies.

Sincerely,



Daniel S. Sullivan  
Commissioner

Enclosures

cc:

Randy Ruaro, Deputy Chief of Staff, Office of the Governor  
Kip Knudson, Director of State & Federal Relations, Office of the Governor  
Daniel Sullivan, Commissioner, Department of Natural Resources

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Joseph Balash, Deputy Commissioner, Department of Natural Resources

Ed Fogels, Deputy Commissioner, Department of Natural Resources

Thomas Crafford, Director DNR, Office of Project Management and Permitting

Sara Longan, Large Project Manager, Office of Project Management and Permitting

William Barron, Director DNR, Division of Oil and Gas

## I. Department of Natural Resources

### A. ANILCA Program Comments

The State supports the overall intent of this planning process to provide further opportunities for oil and gas exploration and development in the National Petroleum Reserve – Alaska (referred to hereafter as NPR-A or the Reserve); however, we continue to have serious concerns about certain aspects of the plan. The statement of purpose and need for the IAP/EIS includes determining the appropriate management of all Bureau of Land Management (BLM)-managed lands in the NPR-A “*in a manner consistent with existing statutory direction,*” yet the plan selectively disregards Congressional direction provided under the Naval Petroleum Reserves Production Act of 1976 (NPRPA or Production Act), as amended; the Alaska National Interest Lands Conservation Act (ANILCA); and the Federal Land Policy and Management Act of 1976 (FLPMA), and inappropriately applies administrative policy to the NPR-A, as follows:

1. BLM Instruction Memorandum 2011-154, which directs BLM to consider wilderness characteristics when making management decisions, does not apply to the NPR-A. While BLM may be required under Section 201 of FLPMA to “*prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values;*” the scope of land use planning in NPR-A was expressly limited by Congress and does not include protecting wilderness-related values and activities.
2. The “broad authority” claimed by BLM under FLPMA Section 302 is in fact expressly limited by section 302(a), which provides that “where a tract of . . . public land has been dedicated to specific uses according to any other provision of law it shall be managed in accordance with such law.” BLM’s FLPMA section 302 authority also is expressly limited by the NPRPA, 42 U.S.C. § 6506a(a)&(b), and its implementing regulations, 43 C.F.R. § 2361.0-2, which provide that mitigation and other protective measures afforded under the Act are secondary to the primary purpose of the Reserve - the exploration and development of oil and gas resources.
3. The Wild and Scenic Rivers Act does not trump ANILCA’s direction for Alaska, which expressly prohibits wild and scenic river reviews without further authorization from Congress. 16 U.S.C. § 1326(b).

Additional discussion of these significant issues and others are provided in the following general and page-specific comments.

#### **Wilderness Management**

The State strongly disagrees with the assertion that the Salazar June 1, 2011 directive to consider wilderness values in management decisions applies to the NPR-A. The scope of land use planning in the Reserve is expressly limited by the Reserve’s organic act. As the DEIS indicates, 42 U.S.C.A. § 6506a(c) states that FLPMA Sections 202 and 603 do not apply to the Reserve.

*(c) Land use planning; BLM wilderness study*

*The provisions of section 202 and section 603 of the Federal Land Policy and Management Act of 1976...shall not be applicable to the Reserve.*

The FLPMA Section 603 exemption makes it clear: there shall be no wilderness reviews or wilderness management in NPR-A. This is further confirmed by ANILCA, which specifically excluded the Reserve from the wilderness study area and interim management requirements of Sections 1001 and 1004. And both ANILCA Section 1320 and Secretarial Order 3310, as revised in the June 1, 2011 Salazar Memo, rely on FLPMA Section 202 authority, which as BLM acknowledges, does not apply in the Reserve. While FLPMA Section 201 gives BLM authority to *inventory* resource and other values, it is not within BLM's authority to implement land use planning direction from which the Reserve is specifically exempt.

Furthermore, section 302(a) of FLPMA specifically states that “*where a tract of public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law,*” and not managed pursuant to the Secretary's authority under section 202 of FLPMA. Instead of being managed under FLPMA, the surface resources of the Reserve are to be managed under the Production Act. 42 U.S.C. § 6506a (b) Mitigation of adverse effects, states:

*Activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonable foreseeable and significantly adverse effects on the **surface resources** of the National Petroleum Reserve in Alaska.*

The Production Act specifically identifies the surface values that are to be considered and protected through the Reserve planning process as “*environmental, fish and wildlife, and historical or scenic values,*” 42 U.S.C. §§ 6503(b), and “*subsistence, recreational, fish and wildlife, or historical or scenic value,*” 42 U.S.C. § 6504(a).

The NPRPA implementing regulations further identify the specific *surface* resources afforded protection under the Act, consistent with the primary purpose of the Reserve. Wilderness character and values were not included. For example,

Implementing regulations at 43 CFR 2361.1 Protection of the environment, states:

*The authorized officer shall take such action, including monitoring, as he deems necessary to mitigate or **avoid unnecessary surface damage and to minimize ecological disturbance** throughout the reserve to the extent consistent with the requirements of the Act for the exploration of the reserve. (43 CFR 2361.1(a), emphasis added)*

*Maximum protection measures shall be taken on all actions within the...special areas, and any other special areas identified by the Secretary as having significant **subsistence, recreational, fish and wildlife, or historical or scenic value**.... (43 CFR 2361.1(c), emphasis added)*

*To the extent consistent with the requirements of the Act...On proper notice as determined by the authorized officer, such actions may be taken to protect **fish and wildlife breeding, nesting, spawning, lambing or calving activity, major migrations of fish and wildlife, and other environmental, scenic or historic values**. (43 CFR 2361.1(e)(1), emphasis added)*

The NPRPA initially directed the Secretary to establish a task force to “conduct a study to determine the values of, and best uses for, the land contained in the reserve,” taking into consideration existing uses and values, including wilderness values; however, there was no direction to base future management decisions on protecting subjective wilderness values. Again, the NPRPA exemption of FLPMA Sections 202 and 603 makes it clear that the Reserve was not to be managed as multiple use lands, and that wilderness protection was not part of the mandate.

The State also strongly objects to BLM’s stated intentions to exercise its authority under Secretarial Order 3310, as amended by the June 1, 2011 Salazar Memo, to recommend designated wilderness independent of this planning effort (page 30, Section 2.4.1). As already noted, ANILCA Section 1320 does not apply to the NPR-A and ANILCA Section 1326(b) precludes BLM from recommending wilderness in the NPR-A without explicit Congressional authority:

*No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a **conservation system unit** ...or for related or similar purposes shall be conducted **unless authorized by this Act or further Act of Congress.***

Neither the NPRPA nor ANILCA can be superseded by an administrative action. It is inappropriate and misleading to the public to indicate otherwise. The DEIS discloses prior NPR-A planning decisions since 1983, which illustrate BLMs various positions on the issue (Chapter 3, Page 428, Section 3.4.8.2) but offers no legally defensible explanation for the apparent current position that designated wilderness is consistent with the primary purposes of the Reserve. Excerpts from prior NPR-A planning efforts cited in this plan include:

*The BLM recognizes the Congressional intent of PL 96-514, which indicates that no “wilderness” designations will be made in the Reserve and the intent of PL 96-487. The **BLM cannot reinterpret Congressional authority through administrative procedures.** (1983 NPR-A FEIS)*

*Because wilderness designation would **not meet the purposes and objectives of this planning effort**, BLM decided not to consider possible wilderness designation for the planning area in the LAP/EIS. (1998 NE NPR-AIAP/EIS)*

*Because creating new **wilderness designations is inconsistent with the management objective**, alternatives proposing such an action [wilderness designation] are outside the scope of the Amended LAP/EIS and this Supplement thereto. (2008 NE NPR-A Final Supplemental IAP/EIS)*

### **Production Act Purpose**

The introductory statement that the Secretary of Interior has “broad authority to regulate the use, occupancy, and development of public lands and to take whatever action is required to prevent unnecessary or undue degradation of the public lands” (1.5.1 Legislative Constraints, Page 5), in accordance with FLPMA Section 302, ignores the exception that applies to the NPR-A.

