



November 7, 2023

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Anchorage, AK 99513

U.S. Fish and Wildlife Service – Alaska Region Headquarters  
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Submitted through ePlanning – <https://eplanning.blm.gov/eplanning-ui/project/2015144/510>

Re: State of Alaska Comments on the Draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement, 88 Fed. Reg. 62,104 (September 8, 2023), DOI-BLM-AK-0000-2021-0006-EIS

Dear Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (FWS),

The State of Alaska (State) submits these comments on the September 8, 2023, Draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement (Leasing SEIS) jointly issued by BLM and FWS (Lead Agencies). The State's comments are based on the collective technical and regulatory expertise in the Departments of Natural Resources (DNR), Environmental Conservation (DEC), and Fish and Game (DFG). Please also refer to the Technical Comments Matrix (enclosed and incorporated).

Throughout administrations, the U.S. has experienced increased economic opportunity, strengthened national security, and enhanced energy affordability because of development of Alaska's natural resources. Oil and gas exploration and development has occurred for decades on Alaska's North Slope, including in areas adjacent to the Coastal Plain, and remains the State's single most important economic engine.<sup>1</sup> All of these rationales support the existing federal law that mandates an oil and gas leasing program proceed in the Coastal Plain that the SEIS must comply with and properly implement.

Responsible leasing and development of the Arctic National Wildlife Refuge (ANWR) Coastal Plain would support our nation's energy security and economic growth, preserve the environment, and create certainty for Alaskans and businesses. It is why the 1002 area was treated uniquely during the establishment of ANWR. It is also why Congress has repeatedly reinforced the unique management of this area by allowing oil and gas development to occur in the 1002 area and the Coastal Plain.

The State's comments are organized as follows:

Section 1 – The State continues to maintain that the Leasing SEIS is unnecessary.

Section 2 – The Department of the Interior should proceed with leasing under the Coastal Plain Oil and Gas Leasing Program (Program) to allow critical revenues to flow to both Alaska and the U.S. Treasury and promote U.S. energy security.

Section 3 – Exploratory seismic work in the Coastal Plain should be allowed to move forward.

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<sup>1</sup> McDowell Group, *The Role of the Oil and Gas Industry in Alaska's Economy*, <https://www.aoga.org/wp-content/uploads/2021/01/Reports-2020.1.23-Economic-Impact-Report-McDowell-Group-CORRECTED-2020.12.3.pdf>.

Section 4 – The State encourages BLM’s prioritization of lease sales.

Section 5 – The Leasing SEIS process is deficient.

Section 6 – The State’s comments on the Leasing SEIS:

a – Alternative B best accomplishes compliance with the Tax Act.

b – Alternative D should not be considered.

c – The Purpose and Need Statement is flawed.

d – The interpretation of the 2,000-acre facility limit is faulty.

e – The Leasing SEIS erroneously considers limiting the total acreage available to seismic operations and imposes restrictions on seismic operations.

f – The lease stipulations and Required Operating Procedures (ROPs) are overly restrictive and thus inconsistent with the Tax Act.

Section 7 – The State’s input on areas to include in lease sales.

Section 8 – For projects in the Coastal Plain, the State supports deference to BLM, as manager of the lands in the Coastal Plain, consistent with its duty and authority under the Tax Act, and consultation with the State and other regulatory agencies and stakeholders.

Section 9 – The State’s input on discussions of downstream greenhouse gas emissions.

Section 10 – Unsupported Connection to Class I Wilderness.

**Section 1 – The State continues to maintain that the Leasing SEIS is unnecessary.**

The 2019 Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (2019 Leasing EIS) and resulting Record of Decision (2019 ROD) comply with applicable laws, are based upon decades of reliable data, and followed a federal National Environmental Policy Act (NEPA) process that involved State, federal, and local agencies, and stakeholders.

In carrying out its directive under the Tax Act to develop and manage “a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain,”<sup>2</sup> over the course of more than two years, the BLM collaborated with the State as a Cooperating Agency,<sup>3</sup> and with federal and local agencies and stakeholders to conduct a robust evaluation of the potential effects of the Program. These efforts culminated in the 2019 Leasing EIS and 2019 ROD, which are based upon decades of reliable data and comply with all applicable laws. They lay the foundation for scientifically driven permitting processes for future oil and gas activities, which will require additional, project-specific analysis. And they provide lease stipulations and ROPs with which leaseholders must comply to ensure protection of the environment and other resources.

These significant efforts should be defended, not ignored and discarded. Requiring a new analysis, based upon no new environmental or social considerations but solely for policy purposes, has dismissed these significant efforts made to date by all stakeholders and brings needless regulatory costs and uncertainties.

Claimed deficiencies (the purported justifications for the Leasing SEIS) have still not been articulated with any specificity and are pretextual.

Secretarial Order 3401, drawing on the language of Executive Order 13990, claims to have identified

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<sup>2</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A). Further, Congress directed that the prohibition in Alaska National Interest Lands Conservation Act (ANILCA) section 1003 on development and production of oil and gas “shall not apply to the Coastal Plain” (Pub. L. No. 115-97, Sec. 20001(b)(1)) and made it an ANWR purpose under ANILCA section 303(2)(B) “to provide for an oil and gas program on the Coastal Plain” (Pub. L. No. 115-97, Sec. 20001(b)(2)(B)).

<sup>3</sup> Including the technical and regulatory experts of DNR, DEC, DFG, the State’s ANILCA Program, and the Departments of Health and Social Services (ADHSS), Commerce, Community, and Economic Development (ADCCED), and Law.

legal deficiencies “in the underlying record,” but goes no further than to identify them as insufficient analysis under NEPA by failing to analyze a range of alternatives and failure to properly interpret the surface use limitation in federal law. If there is any substance to this review, it has not been provided to the State or the public despite the exhaustive public process that produced the “flawed” result. By contrast, the Department of the Interior has defended the 2019 Leasing EIS and 2019 ROD in litigation, and no court has determined they are deficient.<sup>4</sup>

**Section 2 – The Department of the Interior should proceed with leasing under the Program to allow critical revenues to flow to both Alaska and the U.S. Treasury and promote U.S. energy security.**

Revenues could be significant.

Congress set the royalty rate for Coastal Plain development at 16.67 percent and specified that Alaska would receive half, and the U.S. Treasury would receive the balance.<sup>5</sup> Since all Coastal Plain development is within Alaska’s jurisdiction, the state production tax also would apply, along with the State’s corporate income tax. According to U.S. Geological Survey (USGS) estimates, the Coastal Plain holds between 4.3 billion and 11.8 billion barrels of oil.<sup>6</sup> At peak production, ANWR could supply more than 1.4 million barrels of oil per day, which would result in billions of dollars in annual revenue to both the State and federal governments.<sup>7</sup>

These are revenues on which the State depends to provide Alaskans with basic government services and revenues on which the U.S. Treasury depends to support federal programs for the broader American public. These activities also contribute to well-paying jobs and opportunities for Alaskan businesses. They also contribute to the well-being and health of local residents. Continued development in the Coastal Plain would build upon the almost 50 years of safe and responsible oil and gas development the State has experienced, and which has helped our nation meet its national energy security goals.

For Alaska’s rural and remote communities, revenue from taxes on oil and gas development provides an economic lifeline.

Revenue from taxes funds critical services such as schools, health clinics, housing, emergency response, water distribution and wastewater treatment, and heat and electric utilities. The North Slope Borough (NSB) would derive significant revenue from local property taxes, bolstering its ability to provide all these services that provide for the well-being and health of residents. Allowing domestic energy to be produced from the Coastal Plain would support our nation’s economic recovery, environmental progress, American jobs, and provide revenue for necessary services, as well as keep the U.S. from shifting to greater reliance on foreign energy likely produced with lower environmental standards.

Robust production would add essential volumes to the Trans Alaska Pipeline System (TAPS), which is operating at a fraction of its peak capacity. New production in TAPS would improve operational efficiency and likely lower the pipeline tariff, resulting in additional royalty payments to Alaska and sustaining production from other North Slope oil fields. For the past 44 years, TAPS has safely delivered

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<sup>4</sup> See *Gwich'in Steering Comm. v. Bernhardt*, Nos. 3:20-cv-00204-SLG, 3:20-cv-00205-SLG, 3:20-cv-00223-SLG, 2021 U.S. Dist. LEXIS 1471 (D. Alaska Jan. 5, 2021).

<sup>5</sup> Pub. L. No. 115-97, Sec. 20001(b)(4) and (5).

<sup>6</sup> USGS, *Arctic National Wildlife Refuge, 1002 Area, Petroleum Assessment, 1998, Including Economic Analysis*, <https://pubs.usgs.gov/fs/fs-0028-01/fs-0028-01.htm>.

<sup>7</sup> Dana Van Wagener, EIA, *Analysis of Projected Crude Oil Production in the Arctic National Wildlife Refuge*, <https://www.eia.gov/outlooks/aeo/anwr.php>.

over 18 billion barrels of crude oil to meet the nation's energy needs.<sup>8</sup> The ongoing success of this existing infrastructure and its role in the nation's critical energy infrastructure network depends on continued Alaska crude oil production.

Leasing and development of the Coastal Plain will assist the U.S. in meeting the energy challenges of the future. According to the U.S. Energy Information Administration (EIA), U.S. and global demand for oil and natural gas is anticipated to remain steady or potentially increase in coming years.<sup>9</sup> And even if every country meets its Paris commitments, the world will still derive almost 50 percent of its energy from oil and gas through the year 2040.<sup>10</sup> Without production from federal lands with great energy resource potential, such as the Coastal Plain, the needed supplies will have to be provided by production from other states, private lands, or imports from countries that are short on environmental rigor. There is no reason the U.S. should become more dependent upon foreign sources of energy when resources can be safely produced in America.

### **Section 3 – Exploratory seismic work in the Coastal Plain should be allowed to move forward.**

The State maintains that BLM should allow exploratory seismic work in the Coastal Plain to move forward, as soon as possible, using the best management practices and mitigation measures that have been successfully developed and implemented in other parts of the State, including on other federally managed lands.

Congress requires that BLM “offer...those areas that have the highest potential for the discovery of hydrocarbons.”<sup>11</sup> Given the lack of current data from exploratory seismic work necessary for identification thereof, the State maintains that BLM should use its existing authority to allow exploratory seismic work in the Coastal Plain to move forward as soon as possible to identify the “areas that have the highest potential for the discovery of hydrocarbons,”<sup>12</sup> consistent with the Tax Act, and ensure that such data will be acquired and such areas will be identified in the future.

BLM is equipped with existing authority to allow exploratory seismic work in the Coastal Plain to move forward as soon as possible under 43 C.F.R. part 3150, under authority of the Mineral Leasing Act of 1920, Alaska National Interest Lands Conservation Act (ANILCA, 16 U.S.C. sections 3101 et. seq.), and the Department of the Interior Appropriations Act, Fiscal Year 1981.

Program activities in the Coastal Plain should proceed predictably, in a timeframe that allows progress in accordance with well-defined State, federal, and local processes and with robust input from Alaskan stakeholders. The development of new energy resources in the Coastal Plain will benefit Alaska, the local communities of the North Slope, and the Nation. Revenues derived from new production will help sustain public services and the activity will provide new job opportunities while boosting the economy.

Further there is no evidence that exploratory seismic work would negatively impact listed polar bears. The exploratory program was designed in a manner that reduced the take of polar bears to acceptable levels.

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<sup>8</sup> Alyeska Pipeline Service Company, *Trans Alaska Pipeline System – The Facts*, <https://www.alyeska-pipe.com/taps-facts/>.

<sup>9</sup> EIA, *Annual Energy Outlook 2021*, <https://www.eia.gov/outlooks/aeo/>; EIA, *International Energy Outlook 2020*, <https://www.eia.gov/outlooks/ieo/>; International Energy Agency, *World Energy Outlook 2020*, <https://www.iea.org/reports/world-energy-outlook-2020>.

<sup>10</sup> Reuters, *Oil Demand Won't Peak Before 2040, Despite Paris Deal*, <https://www.reuters.com/article/us-oil-outlook-iea/oil-demand-wont-peak-before-2040-despite-paris-deal-iea-idUSKBN13B00P>.

<sup>11</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(i)(II), 131 Stat. 2054 (2017).

<sup>12</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(i)(II), 131 Stat. 2054 (2017).

#### **Section 4 – The State encourages BLM’s prioritization of lease sales.**

The Tax Act includes the binding legal mandate that there be multiple lease sales in the Coastal Plain, the first to be held not later than December 21, 2021, the second not later than December 21, 2024, and that at least 400,000 acres of the highest prospectivity acreage be offered in lease sales.<sup>13</sup>

Although the first lease sale was held within the deadline, Department of the Interior’s obstructionist policy (Secretary Order 3401, June 1, 2021<sup>14</sup>) caused relinquishment of leases and the improper<sup>15</sup> termination of the remaining leases in 2023. Because the Department of the Interior’s policy and actions nullified the first lease sale, two lease sales must be held by December 22, 2027, for the Department to adhere to the spirit of the Tax Act’s mandates.

The first lease sale saw little participation, and no participation from major oil and gas companies. Future lease sales may not see any participation at all. This is not because there is no interest or potential in the Coastal Plain area. It is because the federal government has shown itself to be a bad-faith partner in exploration and development of resources. This process for the Coastal Plain is exacerbating that perception and thwarting Congress’ clear intent that the Secretary lease the Coastal Plain for oil and gas development. Policies that discourage exploration and development have lasting effects on industry and the economy and endanger the energy security of our nation.

The State encourages BLM’s prioritization of lease sales in the Coastal Plain in fulfillment of the Tax Act, to honor needed investments, to allow critical revenues to flow to both Alaska and the U.S. Treasury, to support enhanced North Slope infrastructure, and to keep TAPS fully operational.

#### **Section 5 – The Leasing SEIS process is deficient.**

In contrast to the process resulting in the 2019 Leasing EIS, the State has been denied the opportunity to meaningfully participate as a Cooperating Agency throughout the Leasing SEIS process.

This is despite the Council on Environmental Quality’s (CEQ’s) regulations; the State’s comments to this effect in its October 17, 2023 and May 30, 2023 letters to the Lead Agencies (enclosed and incorporated); and the lack of an extension to the November 7, 2023 public comment deadline. The State has been committed to working with the Lead Agencies throughout the Leasing SEIS process, in its role as a Cooperating Agency, to inform decisions affecting energy development in the Coastal Plain and the environmental safeguards needed to ensure the vitality of Alaskans and Alaskan landscapes. The State is a sovereign trustee of these resources and is the best entity to represent the interests of Alaskans in the development of this SEIS as a Cooperating Agency.

#### **Section 6 – The State’s comments on the Leasing SEIS:**

##### **a – Alternative B best accomplishes compliance with the Tax Act.**

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<sup>13</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(ii), 131 Stat. 2054 (2017).

<sup>14</sup> <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3401-comprehensive-analysis-and-temporary-halt-on-all-activities-in-the-arctic-national-wildlife-refuge-relating-to-the-coastal-plain-oil-and-gas-leasing-program.pdf>.

<sup>15</sup> <https://www.aidea.org/Portals/0/PressReleases/10-18-2023%20AIDEA%20Holds%20DOI%20Accountable%20Press%20Release%20Final.pdf>

The Tax Act requires a) that BLM “establish and administer”<sup>16</sup> an “area-wide”<sup>17</sup> oil and gas program “for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain;”<sup>18</sup> and b) “offer...those areas that have the highest potential for the discovery of hydrocarbons.”<sup>19</sup>

In the Tax Act, Congress directed that the prohibition in ANILCA section 1003 on development and production of oil and gas “shall not apply to the Coastal Plain”<sup>20</sup> and made it an Arctic National Wildlife Refuge (ANWR) purpose under ANILCA section 303(2)(B) “to provide for an oil and gas program on the Coastal Plain.”<sup>21</sup> Further, Congress affirmatively mandated establishment of an “oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.”<sup>22</sup>

Alternative B best satisfies the Tax Act’s mandate to “establish and administer” an “area-wide”<sup>23</sup> oil and gas program. BLM should make every effort to ensure that areas offered for lease “have the highest potential for the discovery of hydrocarbons.”<sup>24</sup> Alternative B acknowledges the lack of current, conclusive data from exploratory seismic work necessary for identification of such “highest potential” areas but recognizes that such data will be developed during exploratory seismic work in leasable areas.

### **b – Alternative D should not be considered.**

The Tax Act requires that at least 400,000 acres that “have the highest potential for the discovery of hydrocarbons”<sup>25</sup> be offered in each lease sale. Under the severe restrictions in Alternative D, such as withdrawals, setbacks, and no-surface-occupancy (NSO) stipulations, it appears there may not be enough acreage available for leasing to satisfy the law. Alternative D would designate more than half of the program area (797,700 acres) as unavailable for leasing and most remaining areas as NSO.<sup>26</sup> Offering these remaining areas as NSO, or with restrictive stipulations, may render them undevelopable and, essentially, unleaseable. Further, if Alternative D is selected, the State is concerned that the proposed lease terms and NSO restrictions will be too cumbersome to generate any meaningful interest in hydrocarbon development and, therefore, discourage leasing—thus thwarting the intent of the Tax Act. The State maintains consideration of Alternative D is inconsistent with applicable law and the Lead Agencies should eliminate Alternative D from consideration in the Final SEIS.

NEPA only requires an agency to consider “reasonable alternatives” to a proposed action, and reasonable alternatives includes alternatives that are technically feasible. 40 C.F.R. § 1508.1(z); 43 C.F.R. § 46.420(b). Here, Alternative D is not technically feasible. The Lead Agencies and many participants seem to have seized upon the potential of extended-reach directional drilling technology as a justification for extreme surface-use restrictions to access subsurface resources. While this technology does exist and has been used to great effect in development of some oil and gas fields, it is not generally appropriate for exploration drilling, nor has it been proven as technically feasible for the Coastal Plain. The existence of

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<sup>16</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A), 131 Stat. 2054 (2017).

<sup>17</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(A), 131 Stat. 2054 (2017).

<sup>18</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A), 131 Stat. 2054 (2017).

<sup>19</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(i)(II), 131 Stat. 2054 (2017). Also, Alternative B best ensures compliance with the Tax Act’s requirement that each lease sale include “not fewer than 400,000 acres area-wide.” Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(i)(I), 131 Stat. 2054 (2017).

<sup>20</sup> Pub. L. No. 115-97, Sec. 20001(b)(1), 131 Stat. 2054 (2017).

<sup>21</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(B), 131 Stat. 2054 (2017).

<sup>22</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A), 131 Stat. 2054 (2017).

<sup>23</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(A), 131 Stat. 2054 (2017).

<sup>24</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(i)(II), 131 Stat. 2054 (2017).

<sup>25</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(i)(II), 131 Stat. 2054 (2017).

<sup>26</sup> Leasing SEIS at 3-32.

extended-reach drilling technology is not a valid basis for justifying such broad and extreme restrictions such as setbacks and NSO leasing for otherwise-indistinguishable areas. It should only be considered as a potential tool for surface impact mitigation during the development planning phase, once the oil and gas resource has been more fully delineated and the feasibility of such technology has been demonstrated in the Coastal Plain.

Moreover, Alternative D does not meaningfully comply with the Tax Act. Oil and gas in the Coastal Plain is underexplored. While best efforts have been made to identify areas of greatest hydrocarbon potential within the Coastal Plain, there is still limited data available to hydrocarbon developers. Once leases are taken, a prudent operator would need to conduct new seismic surveys to better understand the geology before spending significant dollars on drilling and an exploration well. If the area available to conduct seismic surveys is too small, the lessee will not get a good enough picture of the subsurface to identify drilling targets and reduce the high inherent risk of exploration drilling. In 2021, onshore exploration wells had a success rate of one in ten.<sup>27</sup> Couple that with the tens of millions of dollars, at a minimum, to drill an exploration well in the Alaskan arctic, and the economics become very challenging to prospective operators while the risk increases. The challenges of Alternative D are heightened by the fact that it restricts surface occupancy on the western side of the Coastal Plain in the area with the greatest hydrocarbon potential. To have a meaningful oil and gas program in the Coastal Plain, competitive, and fair lease terms must be offered.

By limiting where an operator can locate facilities or drill pads, Alternative D will render some reserves unrecoverable, even with horizontal drilling technology. Alternative D would likely require a significant hydrocarbon discovery for a project to be economic and, therefore, developed. Nearly all the acreage available for surface occupancy in Alternative D is not located in the area believed to have the highest hydrocarbon potential.<sup>28</sup> Although Alternative D permits surface occupancy on a minimal amount of acreage, it may not be in the right location to have a successful oil and gas program. Therefore, Alternative D may not provide a viable alternative to generate actual interest in leasing in the Coastal Plain, which contravenes the intent of the Tax Act.

An oil and gas developer may look elsewhere around the world to explore where development is more certain before taking the risk to explore in the restrictive Coastal Plain.

### **c – The Purpose and Need Statement is flawed.**

The Purpose and Need Statement includes the statement, “Any oil and gas program alternative must consider all five statutory purposes of the Arctic Refuge, none of which are superseded by any other.” This language erroneously suggests that ANWR’s statutory purposes are on equal footing with one another. In fact, Congress did not make the oil and gas program secondary or subject to other purposes, and the purpose and need statement cannot suggest otherwise. Moreover, Section 303(2)(B) of ANILCA puts certain purposes secondary to others. For example, Section 303(2)(B) of ANILCA states that the Refuge should be managed to ensure water quality and necessary water quantity within it, but only in a manner consistent with the conservation of fish and wildlife populations and habitats.<sup>29</sup> Accordingly, all the Refuge’s purposes are not on equal footing with one another, and the purpose and need statement cannot suggest otherwise.

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<sup>27</sup> Energy Institute, [Global onshore drilling success rate dips to lowest on record](https://knowledge.energyinst.org/search/record?id=115186). Accessed November, 7, 2023, available at: <https://knowledge.energyinst.org/search/record?id=115186>.

<sup>28</sup> Leasing SEIS Map 3-8.

<sup>29</sup> Pub. L. No. 96-487, Sec. 303(2)(B), 94 Stat. 2390.

BLM correctly determined previously that “[t]he purpose and need of the Supplemental EIS is bound by statute and remains the same as for the September 2019 [Leasing] EIS, i.e., to implement Section 20001 of Public Law 115-97.” See the State’s comments in its October 31, 2022, and May 31, 2022, letters to the Lead Agencies, and the State’s October 4, 2021, scoping comments (enclosed and incorporated).

**d – The interpretation of the 2,000-acre facility limit is faulty.**

In the Tax Act, Congress directed that the prohibition in ANILCA section 1003 on development and production of oil and gas “shall not apply to the Coastal Plain”<sup>30</sup> and instead announced an Arctic National Wildlife Refuge (ANWR) purpose under ANILCA section 303(2)(B) “to provide for an oil and gas program on the Coastal Plain.”<sup>31</sup> Further, Congress affirmatively mandated establishment of an “oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.”<sup>32</sup> To carry out these provisions, Congress directed that the Secretary “shall issue any rights-of-way or easements across the Coastal Plain...necessary to carry out this section”<sup>33</sup> and “shall authorize up to 2,000 surface acres of federal land on the Coastal Plain to be covered by production and support facilities....”<sup>34</sup>

In the 2019 ROD, BLM correctly interpreted Section 20001(c)(3) as Congress’ “directive” that BLM “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.”<sup>35</sup> Furthermore, BLM correctly concluded that “exploration facilities” do not constitute “production and support facilities” and therefore are not subject to the 2,000-acre limitation.<sup>36</sup> The plain and unequivocal language of the Tax Act does not allow BLM to reach an alternative interpretation of Section 20002(c)(3). Moreover, no court has invalidated or even criticized BLM’s interpretation of Section 20002(c)(3).

Additionally, in the 2019 Leasing EIS, BLM properly assumed, for analytical purposes, that reclamation of federal land formerly containing production and support facilities would free up additional acreage to be subject to the 2,000-acre limit in Section 20001(c)(3) once the land is reclaimed. BLM, however, declined to either adopt or reject this interpretation in the 2019 ROD.<sup>37</sup> Although the State maintains that the analytical assumptions in the 2019 Leasing EIS correctly apply the 2,000-acre limit, the State respects BLM’s decision to defer determining how to apply the limit until it is reached and, further, lands are reclaimed. The 2019 Leasing EIS, however, properly analyzed the impacts of the more flexible application of the 2,000-limit in the interest of administrative efficiency to avoid later triggering the need for additional environmental review.

Finally, Section 20001(c)(2) of the Tax Act requires BLM to authorize rights-of-way (ROWs) and easements for exploration and production facilities that are in addition to the 2,000 acres of federal land on the Coastal Plain for production and support facilities. In Section 20001(c)(2), Congress required that BLM “issue any rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation necessary to carry out” the Program.<sup>38</sup> Such ROWs and easements are not

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<sup>30</sup> Pub. L. No. 115-97, Sec. 20001(b)(1), 131 Stat. 2054 (2017).

<sup>31</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(B), 131 Stat. 2054 (2017).

<sup>32</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A), 131 Stat. 2054 (2017).

<sup>33</sup> Pub. L. No. 115-97, Sec. 20001(c)(2), 131 Stat. 2054 (2017).

<sup>34</sup> Pub. L. No. 115-97, Sec. 20001(c)(3), 131 Stat. 2054 (2017).

<sup>35</sup> 2019 ROD at 10.

<sup>36</sup> 2019 ROD at 11.

<sup>37</sup> 2019 ROD at 13.

<sup>38</sup> Pub. L. No. 115-97, Sec. 20001(c)(2), 131 Stat. 2054 (2017).

subject to the 2,000-acre limitation.<sup>39</sup> As BLM recognized in the 2019 Leasing ROD, “[c]learly Congress intended that successful implementation of the mandated [Program] should not be frustrated by an unavailability of necessary access.” Because inclusion of ROWs or easements for exploration and production purposes in the 2,000-acre authorization would frustrate adequate access to federal land on the Coastal Plain, this access cannot count against the 2,000-acre limitation.

For this reason, surface acres needed for seismic activities cannot be counted against the 2,000-acre limit. Similarly, the Lead Agencies must give the State and private owners “such rights as may be necessary to assure adequate and feasible access for economic and other purposes to State owned and privately owned land”<sup>40</sup> without counting against the surface acres needed therefore against the surface acres cap.

See the State’s comments in its October 31, 2022, letter to the Lead Agencies (enclosed and incorporated),

**e – The Leasing SEIS erroneously considers limiting the total acreage available to seismic operations and imposes restrictions on seismic operations.**

Alternatives C and D inappropriately constrain seismic operations. The Lead Agencies should not consider any alternative that would limit the total acreage available to seismic operations or impose restrictions on seismic operations. The Tax Act does not permit such an alternative. Rather, it directs that “the Secretary shall 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).”<sup>41</sup> Exploration is authorized throughout the National Petroleum Reserve in Alaska – including in areas with significant subsistence, recreational, fish and wildlife, historical, and scenic values – as long as it is conducted in a way that “assure[s] the maximum protection of such surface values to the extent consistent with the requirements of [the Naval Petroleum Reserves Production Act] for the exploration of the Reserve.”<sup>42</sup> Congress thus opened the entire Section 1002 Area to seismic exploration, and the Lead Agencies should not consider an overly restrictive alternative. The Lead Agencies therefore should modify Alternatives C and D to eliminate their constraints on seismic operations.

In the 2019 EIS, BLM properly elected to analyze proposals for seismic operations on a site-specific basis. BLM authorizes seismic operations upon proposals from permit applicants<sup>43</sup> and must comply with NEPA prior to approving seismic operations.<sup>44</sup> The inclusion of an additional alternative, or additional restrictions, in the Leasing SEIS to address seismic operations would be based on speculation as to where and how seismic operations would occur. This hypothetical exercise risks both delaying completion of the NEPA analysis and imposing overly burdensome management measures. Instead, BLM can more

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<sup>39</sup> These are separate and distinct statutory provisions, each addressing independent and mandatory requirements for executing the Program. By addressing the 2,000 surface acres to be covered by “production and support facilities” separate and distinct from ROWs or easements, Congress intended that such “production and support facilities” on ROWs or easements not count toward the 2,000-acre limitation, but be in addition to any federal lands subject to ROWs or easements “for the exploration, development, production, or transportation necessary to carry out” the Program. This is consistent with the Joint Explanatory Statement of the Committee of Conference, which says, “The legislation directs the Secretary to issue any necessary rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation associated with the oil and gas program. *Additionally*, the section authorizes the development of up to 2,000 surface acres of federal land on the Coastal Plain.” H.R. Rep. No. 115-466, at 675 (2017) (emphasis added).

<sup>40</sup> ANILCA Sec. 1110(b).

<sup>41</sup> Pub. L. No. 115-97, Sec. 20001(b)(3), 131 Stat. 2054 (2017).

<sup>42</sup> 42 U.S.C. Sec. 6504(a).

<sup>43</sup> 43 C.F.R. Sec. 3152.2.

<sup>44</sup> 43 C.F.R. Sec. 3152.2(a).

efficiently analyze and manage the potential impacts of seismic operations once concrete plans are proposed.

See the State's comments in its October 31, 2022, letter to the Lead Agencies (enclosed and incorporated).

**f – The lease stipulations and ROPs set forth in all of the action alternatives are overly restrictive and thus inconsistent with the Tax Act.**

The Lead Agencies must not impose such broad NSO restrictions or limit access to such large areas of the Coastal Plain to the extent that future development is restricted, and Congress's mandate is subverted.

Under all of the action alternatives, most lands with the highest hydrocarbon potential are overly burdened with NSO stipulations. It is lawful and prudent to balance surface resource considerations with subsurface resource exploration development. The bias on the part of the Lead Agencies and some other parties involved in this process is so skewed towards preserving surface resources that the concept of "balance" seems to have been ignored.

