

2-10-87

State's

Comments on

1002

REPORT (ANWR)

SENATE SPECIAL COMMITTEE ON
OIL AND GAS
February 10, 1987
3:30 p.m.

MEMBERS PRESENT

Senator Bettye Fahrenkamp, Chairman
Senator Jack Coghill

MEMBERS ABSENT

Senator Paul Fischer

CALENDAR

State's comments on U.S. Department of Interior Draft 1002
Report on Arctic National Wildlife Refuge

WITNESS REGISTER

Rod Swope
Special Assistant for Resources
Office of the Governor
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Juneau, Alaska 99811

Kurt Fredriksson,
Project Analyst, Governmental Coordination
Office of Management & Budget
P.O. Box AW
Juneau, Alaska 99811

Norman Cohen Acting Deputy
Commissioner
Department of Fish & Game
P.O. Box 3-2000
Juneau, Alaska 99802

Lou Pamplin
Department of Fish & Game
333 Raspberry Road
Anchorage, Alaska 99502

Dennis Kelso, Commissioner
Department of Environmental Conservation
P.O. Box O
Juneau, Alaska 99811

Bob Butts
Division of Oil & Gas
Department of Natural Resources

P.O. Box M
Juneau, Alaska 99811

ACTION NARRATIVE

TAPE ONE SIDE ONE
February 10, 1987

Number 001

The meeting was called to order by Senator Fahrenkamp at 3:30 p.m. She stated the committee would be hearing the state's position on the 1002 Report.

Number 014

The first person to appear before the committee was Rod Swope, special staff assistant to the Governor for resources. Mr. Swope discussed how they developed their position on the 1002 Report. When first received, they immediately requested each of their resource agencies to look at the information relative to their particular expertise and establish a department position. That began the process whereby departments began to formulate a position on the report and worked collectively to resolve the different issues that were involved. The issues that they weren't able to reach some consensus agreement on, or for which they required some higher policy direction, were directed to the director level. Remaining issues were eventually given to the Commissioners of the three resource agencies to try to resolve.

He added that throughout their own process, they also took a look at any public comments that were provided to the state by any interested person, public sector or state government.

Number 077

Senator Fahrenkamp asked if after the position is finally arrived at, is it again reviewed by various commissioners or does it go directly from the Office of Management & Budget, and the Governor's office without further review.

Number 085

Kurt Fredriksson, project analyst in the Office of Management and Budget, responded that there had been two commissioner meetings. Based on their first meeting another draft was circulated to the commissioners which led to a final meeting between the commissioners and the Governor. Following that meeting, a final paper was put together and again directed back to the commissioners for approval.

Number 100

Rod Swope continued by saying that the state has recommended to the Secretary of Interior that Congress immediately open up the 1002 area to oil and gas leasing, with exception of the area described by the U.S. Fish & Wildlife Service as the "core" caribou calving area. The state recommended that leasing in the "core" calving area be deferred (that is, no leasing occur for a 10-year period). During that period the Department of Interior would work to establish some sort of caribou impact assessment study group that they feel would be composed of federal, state and private sector researchers to further study the potential impacts of oil and gas activities in the calving area on the Porcupine Caribou herd. It would also include impacts from oil and gas activities on other caribou within the United States as well as the Canadian Arctic.

Number 130

Senator Fahrenkamp referred Mr. Swope to his statement regarding the Department of Interior establishing a caribou impact assessment study group, and asked if that was agreed upon between the state and the Department of Interior before the state arrived at its decision. Mr. Swope responded it would only be their recommendation to them.

Number 135

Mr. Swope recommended the study be done over a 7-year period following the commencement of the first exploration well and it would probably result in a report that would document the effects of oil and gas activities on caribou, including any information they might gather on potential impacts to the Porcupine herd. Based on the information provided in the report, they would recommend that both the Governor and the Secretary collectively provide a recommendation to Congress as to whether or not leasing should go forward in that core calving area. If Congress did not act on the joint recommendation by the Governor and Secretary of Interior within a 10-year period, then that recommendation would go into effect.