*The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, **except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.***

Section 302(b) also states:

*In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law...*

The NPRPA established the primary purpose of the NPR-A, which is oil and gas exploration and development, and limits the scope of protective measures that can be applied in the Reserve. The Act and implementing regulations stipulate that protective measures, including for designated special areas, are limited “to the extent consistent with the requirements of the Act for the exploration of the reserve.” (43 CFR 2361.1(a))

This is acknowledged in the DEIS where it states, in response to a scoping request to eliminate or reduce the size of the existing Special Areas:

*Special Area designation does not itself impede oil and gas development. Special Areas, rather, indicate to managers and the public the importance of certain lands and the need to consider carefully the appropriate protection of surface resources consistent with oil and gas activities.* (Page 31, 2.4.4 Reduce or Eliminate Special Areas)

Yet, while the DEIS includes such references and statements, it still claims the Reserve has “two major purposes”—oil and gas exploration and development and resource protection (Chapter 1, Page 4, Section 1.4, Issue #1), which is also reflected in the purpose and need statement (Chapter 1, Page 1, Section 1.1). In addition, DEIS Alternatives B and C place resource protection above exploration and development, including measures that inappropriately protect wilderness characteristics and values (including wilderness recreation opportunities - Chapter 2, page 21, Alt. C). This is clearly illustrated in the following descriptions of the plan alternatives from Chapter 2, Page 15, Section 2.1:

*Alternative B describes a future management that emphasizes the protection of the surface resources of NPR-A with substantial increases in areas designated as Special Areas, designation of extensive areas that would be deferred from leasing around Teshekpuk Lake and in the southwestern part of the Reserve with important caribou habitat and important primitive recreation values, and recommendation for designation of 12 Wild and Scenic Rivers, while still offering opportunities for oil and gas leasing on nearly half of the Reserve.*

*Alternative C provides for smaller additions to Special Areas than Alternative B, defers from leasing the most remote part of NPR-A that has the greatest potential for providing a primitive recreation experience, provides for leasing with extensive surface protection stipulations near Teshekpuk Lake, and recommends three rivers for designation as Wild and Scenic Rivers, while offering opportunity to lease oil and gas resources in more than three-quarters of the Reserve.*

Only Alternative D correctly describes the relationship between the primary purpose of the Reserve and protective measures.

*Alternative D would allow the BLM to offer all of the NPR-A for oil and gas leasing, while protecting surface values with a collection of protection measures. This chapter*

*also describes alternatives considered but eliminated from detailed analysis and the reasons why these alternatives were eliminated from further consideration.*

We request the DEIS appropriately recognize the limits of FLPMA Section 302 as it applies to the NPR-A IAP, and consistently recognize in all aspects of the plan that protective measures, including designation of Special Areas, are secondary to the primary purpose of the Reserve, which is the exploration and development of oil and gas resources. We offer the following simple edits to the excerpts noted above, which put the proposed actions into the proper context generally. However, this intent also needs to be incorporated into all affected areas of the plan.

*Alternative B offers opportunities for oil and gas leasing on nearly half of the Reserve while describes a future management that emphasizes the protecting on-of-the surface resources of NPR-A with substantial increases in areas designated as Special Areas, designation of extensive areas that would be deferred from leasing around Teshekpuk Lake and in the southwestern part of the Reserve with important caribou habitat and important primitive recreation values, and recommendation for designation of 12 Wild and Scenic Rivers; while still offering opportunities for oil and gas leasing on nearly half of the Reserve.*

*Alternative C offers opportunity to lease oil and gas resources in more than three-quarters of the Reserve while providing es for smaller additions to Special Areas than Alternative B, defers from leasing the most remote part of NPR-A that has the greatest potential for providing a primitive recreation experience, provides for leasing with extensive surface protection stipulations near Teshekpuk Lake, and recommends three rivers for designation as Wild and Scenic Rivers, while offering opportunity to lease oil and gas resources in more than three-quarters of the Reserve.*

### **Wild and Scenic River Review**

The State reiterates its objection to BLM conducting a wild and scenic river review in NPR-A, and does not support recommendations for new wild and scenic rivers. The DEIS cites the Wild and Scenic Rivers Act as its authority to conduct Wild and Scenic River Reviews and also states doing so is consistent with the settlement agreement reached between the Department of Interior and American Rivers in 1983, and with the plan's purpose and need "to protect surface resources" (Chapter 2, page 3). However, the discussion fails to also recognize other applicable federal laws that provide direction specific to the management of the NPR-A – the NPRPA and ANILCA.

ANILCA amended the Wild and Scenic River Act in Alaska by adding 26 rivers to the Wild and Scenic River System and directing the study of 12 additional rivers statewide, including three within the NPR-A. Specifically, ANILCA Section 604 (a) and (b) designated the Etivluk-Nigu, Utukok, and Colville rivers for study for potential inclusion in the wild and scenic rivers system, and decreed that the 1979 NPRPA 105(c) satisfied ANILCA's study requirements. The NPRPA 105(c) study recommendations were transmitted to Congress on April 12, 1979, and Congress never took action to designate the rivers pursuant to the Wild and Scenic Rivers Act.

Congress did not intend an endless cycle of wild and scenic river studies in Alaska. ANILCA defined wild and scenic rivers as conservation system units; therefore, all applicable provisions of ANILCA must be recognized, including the prohibition against further studies in Section 1326(b):

***No further studies** of Federal lands in the State of Alaska for the **single purpose** of considering the establishment of a **conservation system unit**, national recreation area, national conservation area, or*



***for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.***

This intent is articulated in ANILCA's legislative history, which emphasized the importance of including Section 1326, which is provided below. It also shows that Congress clearly retained for itself the sole authority for future studies or reviews for the purpose of creating additional conservation system units in Alaska.

*Title XII – Administrative Provisions*

*“No More”*

*The Committee bill contains two provisions which I think are absolutely necessary to reassert Congress' authorities in the matter of land designations: (1) the revocation of the monuments and the other FLPMA withdrawals which were made last year by the Administration to put pressure on the legislative process, and (2) the exemption of Alaska from the wilderness study provisions of FLPMA in the just belief that with passage of this bill “enough is enough”.*

*However, one further critical provision is lacking. With the designation of over 100 million acres by this bill, coupled with the 50 million acres of units already existing in Alaska, nearly 40 percent of the land mass of the State would be within conservation systems. Surely that sufficiently meets even the most generous allocation of land for this specific purpose to the exclusion of most other land uses. Should this bill become law, we in Alaska must have some assurance that this represents a final settlement of the nation's conservation interests. We cannot continue to be exposed to the threats and intimidation of a zealous Executive which may feel in the future that the Congress did not meet the Administrations desires for land designations in Alaska.*

*Thus, absent from this bill is a provision barring further conservation system designations through administration action such as the Antiquities Act. Obviously, the Congress could act again in the future if it were so inclined, but the arbitrary permanent removal of federal lands from the public domain can no longer be left to the Executive in Alaska. Deletion of such a provision in this bill is a serious deficiency which must be corrected prior to any final action.” (Senate Report No. 96-413, pg. 446, Senator Gravel)<sup>1</sup>*

A later version of the Alaska lands legislation, the so-called Tsongas Substitute for H.R. 39, was amended to include the language now found in ANILCA Section 1326. During the August 18, 1980 Senate floor debate on the Tsongas Substitute, Senator Stevens explained that the Alaska State Legislature had asked the Alaska delegation to address seven consensus points that were not originally contained in the bill:

*“I have uniformly responded to questions in those areas [Alaska communities] concerning the revised Tsongas substitute. This substitute now is a version of the Senate Energy Committee bill, but it does not satisfy the seven points that our State legislature asked us to address in connections with this legislation.*

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<sup>1</sup> While the legislative history of ANILCA is extensive, given the number of bills introduced by both the House and Senate, *Senate Report 96-413* from the Senate Committee on Energy and Natural Resources is acknowledged as one of 2 committee reports that constitute the most relevant legislative history for the Act. It was cited at the end of the original slip law under *Legislative History*.