The lease stipulations and ROPs under these alternatives pose unnecessary challenges to future oil and gas activities, including through access limitations. These kinds of administrative limitations would contravene the federal law mandating the Program. Instead, it is incumbent upon the Lead Agencies to provide maximum flexibility to future decision-makers as new, better, or activity-specific information becomes available, and to rely on permitting processes to facilitate responsible development, production, and transportation of oil and gas resources to and from the Coastal Plain.

Congress set the applicable limit on surface facility development at 2,000 surface acres: "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..."<sup>45</sup> This is a negligible footprint in the 1.5-million-acre Coastal Plain and the 19.3-million-acre ANWR, and significantly protective. Any changes to BLM's analysis of the limitation in the 2019 ROD must acknowledge the interpretative position of the agency taken to date and explain the reasons for the new interpretation.

The State recommends that the Lead Agencies provide specific protection of surface areas where needed and only after areas that have the highest prospectivity acreage has been identified. Identifying areas for oil and gas leasing while restricting surface uses necessary to access subsurface resources is functionally equivalent to designating surface areas as unavailable for "development, production, and transportation of oil and gas in and from the Coastal Plain,"<sup>46</sup> and conflicts with Congress's determination of the permissible footprint for the mandated Program and the appropriate balance for protection of other resources.<sup>47</sup>

Instead, the State recommends that the Lead Agencies recognize that additional stipulations needed to protect surface resources and special areas may be imposed at the time the surface use authorizations and permits to drill are approved, and as the NEPA and permitting processes move forward to review specific

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<sup>45</sup> Pub. L. No. 115-97, Sec. 20001(c)(3) (emphasis added).

<sup>46</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A).

<sup>47</sup> This approach is consistent with the Tax Act, which requires that the Secretary manage the Program "in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976...(including regulations)." (Pub. L. No. 115-97, Sec. 20001(b)(3).) The Naval Petroleum Reserves Production Act of 1976 and its regulations provide specific protections of surface areas where needed.

development proposals. The overlapping regulatory agencies, including the Lead Agencies, the State, and the NSB, with robust participation from North Slope resident stakeholders, including the Native Village of Kaktovik, can develop specific protection of surface areas where needed.

The State has demonstrated over many past decades that oil and gas exploration, development, production, and transportation can occur safely and responsibly with the appropriate regulatory controls and environmental protections. The State recommends that the Lead Agencies avoid restrictions on surface areas that would restrict “development, production, and transportation of oil and gas in and from the Coastal Plain”<sup>48</sup> that would violate the Tax Act. Restricting beyond the 2,000-surface-acre limit is functionally equivalent to designating surface areas as unavailable for “development, production, and transportation of oil and gas in and from the Coastal Plain,”<sup>49</sup> and conflicts with Congress’s determination of the permissible footprint for the mandated Program and the appropriate balance for protection of other resources.

Instead, the State recommends that BLM recognize that additional stipulations needed to protect surface resources and special areas may be imposed at the time the surface use plan and permit to drill are approved, and as NEPA and permitting processes move forward to review specific development proposals. The regulatory agencies, including BLM, can develop specific protection of surface areas where needed. Therefore, the Lead Agencies should revise the lease stipulations and ROPs under the action alternatives to afford more flexibility to operations once proposed.

### **Section 7 – The State’s input on areas to include in lease sales.**

The total acreage of the Coastal Plain should be open to lease sales to ensure BLM’s full compliance with the Tax Act.

The State supports environmentally responsible oil and gas activities, consistent with the State’s mandate under the Alaska Constitution, Article 8, Section 1, that it is to “encourage...the development of its resources by making them available for maximum use consistent with the public interest.”

To functionally allow leasing of the highest prospectivity acreage, all areas of the Coastal Plain must be open for leasing given the limited modern data and information about its resource potential. The Lead Agencies should not rely on limited or outdated subsurface data to determine which acreage of the Coastal Plain to open, close, or limit to surface occupancy, because such reliance does not fully allow for identification or development of “those areas that have the highest potential for the discovery of hydrocarbons,” as are required to be included in the upcoming mandatory lease sale.<sup>50</sup>

Instead, the Lead Agencies should open the total acreage of the Coastal Plain to oil and gas leasing and allow early area-wide exploratory seismic work so that the highest prospectivity acreage can be identified. Without the future ability to lease, companies are unlikely to expend resources conducting exploratory seismic surveys in the unleaseable areas, thus eliminating a valuable opportunity to update assessments of the subsurface resource potential. The Lead Agencies should also recognize that any activity beyond leasing would be subject to additional, robust, site-specific NEPA analyses and permitting processes that establish the terms and conditions and mitigation measures, and thus those considerations are not appropriate at the Leasing SEIS stage. Because Alternatives C and D would close large areas to leasing, the State opposes these alternatives.

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<sup>48</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A), 131 Stat. 2054 (2017).

<sup>49</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A), 131 Stat. 2054 (2017).

<sup>50</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(i), 131 Stat. 2054 (2017).

The State does not object to including in lease sales the area (formerly Tract 29; the disputed area) subject to administrative appeals brought by the State, pending before the Interior Board of Land Appeals (IBLA 2016-109 and IBLA 2017-55), as well as the subject of a lawsuit filed by the State in the U.S. District Court of Alaska (*State of Alaska v. U.S. Department of the Interior*; Docket No. 3:22-cv-00078-SLG); however, subject to the State's reservation of its position that the disputed area is not part of the Coastal Plain.

The State's consent to including the disputed area in lease sales is subject to the State's reservation of its position that the disputed area is not within the boundaries of ANWR, and therefore is not part of the Coastal Plain under the Tax Act. The State's position that the disputed area is outside the boundaries of ANWR is the subject of an ongoing litigation between the State and BLM.

In a November 9, 2020, opinion in docket Nos. IBLA 2016-109 and IBLA 2017-55, the IBLA made findings regarding the location of ANWR's northwestern-most boundary. The IBLA's decision, that addressed lands located between the Staines and Canning Rivers, had the effect of placing the disputed area within ANWR. The State has sought judicial review of the IBLA's decision and, until this litigation is finally resolved, the State maintains that the disputed area lies outside of ANWR notwithstanding the IBLA's decision.

The State notes that in the event the disputed area is included in leases sales (the disputed area appears to include tidal or submerged lands that the State has already placed under lease), the State reserves all legal rights, remedies, and causes of action. No waiver or estoppel may be inferred. The State's remedies may include, without limitation and in addition to the arguments presented to the IBLA, the State's issuance of an ANILCA Section 906(k) letter of concurrence, which, pursuant to that provision, would further protect the State's interest in proceeds derived from activities resulting from lease sales.

In the spirit of a 2019 Memorandum of Agreement (MOA) between BLM and DNR, DNR contends that title of the State to the disputed area (if offered for lease in upcoming lease sale) would continue to be governed by the location of the disputed area legal boundary.

In 2019, BLM and DNR recognized that BLM would be initiating (and that DNR had already initiated) leasing activities in the vicinity of the Coastal Plain coastal boundary (and the ambulatory nature of that coastal boundary). To resolve uncertainty, to eliminate potential bias for disputes, and to prevent avoidable litigation regarding lease administration, leased lands ownership, royalty payments, rentals, and bonus bids, BLM and DNR entered an MOA (2019 MOA between BLM and DNR, fully executed December 18, 2019, enclosed). Pursuant to that MOA, BLM and DNR agreed that title of the U.S. (as represented by BLM) and the State (as represented by DNR) to lands offered for lease (or already leased), in the vicinity of the (ambulatory) boundary, would continue to be governed by the location of the legal boundary. Again, the State contests the IBLA's November 9, 2020, decision in docket Nos. IBLA 2016-109 and 2017-55, which had the effect of placing the disputed area within ANWR, and may pursue judicial or other relief nullifying such decision.

In the spirit of the 2019 MOA, DNR contends that title of the State to the disputed area (if offered for lease in upcoming lease sales) would continue to be governed by the location of the disputed area legal boundary.

**Section 8 – For projects in the Coastal Plain, the State supports deference to BLM, as manager of the lands in the Coastal Plain, consistent with its duty and authority under the Tax Act, and**

**consultation with the State and other regulatory agencies and stakeholders.**

Although the BLM intends to consult with the FWS when making Program decisions, Section 20001(a)(2) and (b)(2)(A) of the Tax Act assigns the BLM the sole responsibility for making such decisions.

The FWS continues managing all federal lands in the Coastal Plain as part of the Arctic Refuge, including both leased and unleased areas; however, the BLM manages all aspects of the Program, including issuing and administering oil and gas leases and issuing permits for all oil and gas activities.

Consistent with the Tax Act, BLM has the duty and authority to fully administer the Program, including the authority to directly manage lands in the Coastal Plain as necessary to do so. Although the Fish and FWS is the manager of ANWR, its management of the Coastal Plain is subject to the provisions of the Tax Act and the revised purpose of ANWR “to provide for an oil and gas program on the Coastal Plain.”<sup>51</sup> This new direction and Congressional purpose controls management of the Coastal Plain, and FWS’s authority must be exercised accordingly. In some cases, it may be unclear whether projects are oil and gas, community, or other projects. Such projects may be a combination or may start as one project type and change to another. The State supports deference to BLM in such cases.

The State appreciates BLM’s acknowledgement in its 2019 ROD that when Congress directed that the prohibition in ANILCA section 1003 on development and production of oil and gas “shall not apply to the Coastal Plain”<sup>52</sup> and made it an ANWR purpose under ANILCA section 303(2)(B) “to provide for an oil and gas program on the Coastal Plain,”<sup>53</sup> it superseded FWS’s ANWR Comprehensive Conservation Plan (CCP, 2015), which precludes oil and gas development, with respect to management of the Coastal Plain.<sup>54</sup>

In the State’s comments on the 2019 EIS, the State recommended direction to the FWS to amend the CCP for consistency with the Tax Act. Even though the FWS has not amended the CCP for consistency with the Tax Act, the State appreciates BLM’s acknowledgement in its 2019 ROD that “The CCP does not constrain BLM actions taken consistent with its jurisdiction over the statutorily mandated oil and gas program within ANWR,”<sup>55</sup> and that until FWS amends the CCP for consistency with the Tax Act, 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.”<sup>56</sup> The State requests that the Lead Agencies incorporate a similar acknowledgment into the Final SEIS.

In implementing the Program, the State recommends that BLM consult with the State and other regulatory agencies, including the NSB, as well as with the North Slope resident stakeholders, including the Native Village of Kaktovik residents.

The State and other regulatory agencies, including the NSB, have authorities and responsibilities for work that may be proposed in the Coastal Plain. These agencies have long histories of safely managing oil and gas development and will have regulatory roles in the Program moving forward. In addition, the State encourages continued significant efforts by BLM to consult with North Slope resident stakeholders,

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<sup>51</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(B), 131 Stat. 2054 (2017).

<sup>52</sup> Pub. L. No. 115-97, Sec. 20001(b)(1), 131 Stat. 2054 (2017).

<sup>53</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(B), 131 Stat. 2054 (2017).

<sup>54</sup> 2019 ROD at 18 and 19.

<sup>55</sup> 2019 ROD at 18.

<sup>56</sup> 2019 ROD at 19.

including the Native Village of Kaktovik residents, to ensure resources of concern are identified and protected.

## **Section 9 – The State’s input on discussions of downstream greenhouse gas emissions.**

### Speculative Downstream Effects

Throughout the Leasing SEIS there are discussions of downstream greenhouse gas emissions from the combustion of petroleum-based fuels by end users, such as government, business, and private citizens. The implication of these discussions is that these greenhouse gas emissions are directly attributable to the development of oil and gas on the coastal plain located on the North Slope of Alaska. See page E-6, Chapter 3, pages 3-8 through 3-9, pages 3-11 through 3-16, pages 3-26 through 3-27, and Appendix Q, pages 49-63. This implication has no basis in logic or in the NEPA analysis process. According to 40 C.F.R. 1508.1(g), effects are defined as:

“changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following: (1) Direct effects, which are caused by the action and occur at the same time and place. (2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”<sup>57</sup>

There is no clear and direct causal chain between a barrel of oil produced on the Coastal Plain and the end user consumer’s greenhouse gas emissions. NEPA has long been understood to only require analysis of effects that are “reasonably foreseeable.”<sup>58</sup> A barrel of oil from the Coastal Plain travels to Prudhoe Bay, Alaska, where it is mixed with crude oil from oil and gas facilities located on the North Slope. The crude oil is then transported through TAPS to Valdez where it is transported by oil tanker to a refinery located in Washington, California, or Asia. At that point, the crude oil would be placed into inventory, with no clear timeline as to when it would be refined and shipped to the end user. We do know that China has a history of stockpiling crude oil.<sup>59</sup> This means that the mixed crude may not be refined and combusted for months or even years.

Given this information and the lack of a causal chain,<sup>60</sup> downstream greenhouse gas emissions from combustion of petroleum-based fuels cannot be attributed to an oil and gas project located on the Coastal Plain, since NEPA regulations at 40 C.F.R. Sec. 1508.1(g) requires “a reasonably close causal relationship to the proposed action or alternatives.” These downstream greenhouse gas emissions are, at most, remote and speculative impacts. Please remove references to downstream greenhouse gas emissions from the Executive Summary, Chapter 3 including numerous tables, as well as Appendix Q.

### Improper Model Use

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<sup>57</sup> <https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A/part-1508>.

<sup>58</sup> See *City of Davis v. Coleman*, 521 F.2d 661 (9<sup>th</sup> Cir. 1974).

<sup>59</sup> <https://www.cnn.com/2020/04/08/business/oil-prices-china-imports/index.html>.

<sup>60</sup> See *Sierra Club v. U.S. Forest Service*, 46 F.3d 835 (8<sup>th</sup> Cir. 1995).

Similarly, the BLM Energy Substitution Model discussed in Appendix R does not appear to be properly predicated on the current global energy market. This model is based on domestic energy demand rather than the global energy demand (including foreign energy demand). Given the current conflict in the Ukraine and the disruption and shift in demands in the global oil market, this modeling exercise oversimplifies the current market.

With sanctions imposed by the United States and the European Union, Russian oil is now being exported to China and India rather than Europe. Any crude oil from the Coastal Plain would be subject to this marketplace disruption. According to the U.S. Treasury, “[i]n recent months, official price reporting agency data has shown that Russian Urals crude oil has traded at a discount of as much as \$25-\$35 per barrel less than Brent.”<sup>61</sup> This disruption in the global energy market has introduced variables that are not adequately addressed in the BLM Energy Substitution Model.

To simply assume that foreign oil demand is simply a function of oil prices disregards the increasingly complex reality of the current global energy market. Reliance on the BLM Energy Substitution Model is inaccurate and should not be relied on.

### Insufficient Explanation of Methods

In addition, the most recent proposed NEPA regulations,<sup>62</sup> propose the addition of a new sentence to 40 C.F.R. Sec. 1501.12(a), encouraging agencies to explain the assumptions and limitations of their models and methods. Appendix Q, Section 2.2.2 in the Leasing SEIS discusses greenhouse gas emissions, including emissions from transportation, processing and downstream greenhouse gas emissions using the GLEEM Model. Elsewhere it is only noted that the model capabilities and methodology can be found in Wolvovsky (2022). Unfortunately, this discussion does not disclose the limitations and caveats that were included in the background for the original use of the model for the Outer Continental Shelf (OCS) oil and gas leasing program. The GLEEM authors specifically noted that:

“the majority of GHG emissions are the result of oil and gas production consumption. As reflected in this analysis, the emissions and associated social costs from the 2017-2022 program and the no leasing scenario are relatively similar, in large part due to the estimated substitution of more GHG-intensive oil and gas sources in the absence of a new OCS leasing program. Future changes in climate or other policies, supply, and demand, shifting economic circumstances, or technological advances could substantially affect the assumptions and results of this analysis.”

This paints a much different picture than the one provided in the Leasing SEIS which implies that the project would be responsible for downstream greenhouse gas emissions.

Please revise the discussion of downstream greenhouse gas emissions to reflect only the greenhouse gas emissions that are directly attributable to the project, and please remove consideration of those that are merely remote and speculative, or otherwise attributable to the government and public consumption of petroleum refined fuels.

### **Section 10 – Unsupported Connection to Class I Wilderness.**

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<sup>61</sup> <https://home.treasury.gov/news/featured-stories/the-price-cap-on-russian-oil-a-progress-report>.

<sup>62</sup> <https://www.federalregister.gov/documents/2023/07/31/2023-15405/national-environmental-policy-act-implementing-regulations-revisions-phase-2>.

In addition, Chapter 3, page 3-31 discusses the impact on Air Quality Related Values (AQRVs) which look at impacts to surface water, vegetation, wildlife, soil, and visibility. These AQRV visibility standards are only applicable in Class 1 areas such as National Parks or National Wilderness Areas.<sup>63</sup> These Class 1 areas are defined for Alaska at 18 Alaska Administrative Code (AAC) 50.015(c)(2), Table 1. This page discusses visibility impairment on the Coastal Plain due to air emissions but makes comparisons with Denali National Park and Gates of the Arctic National Park. The distance from Kaktovik to Denali National Park is 526 miles, while the distance from Gates of the Arctic is 294 miles. Given that the Coastal Plain is located hundreds of miles away and subject to different meteorological and topographic conditions there does not appear to be any support for the conclusion that the visual impairment for these distant areas has any logical connection to the Coastal Plain.

Please remove these discussions from the Leasing SEIS or provide an explanation that these are only best guesses by the BLM and not supported by available evidence.

### **Conclusion**

All phases of responsible oil and gas development, including exploration, development, production, and transportation have extensively occurred in Alaska. Further, it has successfully coexisted with other industries, including fishing, transportation, and tourism. It has also coexisted with subsistence and has contributed to the well being and health of local residents. Accelerating America's energy and environmental progress with Coastal Plain energy, among other affordable homegrown energy sources, would spur the nation's economic recovery and protect access to affordable, reliable, and cleaner energy produced in the U.S.

Alaska state and local agencies and federal regulatory agencies have regulations that protect the environment through comprehensive drilling, development, and production standards; setbacks; ground water protection measures; financial assurance requirements; spill reporting standards; and reclamation requirements. These emphasize planning, consultation, preparedness, and mitigation, and ensure that from start to finish, environmental impacts are scrutinized and mitigated to the greatest extent practicable. Additionally, the State adheres to robust workplace safety labor laws and numerous regulations that ensure the oil and gas industry performs to the highest standards.

The State and its technical and regulatory experts with significant knowledge in the prudent development and management of Alaska's resources stand ready to coordinate and collaborate with the U.S. to achieve energy abundance, secure American jobs, spur economic renewal, and promote environmental stewardship. The State understands the importance of responsible oil and natural gas development to maintaining its pristine environment while also creating various economic opportunities for its citizens and the nation.

Sincerely,



John C. Boyle III  
Commissioner, Alaska Department of Natural Resources

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<sup>63</sup> 42 U.S.C. Sec. 7491; 40 C.F.R. Sec. 52.21(p).

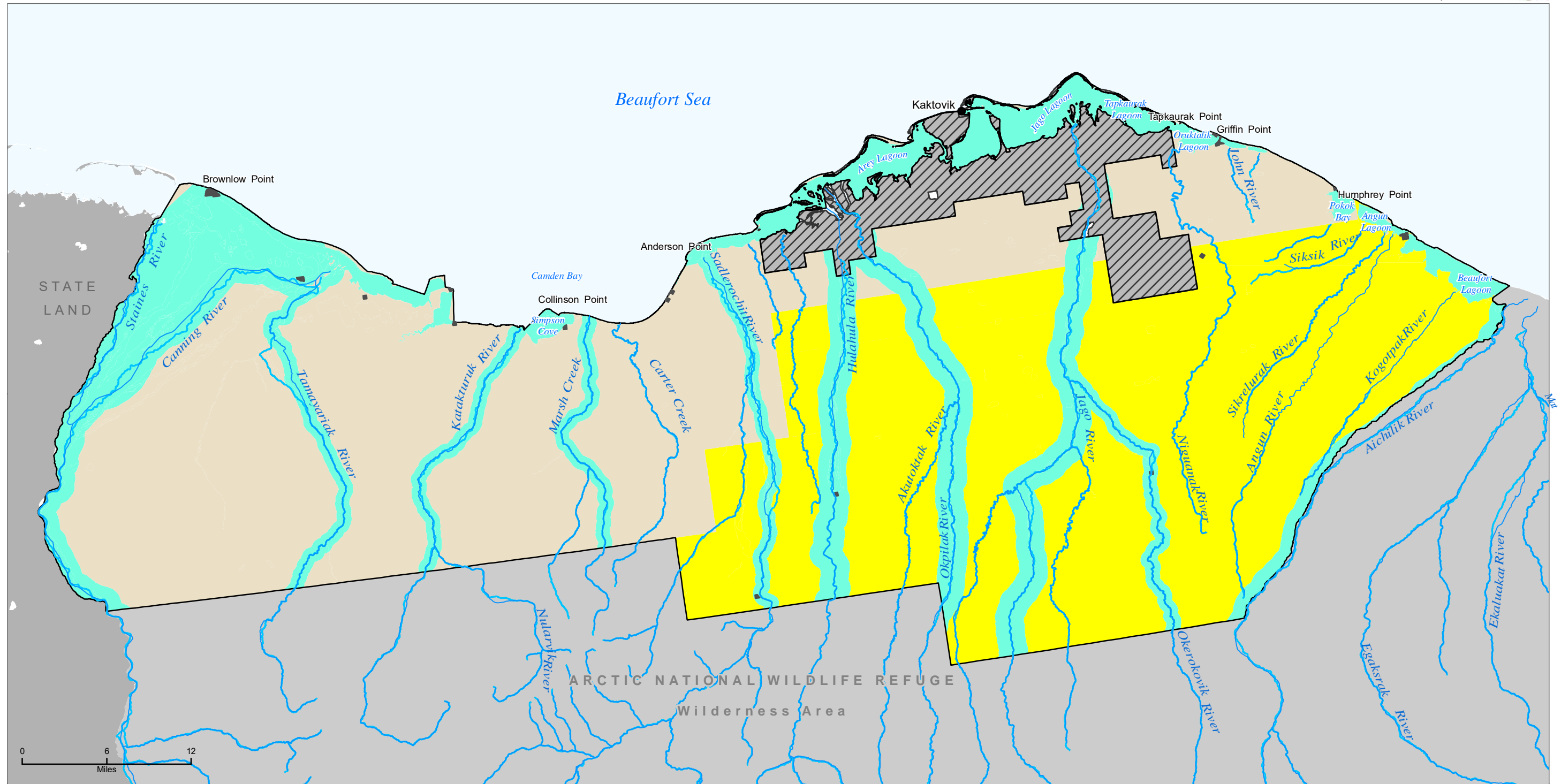


Doug Vincent-Lang  
Commissioner, Alaska Department of Fish and Game



Emma Pokon  
Acting Commissioner, Alaska Department of Environmental Conservation

Enc: Technical Comments Matrix  
State's October 17, 2023, Letter Re: Request for Extension  
State's May 30, 2023, Letter Re: Process  
State's October 31, 2022, Letter Re: Purpose and Need, 2000-Acre Threshold, and Seismic  
State's May 31, 2022, Letter Re: Purpose and Need  
State's October 4, 2021, Letter Re: Scoping  
2019 MOA between BLM and DNR



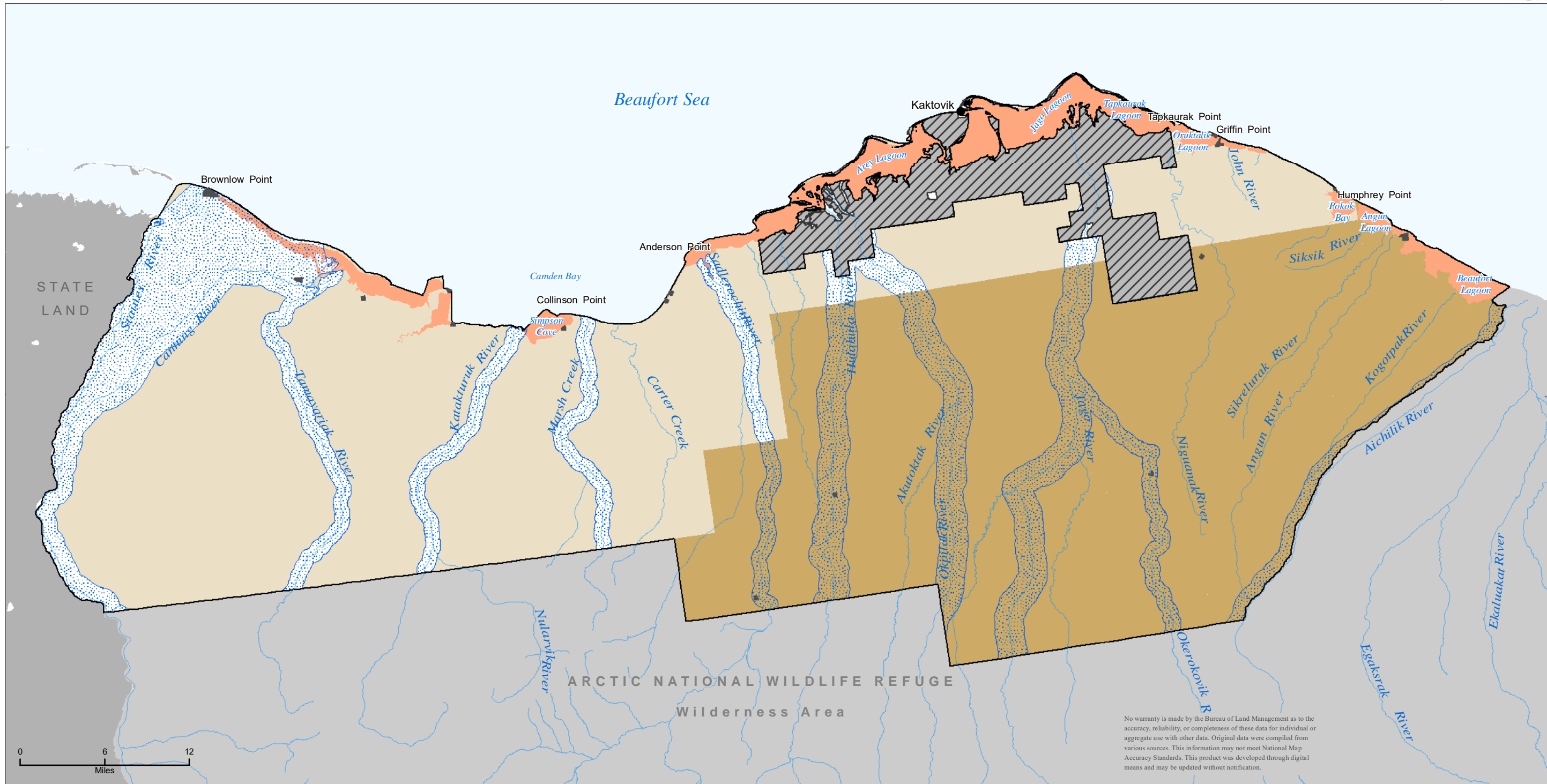
- |  |   |  |
|--|---|--|
| Not available for lease sale (none)      | Available for lease sale                      | Coastal Plain Supplemental EIS boundary                          |
| Subject to controlled surface use (none) | Subject to no surface occupancy               | Native Allotment   |
| Subject to timing limitations            | Subject to only standard terms and conditions | Excluded from Public Law 115-97                                  |
|  |   | Coastal Plain or outside the BLM's oil and gas leasing authority |



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Print Date: 07/15/2023

Map 2-1



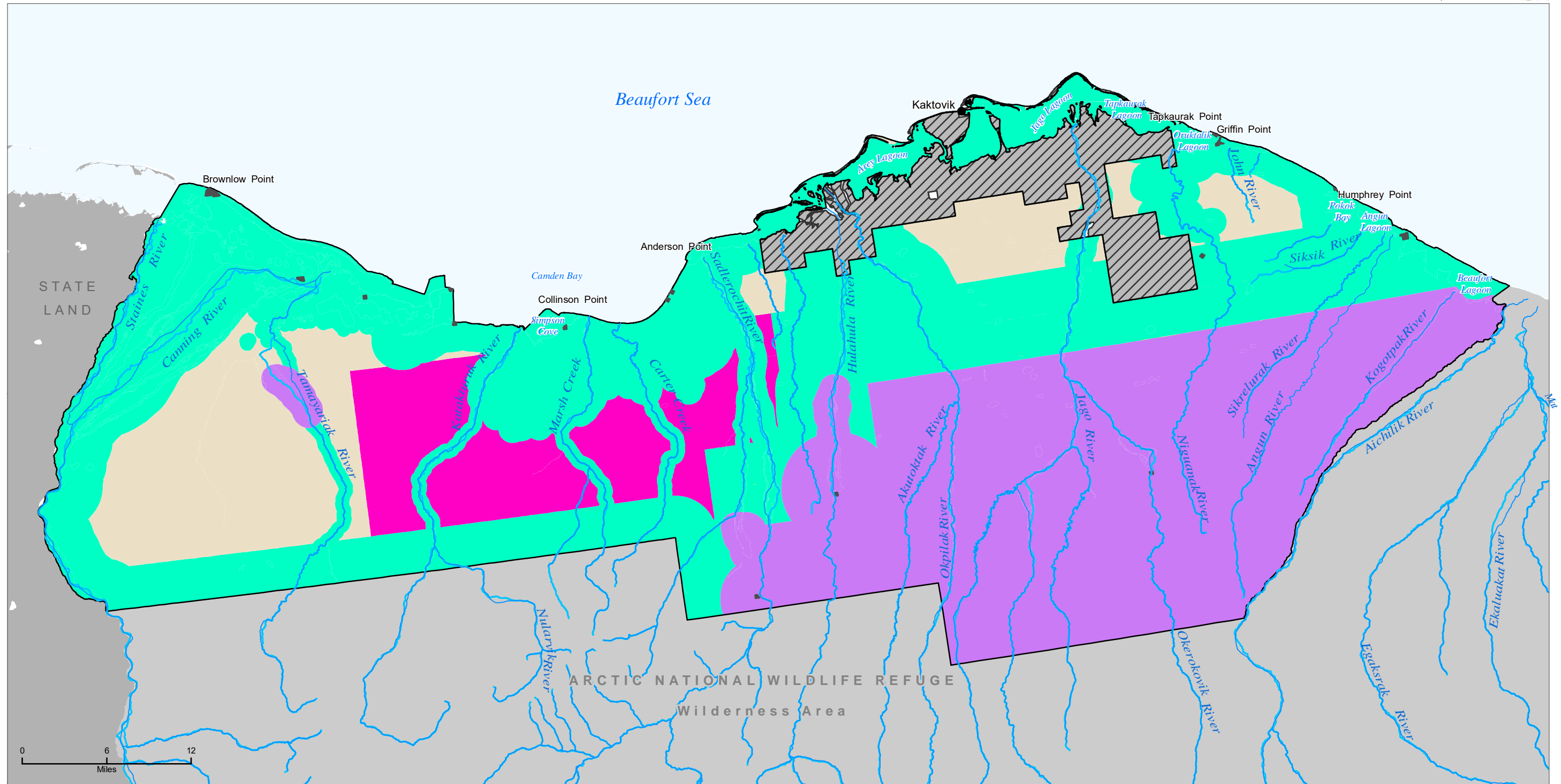
No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