Number 154

Senator Coghill inquired as to when the staff level started to generate their position on ANWR.

Number 168

Mr. Swope responded that specifically with the 1002 Report staff started working on it when they received it approximately at the end of November or the first week of December 1986.

Number 195

Senator Coghill said he was concerned with their recommendation for a seven-year study on the calving area because there had been so many studies done earlier on that herd.

Number 230

Lou Pamplin of the Department of Fish & Game said that most of the detailed study analysis that has been done from the mid-seventies to the present time is work that has been done on the central Arctic herd. There has been some intermittent work done by the state and U.S. Fish and Wildlife Service on the Porcupine Caribou herd, but not with any consistency.

He said in regard to Senator Coghill's question concerning when the state had started formulating their response, that a couple of years ago Fish & Game had tried working with Fish & Wildlife Service to initiate more detailed studies on the Porcupine Caribou herd. The state did not have the funding, but Fish & Wildlife did some census work. They attempted getting draft copies of their report and preliminary input from Fish & Wildlife and the Department of Interior and they were denied. He added that the same thing had occurred on ANWR land exchanges.

Number 270

Senator Fahrenkamp asked if the state was working in any way with Canada during those periods of time. Mr. Pamplin responded that the way the state worked with Canada primarily was to get data from them on the winter use of habitat in the Canadian portion of the range.

Number 294

Senator Coghill inquired if the department had the consultant information from the consortiums of the pipeline, to which Mr. Pamplin replied that staff had seen the data but he did not know if they had exact copies. He said the final data in the 1002 Report on caribou is a composite of consultant data, state data, and Fish & Wildlife Service data.

A discussion followed on the migration and overlap of the Porcupine herd and the 40-Mile herd.

Number 406

Dennis Kelso, Commissioner of Environmental Conservation, said his department's approach to 1002 was to see how adequately it had dealt with basic issues of air, land and water quality as well as how well the document positioned

the state in order to promote its policy objectives in Washington, D.C. He said their position is that it can be done right as far as environmental protection is concerned, and the state should take the steps to assure that it happens.

Number 495

Mr. Kelso said that his department thinks the experience in Prudhoe and in other North Slope development provides a valuable stepping stone and a point to learn from. He said their criticism of the 1002 Report is that the Interior Department has not done an adequate job of laying the ground work and it leaves many questions unanswered. He continued by saying that Interior needs to go back and look at the major areas it has not addressed in the 1002 Report and the state can take its own steps to make sure that those gaps don't swing around and end up costing the state an important policy decision when Congress takes up the matter. He said the Governor's supplemental budget request includes funding to provide appropriate representation in Washington, D.C.

representation.

Mr. Kelso concluded by saying that there has never been the opportunity to pull all the existing information together. Industry has not been able to do so and had no reason to do so. The state has never been staffed to do that kind of bringing together of existing data and identifying whether there are gaps that need to be addressed. He suggested the first thing the state needs to do is pull that data together in consultation with industry.

Number 570

Kurt Fredriksson, governmental coordination, said the 1002 Report speaks to the requirement for a plan of operation to be submitted to the Federal government. He did not know if they will require an environmental impact statement. He said with respect to state authorizations, there would not be a requirement for an EIS.

Number 578

Bob Butts, Department of Natural Resources, said the state doesn't have an environmental impact statement requirement, but the Federal government does if there are federal permits involved, even on state land. He said it would be necessary to do an EIS for the bigger projects. One was done on Endicott and it looked like there would have to be one done for the Lisburne project. He was reasonably sure that there would have to be one done for ANWR. In answer

to a question from Rod Swope, he said that development on private land would probably also require an EIS. Lou Pamplin added that there would probably be a NEPA statement required also.

TAPE ONE SIDE TWO
February 10, 1987

Number 675

Bob Butts of the Department of Natural Resources, said first that it was important to the department that the state's position be consistent with the policies in existence on state land. A second important part was that provisions be made by the Federal government and by Congress to allow the siting of onshore support facilities for offshore development. He said another general concern was that the total package was not so restrictive that oil and gas development and production in ANWR was uneconomical. He concluded by saying that it was clear to the department that opening ANWR has benefits in terms of making existing marginal fields and potential marginal fields offshore ANWR economical.