*I have told Alaskans that while I cannot vote for the Tsongas substitute, I think it has to be judged as being a compromise that is better than the existing situation under the national monuments and certainly better than those the President has indicated he will impose if a bill does not pass.*

*Our State legislature asked us to address seven points. We call them the consensus points. . . . .*

*The fifth injunction of the legislature was to be sure that there is what we call a no-more provision. This was a provision I insisted on in 1978. It was in the so-called Huckaby bill. It was in the bill that almost was approved in 1978. That clause is not in the committee bill. It is in the revised Tsongas substitute because the agreement we had in committee that when the bill had reached its final version on the floor of the Senate, the committee would agree to the no more clause. Realizing that the Tsongas revised substitute may be final version, the Senator from Massachusetts, at my request, has included that.” (Congressional Record – Senate August 18, 1980, pg. S11047)*

Senator Stevens later in the floor debate formally introduced Amendment No. 1967 to H.R. 39 for the following purpose:

*“To provide congressional oversight for major modifications of areas established or expanded by this Act and to require congressional approval for future major executive withdrawals of certain public lands in Alaska.”*

The amendment containing the essential wording of Section 1326 was adopted and became part of the Tsongas substitute<sup>2</sup>. That bill was approved by the Senate on August 19, 1980 and by the House on November 12, 1980.

The settlement reached between American Rivers and the Department of the Interior in 1993 applies to RMPs, but not to IAPs. The settlement agreement clearly states:

*The Director, Bureau of Land Management (BLM) will rescind BLM Instruction Memorandum No. 91-127, which provided an exception for Alaska from the general BLM requirement to conduct wild and scenic river studies as part of the resource management plan (RMP) process. (Emphasis added)*

The settlement also states:

*BLM Manual, Part 8351.06F will be amended to delete the exemption for Alaska for conducting wild and scenic river studies as part of the **RMP** process*

BLM Manual 8351 currently states, “The BLM evaluates identified river segments for their eligibility and suitability for WSR river designation through its **RMP** process. Activity planning **shall not** be used to accomplish such evaluations.” (Page 10, emphasis added) The DEIS clearly recognizes that because FLPMA Section 202 does not apply to the NPR-A, this Integrated Activity Plan is not an RMP:

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<sup>2</sup> Subsection 1324(a) of Amendment 1967 is identical to the language found in Section 1326(a), however subsection (b) of the amendment was more inclusive than the final language of Section 1326(b): and read “No further studies of Federal lands for the single purpose of considering the establishment of a conservation system unit, special management area, national recreation area, national conservation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.”

*Because of the exemption from FLPMA section 202, this plan is not being developed as a RMP.”* (Page 6, Emphasis added)

BLM cannot refer to this plan as an Integrated Activity Plan in name only and continue to follow guidance and process intended for an RMP.

Furthermore, Section 3.4.7 describes the cursory effort by BLM to assess outstandingly remarkable values (ORV) for rivers in the planning area to determine whether they meet the minimum wild and scenic river eligibility criteria of being free-flowing and having *one* ORV (Chapter 3, Page 422). BLM admittedly relied primarily on scoping comments to compile the list of eligible rivers in the plan, and further states “*The planning team decided to take a permissive interpretation of the eligibility of rivers in the planning area.*” The section also justifies the ORVs identified by stating “*It would be difficult to argue that any particular river in the south NPR-A did not possess outstanding remarkable values, given the unique and remote setting when evaluated in a national context and the near necessity for recreationists to use rivers to move through the area in summer.*” The USDI-USDA Final Revised Guidelines for Eligibility, Classification and Management of River Areas (FR 39458) and the Interagency Wild and Scenic Rivers coordinating Council’s technical report “The Wild and Scenic River Study Process” provides explicit guidance for identifying and recommending rivers to Congress for potential designation into the Wild and Scenic River System. Based on the discussion in this section, it appears BLM has not followed the established process; therefore, aside from it being contrary to law, the wild and scenic river study is also wholly insufficient.

Applicable law curbs wild and scenic river reviews in NPR-A in part because additional wild and scenic river designations in the Reserve would seriously interfere with the ability to allocate water resources for on-shore development. Most oil and gas development occurs in the winter, which requires water for ice roads, ice pads, and other functions. Diversion in some rivers would also be necessary to create reservoirs from summer high flow periods to supply the water necessary for winter operation. Fettering those resources with wild and scenic river designations would hinder the ability to permit water use for ice roads, exploratory drilling, and future development. Such a result would be inconsistent with the primary purpose for which the Reserve was designated.

The plan also indicates that rivers found “suitable” for recommendation will be managed to protect free-flow, water quality, and identified ORVs “*During consideration by Congress...*” Given that the study is legally unsupported and technically insufficient, this is nothing more than a blatant attempt to administratively establish protective status for rivers in the planning area, which subverts Congressional authority to protect selected rivers, and ignores Congressional direction in ANILCA and the NPRPA, which prevents such abuse.

The Production Act provides sufficient measures for the Secretary to provide administrative protection for river-related resource values in the Reserve, consistent with the requirements and primary purpose of the Act. As discussed above, the Production Act and implementing regulations allow for mitigation measures, including recommendations for special areas, with the proper caveats that appropriately recognize the primary purpose of the Reserve. In addition, similar to previous statements about wilderness, the 2008 Final Supplemental IAP/EIS for the NPR-A concluded that wild and scenic river designation was inconsistent with the management objectives of the NPR-A (Section 1.2). And similarly, the DEIS does not provide a reasonable explanation for the change in position, nor legally defensible justification for conducting the review.

### **ANILCA Section 810 Analysis**

The State supports providing the public with opportunities to learn about and comment on proposed federal actions that could affect the various resources, uses, and activities that are integral to the lifestyles and livelihoods of Alaskans and visitors. ANILCA requires such public comment opportunities, including the notice and hearing requirements in Section 810. We are concerned, however, with the cursory analysis and determination that Alternative D will significantly affect subsistence resources and uses on the general basis that, compared to the other alternatives, more of the Reserve will be available for oil and gas exploration and development, and less will be “protected.”

This plan, including Alternative D, proposes monitoring, stipulations, required operating procedures/best management practices, and additional protections that apply in biologically sensitive areas. Consistent with the Production Act implementing regulations at 43 CFR 2361.1, BLM is required to “*mitigate or avoid unnecessary surface damage and to minimize ecological disturbance.*” Without more specific information, we question the determination that Alternative D will significantly affect subsistence resources and caution against potential rejection of Alternative D based solely on this overly-generalized analysis.

### **Page-Specific Comments**

Page 5, Section 1.5.1, Legislative Constraints: To improve clarity, we recommend this section address legislation affecting the NPR-A IAP in chronological order.

Page 13, Section 1.10, last paragraph, last sentence: Regarding the criteria for panel recommendations, we recommend also indicating the process must be consistent with ANILCA Section 810(a).

Page 20, Section 2.3.2 Alternative B, 3rd paragraph: Many provisions of ANILCA allow non-subsistence permanent infrastructure on conservation system units (CSUs) in Alaska, including, for some provisions, designated wilderness (e.g. Title XI - transportation and utility systems, cabins, air and water navigation aids, communication sites, and facilities for weather, climate and fisheries research). A blanket prohibition of such facilities would make these areas in the NPR-A more restrictively managed than CSUs, including designated wilderness. We believe this is inappropriate in the Reserve and inconsistent with Congressional intent in the Production Act. In addition, this discussion refers to an allowance for “temporary” access and provides examples of modes of access, which is confusing. We recommend removing the “temporary” qualifier.

Page 22, Section 2.3.3, Alternative C, last paragraph: This section notes that land near Teshekpuk Lake would allow oil and gas leasing but preclude production pads. This action may require horizontal drilling to reach oil and gas resources. It is unclear how drilling and production pads would be acceptable in Alternatives B and D. Since Alternative B is more focused on surface resource protection, we would assume leasing and horizontal drilling would be acceptable unless the expansion of the Teshekpuk Lake Special Area eliminates nearby lease tracts. Further, it is unclear whether construction of production pads or leases in closer proximity to oil reserves at Teshekpuk Lake be allowed in Alternative D, where maximizing lease opportunities is the goal. It would be helpful to provide more detail on the anticipated lease and construction authorizations near Teshekpuk Lake to help differentiate proposed actions in Alternative C.