- 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
- Coastal Plain Supplemental EIS boundary
- Native Allotment
- Excluded from Public Law 115-97
  - Coastal Plain or outside the BLM's oil and gas leasing authority

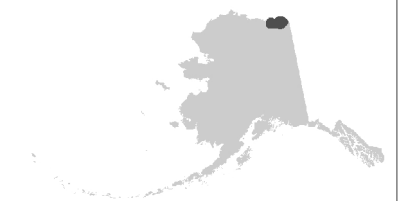


Data source: BLM GIS 2022, USFWS GIS 2022  
Print date: 07/15/2023

Map 2-2

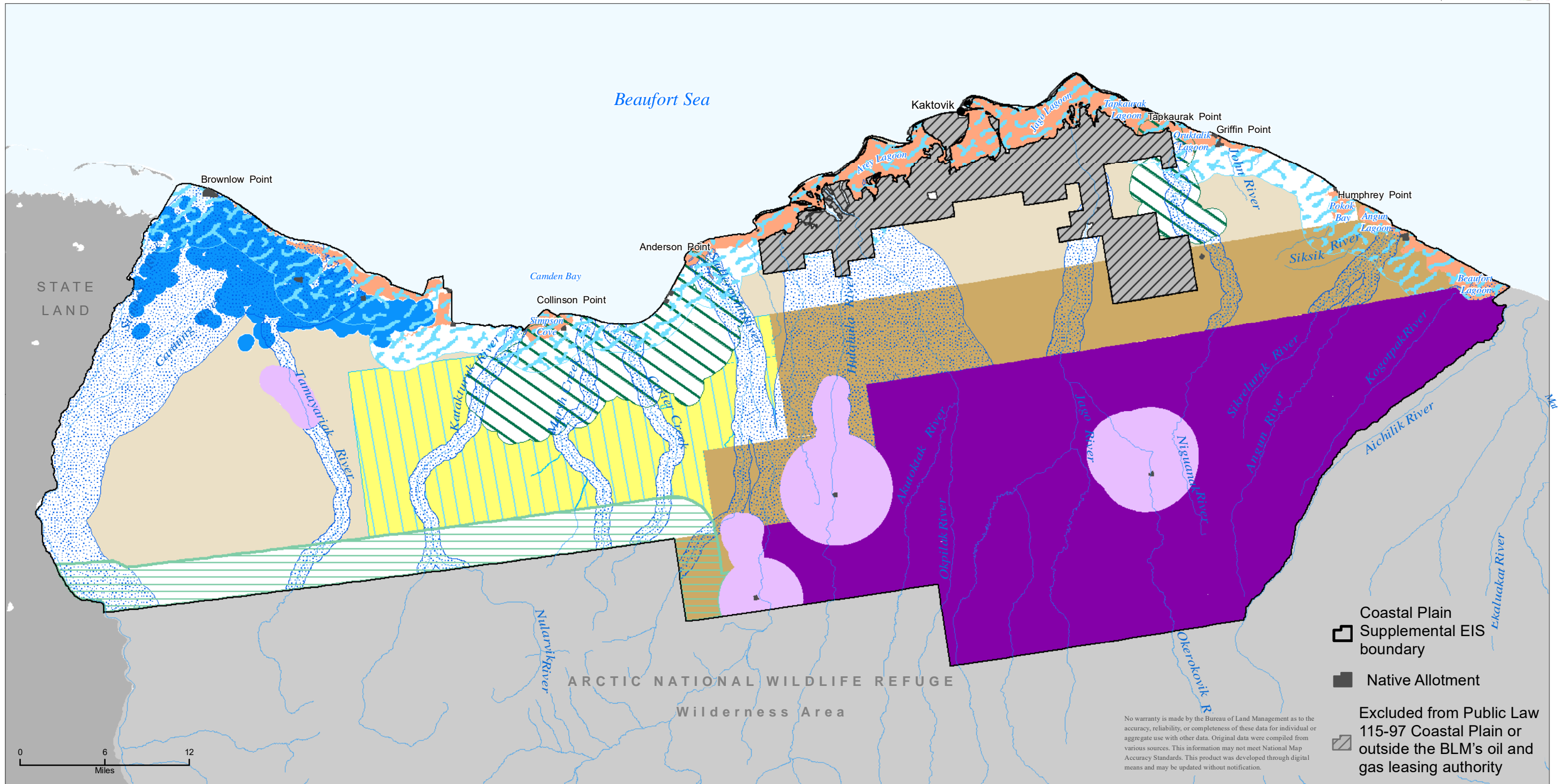


- Not available for lease sale
- Available for lease sale
- Subject to no surface occupancy
- Subject to controlled surface use
- Subject to timing limitations
- Subject to only standard terms and conditions
- Coastal Plain Supplemental EIS boundary
- Native Allotment
- Excluded from Public Law 115-97
- Coastal Plain or outside the BLM's oil and gas leasing authority



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Not available for lease sale and not available for surface occupancy

- Lease stipulation 3—springs/aufeis
- Lease stipulation 7—Porcupine caribou calving habitat

Available for lease sale, subject to no surface occupancy

- Lease stipulation 1—rivers and streams
- Lease stipulation 2—Canning River delta and lakes
- Lease stipulation 4—nearshore marine, lagoon, and barrier island habitat, exploration
- Lease stipulation 5—coastal polar bear river denning habitat

- Lease stipulation 9—coastal area
- Lease stipulation 10—Wilderness boundary

Available for lease sale, subject to controlled surface use

- Lease stipulation 8—Porcupine Caribou post-calving habitat

Available for lease sale, subject to timing limitations

- Lease stipulation 4—nearshore marine, lagoon, and barrier island habitat

Available for lease sale, subject to timing limitations

- Lease stipulation 8—Porcupine Caribou post-calving habitat

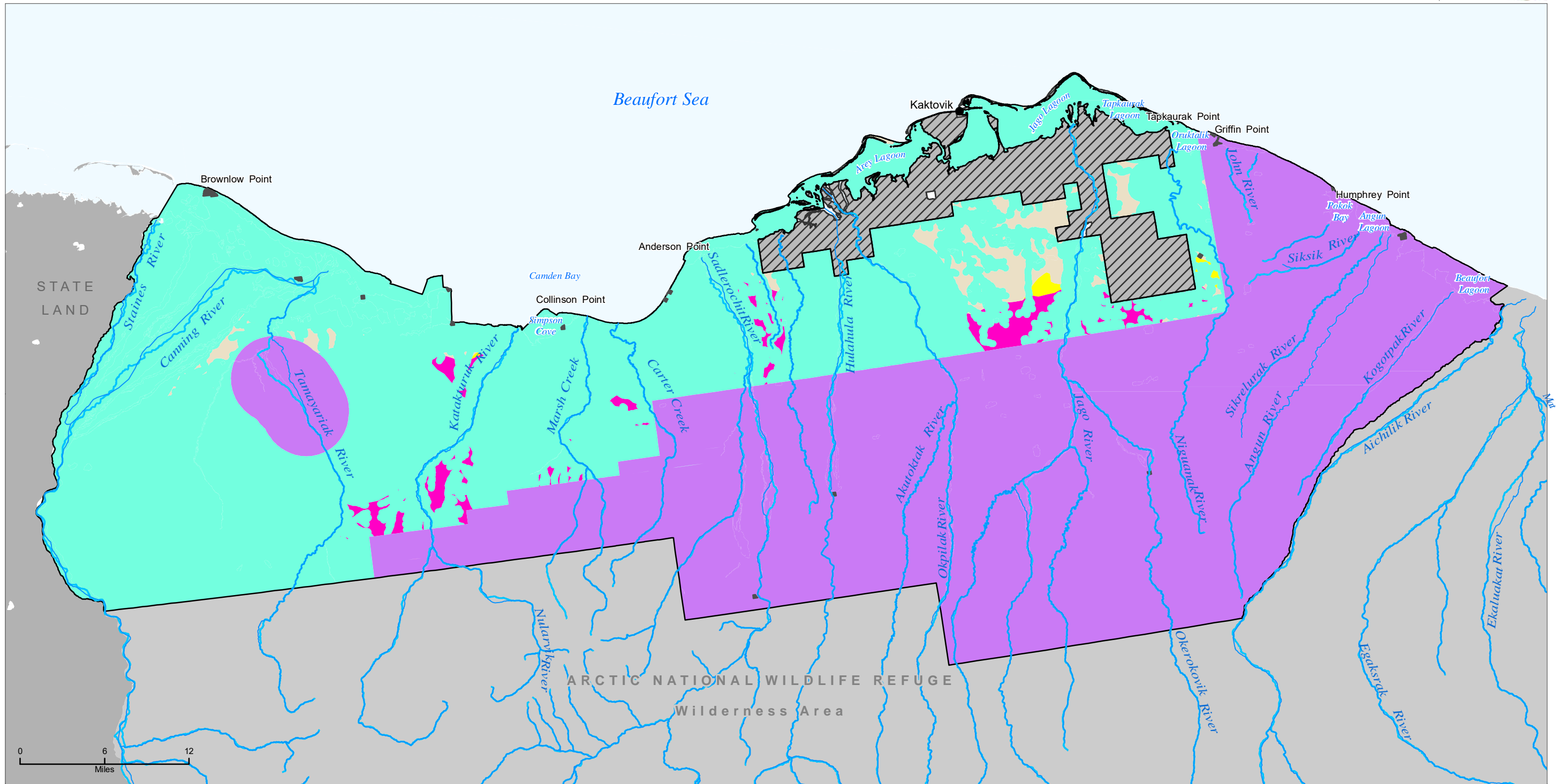
Available for lease sale:

- Subject to only standard terms and conditions

- Coastal Plain Supplemental EIS boundary
- Native Allotment
- Excluded from Public Law 115-97 Coastal Plain or outside the BLM's oil and gas leasing authority



Data source: BLM GIS 2022, USFWS GIS 2022  
Print date: 07/15/2023



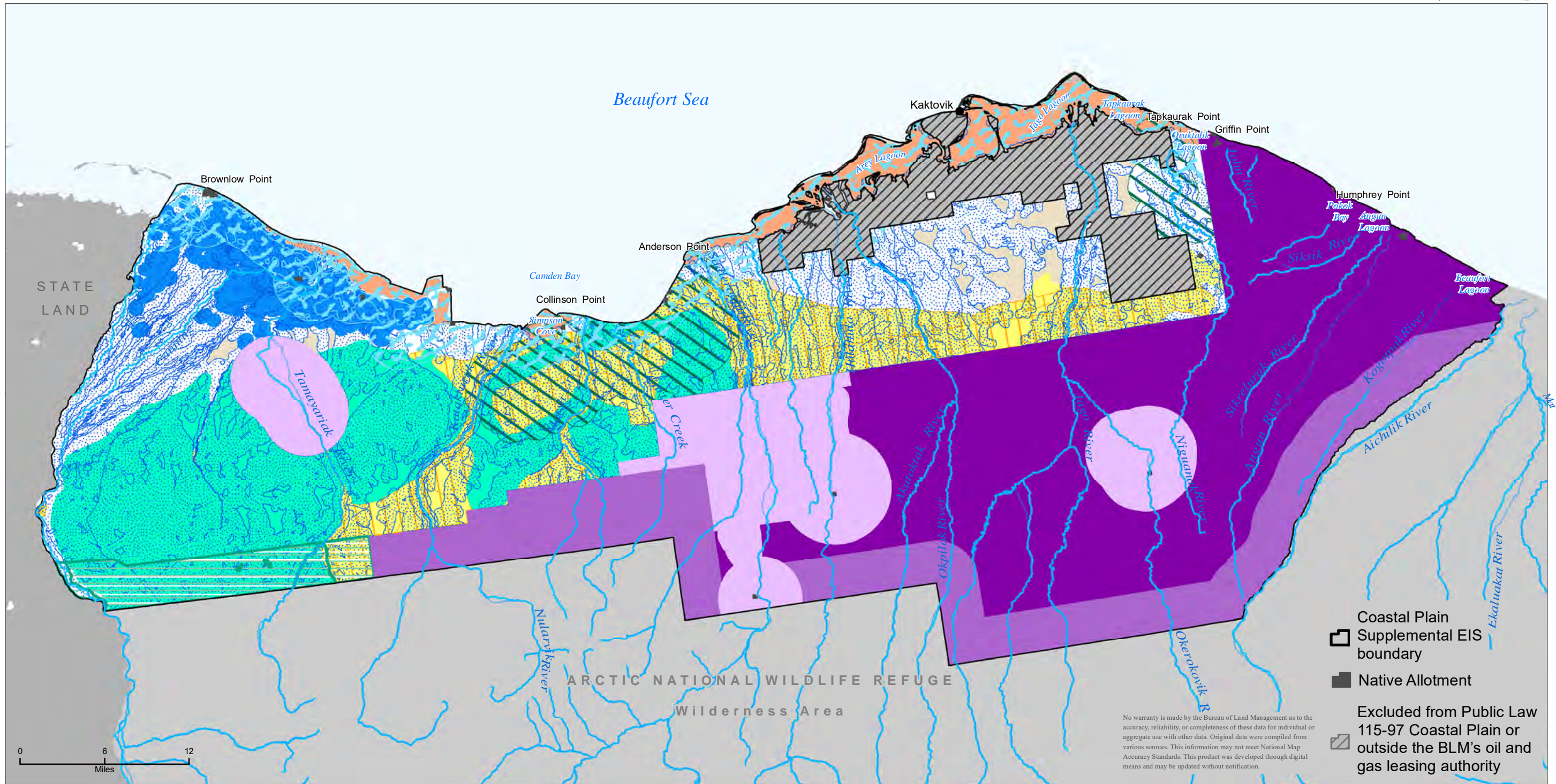
- Not available for lease sale
- Available for lease sale
- Subject to no surface occupancy
- Subject to controlled surface use
- Subject to timing limitations
- Subject to only standard terms and conditions
- Coastal Plain Supplemental EIS boundary
- Native Allotment
- Excluded from Public Law 115-97
- Coastal Plain or outside the BLM's oil and gas leasing authority



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Data Source: BLM GIS 2022, USFWS GIS 2022  
Print Date: 07/28/2023

Map 2-5



Not available for lease sale and not available for surface occupancy

- Lease stipulation 3—springs/aufeis
- Lease stipulation 10—Wilderness boundary
- Lease stipulation 6—Porcupine caribou calving habitat

Available for lease sale, subject to no surface occupancy

- Lease stipulation 1—rivers and streams
- Lease stipulation 2—Canning River delta and lakes
- Lease stipulation 4—nearshore marine, lagoon, and barrier island habitat, exploration
- Lease stipulation 5—coastal polar bear river denning habitat
- Lease stipulation 9—coastal area
- Lease stipulation 10—Wilderness boundary
- Lease stipulation 12—ice-rich soils and yedoma deposits

Available for lease sale, subject to controlled surface use

- Lease stipulation 6—caribou summer habitat, 2050 projected PCH post-calving
- Available for lease sale, subject to timing limitations
- Lease stipulation 4—nearshore marine, lagoon, and barrier island habitat

Available for lease sale, subject to timing limitations

- Lease stipulation 6—caribou summer habitat, 2050 projected PCH calving and post-calving
- Available for lease sale: Subject to only standard terms and conditions



Data source: BLM GIS 2022, USFWS GIS 2022  
Print date: 07/28/2023



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Natural Resources**  
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October 17, 2023

***Submitted via ePlanning***

Bureau of Land Management  
Alaska State Office  
222 W 7th Avenue #13  
Anchorage, AK 99513

U.S. Fish and Wildlife Service  
Alaska Region Headquarters  
1011 East Tudor Road  
Anchorage, AK 99503

Re: Notice of Availability of the Draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement, 88 Fed. Reg. 62,104 (Sept. 8, 2023)  
Agency/Docket No. DOI-BLM-AK-0000-2021-0006-EIS  
Request for 90-Day Extension of the November 7, 2023 Public Comment Deadline

Dear Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (FWS),

The State of Alaska ("State") respectfully requests a 90-day extension of the period for the public to review and comment on the September 8, 2023 Draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement ("Leasing SEIS") jointly issued by BLM and FWS (collectively, the "Lead Agencies").

The State appreciates the Lead Agencies' recent 15-day extension of the public comment deadline from October 23, 2023 to November 7, 2023; however, this extension is inadequate. This timeframe does not afford the State, as a Cooperating Agency on the Leasing SEIS, with adequate opportunity to substantively participate in the development of the Leasing SEIS consistent with the Council on Environmental Quality's (CEQ) regulations that implement the National Environmental Policy Act (NEPA) at 40 C.F.R. parts 1500 through 1508.

To date, the Lead Agencies have not offered the State meaningful opportunity to participate in the development of the Leasing SEIS, despite the CEQ's requirement that Cooperating Agencies "shall . . . [p]articipate in the NEPA process at the earliest practicable time." 40 C.F.R. § 1501.8(b)(1). Throughout development of the Leasing SEIS, the Lead Agencies did not offer the State the chance to review and comment on material components of the Leasing SEIS until the Lead Agencies distributed the Preliminary Draft SEIS:

- In April 2022, May 2022, and subsequent meetings, the Lead Agencies said that they would provide the lease stipulations and required operating procedures (ROPs) that resulted from the numerous Cooperating Agency and resource group meetings in the preceding weeks. The Lead Agencies did not provide the lease stipulations and ROPs until they distributed the Preliminary Draft SEIS in June 2023.

- In the April 2022 meetings, the Lead Agencies said that they would provide their interpretation of the statutory 2000-acre limitation by May 6, 2022. The Lead Agencies did not do so. In the absence of any information, the State volunteered input on the 2000-acre limitation on October 31, 2022. The Lead Agencies did not distribute their interpretation of the statutory 2000-acre limitation until they distributed the Preliminary Draft SEIS in June 2023.
- The Lead Agencies said on March 14, 2023, and again on March 16, 2023, that they would provide Chapter 3 for cooperator review by April 17, 2023. The Lead Agencies did not distribute Chapter 3 until they distributed the Preliminary Draft SEIS in June 2023.
- The State specifically asked in the May 3, 2023, meeting to see the lease stipulations, ROPs, and Chapter 3, and the determination of legality for BLM and FWS serving as co-leads, since these documents were described as being complete. The Lead Agencies did not provide this information until they distributed the Preliminary Draft SEIS in June 2023.
- The Lead Agencies said repeatedly that they would provide the Preliminary Draft SEIS in the first quarter of 2023 but did not provide it until the second quarter of 2023.

When the Lead Agencies finally distributed the Preliminary Draft SEIS to the Cooperating Agencies, the Lead Agencies afforded the State and other cooperators a mere 10 business days to review, and prepare comments on, the Preliminary Draft SEIS. Despite the State's request, the Lead Agencies declined to extend this deadline.

Finally, the Lead Agencies did not respond to the State's comments on the Preliminary Draft SEIS until October 4, 2023—nearly a month into the public comment period on the Draft SEIS, and despite indications from the Lead Agencies that these responses would be received weeks prior. And, the Lead Agencies' initial responses to the State's comments were incomplete.

Given that the State has been denied the opportunity to meaningfully participate as a Cooperating Agency throughout this process, an additional 90-day extension is necessary to allow the State adequate time to review and comment on the Leasing SEIS.

For these reasons, the State respectfully requests that the Lead Agencies extend the public comment period on the Leasing SEIS by an additional 90 days.

Sincerely,



Ashlee Adoko  
Executive Director  
Office of Project Management and Permitting  
Department of Natural Resources

cc: Serena Sweet, BLM, [ssweet@blm.gov](mailto:ssweet@blm.gov)  
Stephanie Kuhns, BLM, [skuhns@blm.gov](mailto:skuhns@blm.gov)  
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THE STATE  
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GOVERNOR MIKE DUNLEAVY

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May 30, 2023

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Bobbie Jo Skibo  
U.S. Fish and Wildlife Service  
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**Re: Arctic National Wildlife Refuge Coastal Plain Supplemental Environmental Impact Statement Process**

Dear Ms. Sweet and Ms. Skibo,

The State of Alaska (State) is concerned that the Arctic National Wildlife Refuge (ANWR) Coastal Plain Supplemental Environmental Impact Statement (SEIS) process (SEIS Process) is not providing Cooperating Agencies opportunities to substantively participate consistent with the Council on Environmental Quality's (CEQ) regulations that implement the National Environmental Policy Act (NEPA) at 40 C.F.R. parts 1500 through 1508. Particularly, section 1501.8 of these regulations "emphasize[s] agency cooperation early in the NEPA process."

To date, the Bureau of Land Management (BLM) and the Fish and Wildlife Service (FWS, Lead Agencies) have not provided any SEIS materials for Cooperating Agencies to review, despite the State devoting considerable time and resources to provide knowledge, expertise, scientific information, and input in initial scoping discussions. If Cooperating Agencies are not provided materials to review prior to their publication or are provided short and cursory periods for review that do not allow meaningful input, it calls into question the role of Cooperating Agencies, the appropriate execution of the SEIS Process, and potentially the basis for decisions subsequently based on the SEIS Process.

The State's technical and regulatory experts have significant knowledge in the prudent development and management of Alaska's resources. They have extensive responsibilities for these same tasks on State lands, and have remained ready since August 4, 2021,<sup>1</sup> to coordinate and collaborate with the Lead Agencies on the SEIS Process to achieve energy abundance, secure American jobs, spur economic renewal, and promote environmental stewardship.

The State maintains that changes to the 2019 Final Environmental Impact Statement (FEIS), including the lease stipulations and Required Operating Procedures (ROPs), are unnecessary because the 2019 FEIS and Record of Decision (ROD) are based on decades of reliable data, and followed a federal NEPA process that involved State, federal, and local agencies, and stakeholders. Changes to the FEIS through

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<sup>1</sup> The date of publication of the Notice of Intent to prepare an SEIS for the ANWR Coastal Plain Oil and Gas Leasing Program, 86 FR 41989.

the SEIS Process must similarly incorporate input, and particularly Cooperating Agency input, as the CEQ regulations expressly recognize.<sup>2</sup>

To date, in its role as a Cooperating Agency, the State has contributed significant staff time across multiple agencies<sup>3</sup> to three, all-day meetings (April 25 through April 27, 2022), 15 resource group meetings (May 17 through May 20, 2022), and additional meetings in October 2022, to inform the analysis in the SEIS Process. The State has specifically provided input regarding the basis for the 2019 FEIS lease stipulations and ROPs, and in the areas of air quality; caribou; marine mammals, other wildlife, and birds; snow, permafrost, soils, and overland travel; and water, springs, fish, and other areas, and the importance that state-input be considered in any changes to these items. The 2019 FEIS process featured multiple alternatives workshops, and provided serial opportunities to review draft alternatives, the “reasonably foreseeable development scenario,” and other documents as they were developed consistent with the nature of the Cooperating Agency process.

Despite stressing to the Lead Agencies the importance of phased reviews for time and workload management, as well as quality input, the State has not seen any SEIS materials to determine if its contributions are being reflected in the SEIS Process. This is inconsistent with the Memorandum of Understanding, signed by the Lead Agencies and the State, dated March 10, 2022 (MOU) regarding Cooperating Agency status to make “best use of available resources including specialized expertise,” for the “benefit of the Federal government, the [State] government, prospective permittees, and the public interest.”<sup>4</sup>

**The Lead Agencies have not met or followed through on timelines and commitments made to cooperators.**

- In April 2022, May 2022, and subsequent meetings, the Lead Agencies said that they would provide the lease stipulations and ROPs that resulted from the numerous Cooperating Agency and resource group meetings in the preceding weeks. More than a year later, the Lead Agencies still have not provided any lease stipulations and ROPs for review.
- The Lead Agencies said on March 14, 2023, and again on March 16, 2023, that they would provide Chapter 3 for cooperator review by April 17, 2023, but have still not provided Chapter 3.
- The Lead Agencies cancelled the April 18, 2023, meeting without explanation.
- The Lead Agencies said repeatedly that they would provide the preliminary draft SEIS in the first quarter of 2023. It is now almost half-way through 2023, and the Lead Agencies still have not provided the preliminary draft SEIS.

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<sup>2</sup> See 40 CFR 1501.7(h), 1501.8, 1508.1(e).

<sup>3</sup> The State’s professionals represent the State’s Department of Natural Resources (DNR), Division of Oil and Gas (Leasing, Permitting, and Resource Evaluation Sections), Division of Mining Land and Water (Program Support, Northern Region, and Realty Services); Department of Environmental Conservation (DEC); Department of Fish and Game (DFG, Habitat and Environmental Species Sections); Department of Law (DOL); the Office of Project Management and Permitting (OPMP), contractors and retained consultants, and others.

<sup>4</sup> MOU, I. B.

- In the April 2022 meetings, the Lead Agencies said that they would provide their interpretation of the statutory 2000-acre limitation by May 6, 2022. The Lead Agencies still have not provided any interpretation. In the absence of any information, the State volunteered input on the 2000-acre limitation on October 31, 2022. However, the State has seen nothing in response.
- The State specifically asked in the May 3, 2023, meeting to see the lease stipulations, ROPs, Chapter 3, and the determination of legality for BLM and FWS serving as co-leads, since these documents were described as being complete.
- Following initial scoping discussions, the Lead Agencies have provided literally nothing to review. Now the Lead Agencies have stated in a May 3, 2023, meeting that they now plan to provide the entire preliminary draft SEIS in June 2023, and give Cooperating Agencies only two weeks to review.

This contrasts with the 2019 FEIS process in which the BLM maintained commitments and adhered to a strict schedule.

**Two weeks to review the entire preliminary draft SEIS is insufficient and unreasonable, especially given the extensive data and information provided by the State.**

Two weeks to review the entire preliminary draft SEIS is unreasonable, especially given the State's informational contributions to date, the complexities of the issues at play (including assertions that previously completed extensive NEPA-reviews required revision or supplementation), and repeated willingness to proactively cooperate and engage as part of the process.

To highlight the unreasonableness, under the CEQ NEPA regulations, the public has, at a minimum, 45 days to review a draft EIS.<sup>5</sup> Although this timeframe does not directly govern Cooperating Agency review, it is more than three times longer than the proposed two-week period for Cooperating Agencies to review.

Further, the MOU, signed by the Lead Agencies and the State, provides that “[t]he Parties shall engage in open and timely communications regarding development of the SEIS. Timeframes shall be reasonable, as established by the Joint Lead Agencies consistent with applicable regulations, executive orders, secretarial orders, the Departmental Manual, and NEPA guidance.”<sup>6</sup> To date, the non-agencies have been non-communicative about the development of interim documents, aside from the series of un-met representations that they would be imminently available that are listed above.

The State requests four to six weeks to review the preliminary draft SEIS.

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<sup>5</sup> 40 CFR 1506.11(d).

<sup>6</sup> MOU, IV.D (emphasis added).

**The Lead Agencies are working in a vacuum.**

In February 2022, the State provided the Lead Agencies a list of topics on which State staff could contribute expertise to fine-tune the SEIS chapters in service on the interdisciplinary teams.<sup>7</sup>

However, it was said in the May 3, 2023, meeting that only federal agencies and specifically, staff from the Lead Agencies, would serve on the interdisciplinary teams. This is troubling because the State has significant and unique experience on Alaska regulatory, environmental, and other issues, including on the Alaska National Interest Lands Conservation Act (ANILCA), which provides a binding legal framework in Alaska that differs greatly from that of the states in the Lower 48. Refusing to engage with cooperating agencies in such a manner limits the information available for consideration in the SEIS process.

**The Lead Agencies are not including the State in subsistence reviews, despite the unique data and information possessed by the State regarding the management of Fish and Game.**

Per the MOU, the State requests to review the ANILCA Section 810 analysis, the preliminary findings required in ANILCA Section 810(a) before any subsistence hearings, and the draft three-part determination after the hearings.<sup>8</sup>

The Lead Agencies said in the May 3, 2023, meeting that they will start a new ANILCA Section 810 analysis that will closely follow, in scope and time, the subsistence analysis in the SEIS.

However, as with other parts of the preliminary draft SEIS, the State could provide more meaningful and helpful information and input if consulted during the planning process, rather than once the document is complete. Receiving the ANILCA Section 810(a) analysis without the opportunity for input before it is finalized could result in requests for backup information, and objections to conclusions on the basis that information is incomplete.

**The Lead Agencies have still not provided substantive rationale or explanation for the alleged “legal deficiencies” in the 2019 FEIS and ROD, although they are using these alleged “legal deficiencies” to drive the SEIS Process.**

In the May 3, 2023, meeting, the Lead Agencies identified alleged “legal deficiencies” in the 2019 FEIS and ROD; specifically –

- BLM did not adequately analyze a reasonable range of alternatives because BLM did not analyze an alternative, besides the no action alternative, that involved fewer than 2,000 acres of surface development.