Number 738

Norman Cohen, Acting Deputy Commissioner, Department of Fish and Game, said that the department attempted to inventory the resources of concern in the coastal plain and come up with mitigation measures for specific resources and address them individually. After that they then went through the process with DEC and DNR to come up with a package that was consistent with the Governor's position of going forward in an environmentally safe manner.

Number 790

Senator Fahrenkamp commented that in the past there has been implied difficulties between the Department of Interior and the State and asked if that was a fair statement and, if so, what process are we going through now to try and improve that.

Number 811

Rod Swope responded that, in his perspective, in the time that he has been involved, he thought they have had good cooperation from the Department of Interior. He said although they had asked for them to try to hold hearings in several areas, and which they were not able to accommodate the State, they did provide some additional time in which to review and respond to the 1002 Report. He felt that generally they have tried to keep the lines of com-

munication open with the Administration as well as their offices in Washington, D.C.

Number 825

Senator Fahrenkamp noted that the Resources Committee would be holding hearings in other areas of the state. She also asked what was being done to make sure that the state is working with the Canadian government on ANWR.

Number 848

Norman Cohen responded that in December 1986 there was a meeting between representative of the U.S. Government and the Canadian Government to discuss an agreement for the conservation of the Porcupine Caribou herd. The agreement was initialed by the representatives of each country and has been under review by the Administration, user groups, industry, the Department of Interior and the State Department. He said that over the next few months people will be able to make recommendations to the State Department as to whether this initial document should be signed by the United States.

Number 868

Senator Fahrenkamp asked if there were conflicts in that area, to which Mr. Cohen responded that at this time there were not conflicts with Canada over issues dealing with the Porcupine herd.

Bob Butts agreed that there hadn't been any disagreements in that area. However, the Canadian government did oppose the recommendation in the 1002 Report because of perceived concerns over caribou. They felt the Department of Interior did not adequately consult the Canadian government prior to making the decision.

Number 895

Senator Fahrenkamp said although there doesn't appear to be a great deal of conflict right now, there has been some in the past. Mr. Butts said that in the context of the 1002 Report, the Canadian government does not believe adequate protection for the caribou will be made under the Interior's chosen alternative. He said the state has provided some additional protection and because of the Canadian concerns.

Number 917

Senator Fahrenkamp closed by saying she was disappointed that the state is getting in the "loop" a little late and

hopes that everyone can work together. She adjourned the meeting at 4:40 p.m.

OIL AND GAS COMMITTEE

FEBRUARY 10, 1987

STATE'S COMMENTS ON THE DEPARTMENT OF INTERIOR'S DRAFT 1002 REPORT
TO TESTIFY:

Rod Swope, Special Assistant to the Governor

- Commissioner Judy Brady, DNR

Commissioner Denny Kelso, DEC

Norm Cohen, Department of Fish and Game

STATE'S RECOMMENDATIONS:

Fully supports opening of the coastal plain subject to appropriate and effective mitigation.

Governor should work closely with Interior. Not enough of that has been done.

Defer leasing in the core calving area for at least 10 years.

Establish ANWR Caribou Impact Assessment Study Group.

Governor and Secretary make recommendations after 7 years.

Implement recommendations if Congress fails to act within 10 years.

Based on 1) high level of protection of fish and game mandated by Congress

2) not enough information about Porcupine Caribou

3) concern for Canadian interests

Recognized FISH and WILDLIFE, SUBSISTENCE, and OIL AND GAS as important national resources there.

Encourage use of best and latest technology.

DOI should establish formal consultation process with the state for planning and resolving disputes.

Identified 8 topics that need further discussion.

HAVE EACH COMMISSIONER REVIEW THEIR COMMENTS.