Page 30, Section 2.4.1 and Page 136, Section 3.2.5.1: We request these sections clarify that the hardrock and coal mining withdrawal was subject to valid existing rights and limited ANCSA-related exceptions.

Page 30, Section 2.4.1, Recommending Wilderness Designation by Congress: The current policy of the Secretary of the Interior, which is referenced in this section only allows for local constituencies and agencies to make wilderness recommendations that have bipartisan congressional support (6/10/11 Salazar to Congress). While not maintaining our objection as explained in the above general comment, when referencing the current policy, the following additional language should be included.

*The BLM may identify and/or make recommendations regarding possible areas appropriate for Wilderness designation independent of this planning effort **that have local, state, and congressional support**.* (Emphasis added.)

Page 360, Section 3.4.3.1 Federal Subsistence Management: The State of Alaska retains management authority over fish and wildlife on federal public lands unless specifically preempted by federal law. The State also provides subsistence opportunities for all Alaska residents. The Federal Subsistence Management Program regulates subsistence uses of fish and wildlife, including harvest, on federal lands and certain waters with a federal reserved water right and provides a priority opportunity for qualified rural residents. These federal regulations, at times, supersede State harvest regulations. Therefore, we request removal of the phrase “*subsistence hunting in the planning area is ruled by Title VIII of [ANILCA]*” as the State of Alaska provides subsistence opportunities throughout the NPR-A.

Furthermore, the federal subsistence priority is a priority opportunity and does not guarantee harvest. Additionally, Section 804 is clear that this priority opportunity applies in two specific circumstances, protection of the continued viability of a fish or wildlife population and the continuation of subsistence uses. Therefore, we request the following modifications to the second sentence in the second paragraph for clarity.

*Federal law, therefore, grants rural subsistence users a priority consumptive opportunity over others [sic] user's (such as commercial or recreational use) only when it is necessary to restrict the taking of fish or wildlife in order to protect the viability of such populations, or to continue subsistence uses for conservation or other reasons.*

Page 423, Section 3.4.8.1, Applicable Laws: We question the inclusion of the Wilderness Act. Consistent with the discussion under ANILCA in this section, the Act has no current application in the NPR-A. We request the section be removed.

Page 310, Section 4.3.17 Wild and Scenic Rivers: We question how the no action alternative can carry forward the wild and scenic river review and assign outstanding remarkable values to 12 streams. The no action alternative is supposed to describe the current situation and assumes the continuation of current management practices.

Page 310, Section 4.3.17 Wild and Scenic Rivers, first paragraph: See previous comments regarding wild and scenic river recommendations. While maintaining our objection to the wild and scenic river recommendation process, it is unclear how the same river can be found suitable in one alternative and not suitable in another. What criteria is BLM using to determine suitability? Without the

supporting documentation that applies to the rivers found suitable for recommendation, this section is incomplete.

Page 318, 4.3.19 Visual Resources, Table 4-21: Visual resource management class 1 is not applicable to the NPR-A. As stated in the plan, class 1 applies to “generally designated wilderness, wilderness study areas... or wild sections of Wild and Scenic Rivers,” none of which exist in the NPR-A.

Page 265, 4.7.7.18 Wilderness Characteristics, Past and Present Effects and Their Accumulation, 1<sup>st</sup> paragraph, 1<sup>st</sup> sentence: The following two statements indicate activities occurring off BLM-managed lands would not affect the NPR-A.

*Past and present activities outside of villages and Umiat, which are not on BLM managed lands, have not negated the wilderness characteristics of naturalness, outstanding opportunities for solitude or primitive and unconfined recreation on the NPR-A lands. (page 265)*

*By the year 2100 villages within the reserve may have an increase in population and infrastructure (see section 4.7.1.2). Since the increase would be contained within the village it would not alter the wilderness characteristics of the BLM-managed lands within the reserve. (page 267)*

Following this same logic, we disagree with the following statement in the plan regarding development outside of NPR-A near Umiat and request it be removed or revised consistent with the above statements.

*There could be increased air traffic at Umiat, which would result in a reduction in solitude and primitive recreation experience for recreation users in the reserve.*

## **Division of Oil and Gas Comments**

### ***General comments***

The exploration, development, production, and transportation of oil and gas resources are primary purposes of the NPR-A. Access, temporary exploration, and permanent development and pipeline facilities can be successfully constructed concurrently with other multiple beneficial land uses. The Division of Oil and Gas strongly supports the approval and construction of essential transportation corridors, and associated road and pipeline routes within the Reserve, including within special areas.

The limited discussion in the IAP/EIS of a future corridor for [oil and gas] infrastructure is referenced in all Alternatives. This potential land use should be maintained in the preferred Alternative.

*“While this plan makes no decision regarding a corridor for infrastructure associated with offshore development, such a corridor could be accomplished in this alternative, subject to appropriate conditions developed through a NEPA process.” (Vol 1, Chapter 2, Page 19; 21; 22).*

The IAP/EIS must address optimizing and improving pipeline integrity. Permanent roads can be a critical component of a pipeline integrity program by making inspections, maintenance, and repairs less costly, easier, and less dependent upon weather conditions. Surface transport provides reliable access for emergencies and under a variety of weather conditions. Roadless pipeline systems will require aerial access and monitoring that can be weather dependent.

## **DEFERRALS:**

### ***Deferred lands timeframes***

The Division of Oil and Gas opposes the creation of deferral areas for oil and gas leasing with indeterminate durations. Sunset dates for the deferrals should be explicitly stated in all alternatives. Deferral area expiration should only be extended beyond current sunset dates to the extent necessary to acquire needed information about an area that will inform appropriate development restrictions, and *not* be used to remove area from consideration for oil and gas leasing without an identified end date or condition to be met.

### ***North Teshekpuk and Kasegaluk Lagoon deferrals***

The IAP/EIS says that lands in these deferral areas will become available for leasing in the given year (2014 or 2018). If history is a guide, the future availability of these deferred lands is anything but certain. It appears just as likely that future planning alternatives might deem these areas permanently off-limits for surface activities, or that future oil and gas lease sales will not encompass the entire planning area, and will simply offer portions of the NPR-A not included in these long-deferred lands. Thus, this amounts to a constructive deferral beyond the areas expiration date. We expect these deferred areas to be included in BLM's annual Call for Lease Area Nominations for NPR-A immediately after the deferral period ends, provided the necessary information required to formulate appropriate development restrictions as discussed elsewhere in these comments has been obtained.

### ***Deferral graphics on Alternatives maps***

The 2004 NPR-A EIS decisions deferred 1.6 million acres in the Kasegaluk Lagoon area from leases sales through 2014, and 425,000 acres north and east of Teshekpuk Lake have been consistently unavailable in lease sales and are currently deferred until 2018. All deferrals should be mapped accurately on each alternative map, with explicit graphical representation and legends (2-1T, 2-2, 2-3, 2-3T, 2-4, and 2-4T).

## **MITIGATION MEASURES**

*LAP/EIS Alternatives, proposed mitigations: Lease stipulations, and required operating procedures/ best management practices, (Vol 1, Table 2-3, Page 36-120)*

A beneficial management plan can maximize multiple land and water uses. Mitigation measures and land use restrictions to reduce negative impacts should be decided on a case-by-case basis.

### ***“Facility Design and Construction” (E-11.a, Page 58)***

*Surveys shall be conducted by the lessee for at least 3 years before authorization of construction, if such construction is within the USFWS North Slope eider survey and at least 1 year outside that area.*

This three year survey duration may cause activities to be delayed and prevent implementation prior to the expiration of the oil and gas lease(s). The Division of Oil and Gas does not encourage delays caused by long-term studies within the U.S. Fish and Wildlife Service North Slope eider survey area that can unnecessarily delay oil and gas activities.