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<sup>7</sup> The State volunteered State experts in the following areas: Physiography; Geology and Minerals; Petroleum Resources; Sand and Gravel Resources; Soils and permafrost; Vegetation; Water Resources and Snow; Climate and Meteorology; Paleontological and Cultural Resources; Wildland Fire; Air Quality; Fish, including Arctic Char and Grayling; Birds, including Gulls, Passerines, Ptarmigan, Waterfowl, Shorebirds, Yellow-Billed Loon, Raptors, Peregrine Falcon, Spectacled and Stellar’s Eiders and Snow Geese; Marine Mammals, including Polar Bear, Bowhead Whale and Ringed Seal; Terrestrial Mammals, including Caribou, Grizzly Bear, Muskox, Dall Sheep, Wolves and Wolverines; Subsistence Impacts to Sociocultural Systems, Environmental Justice and ANILCA Section 810; the Economy; Land Status and Ownership; Transportation; Visual Resource Management; Recreation; Wilderness Values; Public Health; Impacts of Oil, Saltwater, and Hazardous Material Spills; Cumulative Effects; and Impacts Assessments.

<sup>8</sup> MOU, IV. E.

- The ROD did not include a proper interpretation of Section 20001 of Public Law 115-97 (the “Tax Act”), because it allowed for the authorization of up to 2,000 acres to be covered by “production and support facilities,” although the phrase “up to” indicates that fewer than 2,000 acres may be authorized in certain circumstances.
- The 2019 FEIS did not include an adequate analysis of foreign greenhouse gas (GHG) emissions.
- There is not “compliance with Section 810” of ANILCA.
- The Lead Agencies also said any new NEPA analysis involving an additional alternative could trigger additional duties to consult under Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act.

However, the Lead Agencies provided no further analysis beyond these conclusory statements that there are “legal deficiencies.” The State continues to assert, especially without further articulation by the Lead Agencies, that these determinations are changed policy positions, not legal deficiencies. No court or administrative board has reached a decision, or even opined, on the 2019 FEIS’s range of alternatives, the ROD’s interpretation of the Tax Act, or compliance with Section 810 of ANILCA. This is especially pertinent as the legal mandate for development in the Coastal Plain is unique to the Tax Act and its articulation of what is, and is not, required for the development to proceed.

Similarly, no court or administrative board has reviewed the adequacy of the analysis in the 2019 FEIS. In fact, the Department of the Interior (DOI) defended the legality of the analysis in the 2019 FEIS and decisions in the ROD in *Gwich’in Steering Committee v. Bernhardt*, No. 3:20-cv-00204-SLG (D. Alaska). It appears that the purported “legal deficiencies” are a guise for the DOI to undo the decisions made in the ROD and effectuate new policy. Conducting a new SEIS with limited or no input from cooperating agencies and incomplete information may, in fact, introduce new legal deficiencies to BLM and USFWS’s decision making.

Moreover, the SEIS’s scope exceeds the changes necessary to remedy the purported legal deficiencies. For example, the Lead Agencies have also proposed to revise lease stipulations and ROPs. These changes are not necessary to address the purported legal deficiencies and actually seem to demonstrate that the Lead Agencies seek to revisit prior policy decisions.

The FWS appears to be taking the lead in the SEIS Process and to have taken the directive in Order No. 3401 from the Secretary of the Interior (SO 3401) to “conduct a new, comprehensive analysis” to move in a different direction from the 2019 FEIS and to focus their efforts on a predetermined outcome of

1. Having tribal input determine the direction of the SEIS, and
2. Reversing the outcome of the 2019 FEIS Process, despite having no regulatory authority to do so.

The State pointed out in its opening remarks in the April 25, 2022, meeting that, although the FWS is the manager of ANWR, the Tax Act authority clearly provides BLM authority to control the lease sale process. That means that when a conflict exists between BLM regulations and FWS regulations and conservation management plans, the BLM regulations control.

**The State strongly disagrees with a revision to the Purpose and Need Statement to assert that none of the five purposes of ANWR supersede one another.**

The Lead Agencies indicated in the May 3, 2023, meeting that the Purpose and Need Statement would be revised to highlight that none of the five purposes of ANWR supersede one another. The State has repeatedly objected to the possibility of revising the Purpose and Need Statement in letters dated May 31, 2022, and October 31, 2022. The State continues to stand by its positions set forth in these letters.

The State strongly disagrees with a revision to the Purpose and Need Statement to assert that none of the five purposes of ANWR supersede one another. This revision erroneously suggests that ANWR's statutory purposes are on equal footing with one another. In fact, Congress did not make the Coastal Plain Oil and Gas Leasing Program secondary or subject to other purposes, and the Purpose and Need Statement cannot suggest otherwise. Congress also did not make federal compliance with the development purpose for the Coastal Plain optional in any way – it must occur.

Moreover, Section 303(2)(B) of ANILCA puts certain purposes secondary to others. For example, Section 303(2)(B) of ANILCA states that ANWR should be managed to ensure water quality and necessary water quantity within it, but only in a manner consistent with the conservation of fish and wildlife populations and habitats.

BLM lacks any valid basis to revise the Purpose and Need Statement set forth in the 2019 FEIS. Neither Executive Order No. 13990 nor SO 3401 directs any revisions to the Purpose and Need Statement set forth in the 2019 FEIS. Instead, both call for additional analysis of environmental impacts of the Coastal Plain Oil and Gas Leasing Program.

**Consistent with the MOU, the Lead Agencies must respond in writing to the State's comments, and the State requests that they do so as soon as possible.**

The MOU, IV., E., says that the Lead Agencies “shall provide [the State] with written responses to the State's comments on preliminary documents, “including identifying any resulting changes to the SEIS and related documents.”

These written responses further the commitments of the Lead Agencies and the State to “work cooperatively and share information,” per the MOU, I.C. In a letter dated October 31, 2022, the State provided the Lead Agencies with comments on proposed revisions to the Purpose and Need Statement, the Lead Agencies' interpretation of the 2000-acre limitation, and impacts on analyzing seismic exploration in the SEIS. The State also raised these and other issues in its October 4, 2021, scoping comments on the SEIS Process and its May 31, 2022, letter addressing possible revisions to the Purpose and Need Statement.

Although more than six months have passed since the State submitted its October 31, 2022, letter, the Lead Agencies have not informally addressed any of the State's comments, let alone responded in writing. The Lead Agencies also have not identified changes to the SEIS resulting from the State's comments.

Consistent with the MOU, the Lead Agencies must respond in writing to the State's comments. With the additional delay of the SEIS, the State requests the Lead Agencies do so as soon as possible. Otherwise,

the State would remain entirely unaware of the Lead Agencies' decision-making on these issues during nearly the entire time they have been developing the SEIS.

**Conclusion.**

In conclusion, the State maintains that responsible leasing and development of the ANWR Coastal Plain would support our nation's energy security and economic growth, preserve the environment, and create certainty for Alaskans and businesses. Throughout administrations, Americans have enjoyed increased economic opportunity, strengthened national security, and enhanced energy affordability as a result of development of Alaska's natural resources. Oil and gas exploration and development has occurred for decades on the North Slope of Alaska, including in areas adjacent to the ANWR Coastal Plain, and remains the State's single most important economic engine.<sup>9</sup>

The State has been eager to inform decisions affecting energy development in the ANWR Coastal Plain and the environmental safeguards needed to ensure the vitality of Alaskans and Alaskan landscapes.

Sincerely,



Ashlee Adoko  
Executive Director, OPMP

Cc: John C. Boyle III, Commissioner, DNR  
Jason Brune, Commissioner, DEC  
Doug Vincent-Lange, Commissioner, DFG

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<sup>9</sup> McDowell Group, *The Role of the Oil and Gas Industry in Alaska's Economy*, <https://www.aoga.org/wp-content/uploads/2021/01/Reports-2020.1.23-Economic-Impact-Report-McDowell-Group-CORRECTED-2020.12.3.pdf>.



October 31, 2022

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**Re: Response to Draft Purpose and Need Statement  
Request for Input on 2000-Acre Threshold  
Request for Input on Seismic Exploration for Coastal Plain Supplemental EIS**

Dear Ms. Sweet and Ms. Skibo,

The State of Alaska (State) offers this response to the draft Purpose and Need Statement shared by the Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (USFWS) during the cooperating agency meeting on October 19, 2022. Additionally, the State offers this response to the BLM and USFWS's request for input on the 2000-acre threshold and inclusion of seismic exploration in the Supplemental Environmental Impact Statement (SEIS).

The State disagrees with the proposed revisions to the purpose and need statement. BLM lacks any basis to revise the purpose and need statement in the 2019 Final Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program ("2019 FEIS"), and the proposed revision incorrectly implies that all statutory purposes for the Arctic National Wildlife Refuge (ANWR) are on equal footing. As previously stated in the State's Scoping Comments dated October 4, 2021, and its letter to BLM and USFWS dated May 31, 2022, BLM should maintain the purpose and need statement set forth in the 2019 FEIS.

Additionally, the State maintains that BLM (a) should not revisit its interpretation of the Tax Act's 2,000-acre facility limit; and (b) should not enlarge the scope of analysis in the SEIS to address seismic operations.

**The Revisions to the Purpose and Need Statement are Unnecessary.**

The State disagrees with the proposed revisions to the purpose and need statement for two reasons. First, BLM lacks any reason to revise the purpose and need statement set forth in the 2019 FEIS. Neither Executive Order No. 13990 nor Secretarial Order No. 3401 directs any revisions to the purpose and need statement set forth in the 2019 FEIS. Instead, both orders call for additional analysis of environmental impacts of the Coastal Plain Oil and Gas Leasing Program ("Program"). Section 4(a) of the executive order directs the Secretary of the Interior to review the Program and "as appropriate and consistent with applicable law, conduct a new, comprehensive analysis of the potential environmental *impacts* of the oil and gas program" (emphasis added). Similarly, Section 4 of Secretarial Order No. 3401 directs the Department of the Interior to conduct "a new,

comprehensive analysis of the potential environmental *impacts* of the Program and address the identified legal deficiencies” (emphasis added). Accordingly, the additional review, as directed by Executive Order No. 13990 and Secretarial Order No. 3401, does not permit revisions to the purpose and need statement in the 2019 FEIS.

Second, the State strongly disagrees with the statement in the draft purpose and need statement that an alternative must consider all five statutory purposes of ANWR, “none of which are superseded by any other.” This language erroneously suggests that ANWR’s statutory purposes are on equal footing with one another. In fact, Congress did not make the oil and gas program secondary or subject to other purposes, and the purpose and need statement cannot suggest otherwise. Moreover, Section 303(2)(B) of ANILCA puts certain purposes secondary to others. For example, Section 303(2)(B) of ANILCA states that the Refuge should be managed to ensure water quality and necessary water quantity within it, but only in a manner consistent with the conservation of fish and wildlife populations and habitats.<sup>1</sup> Accordingly, all of the Refuge’s purposes are not on equal footing with one another, and the purpose and need statement cannot suggest otherwise.

For these reasons, the State disagrees with BLM’s proposed revisions to the purpose and need statement that was set forth in the 2019 FEIS. As stated in our prior letter, BLM correctly determined previously that “[t]he purpose and need of the Supplemental EIS is bound by statute and remains the same as for the September 2019 Final EIS, i.e., to implement Section 20001 of Public Law 115-97.”<sup>2</sup>

### **BLM Should Not Revisit Its Interpretation of the Tax Act’s 2,000-Acre Facility Limit.**

BLM should not revisit its interpretation of the 2,000-acre facility limit set forth in Section 20002(c)(3) of the Tax Cuts and Jobs Act of 2017<sup>3</sup> (“Tax Act”). Section 20002(c)(3) provides:

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.

In the Coastal Plain Oil and Gas Leasing Program Record of Decision (ROD), BLM correctly interpreted Section 20001(c)(3) as Congress’ “directive” that BLM “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.”<sup>4</sup> Furthermore, BLM correctively concluded that “exploration facilities” do not constitute “production and support facilities” and therefore are not subject to the 2,000-acre limitation.<sup>5</sup> The plain and unequivocal language of the Tax Act does not allow BLM to reach an alternative interpretation of Section 20002(c)(3).

Additionally, in the Final Environmental Impact Statement (FEIS), BLM properly assumed, for analytical purposes, that reclamation of federal land formerly containing production and support

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<sup>1</sup> Pub. L. No. 96-487, § 303(2)(B), 94 Stat. 2390.

<sup>2</sup> See Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska, 86 Fed. Reg. 41,989 (Aug. 4, 2021).

<sup>3</sup> Pub. L. No. 115-97.

<sup>4</sup> ROD at 10.

<sup>5</sup> ROD at 11.

facilities would free up additional acreage to be subject to the 2,000-acre limit in Section 20001(c)(3) once the land is reclaimed. BLM, however, declined to either adopt or reject this interpretation in the ROD.<sup>6</sup> Although the State maintains that the analytical assumptions in the FEIS correctly apply the 2,000-acre limit, the State respects BLM's decision to defer determining how to apply the limit until it is reached and, further, lands are reclaimed. The FEIS, however, properly analyzed the impacts of the more flexible application of the 2,000-limit in the interest of administrative efficiency to avoid later triggering the need for additional environmental review.

Finally, Section 20001(c)(2) of the Tax Act requires BLM to authorize ROWs and easements for exploration and production facilities that are in addition to the 2,000 acres of federal land on the Coastal Plain for production and support facilities. In Section 20001(c)(2), Congress required that BLM "issue any rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation necessary to carry out" the Program.<sup>7</sup> Such ROWs and easements are not subject to the 2,000-acre limitation.<sup>8</sup> As BLM recognized in the 2019 Program ROD, "[c]learly Congress intended that successful implementation of the mandated [Program] should not be frustrated by an unavailability of necessary access." Because inclusion of ROWs or easements for exploration and production purposes in the 2,000-acre authorization would frustrate adequate access to federal land on the Coastal Plain, this access cannot count against the 2,000-acre limitation.

For this reason, surface acres needed for seismic activities cannot be counted against the 2,000-acre limit. Similarly, BLM must give the State and private owners "such rights as may be necessary to assure adequate and feasible access for economic and other purposes to State owned and privately owned land"<sup>9</sup> without counting against the surface acres needed therefore against the surface acres cap.

### **BLM Should Not Modify the Analysis in the SEIS to Address Seismic Operations.**

BLM should not consider an alternative that would limit the total acreage available to seismic operations or impose restrictions on seismic operations. The Tax Act do not permit such an alternative. Rather, it directs that "the Secretary shall 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)."<sup>10</sup> Exploration is authorized

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<sup>6</sup> ROD at 13.

<sup>7</sup> Pub. L. No. 115-97, § 20001(c)(2), 131 Stat. 2054.

<sup>8</sup> These are separate and distinct statutory provisions, each addressing independent and mandatory requirements for executing the Program. By addressing the 2,000 surface acres to be covered by "production and support facilities" separate and distinct from ROWs or easements, Congress intended that such "production and support facilities" on ROWs or easements not count toward the 2,000-acre limitation, but be in addition to any federal lands subject to ROWs or easements "for the exploration, development, production, or transportation necessary to carry out" the Program. This is consistent with the Joint Explanatory Statement of the Committee of Conference, which says, "The legislation directs the Secretary to issue any necessary rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation associated with the oil and gas program. *Additionally*, the section authorizes the development of up to 2,000 surface acres of federal land on the Coastal Plain." H.R. Rep. No. 115-466, at 675 (2017) (emphasis added).

<sup>9</sup> ANILCA § 1110(b).

<sup>10</sup> Tax Act § 20001(b)(3).

throughout the National Petroleum Reserve in Alaska—including in areas with significant subsistence, recreational, fish and wildlife, historical, and scenic values—as long as it is conducted in a way that “assure[s] the maximum protection of such surface values to the extent consistent with the requirements of [the Naval Petroleum Reserves Production Act] for the exploration of the Reserve.”<sup>11</sup> Congress thus opened the entire Section 1002 Area to seismic exploration, and BLM need not consider an overly restrictive alternative.

In the FEIS, BLM properly elected to analyze proposal for seismic operations on a site-specific basis. BLM authorizes seismic operations upon proposals from permit applicants<sup>12</sup> and must comply with the National Environmental Policy Act (NEPA) prior to approving seismic operations.<sup>13</sup> The inclusion of an additional alternative, or additional restrictions, in the SEIS to address seismic operations would be based on speculation as to where and how seismic operations would occur. This hypothetical exercise risks both delaying completion of the NEPA analysis and imposing overly burdensome management measures. Instead, BLM can more efficiently analyze and manage the potential impacts of seismic operations once concrete plans are proposed.

### **Conclusion**

For reasons outlined in this letter, the State reiterates its recommendation that BLM maintain the purpose and need statement set forth in the 2019 FEIS. Additionally, the State recommends that BLM authorize ROWs in addition to 2000 acres for production facilities and not enlarge the scope of analysis in the SEIS to address seismic operations. Thank you for your review and consideration of these important comments.

Sincerely,



Ashlee Adoko  
Associate Director

Cc:

Commissioner Gialopsos, Alaska Department of Natural Resources  
Commissioner Vincent-Lang, Alaska Department of Fish and Game  
Commissioner Brune, Alaska Department of Environmental Conservation

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<sup>11</sup> 42 U.S.C. § 6504(a).

<sup>12</sup> 43 C.F.R. § 3152.2.

<sup>13</sup> *Id.* § 3152.2(a).



May 31, 2022

Serena Sweet  
Bureau of Land Management  
222 West 7th Avenue, #13  
Anchorage, Alaska 99513-7599

Bobbie Jo Skibo  
U.S. Fish and Wildlife Service  
3000 Vintage Boulevard, #201  
Juneau, Alaska 99801-7125

**Re: Response to Native American Rights Fund April 19, 2022 Letter  
Purpose and Need Statement for Coastal Plain Supplemental EIS  
Response to NARF Alternative Proposed During Alternatives Workshop**

Dear Serena and Bobbie Jo,

The State of Alaska (State) offers this response to the letter sent by the Native American Rights Fund (NARF) dated April 19, 2022 ("Letter") urging the Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (USFWS) to revise the purpose and need statement in the Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program (SEIS).

The State disagrees with NARF's proposed revisions to the purpose and need statement. BLM should retain the purpose and need statement set forth in the 2019 Final Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program ("2019 FEIS"). First, BLM lacks any basis to revise the purpose and need statement in the 2019 FEIS. Second, NARF's proposed changes to the purpose and need statement are unnecessary or inconsistent with law, or both.

The State also disagrees with NARF's proposed new alternative presented to cooperators on April 26, 2022, during the SEIS Alternatives Workshop. The State recommends that BLM eliminate NARF's proposed alternative from detailed analysis in the SEIS.

**BLM Lacks Any Basis to Revise the Purpose and Need Statement.**

BLM correctly determined that "[t]he purpose and need of the Supplemental EIS is bound by statute and remains the same as for the September 2019 Final EIS, *i.e.*, to implement Section 20001

of Public Law 115-97.”<sup>1</sup> BLM lacks any reason to revise the purpose and need statement set forth in the 2019 FEIS.<sup>2</sup>

First, neither Executive Order No. 13990 nor Secretarial Order No. 3401 directs any revisions to the purpose and need statement set forth in the 2019 FEIS. Instead, both orders call for additional analysis of environmental impacts of the Coastal Plain Oil and Gas Leasing Program (“Program”). Section 4(a) of the executive order directs the Secretary of the Interior to review the Program and “as appropriate and consistent with applicable law, conduct a new, comprehensive analysis of the potential environmental **impacts** of the oil and gas program” (emphasis added). Similarly, section 4 of Secretarial Order No. 3401 directs the Department of the Interior to conduct “a new, comprehensive analysis of the potential environmental **impacts** of the Program and address the identified legal deficiencies” (emphasis added). These orders do not allow BLM to wholly abandon the 2019 FEIS. Accordingly, the additional review directed by Executive Order No. 13990 and Secretarial Order No. 3401 do not permit revisions to the purpose and need statement in the 2019 FEIS.

Second, in its litigation challenging the 2019 FEIS and Record of Decision (ROD) for the Program, NARF did not allege any legal deficiencies with the purpose and need statement in the 2019 FEIS.<sup>3</sup> The plaintiffs in the other cases challenging the 2019 FEIS and ROD similarly did not allege any deficiencies with the purpose and need statement.<sup>4</sup> Because NARF did not allege any legal deficiencies with the purpose and need in the 2019 FEIS, NARF has no basis to seek to revise it.<sup>5</sup>

For these reasons, BLM cannot revise the purpose and need statement that was set forth in the 2019 FEIS.

### **The Proposed Changes to the Purpose and Need Statement Are Unnecessary and Inconsistent with Law.**

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<sup>1</sup> See Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska, 86 Fed. Reg. 41,989 (Aug. 4, 2021) (emphasis added).

<sup>2</sup> Further, the State references and expressly incorporates its position in its SEIS Scoping Comments dated October 4, 2021, as to why the existing purpose and need statement should be maintained. See State of Alaska Coastal Plain SEIS Scoping Comments at 5 (Oct. 4, 2021).

<sup>3</sup> See Compl. for Declaratory and Injunctive Relief, ECF No. 1, *Native Village of Venetie Tribal Gov’t v. Bernhardt*, No. 3:20-cv-00223-JMK (D. Alaska filed Sept. 9, 2020); Pls.’ Mem. in Supp. of Mot. for TRO and Prelim. Inj., ECF No. 26-1, *Native Village of Venetie Tribal Gov’t*, No. 3:20-cv-00223-SLG (filed Dec. 15, 2020).

<sup>4</sup> See Compl. for Declaratory and Injunctive Relief, ECF No. 1, *Nat’l Audubon Soc’y v. Bernhardt*, No. 3:20-cv-00205-TMB (D. Alaska filed Aug. 24, 2020); Compl. for Declaratory and Injunctive Relief, ECF No. 1, *Gwich’in Steering Comm. v. Bernhardt*, No. 3:20-cv-00204-JWS (D. Alaska filed Aug. 24, 2020); Mot. for Prelim. Inj., ECF No. 43, *Nat’l Audubon Soc’y*, No. 3:20-cv-00205-SLG (filed Dec. 15, 2020); Mem. in Supp. of Pls.’ Mot. for TRO and Prelim. Inj., ECF No. 47-1, *Gwich’in Steering Comm.*, No. 3:20-cv-00204-SLG (filed Dec. 15, 2020).

<sup>5</sup> The State maintains that the mere allegation of a legal deficiency does not justify preparation of an SEIS or modification of the 2020 ROD. With respect to the purpose and need statement in the 2019 FEIS, however, NARF has not even alleged a deficiency exists. Therefore, NARF has no basis to seek to modify the purpose and need statement in the 2019 FEIS.

In the Letter, NARF recommends specific changes to the purpose and need statement in the 2019 FEIS. These changes are unnecessary or inconsistent with law, or both, for the reasons outlined below.

1. The Purpose and Need Statement Should Not Be Revised to Enumerate the Refuge's Purposes.

NARF's proposal to revise the purpose and need statement to explicitly enumerate the purposes of the Refuge as set forth in Public Land Order 2214 is unnecessary.<sup>6</sup> The purpose and need statement in the 2019 FEIS states that "[a]ll action alternatives were designed to meet Section 20001 of PL 115-97 and to account for **all purposes** of the Arctic Refuge."<sup>7</sup> The purpose and need statement "shall be brief"<sup>8</sup> and need not explicitly enumerate the purposes of the Refuge.

Finally, NARF's proposal that the purpose and need statement assert that the Refuge's purposes are on "equal footing with one-another" is contrary to ANILCA. The text of section 303(2)(B) of ANILCA puts certain purposes secondary to others. For example, section 303(2)(B) of ANILCA states that the Refuge should be managed to ensure water quality and necessary water quantity within it, but only in a manner consistent with the conservation of fish and wildlife populations and habitats.<sup>9</sup> By contrast, Congress did not make the oil and gas program secondary or subject to other purposes. Accordingly, all of the Refuge's purposes are not on equal footing with one another, and BLM cannot revise the purpose and need statement to suggest otherwise.

2. The Purpose and Need Statement Should Not Be Revised to Reference Other Authorities.

The State disagrees with NARF's proposal to revise the purpose and need statement to reference or incorporate ANILCA; the National Wildlife Refuge System Administration Act ("Refuge Act"); the National Historic Preservation Act (NHPA); the National Environmental Policy Act (NEPA); Secretarial Order 3401 and Secretarial Order 3403; the USFWS's statutory mandates; and the 2015 Revised Arctic National Wildlife Refuge Comprehensive Conservation Plan ("2015 Arctic Refuge CCP").<sup>10</sup>

NARF's proposal to revise the purpose and need statement to recognize ANILCA, NHPA, NEPA, the Refuge Act, and the USFWS's statutory mandates is unnecessary. Both the 2019 FEIS and ROD recognize that BLM will comply with all applicable laws.<sup>11</sup> Similarly, BLM is bound to comply with Secretarial Orders 3401 and 3403, to the extent consistent with law. The purpose and need

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<sup>6</sup> See Letter at 2-3 § 2.

<sup>7</sup> 2019 FEIS at 1-2 (emphasis added).

<sup>8</sup> 40 CFR 1502.13 Purpose and Need.

<sup>9</sup> Pub. L. No. 96-487, § 303(2)(B), 94 Stat. 2390.

<sup>10</sup> See Letter at 2, 3 §§ 1, 3.

<sup>11</sup> See 2019 FEIS at 1-6 ("BLM would comply with applicable international agreements, federal, state, and local laws, regulations, and executive orders (EOs)."); ROD at 18 ("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 also 2019 FEIS, Appx. D (identifying relevant federal laws including NEPA, ANILCA, NHPA, Refuge Act, and USFWS statutory authorities).

statement does not need to explicitly reference these authorities to ensure the range of alternatives complies with their respective mandates.

Furthermore, NARF incorrectly characterizes ANILCA's mandates. NARF highlights Congress' statement that ANILCA should "provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska . . . ; protect the resources related to subsistence needs;" and "provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so."<sup>12</sup> This characterization ignores that Congress also intended that ANILCA "provide[ ] adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people" and provide a balance between conservation and public lands necessary for more intensive use.<sup>13</sup>

Finally, the State disagrees with NARF's proposal to revise the purpose and need statement to reference the 2015 Arctic Refuge CCP.<sup>14</sup> The 2015 Arctic Refuge CCP does not recognize the statutory changes to the Refuge's purposes set forth in, and was superseded by, the 2017 Tax Act.<sup>15</sup> With the Tax Act, Congress lifted the prohibition on oil and gas development within the Refuge set forth in section 1003 of ANILCA and amended ANILCA to identify an oil and gas leasing program as an express purpose of the Refuge.<sup>16</sup> Because the 2015 Arctic Refuge CCP does not account for this change, the purpose and need statement should not reference it.

### 3. The Purpose and Need Statement Should Not Describe the Method or Scope of Environmental Analysis.

Although the State does not have concerns with Traditional Ecological Knowledge (TEK) being used as a method of analysis, the State disagrees with NARF's proposals to revise the purpose and need statement to include TEK "as a framework for the SEIS development and analysis of alternatives" and to discuss how seismic activities will be analyzed in the SEIS.<sup>17</sup> Both TEK and the proposed discussion of seismic activities relate to how the SEIS will evaluate the impacts of the Project. TEK is a method of analysis because it is used to assess the impacts of a federal action. The proposed discussion of seismic activities relates to the scope of environmental analysis; it would describe the activities the Program would authorize and to what extent anticipated impacts from seismic activities are evaluated in the SEIS.<sup>18</sup>

Discussions of the method or scope of environmental analysis are inconsistent with regulatory requirements of a purpose and need statement.<sup>19</sup> A purpose and need statement describes *why* an agency is proposing to take an action (here, implementation of the Program). The Department of the Interior has described the "need" for an action as "the underlying problem or opportunity to which

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<sup>12</sup> See Letter at 2 (citing 16 U.S.C. § 3101(b) and (c)).

<sup>13</sup> 16 U.S.C. § 3101(d).

<sup>14</sup> See Letter at 3.

<sup>15</sup> See State of Alaska Coastal Plain SEIS Scoping Comments at 13–15 (Oct. 4, 2021).

<sup>16</sup> See Pub. L. No. 115-97, § 20001(b), 131 Stat. 2054 (2017).

<sup>17</sup> See Letter at 4 §§ 5, 7.

<sup>18</sup> The statement that the SEIS "may also inform post-lease activities, including seismic and drilling exploration" does not establish the scope of the analysis in the SEIS. Rather, this statement explains how BLM and/or USFWS may utilize the analysis in the SEIS in future decision-making.

<sup>19</sup> See 40 C.F.R. § 1502.13.

the agency is responding with the action” and the “purpose” of an action as “the goal or objective that the bureau is trying to achieve, and should be stated to the extent possible, in terms of desired outcomes.”<sup>20</sup>

A purpose and need statement do not describe *how* the approving agency will analyze the impacts of that action, either through the method or scope of analysis. That discussion is housed in the EIS’s discussion of environmental consequences, rather than the purpose and need statement.<sup>21</sup> Accordingly, BLM should not revise the purpose and need statement to incorporate the proposed discussions of TEK and seismic activities.

#### 4. The Purpose and Need Statement Does Not Need to be Rewritten.

Contrary to NARF’s characterization, the current purpose and need statement does not contain “unnecessary and superfluous language.”<sup>22</sup> Rather, the current purpose and need statement is adequate. Revising the purpose and need statement as NARF proposes in the Letter would unnecessarily and inappropriately expand the purpose and need statement. BLM should not rewrite the purpose and need statement.

#### **BLM Should Eliminate NARF’s Proposed Alternative from Detailed Analysis.**

On the second day of the Alternatives Workshop (April 26, 2022), NARF presented a new alternative. NARF described this alternative as having a goal of identifying areas where leasing could occur with the least impacts to caribou habitat (particularly calving habitat) and ice-rich soils.