DNR and FISH AND GAME

REVIEW COMMENTS ON STIPULATIONS (ENCLOSURE A)

SUBSISTENCE Implementation of ANILCA requirements

DEC

ENCLOSURE B STATE AUTHORITIES PERTINENT TO ANWR

.QUESTIONS:

* / In the past there seems to have been a lack of coordination between the state and Department of Interior. HOW DO YOU EXPECT TO IMPROVE THAT PROCESS IN THE FUTURE?

* The comments mentioned a concern for our Canadian neighbors. DO YOU HAVE ANY SPECIFIC RECOMMENDATIONS FOR RESOLVING THESE CONFLICTS?

STATE OF ALASKA

OFFICE OF THE GOVERNOR
JUNEAU

STEVE COWPER
GOVERNOR

NEWS RELEASE



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Bus. Phone (907) 465-3500

FOR IMMEDIATE RELEASE
February 6, 1987
No. 87-11

Report from DNC
" " *Fish + Game*

STATE URGES EXPLORATION IN ANWR MORATORIUM IN CARIBOU "CORE" CALVING AREA

JUNEAU--Oil and gas exploration should be permitted in the Arctic National Wildlife Refuge, but delayed in the "core" caribou calving area for at least 10 years pending a study of the impact of exploration on the Porcupine caribou herd, according to the state of Alaska's response to a federal report on ANWR.

In a nine-page letter to the U.S. Interior Department, the state says oil and gas potential in the refuge is extremely promising and therefore, exploration should proceed. At the same time, the state says not enough is known about the potential impact exploration may have in the area of most concentrated caribou calving.

As a result, the state proposes creation of a group composed of federal, state, university and private researchers to study the issues and offer recommendations to the Interior secretary and Alaska's governor about future exploration in the core calving area.

The proposal is contained in the state's formal response to the Interior's Draft Arctic National Wildlife Refuge Coastal Plain Resource Assessment 1002 report. The response, delivered to Interior officials in Washington, D.C., today, details the state's concerns with the draft report.

-MORE-

The comments follow testimony offered by the state in Anchorage on Jan. 5 in which Gov. Steve Cowper said he supports exploration in ANWR with the proper environmental protections.

"Alaska's coastal plain contains the best prospects in this country for a significant oil and gas find," Cowper said, upon release of the state's comments. "I think we can go after it responsibly and with a minimum of disruptions if we follow the guidelines outlined in our response to the federal report."

The state says two key facts are at issue in the debate over development of the coastal plain: (1) ANWR is home to fish and wildlife resources which are of significant national and international importance as well as necessary to the subsistence way of life of those who live in and near the refuge, and (2) the area contains the most outstanding oil and gas frontier remaining in the U.S.

State officials point out that Alaska has more than two decades of experience with oil exploration and that, using the best and latest technology, safe development of the coastal plain is possible. One way to ensure minimum disruption of the caribou is a thorough report on the potential impacts of the core calving area.

After seven years of careful study, the Interior secretary and governor would submit a report to Congress for a decision on whether to open or defer leasing in the core area, under the state's proposal. That study would seek to document the biological importance of the core calving area, the effects of oil and gas activities and the effectiveness of mitigation measures.

-MORE-

The state's comments are the result of months of discussions among state resources agencies, the oil industry and environmental groups. A final 1002 report is expected to be delivered in April to Congress, which then begins debate on opening ANWR to exploration.

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(A copy of the state of Alaska's response to Interior's 1002 report is attached.)

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 6, 1987

The Honorable Donald P. Hodel
Secretary
Department of the Interior
Interior Building, Room 6151
C Street between Eighteenth
and Nineteenth Streets, NW
Washington, DC 20240

Dear Mr. Secretary:

I wish to take this opportunity to thank you for providing the state with the additional two weeks to review and comment on the draft Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment. The additional time enabled us to conduct a more thorough and useful review of this important document. Enclosed is a copy of the state's comments on the draft assessment.