## **SUPPLEMENTAL MITIGATION MEASURES**

***“Additional Protections that Apply in Select Biologically Sensitive Areas”: K-1 through K-12. (Volume 1, Chapter 2, Table 2-3, Page 72-98).***

We were unable to locate a definition of a biologically sensitive area in the IAP/EIS. It is unclear how these areas are established, under which authority they were created, and why they are necessary.

***River set-back distances***

E-2 Lease Stipulation area should be used as guidance, with exceptions allowed for projects on a case-by-case basis.

Examples of proposed protection set-back distances include, but are not limited to:

*K-3a:* The proposed lease stipulations/best management practices are arbitrarily-applied and limit access for resource development. The stipulations should be approved on a project-by-project basis for the area surrounding Teshekpuk Lake within 0.25 mile of the ordinary high watermark, and for oil and gas facilities in the area greater than 0.25 mile, including pipelines and related access roads for facility inspection and maintenance (Vol 1, Chapter 2, Page 78).

*K-11:* Provisions should be made to allow for more than 300 acres permanent surface disturbance per lease tract. This can be accomplished by enlarging the outside boundary to include several lease tracts into one unit. A centralized accumulation of acreage should be allowed proportional with the total acreage within the unit. This could still meet the allowable footprint percentage size requirement for the unit. This would allow for centralized construction of development and production facilities, instead of forcing stranded isolated facilities to be built on a footprint that meets a statistical predetermined percentage of a single lease tract (Volume 1, Chapter 2, Page 94).

***PETROLEUM RESOURCES***

***Petroleum Hydrocarbon Potential:***

Several Alternatives (A, B, C) propose to prevent or restrict oil and gas leasing in areas where there is petroleum hydrocarbon potential. The area north and east of Teshekpuk Lake occupies a near-crestral position along the regional Barrow Arch structural trend, and has significant potential for the discovery of oil bearing reservoirs. It is often noted that all the currently producing oil and gas fields on the North Slope lie within about 30 miles of the Beaufort Sea shoreline. This is because the crest of the Barrow Arch lies relatively close to the shoreline, and is the most important structural feature controlling the migration and accumulation of oil and gas. Potential reservoirs in that area have not been buried as deeply, nor witnessed as much structural uplift and erosion as equivalent age strata farther south, and therefore are expected to maintain higher reservoir quality. For the same reason, source rocks are at a lower degree of thermal maturity in the area northeast of Teshekpuk Lake, favoring the possibility of oil rather than gas accumulations. The Moraine/Nuna interval in the Torok Formation at the Ooguruk production unit is a good example of how reservoirs that suffer from compaction-related degradation and gas-dominated hydrocarbon charge further to the south are now being successfully tapped for oil near the crest of the Barrow Arch just to the east of NPR-A.



The Utukok River region has barely been explored and has significant potential for gas resources. In conflict with this, Alternatives B and C create large areas along NPR-A's southwest boundary with increased land use protections or lease unavailability and the resultant reduced potential for oil and gas activities. These Alternatives expand the Utukok River Uplands Special Area and explicitly assign it and the western Colville River Special Area as unavailable for oil and gas leasing. However, USGS resources assessment publications identify numerous undrilled, unexplored, and prospective resource structures in the southwestern NPR-A foothills region. We request increased consideration of the impacts to oil and gas development on the proposed action.

#### ***Unconventional Petroleum Reservoirs:***

The State questions why the IAP/DEIS does not anticipate any unconventional oil and gas development in NPR-A (Volume 2, Chapter 4, Page 49). BLM has provided a potentially incomplete analysis and projection of unconventional reservoirs in NPR-A. The State is concerned that BLM limits its consideration of unconventional oil and gas resources only to source-rock reservoirs. The IAP/DEIS addresses some important issues on source rock plays, but it has completely ignored the potential in tight sandstone plays. Exploration has established widespread occurrences of oil and gas shows in Beaufortian and Brookian sandstones that lack sufficient porosity and permeability to produce as "conventional" reservoirs.

In addition, the four plays eliminated from consideration as conventional plays due to recent drilling results were shifted by USGS to unconventional tight gas sandstone plays, as stated in Volume 2, Chapter 4, Page 57, paragraph 2. This elimination is apparently based upon the assumption that no development of these plays is anticipated, as described above. The IAP/EIS overlooks this petroleum resource potential, and the only unconventional plays discussed in the IAP/DEIS are source-rock plays. The BLM's analysis should include, and document, the planning for the potential development of hydrocarbons from the "unconventional" sandstone reservoirs, as well.

#### ***Development of discovered oil near Umiat:***

The IAP/DEIS text (Volume 2, Chapter 4, Page 55, paragraph 2) states commercial gas is not likely to be developed at Umiat. Estimates of gas in the Umiat structure are very small; however, the Gubik gas field nearby has been estimated to contain 600 BCF recoverable. Renaissance, the leaseholder at Umiat prior to assigning its interest to Linc Energy, has published an Oil and Gas Journal article in which it identified cold gas injection as the preferred mechanism for pressure maintenance in producing oil from the Umiat field. Gubik gas field is the likely source of this gas. This information should be updated in the text.

### ***SPECIAL AREAS***

#### ***Colville River Special Area***

The K-7 lease stipulations would apply in all Alternatives other than D. This would place restrictions on facility placements due to concern over raptor nest sites, especially Arctic peregrine falcons. Given that Arctic peregrines and other raptors in the region have not been listed as threatened or endangered since the mid-1990s and are very abundant in the region now, consideration should be given to a substantial evaluation of the continued need for the proposed raptor nest protection buffer or if it should be reduced or deleted in all the alternatives.

#### ***Peard Bay Special Area***

Alternatives B and C would designate new special area lands in Northwest NPR-A, despite providing little or no information demonstrating that the expansion of the Peard Bay marine habitat areas while benefit the species listed for protection during agency and NEPA public reviews that were previously conducted for lease sales since the early 1980s. Alternative C limits the Special Area designation to Peard Bay itself, but Alternative B would extend the Special Area boundary to include approximately 1.5 million onshore acres, extending it more than 45 miles inland.

We request some justification for inland boundary expansion of the Peard Bay Special Area. It appears to expand well beyond what is needed for marine habitats. We are concerned that these land designations might set the stage for more restrictive management policies in the future, and might hamper future oil and gas leasing in the areas and pipeline construction that may be needed to transport hydrocarbons from the Chukchi Sea and NPR-A lands eastward to the Trans-Alaska Pipeline System (TAPS).

### **MISCELLANEOUS COMMENT**

#### ***Assumptions regarding “Effects on Public Health”***

The text for Alternative A makes the assertion that there is a direct negative relationship between increased employment and economic growth, and negative health impacts. The FEIS states:

*“The health risks associated with economic growth and in-migration, namely increased use and access to alcohol and drugs and the spread of infectious disease and sexually transmitted diseases will be commensurate with the level of employment, road access, and the degree to which outside workers fraternize with local populations.” (Volume 1, Chapter 2, Table 2-3, Page 119-120).*

It is not credible to assume that all the effects of oil and gas resources development on public health and economics would be negative impacts.

In contrast, a publication by the Institute of Social and Economic Research (ISER), Anchorage, reports that the residents of the North Slope have chosen to combine subsistence and wage employment activities (Kruse, J., ISER 1991). Based upon this information, the presence of oil and gas development and employment cannot be substantiated to be the primary direct source of negative health impacts and changes in health of North Slope residents, as stated in Table 2-3 of the FEIS.

There are public health benefits that have accompanied the overall increase in the standard of living due to oil development that created an enormous property tax base in the North Slope Borough, Alaska. Increased tax revenues and personal incomes are responsible for many public health improvements, including access to better education, good clinics and hospitals, public sanitation, heated homes, and greater affordability of healthy food choices. To assume that North Slope residents would not responsibly and successfully adapt to earning more income through employment betrays a predetermined perspective of the inability of residents to adapt and maintain healthy lifestyles.