The State opposes detailed evaluation of this alternative in the SEIS. This alternative proposes management measures predicated on conclusions of a recent Severson et al. (2021) study regarding projected calving and post calving Porcupine caribou herd distributions.<sup>23</sup> In its SEIS scoping comments, the State discouraged BLM from utilizing the Severson study in its analysis or management.<sup>24</sup> The State explained:

The projections on the future distribution of [Porcupine caribou herd] calving and post calving are provided without assessment of the uncertainty in the projections or tests of key assumptions used in making those projections. Furthermore, the study was confined to years 2012-2018 and does not account for the entire annual variation in calving and post-calving distributions that have been documented through annual surveys since the 1980’s.

The projections of future calving and post calving use areas are based on assumptions that need to be tested and may or may not be accurate. For example, modeling of calving grounds included non-calving cows and modeling of post calving grounds included cows without calves at heel. The landcover classifications used are modeled

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<sup>20</sup> 43 C.F.R. § 46.420(a).

<sup>21</sup> See 40 C.F.R. § 1502.16.

<sup>22</sup> See Letter at 4 § 6.

<sup>23</sup> Severson, J. P., H. E. Johnson, S. M. Arthur, W. B. Leacock, and M. J. Sutor. 2021. Spring phenology drives range shifts in a migratory Arctic ungulate with key implications for the future. *Global Change Biology* 27:4546- 4563.

<sup>24</sup> See State of Alaska Coastal Plain SEIS Scoping Comments at 10 (Oct. 4, 2021).

and need ground truthing. Maximum protein content was assumed to occur as the mid-date between initial and max green-up dates without being measured. While phenology is projected to change in the model, the modeling assumed that the landcover (species composition and spatial coverage) will remain constant for decades despite rapid changes occurring now. Other factors that are known to affect caribou distribution and landscape use such as caribou population size (density), insect prevalence, and predator densities were also assumed to remain constant for decades into the future.

Future calving and post calving distributions are provided in the paper without an evaluation of uncertainty, which is necessary to determine how likely the modeled results are to occur. Without a clear presentation, acknowledgment, or consideration of the sources or the amount of uncertainty in the paper, the implication from the publication is that the presented projections are likely to happen. The sources of uncertainty are almost certainly considerable. The projections are based on a down-scaled climate model that uses caribou distributions that have been modeled onto modeled environmental parameters. In essence, a model built on top of a model that is built on top of yet another model. Each of the models has assumptions as well as unexplained variation (i.e., uncertainty). The uncertainty in each model needs to be carried forward and considered in subsequent models when making projections, which the Severson et al. (2021) paper failed to do. Without a full accounting of the uncertainty in the projections, which is likely to be substantial, it is not possible to assess whether the projected caribou distributions are any more likely than the current caribou distributions.

Given these concerns with the Severson study, its assumptions, and the modeled results, BLM should not analyze an alternative that is predicated on the conclusions of the Severson study.

## **Conclusion**

For reasons outlined in this letter, the State recommends that BLM maintain the purpose and need statement set forth in the 2019 FEIS. Additionally, the State recommends that BLM eliminate NARF's proposed alternative from detailed analysis in the SEIS.

Sincerely,



Ashlee Adoko  
Associate Director

Cc:

Commissioner Corri Feige, Alaska Department of Natural Resources  
Commissioner Doug Vincent-Lang, Alaska Department of Fish and Game  
Commissioner Jason Brune, Alaska Department of Environmental Conservation



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Fish & Game  
Department of Natural Resources  
Department of Environmental Conservation

October 4, 2021

Bureau of Land Management – Alaska State Office  
Attention – Coastal Plain Supplemental Environmental Impact Statement  
222 West Seventh Avenue, Number 13  
Anchorage, Alaska, 99513-7599

Submitted electronically through: <https://eplanning.blm.gov/eplanning-ui/project/2015144/510>

Re: State of Alaska Scoping Comments on Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program

Dear Principal Deputy Assistant Secretary Daniel-Davis,

The State of Alaska (State) Department of Natural Resources (ADNR), in coordination with the Alaska Departments of Environmental Conservation (ADEC) and Fish and Game (ADFG), submits these scoping comments to the Bureau of Land Management (BLM), on the Notice of Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Coastal Plain Oil and Gas Leasing Program (Program).

Responsible leasing and development of the Arctic National Wildlife Refuge (ANWR) Coastal Plain would support our nation's energy security and economic growth, preserve the environment, and create certainty for Alaskans and businesses. Throughout administrations, Americans have enjoyed increased economic opportunity, strengthened national security, and enhanced energy affordability as a result of development of Alaska's natural resources. Oil and gas exploration and development has occurred for decades on the North Slope of Alaska, including in areas adjacent to the Coastal Plain, and remains the State's single most important economic engine.<sup>1</sup>

If the BLM proceeds in preparing an SEIS for the existing program, then the State supports an alternative that protects the leases and rights already conveyed, preserves a robust Program, and fully implements the intent of existing federal law that specifically directs oil and gas development be conducted in the Coastal Plain.<sup>2</sup> The Department is required to analyze a "No Action Alternative", which should fully acknowledge the existing rights and interests in the program and leases in the area. Further, the State is committed to working with the BLM throughout the SEIS process, in its role as a Cooperating Agency, to inform decisions affecting energy development in the Coastal Plain and the environmental safeguards needed to ensure the vitality of Alaskans and Alaskan landscapes.

<sup>1</sup> McDowell Group, *The Role of the Oil and Gas Industry in Alaska's Economy*, <https://www.aoga.org/wp-content/uploads/2021/01/Reports-2020.1.23-Economic-Impact-Report-McDowell-Group-CORRECTED-2020.12.3.pdf>.

<sup>2</sup> The Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, Section 20001, Dec. 22, 2017, 131 Stat. 2235.

The State's comments are separated into five sections. Section 1 regards the fundamental necessity (or lack thereof) of an SEIS. Section 2 addresses the "Purpose and Need" statement, identifies the scope of issues that should be addressed in an SEIS process should it proceed, and describes significant issues related to the Oil and Gas Leasing Program (including the acreage that should be open to oil and gas leasing). Section 3 regards the need for appropriate terms and conditions in any SEIS and reasonable access to the Coastal Plain. Section 4 discusses wild and scenic rivers, wilderness boundaries, and other items related to the Alaska National Interest Lands Conservation Act (ANILCA). Section 5 discusses air quality analysis.

Also, please refer to the State Technical Scoping Comments on the Supplemental Program EIS matrix (Enclosure A).

## SECTION 1 – AN SEIS IS UNNECESSARY

**A SEIS is unnecessary because the 2019 Program EIS and Record of Decision comply with all applicable laws, are based upon decades of reliable data, and followed a federal National Environmental Policy Act (NEPA) process that involved State, federal, and local agencies and stakeholders.**

Federal law establishes that it is in the national public interest for the Secretary of the Interior, acting through the BLM, to develop and manage "a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain."<sup>3</sup> Further, federal law mandates BLM "conduct not fewer than 2 lease sales area-wide under the oil and gas program under this section,"<sup>4</sup> with the first occurring no later than 4 years after the enactment of the Tax Act<sup>5</sup>, and the second occurring no later than 7 years<sup>6</sup> after enactment.<sup>7</sup> Each mandatory lease sale is to include "not fewer than 400,000 acres" and the areas offered must include "those areas that have the highest potential for the discovery of hydrocarbons."<sup>8</sup>

In carrying out this directive, over the course of more than two years, the BLM collaborated with the State as a Cooperating Agency,<sup>9</sup> and with federal and local agencies and stakeholders to conduct a robust evaluation of the potential effects of the Program. These efforts culminated in the 2019 Program EIS and Record of Decision (ROD), which are based upon decades of reliable data and comply with all applicable laws. They lay the foundation for scientifically driven permitting processes for future oil and gas activities, which will require additional, project-

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<sup>3</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A). Further, Congress directed that the prohibition in Alaska National Interest Lands Conservation Act (ANILCA) section 1003 on development and production of oil and gas "shall not apply to the Coastal Plain" (Pub. L. No. 115-97, Sec. 20001(b)(1)) and made it an ANWR purpose under ANILCA section 303(2)(B) "to provide for an oil and gas program on the Coastal Plain" (Pub. L. No. 115-97, Sec. 20001(b)(2)(B)).

<sup>4</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(A).

<sup>5</sup> Or by the end of 2021, which was satisfied by the January 2021 lease sale.

<sup>6</sup> By the end of 2024, which remains to be fulfilled.

<sup>7</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(ii).

<sup>8</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(i).

<sup>9</sup> Including the technical and regulatory experts of ADNR, ADEC, ADFG, and the State's ANILCA Program, as well as of the Alaska Departments of Health and Social Services (ADHSS), Commerce, Community, and Economic Development (ADCCED), and Law.

specific analysis. And they provide lease stipulations and required operating procedures (ROPs) with which leaseholders must comply to ensure protection of the environment and other resources.

These significant efforts should be defended, not discarded. Requiring a new analysis, based upon no new environmental considerations but solely for policy purposes, dismisses these significant efforts made to date by all stakeholders and brings needless regulatory uncertainty. Any new analysis must acknowledge the reasonable conclusions in the 2019 Program EIS and ROD and provide a reasonable basis and rationale for any changes.

**Claimed deficiencies have not been articulated with any specificity and are pretextual.**

Secretarial Order 3401, drawing on the language of Executive Order 13990, claims to have identified legal deficiencies “in the underlying record”, but goes no further than to identify them as insufficient analysis under the National Environmental Policy Act (NEPA) by failing to analyze a range of alternatives and failure to properly interpret the surface use limitation in federal law. If there is any substance to this review, it has not been provided to the public despite the exhaustive public process that produced the “flawed” result.

**BLM should proceed with permitting in the Coastal Plain to honor existing leaseholder investments, to allow critical revenues to flow to both Alaska and the U.S. Treasury, to support enhanced North Slope infrastructure, and to keep the Trans Alaska Pipeline System fully operational.**

The Alaska Industrial Development and Export Authority (AIDEA), Knik Arm Services LLC, and Regenerate Alaska LLC are the current leaseholders of tracts in the Coastal Plain. Their property rights must be recognized and their investments honored; and they should have the opportunity to fully explore their leaseholds consistent with law. The ability to utilize validly acquired land rights, and that terms of a lease contract are sustained, are foundational to U.S. law and must be recognized by the United States and the Department of the Interior.

The Department should also proceed with further activity under the oil and gas leasing program in the Coastal Plain to allow critical revenues to flow to both Alaska and the U.S. Treasury. These revenues could be significant. Congress set the royalty rate for Coastal Plain development at 16.67 percent and specified that Alaska would receive half, and the U.S. Treasury would receive the balance.<sup>10</sup> Since all Coastal Plain development is within Alaska’s jurisdiction, the state production tax also would apply, along with the State’s corporate income tax. According to U.S. Geological Survey (USGS) estimates, the Coastal Plain holds between 4.3 billion and 11.8 billion barrels of oil.<sup>11</sup> At peak production, ANWR could supply more than 1.4 million barrels of oil per day, which would result in billions of dollars in annual revenue to both the State and federal governments.<sup>12</sup>

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<sup>10</sup> Pub. L. No. 115-97, Sec. 20001(b)(4) and (5).

<sup>11</sup> USGS, *Arctic National Wildlife Refuge, 1002 Area, Petroleum Assessment, 1998, Including Economic Analysis*, <https://pubs.usgs.gov/fs/fs-0028-01/fs-0028-01.htm>.

<sup>12</sup> Dana Van Wagener, EIA, *Analysis of Projected Crude Oil Production in the Arctic National Wildlife Refuge*, <https://www.eia.gov/outlooks/aeo/anwr.php>.

These are revenues on which the State depends to provide Alaskans with basic government services and revenues on which the U.S. Treasury depends to support federal programs for the broader American public. These activities also contribute to well-paying jobs and opportunities for Alaskan businesses. Continued development in the Coastal Plain would build upon the almost 50 years of safe and responsible oil and gas development the State has experienced, and which has helped our nation meet its national energy security goals.

For Alaska's rural and remote communities, revenue from taxes on oil and gas development provides an economic lifeline. It funds critical services such as schools, health clinics, housing, emergency response, water distribution and wastewater treatment, and heat and electric utilities. The North Slope Borough would derive significant revenue from local property taxes, bolstering its ability to provide all of these services. Allowing domestic energy to be produced from the Coastal Plain would support our nation's economic recovery, environmental progress, American jobs, and provide revenue for necessary services, as well as keep the U.S. from shifting to greater reliance on foreign energy likely produced with lower environmental standards.

Robust production would add essential volumes to the Trans Alaska Pipeline System (TAPS), which is operating at a fraction of its peak capacity. New production in TAPS would improve operational efficiency and likely lower the pipeline tariff, resulting in additional royalty payments to Alaska and sustaining production from other North Slope oil fields. For the past 44 years TAPS has safely delivered over 18 billion barrels of crude oil to meet the nation's energy needs.<sup>13</sup> The ongoing success of this existing infrastructure and its role in the nation's critical energy infrastructure network depends on continued Alaska crude oil production.

Further Oil and Gas Leasing Program activities in the Coastal Plain should proceed predictably, in a timeframe that allows progress in accordance with well-defined State, federal, and local processes and with robust input from Alaskan stakeholders. In summary, the development of new energy resources in the Coastal Plain will benefit Alaska, the local communities of the North Slope, and the Nation. Revenues derived from new production will help sustain public services and the activity will provide new job opportunities while boosting the economy.

**The State encourages BLM's prioritization of the second Coastal Plain lease sale, given the binding legal mandate in the Tax Act that it be held not later than December 21, 2024 and that at least 400,000 acres of the highest prospectivity acreage be offered for sale.**

Leasing and development of the Coastal Plain will assist the U.S. in meeting the energy challenges of the future. According to the U.S. Energy Information Administration (EIA), U.S. and global demand for oil and natural gas is anticipated to remain steady or potentially increase in coming years.<sup>14</sup> And even if every country meets its Paris commitments, the world will still get almost 50 percent of its energy from oil and gas through the year 2040.<sup>15</sup> Without production

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<sup>13</sup> Alyeska Pipeline Service Company, *Trans Alaska Pipeline System – The Facts*, <https://www.alyeska-pipe.com/taps-facts/>.

<sup>14</sup> EIA, *Annual Energy Outlook 2021*, <https://www.eia.gov/outlooks/aeo/>; EIA, *International Energy Outlook 2020*, <https://www.eia.gov/outlooks/ieo/>; International Energy Agency, *World Energy Outlook 2020*, <https://www.iea.org/reports/world-energy-outlook-2020>.

<sup>15</sup> Reuters, *Oil Demand Won't Peak Before 2040, Despite Paris Deal*, <https://www.reuters.com/article/us-oil-outlook-iaa/oil-demand-wont-peak-before-2040-despite-paris-deal-iaa-idUSKBN13B00P>.

from federal lands with great energy resource potential, such as the Coastal Plain, the needed supplies will have to be provided by production from other states, private lands, or imports from countries that are short on environmental rigor. There is no reason the U.S. should become more dependent upon foreign sources of energy when resources can be safely produced in America.

Combined with this practical need for the resources, federal law mandates a robust sale be conducted in approximately the next three years. To offer 400,000 highly prospective acres, on top of those already under lease, any SEIS will need to fully assess the geologic potential of the Coastal Plain, and development scenarios that enable production of resources from this acreage. Congress's recognition that developments in Alaska, including in the Coastal Plain, can make significant contributions to stabilize energy prices, reduce reliance on foreign sources, and revitalize the economy – and that robust sales must be offered to do so – must be recognized in any SEIS.

## **SECTION 2 – IF AN SEIS IS DEVELOPED, IT MUST BE CONSISTENT WITH ANALYSIS TO DATE AND FEDERAL LAW**

**The Purpose and Need statement in any SEIS should reflect Congress's mandate that the Oil and Gas Program be maintained. There has been no change to this mandate, regardless of any Executive Order (EO), Secretarial Order (SO), or policy directive or alleged flaw by the U.S. Department of the Interior (DOI).**

The Tax Act mandated that the Secretary of the Interior, acting through the BLM, develop and manage “a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.”<sup>16</sup> Further, the Tax Act requires that the Secretary manage the Program “in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976...(including regulations).”<sup>17</sup> The Naval Petroleum Reserves Production Act of 1976, as amended, and its regulations at 43 C.F.R. 2361 require oil and gas leasing and the protection of surface values to the extent consistent with exploration, development, and transportation of oil and gas. There is no authority to pause, suspend, or otherwise defer the program in any of these statutes.

Accordingly, any SEIS must reflect the congressional mandate to develop and manage the Program for leasing, actually hold additional sales, and to facilitate the eventual “development, production, and transportation” of oil and gas in and from the Coastal Plain.<sup>18</sup> Further, the Purpose and Need statement should be clear that leases and lease stipulations that will not allow for exploration and the eventual development, production, and transportation of oil and gas in and from the Coastal Plain will not satisfy federal law.

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<sup>16</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A).

<sup>17</sup> Pub. L. No. 115-97, Sec. 20001(b)(3).

<sup>18</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A).

**If BLM proceeds in preparing an SEIS, BLM should ensure the total acreage of the Coastal Plain is open to oil and gas leasing to ensure BLM's full compliance with the Tax Act, to honor existing leaseholder investments, and to allow access to Kaktovik. If the total acreage is not open to oil and gas leasing, then the BLM should ensure the total acreage is open to seismic work with the possibility for those areas that have the highest potential for the discovery of hydrocarbons to be later open to oil and gas leasing.**

To functionally allow leasing of the highest prospectivity acreage, all areas of the Coastal Plain must be open for leasing given the limited modern data and information about its resource potential. BLM should not rely on limited or outdated subsurface data to determine which acreage of the Coastal Plain to open, close, or limit to surface occupancy, because such reliance does not fully allow for identification or development of “those areas that have the highest potential for the discovery of hydrocarbons,” as are required to be included in the upcoming mandatory lease sale.<sup>19</sup> Instead, the BLM should open the total acreage of the Coastal Plain to oil and gas leasing and allow early, area-wide exploratory seismic work so that the highest prospectivity acreage can be identified. Without the future ability to lease, companies are unlikely to expend resources conducting exploratory seismic surveys in the unleaseable areas, thus eliminating a valuable opportunity to update assessments of the subsurface resource potential. BLM should also recognize that any activity beyond leasing would be subject to additional, robust, site-specific NEPA analyses and permitting processes that establish the terms and conditions and mitigation measures, and thus those considerations are not appropriate at the SEIS stage.

As a global standard-setter in responsible resource development, Alaska has served as an example of American innovation, dependability, and sustainability. The North Slope has demonstrated over decades that oil and gas exploration, development, production, and transportation under some of the harshest environmental conditions in the world can occur safely and responsibly with the appropriate regulatory controls and environmental protections in place. Modern activities on the Slope must meet or exceed the high standards demanded by one of the most rigorous environmental regulatory regimes of any state for balancing development with the protection of resources using best management practices and mitigation measures. These practices and measures can be adopted on the Coastal Plain and should be explicitly recognized regarding initial exploratory work in the Coastal Plain in any SEIS.<sup>20</sup>

**Opening the total acreage of the Coastal Plain to oil and gas leasing is further supported by the demonstrated level of interest of industry on State owned lands proximal to ANWR.**

All State-owned available acreage is offered annually in the neighboring Beaufort Sea and North Slope area-wide lease sale programs. Over the last 4 years, 166 tracts, totaling roughly 289,440 leasable acres within 25 miles of the Coastal Plain, received bids in these sales. The tracts received an average bid per acre of \$60.15 with a total value of \$19,855,290 in bonus bids. This recent activity is part of a longer history of development in the region, with producing fields at

<sup>19</sup> Pub. L. No. 115-97, Sec. 20001(c)(1)(B)(i)

<sup>20</sup> The BLM is equipped with existing authority to allow exploratory seismic work in the Coastal Plain to move forward as soon as possible under 43 C.F.R. part 3150, under authority of the Mineral Leasing Act of 1920, ANILCA (16 U.S.C. sections 3101 et. seq.), and the Department of the Interior Appropriations Act, Fiscal Year 1981.

the Badami and Point Thomson Units on state lands. The continued activities of operators proximal to the Coastal Plain are documented by the Alaska Division of Oil and Gas.<sup>21</sup> It should also be emphasized that iterative exploration of the Coastal Plain, enabled by robust leasing, is necessary to unlock the long-term value of the resources associated with production – not just the short-term bonus bids that accrue during leasing.

**The State reserves its position that Tract 29<sup>22</sup> is not within the boundaries of ANWR, and thus not part of the Coastal Plain.**

The State's position that the land comprising Tract 29 is outside the boundaries of ANWR is the subject of ongoing dispute between the State and BLM. In a November 9, 2020, opinion, denoted as Interior Board of Land Appeals (IBLA) 2016-109 and 2017-55, the IBLA made findings regarding the location of ANWR's northwestern-most boundary. The IBLA's decision, which addressed lands located between the Staines and Canning Rivers, had the effect of placing Tract 29 within ANWR. The State contests the IBLA's decision and may pursue judicial or other relief nullifying the IBLA's November 9, 2020, opinion. Until the litigation is finally resolved, the State maintains that Tract number 29 lies outside of ANWR notwithstanding the IBLA's decision.

The State notes that in the event BLM includes Tract number 29 (which appears to include tidal or submerged lands that the State has already placed under lease) in its lease sale program, the State reserves all legal rights, remedies, and causes of action. No waiver or estoppel may be inferred. The State's remedies include, without limitation and in addition to the arguments presented to the IBLA, the State's issuance of an ANILCA Section 906(k) letter of concurrence, which, pursuant to that provision, further protect the State's interest in proceeds derived from activities resulting from the January 2021 lease sale. Indeed, the State issued such a ANILCA Section 906(k) letter on December 30, 2020 (Enclosure B).

**In the spirit of a 2019 Memorandum of Agreement between BLM and ADNR, ADNR contends that title of the State to Tract 29 areas continues to be governed by the location of the Tract 29 legal boundary.**

In 2019, BLM and ADNR recognized that BLM would be initiating (and that ADNR had already initiated) leasing activities in the vicinity of the Coastal Plain coastal boundary (and the ambulatory nature of that coastal boundary). To resolve uncertainty, eliminate potential basis for disputes, and prevent avoidable litigation regarding lease administration, leased lands ownership, royalty payments, rentals, or bonus bids, BLM and ADNR entered a Memorandum of Agreement (MOA)<sup>23</sup> (Enclosure C).

Pursuant to that MOA, BLM and ADNR agreed that title of the U.S. (as represented by BLM) and the State (as represented by ADNR) to lands offered for lease (or already leased), in the vicinity of the ambulatory boundary, would continue to be governed by the location of the legal

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<sup>21</sup> Activity Maps accessed at: [Maps & GIS - DOG \(https://dog.ADNR.alaska.gov/Information/MapsAndGis#a\)](https://dog.ADNR.alaska.gov/Information/MapsAndGis#a).

<sup>22</sup> As numbered in the first Coastal Plain lease sale, encompassing the disputed Staines-Canning River area on the border of the Coastal Plain.

<sup>23</sup> 2019 MOA between BLM and ADNR, fully executed December 18, 2019 (Enclosure C).

boundary (Map of existing State leases in Tract 29, Enclosure D). Again, the State contests the IBLA's November 9, 2020 decision, denoted as IBLA 2016-109 and 2017-55, which had the effect of placing Tract 29 within ANWR, and may pursue judicial or other relief nullifying such decision. In the spirit of the 2019 MOA, ADNR contends that title of the State to Tract 29 continues to be governed by the location of the Tract 29 legal boundary.

**Any polar bear analysis within an SEIS must be based on sound analysis and assumptions, fully engage State of Alaska experts, and recognize the programmatic nature of the review.**

Ongoing and proposed oil and gas activities on the North Slope of Alaska, if managed appropriately, do not threaten the conservation or sustainability of polar bears at the level of either the global polar bear population or the Southern Beaufort Sea stock. To achieve polar bear conservation, North Slope Borough, State, and Federal agencies are charged with closely reviewing proposed oil and gas activities and actively monitoring ongoing activities. Current permitting programs for oil and gas activities within the range of polar bears require a range of stringent conditions and management practices.

To date, incidental take of polar bears due to oil and gas activities, including exploration, development, and production, has been low relative to the size of the polar bear population. Further, incidental take that results in serious injury or mortality of polar bears is very low. A primary reason for this low level of incidental take is that the stipulations and mitigation measures required by Borough, State, and Federal agencies and used by industry to protect polar bears have been proven to be effective, allowing oil and gas activities to occur with very little take by lethal means, serious injury, or otherwise.

In assessing the potential impacts to polar bears from a Coastal Plain oil and gas leasing program, we caution BLM on using the models the U.S. Fish and Wildlife Service (USFWS or Service) recently developed for predicting incidental polar bear take. While the USFWS effort to establish a quantitative predictive model of incidental polar bear take is a laudable goal, care is required to ensure that the model is unbiased and sufficiently precise. However, the models the USFWS developed overestimate take in several aspects. For example, inherent uncertainty at each step of analyses was primarily addressed with assumptions and decisions that inflated predictions of take. Thus, these biased models predicted levels of incidental take that are unrealistically high and are not supported by the documented levels of take associated with similar levels and types of activities as the USFWS analyzed. The State of Alaska is concerned that USFWS overestimates of incidental take will be inaccurately portrayed as reality. In our comments on the "Proposed Incidental Take Regulation authorizing the nonlethal, incidental, unintentional take by harassment of small numbers of polar bears and Pacific walrus during year-round oil and gas industry activities in the Beaufort Sea and adjacent northern coast of Alaska" we provide several examples of biases in USFWS's models, which remained in the final analyses and we incorporate here by reference.<sup>24</sup>

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<sup>24</sup> Comments from the State of Alaska and the North Slope Borough, available at: [https://downloads.regulations.gov/FWS-R7-ES-2021-0037-0025/attachment\\_1.pdf](https://downloads.regulations.gov/FWS-R7-ES-2021-0037-0025/attachment_1.pdf).

The stated impetus for the SEIS is to address legal deficiencies identified by the Secretary of the Interior<sup>25</sup> in the final environmental impact statement for the ANWR Coastal Plain Oil and Gas Leasing Program. A theoretical legal deficiency relates to the Biological Opinion (BiOp) issued by the USFWS under the Endangered Species Act (ESA) regarding potential effects of the Program on polar bears. Specifically, a lawsuit challenging the validity of the Secretary's authorization of the Program<sup>26</sup> alleges that the BiOp on which BLM relies was not comprehensive and failed to provide details on the mitigation measures needed to ensure the action is not likely to jeopardize the continued existence of polar bears or adversely modify designated critical habitat for the species.

In the past nine months, two separate BiOps that discuss polar bear conservation measures for other oil and gas operations were vacated in court challenges.<sup>27</sup> Although the bases for these vacatur were seemingly similar to the alleged legal deficiencies in the BiOp for the Program, the vacated BiOps were for site-specific project proposals: the Liberty and Willow projects. In contrast, the EIS and the associated BiOp prepared for the Program are programmatic in nature and thus not directly comparable to either of these cases. Programmatic EISs are commonly prepared for landscape-level planning purposes, as described by Council for Environmental Quality (CEQ) guidance, which directs that "NEPA environmental reviews may be on the project specific or on [a] broader programmatic level. The analyses in a programmatic NEPA review are valuable in setting out the broad view of environmental impacts and benefits for a proposed decision such as . . . establishing a policy, program, or plan."<sup>28</sup> An EIS for a programmatic action, such as the Coastal Plain Leasing Program, is necessarily broader than a project-specific EIS or EA, such as for an individual lease sale.

In its BiOp for the Project, USFWS could not describe in detail or accurately analyze site-specific actions because a programmatic action like the Program, by its very nature, does not generally contain the full range of site-specific information that will be provided in future, project-specific proposals that will tier to the program-level BiOp. However, the USFWS can still conduct a robust analysis for its BiOp based on the best information available at the time, including possible expectations for levels of non-lethal take as well as probable mitigation measures that may be effective at the project-specific level of analysis.

In its BiOp for the SEIS, USFWS should discuss potential impacts on polar bears for activities occurring in higher- and lower-density denning habitat within the ANWR Coastal Plain and provide robust analyses for each scenario. Mitigation measures that are currently necessary under existing or previous authorizations for activities to comply with the ESA or the Marine Mammal

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<sup>25</sup> Secretarial Order No. 3401: Comprehensive Analysis and Temporary Halt on all Activities in the Arctic National Wildlife Refuge Relating to the Coastal Plain Oil and Gas Leasing Program. June 1, 2021.

<sup>26</sup> See Complaint for Declaratory and Injunctive Relief, *National Audubon Society et al. v. Bernhardt et al.*, No. 3:20-cv-00205-TMB (D. Alaska filed August 24, 2020).

<sup>27</sup> See *Center for Biological Diversity v. Bernhardt*, 982 F.3d 723 (9th Cir. 2020) (Vacating Bureau of Ocean and Energy Management's approval of the Liberty project based in part on violation of ESA). See also *Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.*, Case Nos. 3:20-cv-00290-SLG, 3:20-cv-00308-SLG (D. Alaska Feb. 6, 2021) (Vacating Record of Decision authorizing Willow Master Development Plan based in part on violation of ESA).

<sup>28</sup> Council on Environmental Quality Final Guidance for Effective Use of Programmatic NEPA Reviews. 79 Fed. Reg. 76986 (December 23, 2014).

Protection Act (MMPA)<sup>29</sup>; should be clearly described for high- and low-density denning areas. If subsequent ESA or MMPA analyses determine that fewer or additional mitigation measures than described in the SEIS BiOp are necessary, then USFWS can and should reinstate consultation to maintain compliance with the ESA.