Like you, I feel it is extremely important that Congress be persuaded to open the coastal plain to oil and gas leasing consistent with the purposes of the refuge to preserve its fish and wildlife values. The state is committed to this objective and with your cooperation will work to see that it is accomplished. I look forward to reviewing the final report to Congress and hope to meet with you in the near future to discuss how we might best advance a cooperative effort to move forward with oil and gas leasing in the Arctic National Wildlife Refuge.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steve Cowper", written over the word "Sincerely".

Steve Cowper
Governor

Enclosure

The Hon. Donald P. Hodel

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February 6, 1987

cc/enc: Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
William Horn, Department of
the Interior, Washington, DC
John Katz, Office of the
Governor, Washington, DC
Alaska Senate Resources Committee
Alaska House Resources Committee

STATE OF ALASKA

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February 6, 1987

Mr. Robert Gilmore
Regional Director
U.S. Department of the Interior
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Gilmore:

The state has reviewed the Draft Arctic National Wildlife Refuge (ANWR), Alaska, Coastal Plain Resource Assessment 1002(h) Report. We appreciate the additional time granted the state to review this important report. Based on our review of the substantial amount of information contained in the draft 1002(h) report, we strongly support the conclusion that oil and gas exploration be allowed in ANWR consistent with the chief purpose of the refuge to preserve its unique wildlife values.

The State of Alaska recommends that Congress immediately open the 1002 area to oil and gas leasing, with the exception of the area described by U.S. Fish and Wildlife Service (USFWS) as the "core" caribou calving area. The state strongly recommends that leasing in the "core" calving area be deferred for a ten-year period. During this ten-year period, the Department of the Interior (DOI) should establish an ANWR Caribou Impact Assessment Study Group composed of federal, state, university, and private researchers to further study the potential impacts of oil and gas activities in the calving area on the Porcupine Caribou Herd. The study should be conducted over a seven-year period following commencement of the first exploratory well and result in a report to the Secretary of the Interior and Governor of Alaska. The report would seek to document the biological importance of the core calving area, the effects of oil and gas activities in the 1002 area on the Porcupine Caribou Herd, and the effectiveness of mitigation measures employed in the 1002 area to minimize adverse impacts to caribou. Based on the report findings, the Governor and Secretary would recommend to Congress to extend the deferral or open the core calving area to oil and gas leasing. If

Congress failed to act on the recommendations within the ten-year period, the recommendation of the Secretary and Governor would be implemented.

It is imperative that the recommendations from the Governor of Alaska be included with those of the Secretary of the Interior given the significant interests of the state involved in both the leasing and protection of resources in the 1002 area. Not only is the state a sovereign steward of natural resources with regulatory responsibilities in the area, it is the principle owner of lands which any ANWR production transportation system must cross.

This recommendation is based on several salient facts. First, Congress has mandated that fish and wildlife populations in ANWR receive a very high level of protection. Because of this mandate, USFWS is required to take a conservative approach when making decisions regarding the impact of development activity on the refuge's fish and wildlife populations. Second, while a sizable amount of information has been collected on the impact of oil and gas activity on the Central Arctic Caribou Herd, questions remain regarding the potential impact of the oil and gas activity on the Porcupine Caribou Herd population because of its larger size, distribution and movement patterns, and population dynamics. Contrary to the statements made on page 112 of the draft 1002(h) report, at this point in time there is inadequate information to predict what population impacts would occur if oil and gas development were to take place in the core calving area. Third, protection of the herd and its habitat is of great concern to our Canadian neighbors, and the deferral and studies will respect those concerns.

Special Values of ANWR

We predicated our review on two fundamental facts inherent to ANWR. First, the fish and wildlife resources of ANWR are of significant state, national, and international importance. The Porcupine Caribou Herd, which numbers some 180,000 animals, annually migrates between Canada's Northwest Territories and Alaska's arctic coastal plain where it spends a portion of each summer. These animals are of great importance to both the people of Alaska and Canada. The Porcupine Caribou Herd and other fish and wildlife of the ANWR coastal plain are the foundation of the subsistence way of life to the residents of Kaktovik, Arctic Village, Venetie, and Fort Yukon in Alaska and Old Crow in the Yukon Territory of Canada. Furthermore, within the refuge, "The 1002 area is the most biologically productive part of the Arctic Refuge for wildlife and is the center of wildlife activity on the refuge." (Draft 1002(h) report, page 46.) The Alaska Department of Fish and Game has conducted an extensive review of ANWR fish and wildlife information which is available on request to USFWS

and other interested parties. The department's data on distribution and abundance of fish and wildlife and areas of special concern confirm the great importance of ANWR's renewable resource base.