## **II. Alaska Department of Fish and Game (ADF&G)**

Caribou

ADF&G supports protective measures for caribou calving areas, insect relief areas, and movement corridors around Teshekpuk Lake as supported by Stipulations K-5, K-9, and K-10. Recent calving survival studies indicate calf survival within areas encompassed by the K-5 Teshekpuk Lake Caribou Habitat Area, the K-10 Southern Caribou Calving Area, and the no leasing area of Alternative B that encompasses the Teshekpuk Lake Special Area is higher than that for calves born outside of these three areas. The areas outlined in Alternative B do encompass much of the calving activity observed both historically and recently. As such, this area represents a valid area for placement of caribou related stipulations with respect to calving and insect relief.

The Utukok River Uplands Special Area was established in 1977 because of its importance to the Western Arctic Caribou Herd (WAH). The calving area of the WAH occurs within the Utukok River Uplands Special Area. The WAH is used as an important subsistence resource for approximately 40 communities in the Northwest Arctic and North Slope boroughs. Protective measures, many of which are present in Lease Stipulation K-12, should be adopted to ensure continued use of caribou habitat, particularly calving and insect relief habitat, within the Utukok River Uplands Special Area.

## Geese

The Teshekpuk Lake Special Area (TLSA) was designated primarily to conserve important nesting, staging, and molting habitat for a large number of waterfowl. Conservation of this area for geese is of greater consequence than any other waterfowl habitat issue on the North Slope. The goose molting area of Teshekpuk Lake Special Area is most critical for Pacific black brant. On average, this region supports up to 30 percent of the entire population for several months; it has been a long-term historical molting area for brant from all breeding grounds including the Yukon-Kuskokwim Delta (75 percent of Teshekpuk molters), North Slope, Canada, and Russia. The area is also the primary molting site for the North Slope segment of mid-continent greater white-fronted geese (MCWFG). The presence of MCWFG in the TLSA has grown from less than 5,000 birds in the 1980s to an average of over 20,000 in the past 10 years; the 2002 count of 35,000 geese approached 6 percent of the continental population.

Given the importance of goose molting traditions in this area and the vital behavioral and nutritional requirements provided by unique habitats, it is critical that stipulations be adopted to minimize impacts to these important habitats. The crucial impediments to compatible development within the goose molting area of the TLSA are the extremely limited extent of sites suitable for roads and facilities and the levels of disturbance that can be expected from even the best oilfield management practices currently in use. Lease stipulation K-4a contains provisions that may reduce some of the projected impacts to molting geese.

ADF&G recommends BLM adopt the conditions originally set forth in the State's 1998 comments for the NE NPR-A IAP/EIS and reiterated in our August 23, 2004 comments on the draft Amended NE NPR-A IAP/EIS, in our February 25, 2005 comments on the final Amended NE NPR-A IAP/EIS, and again in our June 23, 2008 comments on the NE NPR-A Final Supplemental IAP/EIS for inclusion into the Record of Decision. These comments requested:

A. Make leasing available in the Goose Molting Area with the caveat that no permanent oil and gas facilities are allowed until the consultations described below are conducted:

1. Goose disturbance studies, designed and implemented by a joint State, federal, NSB, and industry research and monitoring team are conducted.

2. A consultation [collaboration] process focusing on designing and using appropriate technologies to avoid impacts to molting geese is developed and the results of this process successfully implemented in conjunction with an NPR-A exploration and development planning process.

3. The Federal Aviation Administration (FAA) and BLM, in consultation with ADF&G and the U.S. Fish and Wildlife Service (USFWS), develop and implement appropriate helicopter planning and routing restrictions for this area to prevent disturbance during the critical goose molting period.

B. Establish a three mile wide corridor along the south and west shores of Teshekpuk Lake and along the coast from Cape Halkett south to the Kogru River where no permanent oil and gas facilities would be allowed unless it can be demonstrated to the satisfaction of the BLM State Director in collaboration with State resource agencies, that proposed oil and gas activities will not negatively impact wildlife resources; and

C. Work with lessees and resource agencies to develop strategies and alternatives for shared infrastructure such as pipelines and processing facilities in order to maximize operation efficiency while minimizing potential impacts to surface resources.

In addition, we recommended in 2005 additional modification to some of the measures recommended by the state and adopted by BLM. These included:

A. Expand the Caribou Movement Corridor the entire width of the corridor between Teshekpuk Lake and the Kogru River or to a distance of six miles, retaining a pipeline corridor along the eastern margin of the Caribou Movement Corridor.

B. Expand the Southern Caribou Calving Area to include all of T13N, R2-5W, and the northern half of T12N, R2-5W). Expand the caribou calving area to include the core calving areas north, south, and east of Teshekpuk Lake with the application of NSO [No Surface Occupancy] (with no exceptions), including roads and pipelines, but allowing a limited area for a pipeline along the eastern side of the calving area to allow access to the area north of Teshekpuk Lake.

C. Northwestern caribou migration corridor. We recommend continuation of NSO under 1998 ROD [Record of Decision] and expansion of the NSO to the northeast, with counsel from State resource agencies regarding the extent of the expansion.

D. Reasonable protection of subsistence use, users, and resources within NPR-A focusing on stipulation and ROP [Required Operating Procedures] performance over time through a locally accepted, independent monitoring, assessment and evaluation program of key subsistence protection provisions. A rigorous subsistence stipulation and ROP monitoring, assessment and evaluation program, coupled with baseline studies, should yield information that can be used to protect these surface resources.

The Kasegaluk Lagoon Special Area is a highly productive shallow coastal lagoon and barrier island system spanning 125 miles of the Chukchi Sea coast. Approximately 40 miles of the lagoon are within the NPRA, between Icy Cape and Wainwright. The area provides important habitat nesting, staging, waterbirds during spring and fall migration. Kasegaluk Lagoon serves as migration staging and feeding area for as many as half of the Pacific brant population which uses Kasegaluk Lagoon during fall migration (Johnson 1993). Brant use the northeastern section of Kasegaluk Lagoon in

mid-August through early September for feeding prior to or during their southward migration. This area also serves as a staging area for much of the king eider breeding population (Oppel et al. 2009); supports a nesting colony of about 500 Common eiders (USFWS 2008); and provides molting habitat for male long-tailed ducks. Steller's eiders may also stage in the area during spring and fall migration.

In addition, Kasegaluk Lagoon and associated barrier islands provide haulouts for spotted seal and walrus. Significant numbers of spotted seals use the spits and shoals of Kasegaluk Lagoon and Avak Inlet from July through October (Frost et al. 1993). It is estimated 1,000 to 3,000 seals use the area. In recent years with reduced sea ice presence in the Chukchi Sea, hundreds to thousands of walrus have hauled out on Kasegaluk Lagoon barrier islands in late August through October. Beluga whales also are present from late June to late July, with an estimated 2,000 to 3,500 animals traveling through the area.

Because of the presence of significant concentrations of biological resources in Kasegaluk Lagoon, notably brant and waterbirds, beluga whales, spotted seals, important subsistence harvest areas, as well as its low oil potential, ADF&G recommends that if the area is made available for leasing, the State continue to recommend the area be available for oil and gas leasing but under the condition that no permanent surface facilities be allowed in Kasegaluk Lagoon Special Area.

#### References cited:

Frost, K.J., L.F. Lowry, and G. Carroll. 1993. Beluga whale and spotted seal use of a coastal lagoon system in the Northeastern Chukchi Sea. *Arctic* 46(1):8-16.

Johnson, S.R. 1993. An early-autumn staging area for Pacific Flyway Brant (*Branta bernicla*): Kasegaluk Lagoon, Chukchi Sea, Alaska. *Journal of Field Ornithology* 64:539-548.

USFWS. 2008. Beringian seabird colony catalog. Microsoft Excel spreadsheet. Anchorage, AK.

Oppel, S., D.L. Dickson, and A.N. Powell. 2009. International importance of the eastern Chukchi Sea as a staging area for migrating King Eiders. *Polar Biology* 32:775-783.