**Caribou analysis within an SEIS must also be based on sound analysis and assumptions and fully engage State of Alaska experts.**

We caution BLM on using the recent Severson et al. (2021) publication<sup>30</sup> in its analyses of the future calving and post calving Porcupine Caribou Herd distributions in the 1002 Area. The projections on the future distribution of PCH calving and post calving are provided without assessment of the uncertainty in the projections or tests of key assumptions used in making those projections. Furthermore, the study was confined to years 2012-2018 and does not account for the entire annual variation in calving and post-calving distributions that have been documented through annual surveys since the 1980's.

The projections of future calving and post calving use areas are based on assumptions that need to be tested and may or may not be accurate. For example, modeling of calving grounds included non-calving cows and modeling of post calving grounds included cows without calves at heel. The landcover classifications used are modeled and need ground truthing. Maximum protein content was assumed to occur as the mid-date between initial and max green-up dates without being measured. While phenology is projected to change in the model, the modeling assumed that the landcover (species composition and spatial coverage) will remain constant for decades despite rapid changes occurring now. Other factors that are known to affect caribou distribution and landscape use such as caribou population size (density), insect prevalence, and predator densities were also assumed to remain constant for decades into the future.

Future calving and post calving distributions are provided in the paper without an evaluation of uncertainty, which is necessary to determine how likely the modeled results are to actually occur. Without a clear presentation, acknowledgment, or consideration of the sources or the amount of uncertainty in the paper, the implication from the publication is that the presented projections are likely to happen. The sources of uncertainty are almost certainly considerable. The projections are based on a down-scaled climate model that uses caribou distributions that have been modeled onto modeled environmental parameters. In essence, a model built on top of a model that is built on top of yet another model. Each of the models has assumptions as well as unexplained variation (*i.e.*, uncertainty). The uncertainty in each model needs to be carried forward and considered in subsequent models when making projections, which the Severson et al. (2021) paper failed to do. Without a full accounting of the uncertainty in the projections, which is likely to be substantial, it is not possible to assess whether the projected caribou distributions are any more likely than the current caribou distributions.

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<sup>29</sup> *i.e.*, Incidental Take Statements under the ESA or Incidental Take Regulations under the MMPA.

<sup>30</sup> Severson, J. P., H. E. Johnson, S. M. Arthur, W. B. Leacock, and M. J. Sutor. 2021. Spring phenology drives range shifts in a migratory Arctic ungulate with key implications for the future. *Global Change Biology* 27:4546-4563.

### SECTION 3 – ANY SEIS MUST INCLUDE REASONABLE TERMS AND CONDITIONS

**BLM must not impose such broad no surface occupancy (NSO) restrictions or limit access to such large areas of the Coastal Plain to the extent that future development is restricted and Congress’s mandate is subverted.**

BLM must not identify NSOs, controlled surface uses (CSUs), or timing limitations (TLs) that create unnecessary challenges to future oil and gas activities, including through access limitations. These kinds of administrative limitations would contravene the federal law mandating the Program. Instead, it is incumbent upon BLM to provide maximum flexibility to future decision-makers as new, better, or activity-specific information becomes available, and to rely on permitting processes to facilitate responsible development, production, and transportation of oil and gas resources to and from the Coastal Plain.

Congress set the applicable limit on surface facility development at 2,000 surface acres: “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...”<sup>31</sup> This is a negligible footprint in the 1.5-million-acre Coastal Plain and the 19.3-million-acre ANWR, and significantly protective. Any changes to BLM’s analysis of the limitation in the existing ROD must acknowledge the interpretative position of the agency taken to date.

The State recommends that BLM provide specific protection of surface areas where needed and only after areas that have the highest prospectivity acreage has been identified. Identifying areas for oil and gas leasing while restricting surface uses necessary to access subsurface resources is functionally equivalent to designating surface areas as unavailable for “development, production, and transportation of oil and gas in and from the Coastal Plain,”<sup>32</sup> and conflicts with Congress’s determination of the permissible footprint for the mandated Program and the appropriate balance for protection of other resources.<sup>33</sup>

Instead, the State recommends that BLM recognize that additional stipulations needed to protect surface resources and special areas may be imposed at the time the surface use authorizations and permits to drill are approved, and as the NEPA and permitting processes move forward to review specific development proposals. The overlapping regulatory agencies, including BLM, the State, and the North Slope Borough, with robust participation from North Slope resident stakeholders, including the community of Kaktovik, can develop specific protection of surface areas where needed.

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<sup>31</sup> Pub. L. No. 115-97, Sec. 20001(c)(3) (emphasis added).

<sup>32</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(A).

<sup>33</sup> This approach is consistent with the Tax Act, which requires that the Secretary manage the Program “in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976...(including regulations).” (Pub. L. No. 115-97, Sec. 20001(b)(3).) The Naval Petroleum Reserves Production Act of 1976 and its regulations provide specific protections of surface areas where needed.

**For projects in the Coastal Plain, the State supports deference to the BLM, as manager of the lands in the Coastal Plain, consistent with its duty and authority under federal law.**

BLM has the statutory duty to fully administer the Program, including the authority to directly manage lands in the Coastal Plain as necessary to do so. Although the Fish and Wildlife Service (FWS) is also a manager of ANWR, its management of the Coastal Plain is subject to the provisions of applicable law, including the identified purpose of ANWR “to provide for an oil and gas program on the Coastal Plain.”<sup>34</sup> This direction and Congressional purpose controls management of the Coastal Plain with regard to oil and gas, and FWS’s authority must be exercised accordingly. In some cases, it may be unclear whether projects are oil and gas, community, or other projects. Such projects may be a combination or may start as one project type and change to another. The State supports deference to BLM in such cases.

**BLM should recognize ANILCA’s grant to the State and private landowners of rights as may be necessary to ensure adequate and feasible access for economic and other purposes.**

Where there are State and private owners of lands, including subsurface rights, valid mining claims, and other valid occupancies that are within or “effectively surrounded by” the Coastal Plain, BLM must give the State and private owners of such lands “such rights as may be necessary to assure adequate and feasible access for economic and other purposes to State owned and privately owned land,”<sup>35</sup> to fully comply with ANILCA. Additional detail on this point is provided in section 4 below.

**It is reasonable that BLM authorize up to 2,000 surface acres of federal land on the Coastal Plain to be covered by production and support facilities *in addition to* authorizing rights-of-way (ROWs) or easements across the Coastal Plain for the exploration, development, production, or transportation necessary to carry out the Program.**

Congress requires that BLM “authorize up to 2,000 surface acres of federal land on the Coastal Plain to be covered by *production and support facilities*...”<sup>36</sup> Regarding ROWs or easements, Congress requires that BLM “issue any rights-of-way or easements across the Coastal Plain for the *exploration, development, production, or transportation necessary to carry out*” the Program.<sup>37</sup> As stated in the 2019 Program ROD, “Clearly Congress intended that successful implementation of the mandated [Program] should not be frustrated by an unavailability of necessary access.”<sup>38</sup>

BLM must allow exploratory seismic work in the Coastal Plain to move forward as soon as possible without counting surface acres needed for that activity against the surface acres cap, in violation of law. The 2,000 surface acres to be covered by production and support facilities are to be *in addition to* the ROWs or easements for the exploration, development, production, or transportation necessary to carry out the Program.<sup>39</sup> Similarly, BLM must give the State and private owners “such rights as may be necessary

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<sup>34</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(B), 131 Stat. 2054 (2017).

<sup>35</sup> ANILCA Sec. 1110(b).

<sup>36</sup> Pub. L. No. 115-97, Sec. 20001(c)(3) (emphasis added).

<sup>37</sup> Pub. L. No. 115-97, Sec. 20001(c)(2) (emphasis added).

<sup>38</sup> Pg. 10.

<sup>39</sup> These are separate and distinct statutory provisions, each addressing independent and mandatory requirements for executing the Program. By addressing the 2,000 surface acres to be covered by “production and support facilities” separate and distinct from ROWs or easements, Congress intended that such “production and support facilities” on

to assure adequate and feasible access for economic and other purposes to State owned and privately owned land,”<sup>40</sup> without counting against the surface acres needed therefore against the surface acres cap.

#### **SECTION 4 – ANY SEIS MUST BE CONSISTENT WITH ANILCA**

##### **Prior Wilderness and Wild and Scenic River Recommendations were nullified by Congress and are Inconsistent with ANILCA**

The SEIS must not conflict with ANILCA or mischaracterize the Wild and Scenic Rivers Act or 1964 Wilderness Act. The federal law applicable to the Coastal Plain supersedes prior administrative actions, such as the wilderness recommendations for the Coastal Plain put forward in the 2015 Revised Arctic National Wildlife Refuge Comprehensive Conservation Plan (2015 Arctic Refuge CCP). In the 2019 Program ROD BLM correctly concluded that when Congress directed that the prohibition in ANILCA Section 1003 on development and production of oil and gas “shall not apply to the Coastal Plain,”<sup>41</sup> and made it an ANWR purpose under ANILCA Section 303(2)(B) “to provide for an oil and gas program on the Coastal Plain,”<sup>42</sup> it superseded the 2015 Revised Arctic Refuge CCP, which precluded oil and gas development with respect to management of the Coastal Plain.<sup>43</sup> The same is true – that the recommendation has been implicitly Congressionally nullified – for the FWS’ 2015 decision to recommend a portion of the Hulahula River located in the Coastal Plain as a wild and scenic river (WSR). This language should be carried forward into the Supplemental Program EIS and ROD.

Further, the BLM acknowledged in the 2019 Program ROD that “The CCP does not constrain BLM actions taken consistent with its jurisdiction over the statutorily mandated oil and gas program within ANWR,”<sup>44</sup> and that until FWS amends the CCP for consistency with the Tax Act, 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.”<sup>45</sup> Similarly, this language should be carried forward into the Supplemental Program EIS and ROD. Further, the State proposes that DOI direct the FWS to conduct a targeted amendment to the 2015 Arctic Refuge CCP consistent with current law that lifts the minimal management category for the Coastal Plain.

In addition, ANILCA Section 1326(b), which applies to all studies that consider the establishment of new conservation system units (CSUs), including wilderness and WSRs,

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ROWs or easements *not* count toward the 2,000-acre limitation, but be *in addition* to any federal lands subject to ROWs or easements “for the exploration, development, production, or transportation necessary to carry out” the Program. This is consistent with the Joint Explanatory Statement of the Committee of Conference, which says, “The legislation directs the Secretary to issue any necessary rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation associated with the oil and gas program. *Additionally*, the section authorizes the development of up to 2,000 surface acres of federal land on the Coastal Plain.” H.R. Rep. No. 115-466, at 675 (2017) (emphasis added).

<sup>40</sup> ANILCA Sec. 1110(b).

<sup>41</sup> Pub. L. No. 115-97, Sec. 20001(b)(1), 131 Stat. 2054 (2017).

<sup>42</sup> Pub. L. No. 115-97, Sec. 20001(b)(2)(B), 131 Stat. 2054 (2017).

<sup>43</sup> Pg. 18 and 19.

<sup>44</sup> Pg. 18.

<sup>45</sup> Pg. 19.

prohibits WSR reviews not authorized in ANILCA or a subsequent Act of Congress.<sup>46</sup> No further reviews in Alaska, beyond the long since completed WSR reviews authorized in ANILCA Section 604, have been authorized by Congress. The FWS claims Section 5(d)(1) of the WSRA grants authority to conduct WSR reviews (referred to as agency-directed reviews or studies); however, that perceived authority in the WSRA preceded the passage of ANILCA and the prohibition in Section 1326(b). Further, the authority in ANILCA Section 1317 to conduct a one-time wilderness review sun-setted in 1985. Therefore, any wilderness or WSR reviews in the Coastal Plain would violate ANILCA.

The 2019 Coastal Plain EIS incorrectly cites the 2015 Arctic Refuge CCP as obligating the USFWS to apply protections to all the study rivers in the Coastal plain. Not only did the review violate ANILCA Section 1326(b) but the WSRA limits protections for rivers that Congress designates for review to three years following submittal to Congress<sup>47</sup> The interim management prescriptions identified in the 2015 Arctic Refuge CCP were *only* applied to lower portions of the Hulahula River (Page I-F-1) because it was the only river in the Coastal Plain that the FWS found suitable to recommend to Congress for designation as a WSR. There is no basis for applying protections to the Canning, Okpilak, and Jago rivers as was done in the 2019 Coastal Plain EIS. Even if the study was legally conducted, which it was not, none of these rivers or river segments were recommended for WSR designation.

Therefore, it is entirely inappropriate for the SEIS to carry forward the results of an outdated and legally flawed WSR review by identifying both rivers found eligible and/or suitable as special WSR designations needing additional protections to ensure their status for future designation, especially considering no congressional action occurred to designate any of these rivers, nor did Congress even have the option to take any action on eligible rivers. Applying blanket NSO designations to these rivers is also beyond the intent of Congress for management of designated WSRs in Alaska.

Additionally, many of the protective measures applied to both eligible and suitable rivers in the 2019 Coastal Plain EIS, in particular the blanket one-to-five mile “no surface occupancy” (NSO) setbacks and buffers, far exceed the boundaries, withdrawals, and restrictions that Congress applied to WSRs designated by ANILCA. The boundary for ANILCA designated WSRs is “an average of 640 acres per mile on each side of a designated WSR”;<sup>48</sup> the mineral withdrawal applied to “wild” river segments extends one-half mile from the bank (this is not applicable to river segments designated only as “scenic” or “recreational”). ANILCA also includes numerous allowances for access and use including a process for site specific consideration of proposed transportation and utility systems; a process that also applies to subsequent development

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<sup>46</sup> “Future Executive Actions: 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 areas or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.”

<sup>47</sup> “A river is protected [under Section 5(a) of the WSRA] for the duration of the study up to three years after the required report is submitted (along with the President’s recommendation) to Congress.” (Page 28, A Compendium of Questions and Answers Relating to Wild and Scenic Rivers, A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council Compiled By: Gary Marsh, Bureau of Land Management (Retired), Washington DC Contact: Dan Haas, U.S. Fish & Wildlife Service, Burbank, Washington. May 1997, Revised June 2006, May 2011, May 2014, January 2017, August 2018).

<sup>48</sup> ANILCA Section 606(a)(1).

proposals in the Coastal Plain.<sup>49</sup> The 2015 Arctic Refuge CCP recognizes that ANILCA Section 1107 specifically addresses the authorization of transportation and utility systems, including pipeline rights-of-way, within designated WSR corridors:

*Rights-of-way that cross any area inside the boundaries of a unit of the Wild and Scenic Rivers System will assure that the stream flow of, and transportation on, the designated river are not interfered with or impeded and that the facility is located and constructed in an environmentally sound manner (ANILCA Section 1107(b); 43 CFR 36.9(c) and (d)). Additional special requirements apply to rights-of-way for pipelines issued under the Mineral Leasing Act of 1920 (30 U.S.C. 185), Section 1107(c) of ANILCA, and regulations at 43 CFR 36.9(d).*<sup>50</sup>

Managing the rivers determined eligible and suitable in 2015 to maintain their status as potential WSRs is an administrative action taken by the USFWS that conflicts with both ANILCA and subsequent direction from Congress. Further, Congress took no action to designate any of the recommended rivers; rivers determined eligible but not recommended were not submitted to Congress for consideration of any kind. The SEIS must not include any restrictions that have the potential to interfere with or frustrate the ability of the Secretary to carry out direction in the Oil and Gas Leasing Program. We reiterate our request to remove management actions intended to protect the status and associated values of all river segments found eligible and/or suitable in the USFWS' 2015 agency-directed WSR review. BLM should ensure the eligible and suitable special "WSR" designations, and any related protective measures are not included in any SEIS.

### **ANILCA amended the Wilderness Act as it applies in Alaska**

ANILCA Section 707 recognizes that ANILCA contains numerous statutorily allowed exceptions to the Wilderness Act, which apply to all CSUs in Alaska, including the Arctic National Wildlife Refuge.<sup>51</sup> These provisions include the ability to authorize transportation and utility systems, motorized use, and other development in designated wilderness.

ANILCA also established the Mollie Beattie Wilderness Area on the Refuge, which has specific boundaries. The 2019 EIS inappropriately applies a wilderness area buffer that extends beyond that boundary into the Coastal Plain and applies wilderness area protections, such as NSOs, beyond the wilderness boundary. This management approach is inconsistent with ANILCA and must not be carried forward in the SEIS.

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<sup>49</sup> The Tax Act directed the DOI to issue ROWs to facilitate oil and gas development in the Coastal Plain; therefore, the decision to issue the ROWs is non-discretionary; however, the procedural elements of the ANILCA Title XI process and other considerations for issuing the ROWs still applies.

<sup>50</sup> Page 2-66, 2015 Arctic Refuge CCP.

<sup>51</sup> Section 707: "Except 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, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture for areas designated in sections 701 and 702 shall, as applicable, be deemed to be a reference to the Secretary of the Interior."

**ANILCA grants to the State and private landowners such rights as may be necessary to ensure adequate and feasible access for economic and other purposes.**

In addition to the authority granted to the Secretary to provide for oil and gas development, ANILCA Section 1110(b) directs the Secretary of Interior to grant State and private landowners within or “effectively surrounded” by a CSU “such rights as may be necessary to assure adequate and feasible access for economic and other purposes.” This applies to subsurface rights, valid mining claims, and other valid occupancies. The preamble to the final Department of Interior ANILCA implementing regulations at 43 CFR 36 confirms that “valid occupancy” includes a valid leasehold:

*“The Statute establishes the circumstances where the Secretary of the Interior is required to give such access rights as may be necessary to assure adequate and feasible access. It resolves the issues raised by the comments. For instance, 1110(b) lists the term “valid occupancy” as an interest to which it applies. This included a valid leasehold. Likewise the statute makes no distinction between inholding in existence at the time of ANILCA or inholdings interest created subsequent to ANILCA.”<sup>52</sup>*

The preamble to the final regulations also cites legislative history confirming that this statutory right “is an independent grant supplementary to all other rights of access, and shall not be construed to limit or be limited by any right of access granted by common law, other statutory provisions, or the Constitution.”<sup>53</sup>

ANILCA Section 1110(b) also allows for the Secretary to apply terms and conditions: “Such rights shall be subject to *reasonable regulations* issued by the Secretary to protect the natural and other values of such lands.” (emphasis added) However, the FWS cannot apply terms and conditions that would interfere with or frustrate the rights of inholders to access and use their inholdings. In addition, as affirmed in a unanimous decision by the Supreme Court, Section 103(c) prevents the FWS from applying its agency regulations to activities that are occurring on the inholding itself.<sup>54</sup>

**Any ANILCA Section 810 Analysis in an SEIS must be appropriately scoped and include robust data and State information.**

Prior to determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands, Section 810 of ANILCA requires BLM to “evaluate the effect of such use, occupancy or disposal 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.” As part of that analysis, Section 810 requires a federal agency to determine if an action may significantly restrict subsistence uses and if so, the federal agency is required to provide notice and hearings in the vicinity of the area involved and a make a subsequent determination that addresses the necessity for the significant restriction(s) to subsistence uses, consistent with sound management

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<sup>52</sup> 51 FR 31619, September 4, 1986.

<sup>53</sup> 51 FR 31619, September 4, 1986.

<sup>54</sup> *Sturgeon v. Frost*, 587 U.S. \_\_\_, 139 S. Ct. 1066, 1073-1076 (2019).

of public lands; the minimization of public lands utilized to accomplish the purposes of the action; and the reasonable steps taken to minimize adverse impacts upon subsistence uses and resources. Once the procedural steps outlined in ANILCA Section 810 are complete, the federal agency may manage or dispose of the public lands under consideration.

### *Scope of Analysis*

BLM correctly limited the 2019 Final Coastal Plain EIS 810 analysis to lands within the Coastal Plain area. Federal law requires the Secretary of the Interior 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 not given discretion to determine if leasing can be conducted. Federal law also directs Secretary to “conduct not fewer than 2 lease sales area-wide” within 10 years of the passage of the provision, and to offer for lease under the oil and gas program, not fewer than 400,000 acres area-wide in each lease sale.<sup>55</sup> Thus, the requirement in Section 810(a) to evaluate the availability of other lands for the purposes sought to be achieved and to look at other alternatives that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes is limited to looking at lands within the Coastal Plain area.

We also concur with BLM decision that while the Porcupine Caribou Herd (PCH) is used as a subsistence resource by Canadian communities, the 810 Analysis is restricted to an analysis of subsistence impacts to rural residents of Alaska.

### *Analysis of Effects*

The 2019 Final Coastal Plain EIS analyzed potential impacts on subsistence uses and needs for a range of potentially affected communities by considering use of the Porcupine Caribou Herd by 22 communities in the vicinity of the Coastal Plain. The EIS evaluates impacts to subsistence use of fish, marine mammals (bowhead and beluga whales, bearded seals), and caribou as “the majority of the wild foods consumed by residents of Kaktovik, Nuiqsut, Arctic Village, or Venetie” (page E-3). The conclusion that those are the majority of wild foods consumed by those villages is technically accurate; however, moose are also a significant subsistence resource for Arctic Village and Venetie and sheep are a subsistence resource for Kaktovik and Arctic Village.

### *Data*

ADF&G reviewed the reference list of caribou data used for the 810 Analysis and did not identify gaps. We concur with BLM’s statement in the Final EIS 810 Analysis that the Russell and Gunn data is problematic (page E-9):

*Russell and Gunn (2019) modelled the worst-case scenario with respect to 1002 development, making the assumption that any area within the program area could be developed. Further, in this worst-case scenario they did not account for mitigation measures (e.g., lease stipulations and required operating procedures), that could limit*

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<sup>55</sup> Public Law 115-97, Sec. 20001(c).

*development under the action alternatives, including Alternative B (see Russell and Gunn 2019, page 52).*

In addition, the Russell and Gunn models did not include uncertainty associated with the parameters they used to inform (populate) their models and that uncertainty was not propagated, which also contributed to modelling the worst-case scenario BLM outlines in the paragraph above.

We agree with the following potential effects BLM identified that could impact subsistence use of the PCH (FEIS, pages E-7 to E-10):

- Displacement of maternal caribou during calving.
- Habitat loss or alteration.
- Mortality or injury due to vehicle collisions.
- Altered movement patterns due to linear infrastructure.
- Altered caribou behavior due to aircraft traffic and development activities.

### Mitigation Measures

BLM included the protective lease stipulations and Required Operating Procedures that ADFG recommended to mitigate impacts on subsistence resources and uses in the lease area and prevent future restrictions on subsistence uses that might be caused by an activity under the Coastal Plain leasing program. These measures included: setbacks for facility and transportation corridors from the coastline; minimum pipeline ground clearances of 7 feet; and separation of roads and pipelines by at least 500 feet.

### ***Additional Recommendations***

Should BLM prepare an SEIS, we recommend including the following information in the SEIS and the 810 Analysis:

- Continue to focus on the Porcupine Caribou Herd and the Central Arctic Caribou Herd as well as fish and marine mammals, and include discussion on moose and sheep as discussed above.
- Include a comparison of state and federal hunting seasons to determine if these seasons have an impact on displacement of maternal caribou during calving. Currently, state regulations close cow hunting during the calving season of May 1 through June 30.
- We request BLM use the most robust and sound data available regarding distribution of subsistence resources, including fully engaging with ADF&G experts. This includes incorporating additional data on the two caribou herds produced since the 2019 Final Coastal Plain EIS was finalized.
  - Prichard, A. K., B. E. Lawhead, E. A. Lenart, and J. H. Welch. 2020. Caribou distribution and Movements in a northern Alaska oilfield. *The Journal of Wildlife Management*. doi:10.1002/jwmg.21932
    - This paper demonstrates that the CAH move through the oilfield to access important seasonal habitat
  - Prichard, A. K., L. S. Parrett, E. A. Lenart, J. R. Caikoski, K. Joly, and B. T. Person. 2020. Interchange and overlap among four adjacent Arctic caribou herds. *Journal of Wildlife Management* 1-15.
    - This paper demonstrates that there is interchange among the four north slope caribou herds (caribou that were collared with one herd were later found in

another herd...caribou from the smaller size herds were more likely to join a larger herd vs the opposite).

- Outline ways to conduct continued monitoring of subsistence uses and needs, both within the Coastal Plain area and in areas that could be influenced by changes in resources. To the extent that new developments are conducted under changing circumstances, future studies should be conducted to evaluate resulting effects to enable adaptive planning with respect to road siting, orientation, and traffic management on future roads.
- Include careful notation for the reader that documentation related to subsistence areas in no way implies comprehensiveness and does not reflect the dynamic character of the spatial data referenced and used for estimates of how much land within a given management action overlaps with areas that have been documented as used by subsistence users.
- Document all notices sent to the entities identified in ANILCA Section 810(a)(1)(2).

## **SECTION 5 – ANY AIR QUALITY ANALYSIS MUST FULLY ENGAGE THE STATE EARLY IN THE PROCESS**

### **Air quality analysis requires State ADEC engagement.**

In Volume 3 of the 2019 Program EIS, the BLM noted that it was undertaking a “cumulative Alaska North Slope Air Quality Model.” The State also understands that the BLM has recently completed work on an updated photochemical model and weather research and forecasting (using modelled meteorological data) for the North Slope. These updated tools should allow the BLM to better analyze the air quality impacts in the SEIS. The State understands that fine tuning the air quality analysis can take time and resources, so the State encourages the BLM to engage early with the ADEC’s air quality staff, so that air quality concerns do not end up as an unexpected challenge or concern late in the NEPA process.

In implementing the Program and creating solutions, the State recommends that BLM consult with the State and other regulatory agencies, including the North Slope Borough, as well as with the North Slope resident stakeholders, including the Kaktovik residents. The State and other regulatory agencies, including the Borough, have authorities and responsibilities for work that may be proposed in the Coastal Plain. These agencies have long histories of safely managing oil and gas development and will have regulatory roles in the Program moving forward. In addition, the State encourages continued significant efforts by BLM to consult with North Slope resident stakeholders, including the Kaktovik residents, to ensure resources of concern are identified and protected.

## **CONCLUSION**

All phases of responsible oil and gas development, including exploration, development, production, and transportation have extensively occurred in Alaska. Further, it has successfully coexisted with other industries, including fishing, transportation, and tourism. Accelerating America’s energy and environmental progress with Coastal Plain energy, among other affordable homegrown energy sources, would spur the nation’s economic recovery and protect access to affordable, reliable, and cleaner energy produced in the U.S.

Alaska state and local agencies and federal regulatory agencies have regulations that protect the environment through comprehensive drilling, development, and production standards; setbacks;

ground water protection measures; financial assurance requirements; spill reporting standards; and reclamation requirements. These emphasize planning, consultation, preparedness, and mitigation, and ensure that from start to finish, environmental impacts are scrutinized and mitigated to the greatest extent practicable. Additionally, the State of Alaska adheres to robust workplace safety labor laws and numerous regulations that ensure the oil and gas industry performs to the highest standards.

The State of Alaska and its technical and regulatory experts with significant knowledge in the prudent development and management of Alaska's resources stand ready to coordinate and collaborate with the U.S. to achieve energy abundance, secure American jobs, spur economic renewal, and promote environmental stewardship. The State of Alaska understands the importance of responsible oil and natural gas development to maintaining its pristine environment while also creating various economic opportunities for its citizens and the nation.