The second intrinsic feature of ANWR is that it has high oil and gas potential. The state concurs with the draft 1002(h) report findings on page 1 that the 1002 area, "... is clearly the most outstanding oil and gas frontier remaining in the United States, and could contribute substantially to domestic energy supplies." As you know, the Alaska Department of Natural Resources has recently made public a preliminary appraisal it conducted of petroleum resource potential in ANWR's coastal plain. Alaska's report confirms DOI's conclusion that ANWR's coastal plain has the potential for an unusually large accumulation of oil.

Past Lessons Learned from Oil and Gas Activities in Alaska

As indicated in the draft 1002(h) report, development of ANWR's coastal plain will alter the existing environment and to some degree affect the Porcupine Caribou Herd. It is critical that appropriate and effective measures be taken to minimize the potential adverse effects of oil and gas activities on ANWR's coastal plain. Alaska has nearly two decades of experience in dealing with oil exploration, and lessons of the past will serve as a guideline for development in the future. In the event Congress permits exploration, the state would encourage that the best and latest technology be used.

The state assumes the draft 1002(h) report was not intended to be all inclusive, and that more detailed performance standards would be developed in concert with the state prior to any lease sales or any transfer of subsurface rights. Clearly, additional time will be needed in order to develop an adequate set of terms and conditions designed to ensure protection of air and water quality and fish and wildlife resources. With this understanding, our general comments on the proposed mitigation measures summarized in the draft 1002(h) report are included in Enclosure A.

Federal/State Consultation and Resolution of Issues

The state is encouraged to read on page 97 of the 1002(h) report that "The FWS would emphasize early and continuous consultation and coordination with leaseholders, permittees, and state and federal agencies at the start of planning." Consistent with this federal intent, the state feels it is essential that DOI establish a formal consultation process with the state and other parties in order to clearly establish at what points in the process and what level of detail different issues and authorities will be addressed. This process would also allow the opportunity for the parties to clarify their respective authorities,

permitting, and field procedures to avoid duplication or conflicting efforts. These consultations should identify or acknowledge existing regulatory requirements and authorizations at federal, state, and local levels. At a minimum, it should address different agencies' review times and public notice requirements. Issues that should be addressed are the timing of the various phases of review for specific projects; the level of detail to be addressed at each; and the coordination of permitting, review of plans of operations, field surveillance, and field approvals. Experiences associated with the development of the Trans-Alaska Pipeline System (TAPS) and the proposed Alaska Natural Gas Transportation System (ANGTS) from Prudhoe Bay to the Canadian border could provide useful models for cooperative management programs.

A coordinated interagency process for planning, design review, permitting, field surveillance, compliance and enforcement, and reclamation would serve the state, DOI, and industry well. The state's existing coastal management consistency process as well as the jurisdiction of state agencies such as the Departments of Fish and Game, Environmental Conservation, Natural Resources and the Alaska Oil and Gas Conservation Commission need to be acknowledged and effectively implemented in the review and permitting of each stage of the overall project. Lack of sufficient and effective coordination could lead to each agency dealing independently with applicants and could result in permitting inefficiencies with duplicative and inconsistent compliance and enforcement actions.

Topics Needing Further Discussion in the Final 1002(h) Report

Overall, the State finds that USFWS did an excellent job in compiling and summarizing a large amount of biological and geological information in the draft 1002(h) report. Considerably more work needs to be directed to the following eight issues of major importance to the state.