**NPR-A DEIS Alaska Department of Fish and Game Comments**

Chapter/ Section	Page	Line	Figure/ Table	Comment
Chapter 2/ Section 2.1.2	17			Within Section 2.1.2, the draft states "It was designated in 1977 because of its critical importance for the Western Arctic herd of caribou, which was then in decline, but today is the largest herd on the North Slope." The WAH has declined to a revised 2009 population of 348,000 caribou. This said, the Department believes this herd is managed sustainably and is not at risk.
Chapter 3/ Section 3.4.3	358			In the first paragraph, reference is made to the link between subsistence foods and food security. See Brown, C.L., J.S. Madganz, D.S. Koster, and N.M. Braem, editors. 2012. Subsistence harvests in 8 communities in the central Kuskokwim River drainage, 2009. Alaska Department of Fish and Game, Division of Subsistence, Technical paper No. 365. Fairbanks, Alaska for findings on food security in rural Alaska communities that take into account subsistence and store bought foods.
Chapter 3/ Section 3.4.3	359			States "About 87 percent of the North Slope Borough and 91 percent of Northwest Arctic Borough residents are satisfied with the fish and game that is available in their region." Is the citation Poppel et al. 2007?
Chapter 3/ Section 3.4.3	359			The 4th paragraph, (discussing of sharing), overlooks barter and trade as part of distribution of wild foods. See Madganz, J.S. C.J. Utermohle, and R.J. Wolfe. The production and distribution of wild food in Wales and Deering, Alaska, 2002. Alaska Department of Fish and Game, Division of Subsistence, Technical paper No. 259. Fairbanks, Alaska, and other within the technical paper series for findings on social network analysis of subsistence foods.
Chapter 3/ Section 3.4.3	359			The 5th paragraph refers to the 2000 Subsistence update, with Arctic area harvest of ~ 10,507,255 pounds, 516 pounds per person per year. This information has been updated and changed slightly. Update available online at <a href="http://www.adfg.alaska.gov/static/home/library/pdfs/subsistence/subsistence_overview2010.pdf">http://www.adfg.alaska.gov/static/home/library/pdfs/subsistence/subsistence_overview2010.pdf</a>
Chapter 3/ Section 3.4.3	359			5th paragraph: Cites Poppel, that 57% of Barrow and Kotzebue and over 70% in smaller communities depend on subsistence foods for half or more of their diet. Check tables in Poppel: these values are for proportion of meat and fish consumed that is traditional food, not proportion of total diet.
Chapter 3/ Section 3.4.3.3	366			"Terrestrial mammals comprise up to 95 percent of harvest. (Citation?)
Chapter 3/ Section 3.4.3.3	367			1st paragraph: "Periodic shortages..." gives the impression that Anaktuvuk Pass residents still follow migrating caribou year-round.
Chapter 3/ Section 3.4.3.3	369			Refers to harvest caribou data collected by ADF&G, cited as Pedersen 2006. That data has since been revised and published in Technical Paper 361. See Braem, N.M. S. Pedersen, J. Simon, D.S. Koster, T. Kaleak, P. Leavitt, J. Patkotak, and P. Neakok. 2011. Monitoring of caribou harvests in the National Petroleum Reserve in Alaska: Atkasuk, Barrow and Nuiqsut, 2003-2007. Alaska Department of Fish and Game, Division of Subsistence Technical Paper No. 361, Fairbanks.

**NPR-A DEIS Alaska Department of Fish and Game Comments**

Chapter/ Section	Page	Line	Figure/ Table	Comment
Chapter 3/Section 3.4.3.3	375			Refers to harvest caribou data collected by ADF&G, cited as Pedersen 2006. That data has since been revised and published in Technical Paper 361. See Braem, N.M. S. Pedersen, J. Simon, D.S. Koster, T. Kaleak, P. Leavitt, J. Patkotak, and P. Neakok. 2011. Monitoring of caribou harvests in the National Petroleum Reserve in Alaska: Atqasuk, Barrow and Nuiqsut, 2003-2007. Alaska Department of Fish and Game, Division of Subsistence Technical Paper No. 361, Fairbanks. NOTE: Data collected in Barrow between 2003-2007 is believed to have resulted in overestimates of harvest. See TP 361.
Chapter 3/Section 3.4.3.3	376-378			More recently published information on Barrow subsistence use areas (contemporary ones) published in MMS OCS Study Number 2009-003, Subsistence Mapping of Nuiqsut, Kaktovik and Barrow. 2010. Stephen Braund & Associates, Anchorage, AK 99510
Chapter 3/Section 3.4.3.3	382			Refers to harvest caribou data collected by ADF&G, cited as Pedersen 2006. That data has since been revised and published in Technical Paper 361. See Braem, N.M. S. Pedersen, J. Simon, D.S. Koster, T. Kaleak, P. Leavitt, J. Patkotak, and P. Neakok. 2011. Monitoring of caribou harvests in the National Petroleum Reserve in Alaska: Atqasuk, Barrow and Nuiqsut, 2003-2007. Alaska Department of Fish and Game, Division of Subsistence Technical Paper No. 361, Fairbanks.
Chapter 3/Section 3.4.3.3	383-386			More recently published information on Nuiqsut subsistence use areas (contemporary ones) published in MMS OCS Study Number 2009-003, Subsistence Mapping of Nuiqsut, Kaktovik and Barrow. 2010. Stephen Braund & Associates, Anchorage, AK 99510
Chapter 3/Section 3.4.3.3	395			States WAH population estimate is 401,000. The WAH has declined to a revised 2009 population of 348,000 caribou. This said, the Department believes this herd is managed sustainably and is not at risk.
Chapter 3/Section 3.4.3.3	395			States "it is estimated that at least 43 rural communities rely on the Western Arctic Caribou Herd as their primary terrestrial meat source. Far fewer than 43 rely on it as their primary terrestrial meat source. Wales, contained in the list on p. 395, only rarely takes caribou, for example. The role of caribou in the nutritional, cultural, and economic health of northwestern Alaskan communities varies. In some communities, caribou meat is a large portion of the total subsistence harvest each year. In communities where other resources are more abundant, caribou may represent a smaller portion of the total subsistence harvest. Because of a village's location, residents may have only occasional access to the WACH. In villages located along key migration routes, residents might take caribou during several months of the year.

## NPR-A DEIS Alaska Department of Fish and Game Comments

Chapter/ Section	Page	Line	Figure/ Table	Comment
Chapter 3/Section 3.4.3.3	396			The list of communities that utilize and *depend* on WACH caribou should be revised to reflect that several communities on the list only rarely harvest caribou from the WAH. Or change the language from "utilize and depend."
Chapter 3	449			Refers to outmigration from North Slope between 2000-2007, suggesting that findings in Martin et al. identify rapid increases in home heating and other energy prices as a causal factor in NSB outmigration. The study did not find this, see pages 8 and 9, and does not refer to NSB outmigration specifically (refers to rural Alaska). Barrow has natural gas for heat. The North Slope Borough subsidizes heating fuel in 5 NSB communities, while it is unclear how long this subsidy has been in place. Suggest a rewrite of this paragraph.
Chapter 3/Section 3.4.11.1	449			Refers to high costs of living in North Slope villages. Suggest incorporating existing data from the University of Alaska Cooperative Extension Service Food Cost Surveys.
Chapter 5/ Appendix A2.2	14			In the bulleted items describing how Alternative B differs from Alternative A, mention should be made to the expansion of the Utukok River Upland Special Area under Alternative B that would include more of the WACH range (calving area, insect relief), therefore providing greater protective measures to the WACH. This would reduce the risk of direct and indirect impacts to subsistence harvests of Unit 26, 22 and 23 communities.
Chapter 5/Appendix A2.4.1	22			With regard to the subsection "Caribou": Alternatives which provide greater protective measures for calving areas of the TCH and WACH will have less effect on caribou, and hence, subsistence harvest of caribou.
Chapter 5/Appendix A2.5.1 and any discussion of cumulative effects	25			With regard to cumulative effects, those resulting from oil/gas activity within NPRRA (listed in bullet form on page 23) should be considered as part of a larger suite of proposed development activities within the range of the Western Arctic Caribou herd. These include a transportation corridor (pipeline and/or roads) that would transport Chukchi Sea oil/gas to the TAPS, a road to the Ambler Mining district from the Dalton Highway, and proposed road through the Yukon connecting to the Council Road (and Nome). When looking at cumulative impacts it is also important to closely examine how cumulative impacts associated with resource development have affected other North Slope caribou herds. Information is available to show that potentially impacted caribou herds can co-exist despite cumulative resource development if responsible conservation stipulations are adopted.
Vol 4. Appendix B	35			Fish Habitat Permits are issued by the Alaska Department of Fish and Game under Alaska Statutes AS 16.05.841 and AS 16.05.871.