Sincerely,



Corri Feige  
Commissioner, ADNR



Jason Brune  
Commissioner, ADEC



Doug Vincent-Lang  
Commissioner, ADFG

- Enc: A: State Technical Scoping Comments on the Supplemental Program EIS matrix  
B: ANILCA Section 906(k) letter, issued December 30, 2020  
C: 2019 MOA between BLM and ADNR, fully executed December 18, 2019  
D: Map of existing State leases in Tract 29

## **Exhibit A**

**State Technical Scoping Comments on the Supplemental Program EIS**

Affiliation	Resource/ Topic	Technical Scoping Comment
<u>Comments Addressing Resource Concerns and Best Management Practices</u>		
ADFG	Bears, Polar and Grizzly	<p>Polar and grizzly bears both occur and den within the Coastal Plain. As a result, protection of den sites during exploration or development activities will need to occur similar to that occurring on State and federal lands to the west. A one mile buffer for occupied polar bear dens, and a one-half mile buffer for occupied grizzly bear dens should be used within the Coastal Plain.</p> <p>As identified above, solid waste management, particularly adequate handling, storage, and disposal of putrescible wastes that can be attractants to bears, will be an important issue to evaluate and to develop adequate mitigation measures and best management practices. Bear-proof fencing around certain facilities would be another measure to evaluate and implement.</p> <p>The potential for attraction of polar bears congregating at the Kaktovik bowhead whale bone disposal area to oilfield facilities needs to be evaluated, and measures developed to ensure safety of both humans and bears near oilfield facilities.</p> <p>If oil field development requires a solid waste disposal facility (landfill) be constructed within the Coastal Plain, issues that need to be addressed include facility siting to avoid known concentration areas of polar and grizzly bears, fencing of the site with both chain link and electrified fence, and design measures to facilitate efficient operation and maintenance of the site and surrounding fencing (e.g., repairs, snow removal).</p> <p>Lessees should be required to develop and implement a Human/Bear Interaction Plan designed to minimize interaction and conflicts between bears and humans. The plan shall include measures to:</p> <ul style="list-style-type: none"> <li>A. minimize attraction of bears to facility sites;</li> <li>B. organize layout of buildings and work areas to minimize interactions between humans and bears;</li> <li>C. warn personnel of bears near or on facilities and the proper actions to take;</li> <li>D. if authorized, deter bears from the drill site;</li> <li>E. provide contingencies in the event bears do not leave the site;</li> <li>F. discuss proper storage and disposal of materials that may be toxic to bears; and</li> <li>G. provide a systematic record of bears on the site and in the immediate area.</li> </ul>

**State Technical Scoping Comments on the Supplemental Program EIS**

Affiliation	Resource/ Topic	Technical Scoping Comment
ADFG	Caribou	<p>The Porcupine Caribou Herd (PCH) is a major international resource, recognized by a United States - Canada agreement, and is vital to the subsistence economies of several communities in Alaska and Canada. The PCH often uses the Coastal Plain for calving and for rearing calves. Calving occurs over a wide area and can vary annually, including the northern Yukon, but in many years most cows calve in a smaller area of Alaska, the Jago Uplands, which overlaps part of the Coastal Plain. Non-parturient cows including young age class females, and bulls, will use the coastal plain, including the Coastal Plain, as summer habitat. The PCH also uses coastal areas of the Coastal Plain, the Jago Uplands, and snow fields for insect relief habitat during the summer period.</p> <p>The Central Arctic Herd (CAH) calves west of the Coastal Plain, adjacent to the Prudhoe Bay and Kuparuk oil fields, but in some years will travel east during the post calving period into the Coastal Plain to rear calves and seek insect relief.</p> <p>We recommend the BLM thoroughly evaluate the habitat use and requirements of the PCH and CAH, and develop measures to minimize adverse effects to these herds and ensure continued use of the Coastal Plain by caribou. A thorough review of the literature discussing the impacts of oil and gas exploration and development activities to the CAH should be evaluated and used to evaluate the potential effects of oil and gas exploration and development to the PCH.</p> <p>Measures that should be developed include facility and transportation corridors setback from the coastline to maintain caribou movements along the coastline as well as access to insect relief habitat; minimum pipeline ground clearances of 7 feet; and separation of roads and pipelines by at least 500 feet. Additional caribou protection measures for activities within the core calving area of the PCH should be evaluated.</p> <p>Only essential facilities should be located proximal to the coastline to minimize potential effects to caribou movements to and within insect relief habitat. All other facilities including transportation corridors for roads or pipelines should be set back from the coastline. Criteria will need to be developed to determine which facilities are considered essential within a specified distance of the coastline. A complete evaluation of facility siting will be an important aspect of this Supplemental Program EIS to develop appropriate lease mitigation measures and best management practices.</p>

**State Technical Scoping Comments on the Supplemental Program EIS**

Affiliation	Resource/ Topic	Technical Scoping Comment
ADNR DGGS	Climate and Meteorology	Recommend BLM consider climate scenarios when evaluating oil and gas exploration and development, and associated reclamation efforts.
ADNR DGGS	Climate and Meteorology	Recommend BLM consider potential changes in water resources, including precipitation and drainage changes, under climate scenarios through the end of this century.
ADFG	Coastal Facilities	<p>Coastal facilities, including docks, causeways, seawater treatment plants for waterflood operations, and desalination plants may be required for the efficient operation of oilfield exploration and development activities. Extensive review of both marine and terrestrial structures and facilities will be required to evaluate potential effects to both biotic and abiotic resources. We recommend causeways and docks not be located in river mouths or deltas. We recommend approved causeways be designed, sited, and constructed to prevent significant changes to nearshore oceanographic circulation patterns and water quality characteristics (e.g., salinity, temperature, suspended sediments) that result in exceedances of water quality criteria, and must maintain free passage of marine and anadromous fish.</p> <p>Only essential facilities should be located proximal to the coastline to minimize potential effects to polar bears (movements along the coast or denning) and caribou (movements along insect relief habitat). All other facilities including transportation corridors for roads or pipelines should be set back from the coastline. Criteria will need to be developed to determine which facilities are considered essential within a specified distance of the coastline. A complete evaluation of facility siting will be an important aspect of this Supplemental Program EIS to develop appropriate lease mitigation measures and best management practices.</p>
ADNR DGGS	Coastal Hazards	Recommend using historical shoreline change rates, permafrost mapping, and permafrost thaw projections to determine vulnerability to coastal erosion and work with DGGS to develop protocols to minimize impacts under current and projected climate scenarios.
ADNR DGGS	Coastal Hazards	Recommend working with DGGS to seek out or determine coastal flood vulnerability of potential development regions in current and projected climate scenarios.
ADNR DGGS	Coastal Hazards	Recommend BLM assess sea ice distribution projections to determine potential hazards to infrastructure, changes to coastal morphology, and increased flooding onshore.

**State Technical Scoping Comments on the Supplemental Program EIS**

Affiliation	Resource/ Topic	Technical Scoping Comment
ADFG	Fish	<p>All freshwater fish present in streams and rivers within the Coastal Plain are concentrated in deep pools in rivers or in spring-fed habitats during winter. Deep pools within selected portions of some of the major river systems provide overwintering habitat for fish, while spring areas provide both spawning and overwintering habitat. Only two known spring areas (Fish Hole #1, Hula Hula River and Sadlerochit Springs) occur within the Coastal Plain, and pools of water under six feet of ice during the winter are rare. Overwintering habitats for fishes are considered to be extremely limited, very sensitive to disturbance and water withdrawals, and essential for their survival.</p> <p>Careful evaluation of the potential impacts of exploration and development to these limited habitats is essential. As the current policy on the North Slope is to generally prohibit winter water withdrawal from rivers and streams, continuation of this policy should be included for the Coastal Plain. Similar to that stipulated on state land, no facilities shall be sited within one-half mile of identified Dolly Varden overwintering and/or spawning areas.</p>
DNR DGGS	Geologic Hazards	Recommend that BLM develop mitigation measures to reduce mass wasting of slopes resulting from development activities.
DNR DGGS	Geologic Hazards	Recommend that BLM develop mitigation measures to reduce river bank collapse resulting from development activities.
DNR DGGS	Geologic Hazards	Recommend that BLM develop mitigation measures for development activities in areas of potential riverine and coastal flooding/erosion, permafrost degradation, aufSupplemental Program EIS, ground failure, and ice push.
ADFG	Gravel Mine Sites	Gravel will be necessary for any development activities that occur within the Coastal Plain. We recommend BLM evaluate the siting, development, operation, and reclamation of potential gravel mine sites to ensure overall impacts to water quality and fish and wildlife resources are mitigated. Conversion of former gravel mine sites to water reservoirs provides the opportunity to create a water supply for industrial use, and if located near a stream, may provide overwintering habitat for fish upon colonization. Given the general lack of available winter fresh water within the Coastal Plain, an emphasis on converting mine sites to flooded reservoirs will be paramount to reducing potential impacts to fish and aquatic resources.
DNR DGGS	Hydrology	Recommend consider establish river discharge measurements and water balances to determine the amount of surface and groundwater available

**State Technical Scoping Comments on the Supplemental Program EIS**

Affiliation	Resource/ Topic	Technical Scoping Comment
DNR DGGS	Hydrology	Recommend BLM consider obtaining airborne electromagnetic geophysical data to determine taliks size and configuration for potential groundwater use in the area.
ADFG	Hydrology	Water availability in the Coastal Plain is substantially less than that found in the Prudhoe Bay-Kuparuk and NPRA areas to the west. BLM needs to carefully evaluate potential water sources that may be considered for industrial use, particularly the winter water availability from the limited number of lakes within the Coastal Plain. Marine waters, in terms of desalinization to create water of a quality suitable to create ice roads and not damage tundra, should be evaluated as an alternative to the limited available fresh water. Potential impacts to tundra resources from the lack of sufficient snow or water to create sufficient snow or ice roads should be evaluated as well.
DNR DGGS	Mineral Resources	There is lode potential for "basalt-hosted copper" in the Proterozoic Katakturuk Dolomite unit, which is exposed at the surface just outside of the south-central edge of the Coastal Plain. USGS Alaska Resource Data File record number ML008 states native copper occurs in basalt at latitude 69.63 degrees north and longitude 144.75 degrees west. The extent of basalt, and copper within basalt, within the Kataktukuk Dolomite is not known due to lack of detailed mapping and geochemical sampling. The Coastal Plain of ANWR is largely covered in surficial materials. The Kataktukuk Dolomite may or may not extend into the Coastal Plain in the subsurface.
DNR DGGS	Mineral Resources	There is lode potential for "yttrium and ytterbium (a rare-earth element)" within the Jurassic to Cretaceous Kingak Shale, which is exposed at the surface just outside of the southeastern edge of the Coastal Plain. USGS Alaska Resource Data File record number DP003 states there are 300 parts per million (ppm) yttrium and 15 ppm ytterbium in a sample of efflorescent salt that is mainly aluminum sulfate. Efflorescent salts coat outcrops of Kingak Shale and accumulate along the margins of ephemeral pools at the foot of cut banks." This site is located at latitude 69.53 degrees north and longitude 143.15 degrees west. The extent of sulfosalts, and yttrium and ytterbium, within the Kingak Shale is not known due to lack of detailed mapping and geochemical sampling. The Coastal Plain of ANWR is largely covered in surficial materials. The Kingak Shale crops out along the southeastern margin of the Coastal Plain, and may or may not extend into the Coastal Plain in the subsurface.
DNR DGGS	Mineral Resources	Recommend that BLM clarify whether leasing will be limited to oil and gas leasing only.
DNR DGGS	Mineral Resources	Recommend that BLM consider impacts to potential mineral development from oil and gas exploration and production activities.

**State Technical Scoping Comments on the Supplemental Program EIS**

Affiliation	Resource/ Topic	Technical Scoping Comment
DNR DGGS	Mineral Resources	In the Coastal Plain, the mineral-resource potential for beach-sand-type placer gold or heavy minerals is unknown, as there is no publically available, geochemical sampling data available for near-shore or off-shore sediments.
DNR DGGS	Mineral Resources	In the Coastal Plain, the mineral-resource potential for beach-sand-type placer gold or heavy minerals is unknown, as there is no publically available, geochemical sampling data available for near-shore or off-shore sediments.
DNR DGGS	Paleontological Resources	Recommend that BLM develop mitigation measures to reduce damage or loss to paleontological resources resulting from development activities. Activities associated with development, such as construction of roads or wellpads, could unearth or disturb paleontological resources. Marine and terrestrial mammal fossils are likely to be present in unconsolidated deposits of the coastal plain. Trasnported fossils are likely to be found in Cretaceous and Tertiary deposits along major rivers.
DNR DGGS	Permafrost	Recommend BLM a high resolution ground ice map in the transportation corridors (on the scale of meters).
DNR DGGS	Permafrost	Recommend consider road and pad design alternatives to mitigate thermal impacts to permafrost stability.
DNR DGGS	Physiography	Recommend that BLM consider the impact of geology and physiography on landscape disturbance.
DNR DGGS	Physiography	Recommend BLM consider how geologic units and processes in different physiographic provinces impact disturbances.

**State Technical Scoping Comments on the Supplemental Program EIS**

Affiliation	Resource/ Topic	Technical Scoping Comment
ADFG	Riparian Areas	<p>Major river systems and their associated riparian habitat are unique and used by a variety of wildlife species, including fishery resources. Riparian habitats are used by a majority of the key species of wildlife in the Coastal Plain. Muskoxen use riparian and adjacent upland habitats for movements, calving, and feeding. Caribou from the PCH use riparian habitats for calving, feeding, and as migration corridors during their movements to and from coastal insect relief habitat. Polar bear den sites are most commonly found in snow drifts along cut banks of these river systems. Selected portions of the major rivers also are used by Arctic grayling, Dolly Varden and other fish species for migration, spawning, rearing, and overwintering.</p> <p>While muskoxen are no longer abundant within the Coastal Plain, we recommend the BLM evaluate riparian habitats and develop mitigation measures that allow for maintenance of these habitats in the event muskoxen expand into formerly occupied habitats. These measures will also maintain these habitats for other species that use them, as well as subsistence users that may harvest animals and fish in these areas.</p>
ADNR DGGS	Sand and Gravel Resources	Recommend that BLM develop mitigation measures for sand and gravel extraction and work with ADNR MLW and DGGS to develop protocols to minimize disturbance. As part of this there needs to be an evaluation of the potential volume of sand and gravel needed in development.
ADNR DGGS	Sand and Gravel Resources	Recommend BLM consider include offshore development of sand and gravel resources as a possible mitigation measure to reduce onshore disturbance and impact to other resources from sand and gravel mining.
ADNR DGGS	Sand and Gravel	Recommend that BLM consider use of onshore sand and gravel extraction sites as fresh water reservoirs for ice road and pad construction.
ADNR DGGS	Soil Resources	Recommend that BLM develop mitigation measures to reduce loss of vegetative cover, removal of topsoil, melting of permafrost, erosion, rutting, and ponding resulting from development activities.
ADFG	Solid Waste Management	Solid waste management, particularly adequate handling, storage, and disposal (incineration) of putrescible wastes that can be attractants to bears, foxes, and scavenging birds, will be an important issue to evaluate and develop adequate mitigation measures and best management practices.

**State Technical Scoping Comments on the Supplemental Program EIS**

Affiliation	Resource/ Topic	Technical Scoping Comment
ADFG	Subsistence Concerns	Impacts of oil and gas activity in the Coastal Plain on fish and wildlife resources can adversely affect human uses of these resources. This is true both in Kaktovik in the Coastal Plain and in other Canadian and Alaskan communities that rely on wildlife which use the Coastal Plain, most notably the Porcupine Caribou Herd and anadromous overwintering populations of Dolly Varden. A comprehensive discussion of subsistence uses by communities that use these subsistence resources is required to better assess the future impacts of development in the coastal plain.
ADFG	Support Facilities	We recommend the BLM include evaluation of the potential effects of an oilfield supply complex (essentially a "Deadhorse East") somewhere within the Coastal Plain that would support exploration, drilling, and operational activities should leasing lead to development. Operations likely included in this complex would be drilling contractors, equipment rental contractors, well testing, fuel storage, equipment maintenance facilities, camp facilities, and others that are essential to successfully operating an oilfield. This complex may or may not be located on active leases if it is developed, so resource protection measures must be developed for both on- and off-lease development scenarios. Food storage and handling, and solid waste management, particularly putrescible waste and attraction of bears and foxes to these wastes, are important issues to be evaluated.
ADFG	Wildlife Oil Spill Response	The need for a wildlife oil spill response facility within the Coastal Plain for initial capture, stabilization, and cleaning of oiled wildlife (e.g., polar bears) before sending them on to a more permanent treatment facility should be evaluated.
ADFG	Wildlife-related Recreation	The potential effects of oil and gas exploration and development activities on wildlife-related recreation (e.g., polar bear viewing at Kaktovik) need to be evaluated. Issues including access to wildlife-related recreational areas, and the effects on the quality of recreational use also should be addressed.
<u>Comments Identifying Existing Data and Potential References</u>		
ADNR DGGs	Existing Data, Mineral Resources	The USGS Geochemical Atlas of Alaska (Lee and others, 2016) shows the location of elemental anomalies in sediments within the Coastal Plain; the main elemental anomaly is gold. In the USGS Alaska Geochemical database, twenty samples have gold values greater than 0.10 parts per million (ppm) in sediments scattered throughout the Coastal Plain. Seven samples have greater than 0.50 ppm gold, with a high value of 2.23 ppm gold. Some of the high-gold values are located near the northern edge of the Coastal Plain, near the northernmost extension of the coastline. There may be alluvial-, bench-, or beach-type placer gold potential in this area.

**State Technical Scoping Comments on the Supplemental Program EIS**

Affiliation	Resource/ Topic	Technical Scoping Comment
ADFG	Potential References, Recent North Slope Environmental Impact Statement (Supplemental Program EIS)	Recommend the BLM examine some of the more recent North Slope EIS documents for resource information, impact assessment information, mitigation measures, lease stipulations, and best management practices that may be used directly or modified for use within the Coastal Plain Supplemental Program EIS. Two of the most applicable documents include the 2013 BLM National Petroleum Reserve-Alaska (NPPRA) Integrated Activity Plan and the 2012 ExxonMobil Point Thomson Project EIS.
ADNR DGGS	Special Expertise, Soil	Recommend that BLM work with ADNR DGGS and MLW to evaluate the potential impacts soil disturbance to the landscape. For example what soils are more stable and what soils are more susceptible to erosion. What soils are most susceptible/least susceptible to permafrost degradation.
ADNR DGGS	Special Expertise, Soil	Recommend BLM work with other agencies such as ADNR DGGS and MLW to consider the quality of soils for potential use and to develop protocols for soil use.
ADNR DGGS	Special Expertise, Coastal	Recommend working with NOAA Office of Coast Survey to determine navigability of potential development sites.
ADNR DGGS	Special Expertise, Coastal	Recommend working with ADNR DGGS to seek out or determine coastal flood vulnerability of potential development regions in current and projected climate scenarios.
AOGCC	Special Expertise, Underground Injection	Utilize AOGCC to assure compliance with the highest environmental standards of underground injection of waste.
AOGCC	Special Expertise, Various	Utilize capability/experience of the ADEC to understand how the State of Alaska ensures high environmental standards while efficiently developing a resource.

State Technical Scoping Comments on the Supplemental Program EIS

Affiliation	Resource/ Topic	Technical Scoping Comment
AOGCC	Special Expertise, Wildlife management	Utilize ADFG to understand potential impacts and mitigation measures for ice infrastructure that crosses fish-bearing streams.
AOGCC	Special Expertise, Winter Tundra	Utilize ADNR to provide guidance on environmentally friendly methods for winter tundra travel.

## **Exhibit B**



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

OFFICE OF THE COMMISSIONER

550 West 7<sup>th</sup> Avenue, Suite 1400  
Anchorage, AK 99501-3561  
Main: 907.269-8431  
Fax: 907-269-8918

December 30, 2020

Mr. Chad B. Padgett, State Director  
Bureau of Land Management, Alaska State Office  
222 W. 7<sup>th</sup> Avenue, #13  
Anchorage, AK 99513-7504

Re: ANWR 2021 Coastal Plain Alaska Oil and Gas Lease Sale  
Tract 29 – ANILCA 906(k) Concurrence Letter

Dear State Director Padgett:

On December 17, 2020 Governor Dunleavy submitted the State of Alaska's (State) consolidated comments regarding the Call for Nominations and Comments for the Coastal Plain Alaska Oil and Gas Lease Sale. Governor Dunleavy indicated that the State does not object to the Bureau of Land Management (BLM) including Tract number 29 in the January 6, 2021 lease sale, but that it was subject to the State's reservation of its position that Tract 29, which encompasses the disputed Staines-Canning River area, is not within the boundaries of ANWR, and therefore is not part of the Coastal Plain under the Tax Act. The Governor's letter further indicated that the State was reserving all legal rights, remedies, and causes of action, including the issuance of an ANILCA Section 906(k) letter of concurrence.

Pursuant to Governor Dunleavy's December 17, 2020 letter and Section 906(k) of ANILCA, my department hereby concurs with any proposed 2021 coastal plain oil and gas lease of Tract 29, state selected land, provided the following terms are adhered to:

1. BLM will notify the State in event the lease authorization terminates before title transfers to the State or in the event the authorization is not issued;
2. BLM will provide proof that any funds received are being escrowed and the amount of the funds;
3. BLM will include this office on the distribution list for any subsequent decisions or notices issued for the subject lease;
4. Upon conveyance of these state selected lands to the State of Alaska, the lessee is required to apply for an authorization from the State and comply with the state requirements for the proposed activity;
5. BLM will reference GS-1352 (F-031832) in any subsequent correspondence; and
6. The area reclaimed, if necessary, before the title conveyance to the State.

This concurrence letter is effective for the duration of the BLM authorized lease of Tract 29.

Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Corri A. Feige".

Corri A. Feige  
Commissioner

## **Exhibit C**



## MEMORANDUM OF AGREEMENT

Between the  
BUREAU OF LAND MANAGEMENT, ALASKA STATE OFFICE  
and the  
ALASKA DEPARTMENT OF NATURAL RESOURCES

BLM MOA No.: AK2019-001

SUBJECT: Preservation of Contractual Rights and Obligations for Purposes of Mineral Lease Administration in the Vicinity of the Coastal Boundary of the Arctic National Wildlife Refuge Coastal Plain

### A. BACKGROUND

On June 29, 2000, the Supreme Court of the United States granted a joint motion for entry of a Decree in a case<sup>1</sup> resolving a dispute between the United States and Alaska over the ownership of coastal submerged lands in the Beaufort Sea and quieting title to coastal submerged lands within two federal reservations, the National Petroleum Reserve - Alaska (NPR) and the Arctic National Wildlife Refuge (ANWR). Paragraph F of the Decree recognizes that the coastal boundaries of the NPR and ANWR - as defined in the original presidential executive order (Executive Order 3797-A, Feb. 27, 1923) and Department of the Interior secretarial order (Public Land Order 2214, Dec. 6, 1960), respectively, creating these areas-are ambulatory and will therefore migrate as a result of changes in relevant physical features. Paragraph F of the Decree provides that the United States and the State of Alaska may resolve disputes arising from those changes through, among other options, negotiation and agreement. For purposes of this Memorandum of Agreement, the interests of the latter party are represented by the Alaska Department of Natural Resources (DNR), and the former party by the Bureau of Land Management - Alaska State Office (BLM), an entity of the U.S. Department of the Interior. Throughout this agreement, these are referred to collectively as the 'Parties'.

The BLM is preparing to implement an oil and gas leasing program in the Coastal Plain of ANWR. Congress identified the Coastal Plain in Section 1002 of the Alaska National Interest Lands Conservation Act (ANILCA) for its oil and gas potential. Legislation was enacted on December 22, 2017, Public Law (PL) 115-97, lifting a prohibition on oil and gas development imposed by Section 1003 of ANILCA and requiring BLM to implement an oil and gas leasing program. The State of Alaska has historically leased, and continues to lease, offshore tracts in the vicinity of the coastal boundary of the ANWR Coastal Plain.

<sup>1</sup>The case in question is docket number 84, Original (aka "Original 84"), decided by the Supreme Court on June 19, 1997, often informally referred to as the "Dinkum Sands" case.

## B. PURPOSE

The BLM and the DNR have initiated, or in the case of the BLM soon will be initiating, mineral leasing activities in the vicinity of the coastal boundary of the ANWR Coastal Plain. Each agency recognizes that the ambulatory nature of that boundary may lead to uncertainty and disputes respecting administration of leases, ownership of leased lands, and payment of royalties, rentals, and bonus bids. To resolve that uncertainty, eliminate a potential basis for disputes, and prevent avoidable litigation, the two entities are entering into this Memorandum of Agreement (**MOA**) to clarify their respective rights and obligations with respect to leased lands, notwithstanding the constant changes in the location of the coastal boundary of the **ANWR Coastal Plain** (as the term "Coastal Plain" is defined in PL 115-97). Under the terms of this MOA, the title of the United States (as represented here by BLM) and Alaska (as represented here by DNR) to lands offered for lease, or currently leased, in the vicinity of the coastal boundary of the ANWR Coastal Plain, would continue to be governed by the location of ANWR's ambulatory coastal boundary. Nevertheless, changes in the location of that boundary would have no effect on each agency's contractual rights and obligations under any affected lease that incorporates a portion of its boundary as defined by the map depicted in Appendix 1 of this agreement, for the life of the lease, or any extension or renewal of the lease term. The BLM and DNR have prepared this MOA to set forth the controlling principles of this arrangement.

## C. AUTHORITIES

The BLM enters this agreement pursuant to the following authorities.

- Supreme Court of the United States Decree 530 U.S. 1021, entered June 29, 2000, and the Court's predecessor decision 521 U.S. 1, dated June 19, 1997.
- Public Law 115-97, Section 20001, commonly referred to as the Tax Cuts and Jobs Act
- Federal Land Policy and Management Act of 1976, Section 307(b); 43 U.S.C Section 1737(b).

The DNR enters this agreement pursuant to the following authorities.

- Supreme Court of the United States Decree 530 U.S. 1021, entered June 29, 2000, and the Court's predecessor decision 521 U.S. 1, dated June 19, 1997.
- The Alaska Land Act, AS 38.05.005-38.05.990, and all supporting regulations.

## D. CONTROLLING PRINCIPLES AND AGENCY RESPONSIBILITIES

1. The BLM and DNR recognize that the coastal boundary of the ANWR Coastal Plain is defined by reference to geographic features that migrate, accrete, and erode in response to natural phenomena such as ocean currents, waves, storm surges, and sea ice. As a result, the coastal boundary is naturally ambulatory and will change over time.
- ii. The BLM and DNR also recognize that the ambulatory nature of the ANWR Coastal Plain's coastal boundary can give rise to uncertainty and disputes in the administration of each agency's oil and gas leasing program. Each agency has already or anticipates offering mineral leases adjacent to the ANWR Coastal Plain coastal boundary. Because

the ANWR Coastal Plain coastal boundary is ambulatory and will continue to be so after those leases are offered, the geographic extent and validity of each agency's leases could be called into question.

111. To reduce that uncertainty, eliminate a potential basis for disputes, and prevent avoidable litigation, the BLM and DNR shall recognize the following principles for preservation of their contractual rights and obligations, and those of their lessees, pertaining to mineral leases in the vicinity of the ANWR Coastal Plain coastal boundary.
  1. The title of the United States and Alaska (as represented here by BLM and DNR) to any lands offered for lease, or leased, in the vicinity of the ANWR Coastal Plain coastal boundary shall continue to be governed by the actual location of that ambulatory boundary. Commencing with the signature of this MOA, the BLM and DNR shall use the administrative lease line to identify the limits of lease offerings, and the boundaries of individual leases adjacent to the ANWR Coastal Plain coastal boundary, under their respective mineral leasing programs. The map, attached as Appendix 1, depicts a fixed "Administrative Lease Line for the Coastal Boundary of the Coastal Plain of the ANWR." (Hereinafter administrative lease line). The geospatial data and subsequent map product representing the data, as shown in Appendix 1, was prepared for the express purpose of depicting an agreed upon line for future oil and gas leasing by the Parties. It does not constitute an official survey but establishes an administrative line that both parties will use to determine lease tracts. The administrative lease line in Appendix 1 extends over most, but not all of the length of the ANWR Coastal Plain coastal boundary, from the eastern limit of the ANWR Coastal Plain coastal boundary near the mouth of the Aichilik River, westward to a point near Brownlow Point along longitude 145° 51' W. The remainder of the coastal boundary of the ANWR Coastal Plain west of longitude 145° 51' W. is currently the subject of litigation among the Parties and is not addressed in this Agreement at this time. It is the Parties' intent that when they resolve their dispute as to that remaining segment of the ANWR Coastal Plain coastal boundary, the parties will amend Appendix 1 to include that currently disputed segment in this Agreement. Copies of Appendix 1 - and the geospatial data which generated it - will be kept available for public inspection at the Alaska State Office of the Bureau of Land Management and the Department of Natural Resources, Office of the Commissioner, in Anchorage, Alaska. Appendix 1 is deemed to set out a reasonable depiction - based on the data and information currently available to the Parties - of the current coastal boundary of the ANWR Coastal Plain for purposes of lease administration. It shall be understood that the administrative lease line does not necessarily depict the exact location of the ANWR Coastal Plain coastal boundary, which depends, at any given time, on the instantaneous location of ambulatory geographic features.
  2. If the BLM or DNR enters into any mineral leases in the vicinity of the ANWR Coastal Plain coastal boundary while this MOA is in effect, the boundaries of any such lease for the life of that lease, including any extensions or renewals of the lease term, shall be governed by this agreement and the approved administrative lease line. The BLM and DNR shall each recognize the right of the other to

continue to enforce and apply the contractual terms of any such lease without regard to any movement in the **ANWR** Coastal Plain coastal boundary. The rights and obligations of the lessor and the lessee under any such lease, for the life of that lease, including any extensions or renewals of the lease term and including but not limited to:

1. the right to receive royalties, rentals, and bonus bids;
- ii. the right to extract minerals; and
- m. the obligation to comply with the terms and conditions of the lease;

shall not be affected by any movement in the **ANWR** Coastal Plain coastal boundary. Upon the expiration, termination, or relinquishment of any such lease, any unfulfilled obligations of the lessor and lessee under the lease that depend on the location of the **ANWR** Coastal Plain coastal boundary shall continue to be determined by the location of the administrative lease line.

3. The foregoing principles shall apply to the State oil and gas leases listed on Appendix 2 which were issued prior to this MOA.

- 1v. At any time after the end of the ten-year period commencing from the date of signature of this MOA, and from time to time thereafter, the BLM and DNR may agree to revise the administrative lease line set out in Appendix 1 for leases issued after the effective date of the revision. If the BLM and DNR elect to revise the administrative lease line, they shall be guided by:

1. Changes in relevant physical features;
2. Generally accepted surveying principles; and
3. Lease management considerations of either agency that may lead to a revised administrative lease line that represents a compromise.

The revised line must be defensible as a reasonable approximation of the actual **ANWR** Coastal Plain coastal boundary.

Upon agreement between the BLM and DNR, copies of the revised administrative lease line and the relevant geospatial data shall be kept available for public inspection at the Alaska State Office of the Bureau of Land Management and at the Department of Natural Resources, Office of the Commissioner, in Anchorage, Alaska. The new administrative lease line shall become effective on the date of the last signature to the MOA amendment.

- v. The BLM and DNR may elect to discontinue use of the administrative lease line or a revised administrative lease line, for future leasing activity, effective at any time after the end of the ten-year period commencing from the date of signature of this **MOA**. The party seeking to discontinue use of the administrative lease line, or any revised administrative lease line, shall provide written notice to the other party. Notice may be given during the ten-year period commencing from the date of signature of this **MOA**, but no discontinuance will occur until after the initial ten-year period. If either party elects to discontinue use of the administrative lease line, or any revised administrative lease line, the provisions of Section D(iii) shall not apply to any lease issued by either

party after the effective date of discontinuance, and the limits of any such lease issued by either party after the date of discontinuance shall be determined on the basis of the ambulatory coastal boundary of the ANWR Coastal Plain or a new agreement between the BLM and DNR.