1. Standards for Air and Water Quality Protection

The draft 1002(h) document focuses primarily on a discussion of habitat and wildlife issues and petroleum potential. The document is considerably weaker with respect to air, land, and water quality issues. DOI must acknowledge and accurately reflect in the final 1002(h) report state authority in this area and the body of regulations and requirements associated with sound environmental practices. A list of pertinent state authorities is included in Enclosure B for your reference.

a) Air Quality Management

Particular attention should be paid to emissions associated with start-up and upset flaring, emissions of nitrogen oxides, and the best available technology review process associated with "prevention of significant deterioration" review.

b) Drilling Wastes and Solid Waste Management

Major waste streams include garbage, drilling wastes, metal wastes, and oily wastes. Our experiences on the north slope verify that it is very important that proper management of all these wastes be addressed from the beginning.

Drilling wastes are of particular concern. Improper management of drilling wastes can result in the contamination of adjacent habitats with potential negative effects to the vegetation and fish and wildlife species. Management of drilling wastes should involve development of best practices to minimize waste generation and to ensure total containment or injection of all produced wastes. Best practices should be based in part on a thorough evaluation of the effectiveness of past practices of drilling waste disposal in Alaska. Recent efforts by the Alaska Department of Environmental Conservation to develop a workable set of regulations governing these activities are nearing completion and should be viewed as the framework for developing specific requirements. In addition, the U.S. Environmental Protection Agency is currently studying the issue of proper drilling waste disposal and should soon have a report available.

Provisions for pickup of windblown litter and other debris must be addressed by stipulation. Early planning for sound disposal of each waste stream will lead to the best environmental results.

c) Liquid Waste Management

Possible liquid waste discharges include domestic wastewater, reserve pit fluids, produced water discharges, hydrostatic test discharges, vessel rinsates and radiographic wastes. Each needs to be identified and provisions made for proper disposal. The existing local, state and federal regulatory structure, ranging from plan review to the use of the best practicable technology, needs to be addressed. ReInjection of produced waters and non Resource Conservation and Recovery Act (RCRA) regulated liquid wastes is routinely practiced on state lands on the north slope.

d) Hazardous Waste Management

No discussion of hazardous waste management is included in the draft 1002(h) report. Hazardous waste management is governed by stringent requirements under the federal RCRA. Transportation of hazardous materials is regulated by the federal Department of Transportation. Proper management must be addressed.

e) Oil Spill Prevention and Response

The draft 1002(h) report refers to the need to address oil spill control requirements at page 84. More detailed plans will be required under the cited state and federal statutes. Provision for a coordinated response capability should be provided by stipulation.

2. Provisions for Offshore Support Facilities

It is important that the final 1002(h) report and management alternatives address the siting in ANWR of oil and gas facilities needed to support offshore oil and gas development occurring adjacent to ANWR on state-owned submerged lands and on the federal Outer Continental Shelf. As written, none of the alternatives specifically state that support facilities, if needed, would be permitted.

3. Alternative Development and Transportation Scenarios

Statements in the draft 1002(h) report refer to a transportation corridor (road and pipeline) between ANWR and TAPS Pump Station 1 in Prudhoe Bay. The state recognizes that the scenario which was analyzed is only one of many potential alternatives. The actual alignment of transportation facilities if, in fact, discoveries are made and any facilities are required, will be dependent upon many factors including the location and size of any reserves discovered, the need to accommodate delivery of any additional nearby reserves, terrain constraints, habitat considerations, and project economics. We suggest that the final report reflect the interrelationship of these factors in determining the size and location of needed transportation facilities. In addition, we suggest that the report describe the level of any review that will proceed these decisions. Interagency and public reviews of TAPS and ANGTS projects provide a good model of the scope of analysis which accompanies the review and approval of a major transportation project.

4. Subsistence ANILCA 810 Analysis

The draft 1002(h) report does not address the process by which the impacts of oil and gas development on subsistence activities will be identified and mitigated. Such an analysis is required by Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA).