# National Petroleum Reserve-Alaska Preliminary Draft IAP/EIS Review Comments

June 12, 2012

## Organization: Alaska Department of Environmental Conservation

Chapter	Page	Section	Paragraph	Comment	Suggestion
Chapter 3	125	3.2.2 Air Quality		Subsection 3.2.2.1 regarding attainment status notes that NPR-A is in an area that is in attainment of current National Ambient Air Quality Standards (NAAQS) and the Alaska Ambient Air Quality Standards AAAQS.	While North Slope air quality data have not shown violations of the National Ambient Air Quality Standards (NAAQS) near the facilities, questions have arisen about the ability of air quality models to predict deposition of pollutants, given the North Slope's strong atmospheric stability and complex high latitude atmospheric chemistry. The Department believes that setting up an air quality monitoring network would be a valuable tool for establishing an existing baseline for NPR-A air quality and to ground truth and check the accuracy / sensitivity of air modeling in the Arctic. The lack of existing data and potential for future development make it important that the Bureau of Land Management take steps in the current EIS process to develop better baseline air quality information to help guide any future development.
Chapter 3	125	3.2.2		Subsection 3.2.2.1 regarding attainment status notes that the State of Alaska is in the process of updated air quality regulations at 18 AAC 50 to include the 24-hour standard for fine particulate matter. This process is still ongoing.	

Chapter	Page	Section	Paragraph	Comment	Suggestion
Chapter 3	463	3.4.11.5	4	This paragraph notes that the Alaska Department of Environmental Conservation administers the funds and grants under the National Petroleum Reserve-Alaska Impact Mitigation Program (19 AAC 50). This is incorrect.	The Alaska Department of Commerce Community and Economic Development is the correct department to cite. The proper regulation citation is found at 3 AAC 150. This change of regulation citation occurred in 1999.
Chapter 4	19		2	This paragraph notes that <i>"No new gravel pads are anticipated to be constructed for exploration. (They would likely be prohibited under all the action alternatives).</i> It is not clear why this conclusion was made or under what authority.	Just because seasonal ice pads have been used in past in the NPR-A, it appears that this policy would create a seasonal restriction on drilling exploration wells in the NPR-A. The Alaska Oil and Gas Conservation Commission and the Alaska Department of Environmental Conservation has the authority to impose restriction on exploration well drilling.
Chapter 4	49		4	The word exits does not make sense in the sentence that ends <i>"... where geologists believe that the source rock that yielded the oil of Prudhoe Bay and the other large conventional oil fields exits."</i>	It appears the proper word is "exists".
Chapter 4	113		3	This paragraph notes that <i>"Exploration drilling under Alternative A is not expected to have a measurable effect on water quality since spills will occur in the winter and will likely occur on ice pads."</i> This approach is too simplistic.	The sentences should state that these winter spills pose a lesser risk to the environment due to oil spills soaking into the snow. This can allow for easier cleanup than bare tundra, but the risk still exists for oil to be released to the environment during spring break up.

Chapter 4	336	2	This paragraph notes that “substantial health effects may accrue at even levels below NAAQS standards.” It is not clear what this statement is trying to imply.	The sentence should include a statement that the agency regulations reflect standards that are protective of human health. The existing statement appears to imply that the agency regulations are not protective of human health.
Chapter 4	337	4-5	Paragraphs 4-5 are not related to Noise-related Health Effects, which is where they are currently found.	These two paragraphs should be moved to the section discussing Air Quality Effects at the top of page 336.
Chapter 4	338	1-2	Paragraphs 1-2 are not related to Noise-related Health Effects, which is where they are currently found.	These two paragraphs should be moved to the section discussing Air Quality Effects at the top of page 336.
Chapter 4	341		Figure 4-25 is a diagram with linkages to acculturative stress from oil and gas development activities. The top linkage “Lack of connection to land/traditional land use” is directly linked to Strength of traditional culture. This link does not make sense.	The linkages need a better explanation. The linkage to Increased ability to hunt appears to lead to an increase in Strength of traditional culture, but the lack of connection to land/traditional land use appears to work in the opposite direction. Perhaps arrows would be appropriate to signify direction.
Chapter 4	364	1	The final sentence in this paragraph states “These protective measures will ensure that any release of drilling muds or oil from blowouts will not enter adjacent water bodies.” This statement is misleading.	The sentence should be re-written to reflect the fact that the protective measures will decrease the risk of drilling muds or oil from entering adjacent water bodies.
Chapter 4	65		Table 4-40, footnote 5 cites a BOEM reference in preparation by Anderson to justify an increase in the spill rate per billion barrels produced. The citation should be to a published reference that is available for review.	Since the spill rate is a measure of risk that must be mitigated, the spill rate used in the table needs to be justified. The cited reference should be provided to the cooperating agencies for review and could be included in an appendix for

Chapter 4	67	4.7.5.3			<p>public review. The references cited in the final EIS should only be those generally available for review, not documents in preparation.</p> <p>Determine if the MOA between the EPA and Corp of Engineers is still current. If not revise this paragraph.</p>
Chapter 4	89		4	<p>Section 4.7.5.3 Wetlands and Floodplains paragraph cites a Memorandum of Agreement between the EPA and the Army Corp of Engineers. This agreement may have been superseded by a joint rulemaking in 2008 and further guidance from the Corp of Engineers Alaska District in 2009.</p> <p>The paragraph titled Marine Waters states that <i>“mechanical recovery, the method allowed by current regulations, is not efficient and only removes a fraction of the spilled oil, especially in broken ice.”</i> This statement implies that mechanical recovery is inappropriate for spill response.</p>	<p>This statement should explain that Alaska spill response regulations at 18 AAC 75 recognize the limitations of mechanical recovery methods and accounts for that by requiring the responsible party to control and capture a realistic planning standard volume within a 72 hour time frame. This means that the responsible party is required to provide whatever assets are need to clean up the volume of oil expected, no matter what the efficiency rate of the equipment might be.</p> <p>The entire paragraph should be deleted.</p>
Chapter 4	262		3	<p>This paragraph implies that a decrease in funding for recreational facilities on state land could result in a decrease in recreational activity on state land. It then proposes that this could lead to an increase in recreational activity on NPR-A lands. This defies logic, since the following statement confirms that there are no recreational facilities on NPR-A</p>	

Chapter 4	283			lands. It would follow logically that any recreational facilities still provided on state lands would be more attractive than no facilities.	
			Final paragraph	The last sentence notes in part <i>“hunters report that they need to travel farther to reach subsistence resources due to both a displacement of animals and to avoidance of industrialized areas.”</i> The end of the sentence is grammatically cumbersome.	Either delete the word “to” before the word avoidance or change the wording to <i>“a displacement of animals and to avoid industrialized areas.”</i>
Chapter 4	284		3	This paragraph states that a road to Umiat <u>would</u> introduce the potential for competition and conflicts between outsiders and hunters from Anaktuvuk Pass. This statement needs to be amended.	The word “would” needs to be changed to “could” since one of the alternatives being discussed in the EIS for a road to Umiat involves a road that connects with the Spine Road and not directly to the Dalton Highway, so public use would not be a given. Other controls on public access or limitation on recreational hunting and fishing should be addressed.
Chapter 4	329	4.11.4.17		This subsection is titled “Wild and Scenic Rivers” but the text described generically what would happen to rivers in the event of a very large oil spill (VLOS). If a VLOS has the potential to impact a Wild and Scenic River within NPR-A that should be described with direct reference to the river in question.	Remove the words “Wild and Scenic” from the subsection title.

Appendix B	35			<p>The listing of permits and approval actions by the Alaska Dept. of Environmental Conservation bullet nine notes that the department will receive authorization for EPA to issue NPDES permits by May 2013. This date is incorrect.</p>	<p>The date should be changed to October 2012.</p>
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