- vi. This MOA applies solely for the purpose of facilitating federal and state mineral leasing by reducing uncertainty and avoiding disputes over lease obligations that could otherwise lead to litigation. This MOA supplements, but does not expressly or impliedly repeal, any other provision of the 2000 Supreme Court Decree, 530 U.S. 1021. This MOA does not affect title to any real property, does not affect the legislative jurisdiction of either the United States or Alaska; and does not affect the application of any federal or state laws except that neither the BLM nor DNR may invoke such laws to claim that a change in the ANWR Coastal Plain coastal boundary invalidates the contractual rights and obligations set out in affected leases. This MOA is an agreement among only the Parties; it provides no third-party rights. In any dispute over the actual location of the ANWR Coastal Plain coastal boundary, neither the United States nor Alaska shall be estopped from taking a position respecting the location of that boundary that differs from the administrative lease line.
- vii. The BLM and DNR may jointly make typographical corrections to the administrative lease line geospatial data and resulting map (Appendix 1) at any time the lease line established herein is in effect. Typographical corrections are limited to undisputed typing or drafting mistakes, including omission of a portion of the connecting line, inclusion of unnecessary or duplicative descriptions and a mistake in typing a particular number. Changes must be agreed upon in writing by the BLM and DNR and must be available for public inspection at the appropriate federal and state offices. Typographical corrections cannot cause a change in the agreed upon location of the administrative lease line or affect the rights under any federal or state leases in effect at the time of correction.

#### E. GENERAL PROVISIONS

Nothing in this MOA alters, amends, or affects in any way the statutory authority of the BLM or DNR. As required by the Anti-deficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the BLM in this MOA are subject to the availability of appropriated funds and budget priorities. Nothing in this MOA, in and of itself, obligates the BLM or DNR to expend appropriations or to enter into any contract, assistance agreement, or interagency agreement, or to incur financial obligations. Any transaction involving transfers of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

This MOA is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States or the State of Alaska, their agencies, their officers, or any other person. This MOA neither expands nor is in derogation of those powers and authorities vested in the Parties by applicable law. Nothing in this MOA is intended to conflict with current law or regulation or the directives of the DNR or the BLM.

If a term of this MOA is inconsistent with such authority, that term is invalid, but the remaining terms and conditions of this MOA will remain in full force and effect.

**P>ATU S**



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Chad B. Padgett

State Director, Alaska State Office  
Bureau of Land Management  
U.S. Department of the Interior



Corri A. Feige



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Commissioner  
Department of Natural Resources  
State of Alaska

APPENDIX 1: ANWR Coastal Plain Administrative Lease Line Map.



Coastal Plain Bureau of Land Management and State of Alaska Official Administrative Lease Line

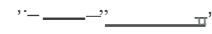
Bureau of Land Management Administrative Lease Area

State of Alaska Lease Tracts

Excluded from Public Law 5... Plain or outside the BLM's

Note 1 - The remainder of the coastal boundary of the ANWR Coastal Plain west of longitude 145° 51' W is currently the subject of litigation among the Parties, and is not addressed in the Agreement at this time. It is the Parties' intent that when they resolve their dispute as to that remaining segment of the ANWR Coastal Plain coastal boundary the parties will amend the Agreement and this map to include that currently disputed segment.

Natural Resources Service of the Department of the Interior, Bureau of Land Management, Alaska Region, Fairbanks, Alaska. This map is a product of the Alaska Department of Natural Resources, Division of Land Management, and the Bureau of Land Management, Alaska Region. It is based on the best available information and is not intended to be used for legal purposes. The map is a product of the Alaska Department of Natural Resources, Division of Land Management, and the Bureau of Land Management, Alaska Region. It is based on the best available information and is not intended to be used for legal purposes.



This map and the geospatial data that was used to prepare it are for the express purpose of depicting an agreed upon line for future oil and gas leasing by both the United States and the State of Alaska. It does not constitute an official survey, instead it establishes an administrative line that both parties will use to determine lease tracts. The geospatial data is to be used for mapping and administrative purposes only. This line does not represent the actual boundary of the Arctic National Wildlife Refuge, which is ambulatory and will therefore migrate as a result of changes in relevant physical features. This line is a reasonable representation, based on geospatial data and information currently available to all parties of this agreement of the current coastal boundary of the ANWR Coastal Plain for purposes of lease administration. The title to lands offered for lease, or leased, will continue to be governed by the location of the Arctic National Wildlife Refuge ambulatory coastal boundary.

The geospatial line data representing the "Administrative Lease Line" is agreed upon by both Parties for leasing purposes and the resulting map is a part of the Memorandum of Agreement.



APPENDIX 2: State oil and gas leases issued prior to Memorandum of Agreement.

<b>Alaska Division of Lands (AOL) Serial Number</b>	<b>State Lease Sale Tract (LST) Serial Number</b>	<b>Beaufort Sea Areawide Lease Sale</b>	<b>Effective Date</b>	<b>Expiration Date</b>
391629	BS0069	2010A	06/01/2011	05/31/2021
392115	BS0073	2011W	01/01/2013	12/31/2022
392117	BS0075	2011W	01/01/2013	12/31/2022
392119	BS0077	2011W	01/01/2013	12/31/2022
392120	BS0078	2011W	01/01/2013	12/31/2022
393573	BS0072	2017W	04/01/2018	03/31/2026

Legal descriptions for State oil and gas leases and lease sale tracts are available from the Department of Natural Resources, Division of Oil and Gas, Leasing Section at 550 W Jlh Avenue, Suite 1100, Anchorage, Alaska 99501 or online at <https://dog.dnr.alaska.gov/Services/RecordsRequest/>.

## **Exhibit D**

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31 32 33 34 35 36 31 32 33 34 35

6 5 4 3 2 1 6 5 4 3 2

7 8 9 10 11 12 7 8 9 10 11

18 17 16 15 14 13 18 17 16 15 14

19 20 21 22 23 24 19 20 21 22 23

30 29 28 27 26 25 30 29 28 27 26

U010N024E

U010N025E

**392120**

**343110**

**390310**

**392122**

**392121**

U009N024E

U009N025E

Tract 29

Tract 31

**343112**

Tract 30

Section ANWR Lease Sale Tract Issued State Lease

- Township
- Tract 29
- All Other Tracts
- ADL 343110
- ADL 343112
- ADL 390310
- ADL 392120
- ADL 392121
- ADL 392122



This map was produced by the Division of Oil and Gas Leasing Section.

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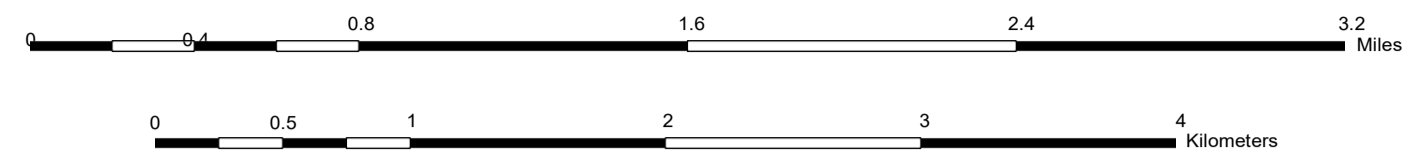
**Dowling Point**  
December 15, 2020

Data on this map are depicted at section- or township-level resolution. Base map data are from geospatial data maintained by the Department of Natural Resources and are available at <https://dog.dnr.alaska.gov/Information/MapsAndGis>. Base map data are in North American Datum, Alaska Albers projection. The use of multiple datasets from varying sources may result in discrepancies in coincident boundaries.

Alaska Department of Natural Resources

DIVISION OF OIL AND GAS  
ASTAI PLAIN TRACTS 28, 29, 30, AND 31







## MEMORANDUM OF AGREEMENT

Between the

**BUREAU OF LAND MANAGEMENT, ALASKA STATE OFFICE**

and the

**ALASKA DEPARTMENT OF NATURAL RESOURCES**

BLM MOA No.: AK2019-001

SUBJECT: Preservation of Contractual Rights and Obligations for Purposes of Mineral Lease Administration in the Vicinity of the Coastal Boundary of the Arctic National Wildlife Refuge Coastal Plain

### A. BACKGROUND

On June 29, 2000, the Supreme Court of the United States granted a joint motion for entry of a Decree in a case<sup>1</sup> resolving a dispute between the United States and Alaska over the ownership of coastal submerged lands in the Beaufort Sea and quieting title to coastal submerged lands within two federal reservations, the National Petroleum Reserve – Alaska (NPR) and the Arctic National Wildlife Refuge (ANWR). Paragraph F of the Decree recognizes that the coastal boundaries of the NPR and ANWR – as defined in the original presidential executive order (Executive Order 3797-A, Feb. 27, 1923) and Department of the Interior secretarial order (Public Land Order 2214, Dec. 6, 1960), respectively, creating these areas – are ambulatory and will therefore migrate as a result of changes in relevant physical features. Paragraph F of the Decree provides that the United States and the State of Alaska may resolve disputes arising from those changes through, among other options, negotiation and agreement. For purposes of this Memorandum of Agreement, the interests of the latter party are represented by the Alaska Department of Natural Resources (DNR), and the former party by the Bureau of Land Management - Alaska State Office (BLM), an entity of the U.S. Department of the Interior. Throughout this agreement, these are referred to collectively as the 'Parties'.

The BLM is preparing to implement an oil and gas leasing program in the Coastal Plain of ANWR. Congress identified the Coastal Plain in Section 1002 of the Alaska National Interest Lands Conservation Act (ANILCA) for its oil and gas potential. Legislation was enacted on December 22, 2017, Public Law (PL) 115-97, lifting a prohibition on oil and gas development imposed by Section 1003 of ANILCA and requiring BLM to implement an oil and gas leasing program. The State of Alaska has historically leased, and continues to lease, offshore tracts in the vicinity of the coastal boundary of the ANWR Coastal Plain.

<sup>1</sup>The case in question is docket number 84, Original (aka "Original 84"), decided by the Supreme Court on June 19, 1997, often informally referred to as the "Dinkum Sands" case.

## B. PURPOSE

The BLM and the DNR have initiated, or in the case of the BLM soon will be initiating, mineral leasing activities in the vicinity of the coastal boundary of the ANWR Coastal Plain. Each agency recognizes that the ambulatory nature of that boundary may lead to uncertainty and disputes respecting administration of leases, ownership of leased lands, and payment of royalties, rentals, and bonus bids. To resolve that uncertainty, eliminate a potential basis for disputes, and prevent avoidable litigation, the two entities are entering into this Memorandum of Agreement (MOA) to clarify their respective rights and obligations with respect to leased lands, notwithstanding the constant changes in the location of the coastal boundary of the ANWR Coastal Plain (as the term "Coastal Plain" is defined in PL 115-97). Under the terms of this MOA, the title of the United States (as represented here by BLM) and Alaska (as represented here by DNR) to lands offered for lease, or currently leased, in the vicinity of the coastal boundary of the ANWR Coastal Plain, would continue to be governed by the location of ANWR's ambulatory coastal boundary. Nevertheless, changes in the location of that boundary would have no effect on each agency's contractual rights and obligations under any affected lease that incorporates a portion of its boundary as defined by the map depicted in Appendix 1 of this agreement, for the life of the lease, or any extension or renewal of the lease term. The BLM and DNR have prepared this MOA to set forth the controlling principles of this arrangement.

## C. AUTHORITIES

The BLM enters this agreement pursuant to the following authorities.

- Supreme Court of the United States Decree 530 U.S. 1021, entered June 29, 2000, and the Court's predecessor decision 521 U.S. 1, dated June 19, 1997.
- Public Law 115-97, Section 20001, commonly referred to as the Tax Cuts and Jobs Act
- Federal Land Policy and Management Act of 1976, Section 307(b); 43 U.S.C Section 1737(b).

The DNR enters this agreement pursuant to the following authorities.

- Supreme Court of the United States Decree 530 U.S. 1021, entered June 29, 2000, and the Court's predecessor decision 521 U.S. 1, dated June 19, 1997.
- The Alaska Land Act, AS 38.05.005-38.05.990, and all supporting regulations.

## D. CONTROLLING PRINCIPLES AND AGENCY RESPONSIBILITIES

- i. The BLM and DNR recognize that the coastal boundary of the ANWR Coastal Plain is defined by reference to geographic features that migrate, accrete, and erode in response to natural phenomena such as ocean currents, waves, storm surges, and sea ice. As a result, the coastal boundary is naturally ambulatory and will change over time.
- ii. The BLM and DNR also recognize that the ambulatory nature of the ANWR Coastal Plain's coastal boundary can give rise to uncertainty and disputes in the administration of each agency's oil and gas leasing program. Each agency has already or anticipates offering mineral leases adjacent to the ANWR Coastal Plain coastal boundary. Because

the ANWR Coastal Plain coastal boundary is ambulatory and will continue to be so after those leases are offered, the geographic extent and validity of each agency's leases could be called into question.

- iii. To reduce that uncertainty, eliminate a potential basis for disputes, and prevent avoidable litigation, the BLM and DNR shall recognize the following principles for preservation of their contractual rights and obligations, and those of their lessees, pertaining to mineral leases in the vicinity of the ANWR Coastal Plain coastal boundary.
  1. The title of the United States and Alaska (as represented here by BLM and DNR) to any lands offered for lease, or leased, in the vicinity of the ANWR Coastal Plain coastal boundary shall continue to be governed by the actual location of that ambulatory boundary. Commencing with the signature of this MOA, the BLM and DNR shall use the administrative lease line to identify the limits of lease offerings, and the boundaries of individual leases adjacent to the ANWR Coastal Plain coastal boundary, under their respective mineral leasing programs. The map, attached as Appendix 1, depicts a fixed "Administrative Lease Line for the Coastal Boundary of the Coastal Plain of the ANWR." (Hereinafter administrative lease line). The geospatial data and subsequent map product representing the data, as shown in Appendix 1, was prepared for the express purpose of depicting an agreed upon line for future oil and gas leasing by the Parties. It does not constitute an official survey but establishes an administrative line that both parties will use to determine lease tracts. The administrative lease line in Appendix 1 extends over most, but not all of the length of the ANWR Coastal Plain coastal boundary, from the eastern limit of the ANWR Coastal Plain coastal boundary near the mouth of the Aichilik River, westward to a point near Brownlow Point along longitude 145° 51' W. The remainder of the coastal boundary of the ANWR Coastal Plain west of longitude 145° 51' W. is currently the subject of litigation among the Parties and is not addressed in this Agreement at this time. It is the Parties' intent that when they resolve their dispute as to that remaining segment of the ANWR Coastal Plain coastal boundary, the parties will amend Appendix 1 to include that currently disputed segment in this Agreement. Copies of Appendix 1 – and the geospatial data which generated it – will be kept available for public inspection at the Alaska State Office of the Bureau of Land Management and the Department of Natural Resources, Office of the Commissioner, in Anchorage, Alaska. Appendix 1 is deemed to set out a reasonable depiction – based on the data and information currently available to the Parties – of the current coastal boundary of the ANWR Coastal Plain for purposes of lease administration. It shall be understood that the administrative lease line does not necessarily depict the exact location of the ANWR Coastal Plain coastal boundary, which depends, at any given time, on the instantaneous location of ambulatory geographic features.
  2. If the BLM or DNR enters into any mineral leases in the vicinity of the ANWR Coastal Plain coastal boundary while this MOA is in effect, the boundaries of any such lease for the life of that lease, including any extensions or renewals of the lease term, shall be governed by this agreement and the approved administrative lease line. The BLM and DNR shall each recognize the right of the other to

continue to enforce and apply the contractual terms of any such lease without regard to any movement in the ANWR Coastal Plain coastal boundary. The rights and obligations of the lessor and the lessee under any such lease, for the life of that lease, including any extensions or renewals of the lease term and including but not limited to:

- i. the right to receive royalties, rentals, and bonus bids;
- ii. the right to extract minerals; and
- iii. the obligation to comply with the terms and conditions of the lease;

shall not be affected by any movement in the ANWR Coastal Plain coastal boundary. Upon the expiration, termination, or relinquishment of any such lease, any unfulfilled obligations of the lessor and lessee under the lease that depend on the location of the ANWR Coastal Plain coastal boundary shall continue to be determined by the location of the administrative lease line.

3. The foregoing principles shall apply to the State oil and gas leases listed on Appendix 2 which were issued prior to this MOA.

- iv. At any time after the end of the ten-year period commencing from the date of signature of this MOA, and from time to time thereafter, the BLM and DNR may agree to revise the administrative lease line set out in Appendix 1 for leases issued after the effective date of the revision. If the BLM and DNR elect to revise the administrative lease line, they shall be guided by:

1. Changes in relevant physical features;
2. Generally accepted surveying principles; and
3. Lease management considerations of either agency that may lead to a revised administrative lease line that represents a compromise.

The revised line must be defensible as a reasonable approximation of the actual ANWR Coastal Plain coastal boundary.

Upon agreement between the BLM and DNR, copies of the revised administrative lease line and the relevant geospatial data shall be kept available for public inspection at the Alaska State Office of the Bureau of Land Management and at the Department of Natural Resources, Office of the Commissioner, in Anchorage, Alaska. The new administrative lease line shall become effective on the date of the last signature to the MOA amendment.

- v. The BLM and DNR may elect to discontinue use of the administrative lease line or a revised administrative lease line, for future leasing activity, effective at any time after the end of the ten-year period commencing from the date of signature of this MOA. The party seeking to discontinue use of the administrative lease line, or any revised administrative lease line, shall provide written notice to the other party. Notice may be given during the ten-year period commencing from the date of signature of this MOA, but no discontinuance will occur until after the initial ten-year period. If either party elects to discontinue use of the administrative lease line, or any revised administrative lease line, the provisions of Section D(iii) shall not apply to any lease issued by either

party after the effective date of discontinuance, and the limits of any such lease issued by either party after the date of discontinuance shall be determined on the basis of the ambulatory coastal boundary of the ANWR Coastal Plain or a new agreement between the BLM and DNR.

- vi. This MOA applies solely for the purpose of facilitating federal and state mineral leasing by reducing uncertainty and avoiding disputes over lease obligations that could otherwise lead to litigation. This MOA supplements, but does not expressly or impliedly repeal, any other provision of the 2000 Supreme Court Decree, 530 U.S. 1021. This MOA does not affect title to any real property, does not affect the legislative jurisdiction of either the United States or Alaska; and does not affect the application of any federal or state laws except that neither the BLM nor DNR may invoke such laws to claim that a change in the ANWR Coastal Plain coastal boundary invalidates the contractual rights and obligations set out in affected leases. This MOA is an agreement among only the Parties; it provides no third-party rights. In any dispute over the actual location of the ANWR Coastal Plain coastal boundary, neither the United States nor Alaska shall be estopped from taking a position respecting the location of that boundary that differs from the administrative lease line.
- vii. The BLM and DNR may jointly make typographical corrections to the administrative lease line geospatial data and resulting map (Appendix 1) at any time the lease line established herein is in effect. Typographical corrections are limited to undisputed typing or drafting mistakes, including omission of a portion of the connecting line, inclusion of unnecessary or duplicative descriptions and a mistake in typing a particular number. Changes must be agreed upon in writing by the BLM and DNR and must be available for public inspection at the appropriate federal and state offices. Typographical corrections cannot cause a change in the agreed upon location of the administrative lease line or affect the rights under any federal or state leases in effect at the time of correction.

#### E. GENERAL PROVISIONS

Nothing in this MOA alters, amends, or affects in any way the statutory authority of the BLM or DNR. As required by the Anti-deficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the BLM in this MOA are subject to the availability of appropriated funds and budget priorities. Nothing in this MOA, in and of itself, obligates the BLM or DNR to expend appropriations or to enter into any contract, assistance agreement, or interagency agreement, or to incur financial obligations. Any transaction involving transfers of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

This MOA is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States or the State of Alaska, their agencies, their officers, or any other person. This MOA neither expands nor is in derogation of those powers and authorities vested in the Parties by applicable law. Nothing in this MOA is intended to conflict with current law or regulation or the directives of the DNR or the BLM.

If a term of this MOA is inconsistent with such authority, that term is invalid, but the remaining terms and conditions of this MOA will remain in full force and effect.

F. SIGNATURES



12-18-19

Chad B. Padgett  
State Director, Alaska State Office  
Bureau of Land Management  
U.S. Department of the Interior



for

12/4/2019

Corri A. Feige  
Commissioner  
Department of Natural Resources  
State of Alaska



APPENDIX 1: ANWR Coastal Plain Administrative Lease Line Map



- Coastal Plain Bureau of Land Management and State of Alaska Official Administrative Lease Line
- Bureau of Land Management Administrative Lease Area
- State of Alaska Lease Tracts
- Excluded from Public Law 115-97 Coastal Plain or outside the BLM's

Note 1 - The remainder of the coastal boundary of the ANWR Coastal Plain west of longitude 143° 57' W is currently the subject of litigation among the Parties, and is not addressed in the Agreement at this time. It is the Parties' intent that when they resolve their dispute as to that remaining segment of the ANWR Coastal Plain coastal boundary, the parties will amend the Agreement and this map to include that currently disputed segment.

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

This map and the geospatial data that was used to prepare it are for the express purpose of depicting an agreed upon line for future oil and gas leasing by both the United States and the State of Alaska. It does not constitute an official survey, instead it establishes an administrative line that both parties will use to determine lease tracts. The geospatial data is to be used for mapping and administrative purposes only. This line does not represent the actual boundary of the Arctic National Wildlife Refuge, which is ambulatory and will therefore migrate as a result of changes in relevant physical features. This line is a reasonable representation, based on geospatial data and information currently available to all parties of this agreement of the current coastal boundary of the ANWR Coastal Plain for purposes of lease administration. The title to lands offered for lease, or leased, will continue to be governed by the location of the Arctic National Wildlife Refuge ambulatory coastal boundary.

The geospatial line data representing the 'Administrative Lease Line' is agreed upon by both Parties for leasing purposes and the resulting map is a part of the Memorandum of Agreement.



APPENDIX 2: State oil and gas leases issued prior to Memorandum of Agreement.

<b>Alaska Division of Lands (ADL) Serial Number</b>	<b>State Lease Sale Tract (LST) Serial Number</b>	<b>Beaufort Sea Areawide Lease Sale</b>	<b>Effective Date</b>	<b>Expiration Date</b>
391629	BS0069	2010A	06/01/2011	05/31/2021
392115	BS0073	2011W	01/01/2013	12/31/2022
392117	BS0075	2011W	01/01/2013	12/31/2022
392119	BS0077	2011W	01/01/2013	12/31/2022
392120	BS0078	2011W	01/01/2013	12/31/2022
393573	BS0072	2017W	04/01/2018	03/31/2026

Legal descriptions for State oil and gas leases and lease sale tracts are available from the Department of Natural Resources, Division of Oil and Gas, Leasing Section at 550 W 7<sup>th</sup> Avenue, Suite 1100, Anchorage, Alaska 99501 or online at <https://dog.dnr.alaska.gov/Services/RecordsRequest/>.

**Technical Comments Matrix**  
**Coastal Plain Oil and Gas Leasing Program – Draft SEIS**  
**State of Alaska - Submitted November 7, 2023**

ID	Document Reference	Internal Reviewer	Internal Agency	Resource/Topic	Comment
	Executive Summary, ES-1, and throughout	JDA/LH	DMLW	Program Area Definition / Land ownership	Program Area as declared on page ES-1 and as defined by Map 1-1 is incomplete, incorrect, and misleading. The State asserts that the land between the Staines and Canning Rivers (formerly known as Tract 29 in the previous EIS), was validly selected by the State of Alaska under the Alaska Statehood Act through numerous applications and has active litigation in the U.S. District Court for the District of Alaska, <i>State of Alaska v. U.S. Dep't of the Interior</i> , No. 3:22-cv-00078-SLG, to confirm this position. Until resolution of this case, the definition of Program Area must indicate that these lands are "Under Dispute" or "state selected" to avoid misleading decisions within the SEIS and misleading the Public-at-Large. At least one Alternative should have considered the outcome that the lands between the Staines and Canning Rivers are state-selected and will become state-owned. Since all Alternatives within the SEIS use this misleading definition of Program Area, the entire document therefore contains a legal defect.
	Executive Summary, ES-7, Paragraph 1	MW	DFG	Mistake	The paragraph states "The community of Nuiqsut could experience impacts on caribou,..." Nuiqsut should be replaced with Kaktovik.
	Chapter 2, Table 2.3, Page 2-15	MW	DFG	Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief	<p>The ADF&amp;G continues to caution against developing lease stipulations in the Coastal Plain Program Area concerning Porcupine Caribou Herd future calving and post-calving distributions based on modeled predictions presented in Severson et al. (2021). The models as presented provide neither tests of key assumptions used in making those projections nor an assessment of the uncertainty in those projections. Without a full accounting of the uncertainty in the projections, which is likely to be substantial, it is not possible to assess whether the projected caribou distributions are any more likely than the current caribou distributions.</p> <p>Lacking a clear presentation, acknowledgment, or consideration of the sources or the amount of uncertainty in the paper, the implication from the publication is that the presented projections are likely to happen.</p> <p>The Severson et al. (2021) publication is cited 31 times in the Coastal Plain DSEIS, 17 times singularly in relation to the modeled future calving and modeled future post-calving Porcupine Caribou Herd distributions in the Coastal Plain Program Area, and 3 times singularly in Lease Stipulation 6 for Alternative D.</p> <p>The Coastal Plain DSEIS does not acknowledge the lack of certainty in these modeled predictions and therefore also implies that the Severson et al. (2021) predictions are likely to happen.</p> <p>This lack of acknowledgement of the uncertainty in the predictions deprives decision makers of essential information.</p> <p>The SDEIS should acknowledge the lack of certainty in the Porcupine Caribou Herd future calving and post-calving distributions based on modeled predictions presented in Severson et al. (2021).</p>
	Chapter 3, Sec. 3.2.4	JDA/LH	DMLW	Land ownership	State reserves its position that the land between the Staines and Canning Rivers (former Tract 29) is not within the boundaries of ANWR and thus not part of the Coastal Plain.
	Chapter 3., Sec. 3.2.5	JDA/LH	DMLW	Land ownership	State reserves its position that the land between the Staines and Canning Rivers is not within the boundaries of ANWR and thus not part of the Coastal Plain.
	Chapter 3, Sec. 3.2.6	JDA/LH	DMLW	Land ownership	State reserves its position that the land between the Staines and Canning Rivers is not within the boundaries of ANWR and thus not part of the Coastal Plain.
	Chapter 3, Section 3.3.4, Page 3-197, Paragraph 1	MW	DFG	Prediction of future distributions of PCH	<p>Please see comment regarding Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief.</p> <p>Also, "to predict the extent of future during calving and post-calving distributions as a result of a warming climate," in the first paragraph seems to be missing a word after "future."</p>
	Chapter 3, Section 3.3.4, Page 3-197, Paragraph 4 last sentence	MW	DFG	Prediction of future distributions of PCH	<p>Please see comment regarding Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief.</p> <p>Also, perhaps the last sentence on this page is where the reference to Map 3-33 is meant to be.</p>
	Chapter 3, Section 3.3.4,	MW	DFG	Prediction of future distributions of PCH	Please see comment regarding Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief.

**Technical Comments Matrix**  
**Coastal Plain Oil and Gas Leasing Program – Draft SEIS**  
**State of Alaska - Submitted November 7, 2023**

Page 3-214, Paragraphs 3 and 4					
Chapter 3, Section 3.3.4, Page 3-215, Paragraph 3	MW	DFG	Prediction of future distributions of PCH		Please see comment regarding Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief.
Chapter 3, Section 3.3.4, Page 3-216, Paragraph 6	MW	DFG	Prediction of future distributions of PCH		Please see comment regarding Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief.
Chapter 3, Section 3.3.4, Page 3-218, Paragraphs 1 and 2	MW	DFG	Prediction of future distributions of PCH		Please see comment regarding Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief.
Chapter 3, Section 3.3.4, Page 3-218, Paragraph 2	MW	DFG	Mistake		The text says “and only 100 acres of current and predicted future Porcupine Caribou Herd calving areas (as predicted by Severson et al. 2021) would be open to leasing under standard terms and conditions ( <b>Table J-22</b> in <b>Appendix J</b> ).” The reference should be to Table J-22.
Chapter 3, Section 3.3.4, Page 3-222, Paragraph 1	MW	DFG	Prediction of future distributions of PCH		Please see comment regarding Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief.
Chapter 3, Section 3.3.4, Page 3-323, Paragraph 1	MW	DFG	Prediction of future distributions of PCH		Please see comment regarding Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief.
Chapter 3, Sec. 3.4.1	JDA/LH	DMLW	Land ownership		State reserves its position that the land between the Staines and Canning Rivers is not within the boundaries of ANWR and thus not part of the Coastal Plain.
Chapter 3, Section 3.4.1 Landownership and Use, page 3-270	MD	DNR-ANILCA	Allowances for ANILCA Title XI Transportation and Utility Systems		ANILCA Title XI requires special consideration/review of Transportation and Utility Systems in Conservation System Units like the Arctic National Wildlife Refuge. We request the following addition (underlined text) to this sentence: “In areas subject to NSO, new land uses would be precluded, except where ANILCA allowances would allow construction such as roads allowed under 1110(b) <u>and the Title XI Transportation and Utility System provisions.</u> ”
Chapter 3, Section 3.4.4, Page 3-361, Paragraph 1	MW	DFG	Prediction of future distributions of PCH		Please see comment regarding Lease Stipulation 6 – Alternative D - Caribou Calving, Post-calving, and Insect Relief.
Chapter 3, Section 3.4.4, Pages 3-338 and 3-339	MW	DFG	Typo		The text says, “in coastal communities, an 3-338mialik...” This appears to be a typo repeated on at least these two pages. 3-339mialik is used on page 3-339.
Chapter 3, Section 3.4.7, Special Designations,	JW	ADF&G ANILCA	Wild and Scenic Rivers and Wilderness Qualities and Values		The area identified by Congress in P.L. 115-97 has neither designated wild and scenic rivers nor wilderness. These sections, as well as any related stipulations, should be deleted from the SEIS. Section 3.4.7 states: “... where practicable and where it does not conflict with the purposes of PL 115-97, stipulations would be applied to protect WSR characteristics including water quality and free flowing conditions on rivers determined to be suitable and recommended to Congress to be included in the system.” The purpose of PL