Impacts of oil and gas activity in the 1002 area on fish and wildlife resources can adversely affect human uses of these resources. This is true both in the 1002 area and in other Canadian and Alaskan communities that rely on wildlife which use the 1002 area, most notably the Porcupine Caribou Herd. The draft 1002(h) report does not present a complete picture of subsistence uses in the area. The discussion focuses principally on subsistence uses in the community of Kaktovik, and makes only passing reference to some but not all other communities that use the Porcupine Caribou Herd. A more comprehensive discussion of subsistence uses by communities that use Porcupine Caribou Herd is required in order to better assess the future impacts of development in the coastal plain. The potential impacts associated with oil and gas exploration and development in the 1002 area, like the siting and design of transportation facilities, cannot be addressed with certainty until exploration has confirmed the existence and location of potential oil and gas fields and some understanding of the scope of development is known. Enclosure C describes the basic requirements of ANILCA 810, and provides a recommended approach for meeting these requirements.

5. Water Availability and Use

The draft 1002(h) report correctly notes that water resources in the 1002 area are very limited and confined to the surface. Most of these water sources freeze solid by late winter. Given the paucity of fresh water for industrial use within the 1002 area, the draft report concludes that adjacent marine waters must be viewed as a water resource. Little attention is given to other alternatives used elsewhere on the north slope, such as snow melters and deep thaw lake reservoirs.

Fresh water for use in the Prudhoe Bay oilfield was taken from the Sagavanirktok River adjacent to the Deadhorse industrial area during the early years of that field's development. This removal of water from the Sagavanirktok River resulted in dewatering of fish overwintering habitats with documented mortality of large numbers of fish. As a consequence, the state no longer allows the use of water from this and similar sources. Currently, in order to provide fresh water for industrial uses in the Prudhoe Bay area, the state requires the use of several large surface

water reservoirs that have been developed. The majority of these reservoir sites are depleted deep gravel mine sites that have been flooded with surface water. Other sites are shallow tundra lakes that have been deepened to provide winter water supplies. These water reservoirs are filled either passively or actively from nearby drainages during the spring breakup period and are, in general, isolated from river and stream systems during the remainder of the year. DOI should initiate a more thorough analysis of similar alternatives for industrial water use in the 1002 area.

6. Gravel Use

Gravel sites in ANWR should be sited, developed, and reclaimed in such a manner that overall impacts to water quality and fish and wildlife resources are mitigated. Plans for gravel removal should include detailed plans for the reclamation of the site to be conducted in phases concurrent with the removal of gravel. Gravel sites may also be developed in such a manner that they can be used as water sources for both exploration and development.

7. Disputed Acreage

Although the draft report references the submerged lands ownership dispute between the state and federal government regarding the coastal lagoons between the mainland and offshore barrier islands, it does not address the ownership status of the beds of nontidal navigable waters. The state asserts ownership of the submerged lands underlying the Aichilik, Jago, Okpilak, Hulahula, Salerochit, Staines, and Canning rivers within the 1002 area.

8. Decision Rules and Mitigation Policy

The terms "avoidable adverse impacts" and "unnecessary adverse effects" are not defined and do not appear in USFWS Mitigation Policy (Federal Register, Vol. 46, No. 15). Adding further to the confusion is a list of "unavoidable effects" on page 101 that includes a mix of those that are truly unavoidable (e.g., loss of habitat by gravel overlay for roads and pads) with many that are avoidable with proper design (e.g., erosion and ponding along roads, water storage pits in streambeds).

There also appear to be discrepancies between the explanation regarding Resource Category 1 and 2 in the draft 1002(h) report and the explanation for both of these categories in the federal mitigation policy regulations. Further, the draft 1002(h) report makes no mention of the requirement for "no significant adverse affect" as provided

February 6, 1987

under Section 1002(h) of ANILCA. DOI should address these apparent inconsistencies with USFWS mitigation policy in the final 1002(h) report.

As discussed earlier in our comments, the Alaska Coastal Management Program standards and review procedures need to be addressed in the final 1002(h) report. In particular, reference should be made to the Habitat Standard (6 AAC 80.130) which requires habitats to be managed so as to maintain or enhance their characteristics and that uses and activities which will not conform to this standard may be allowed if there is a significant public need and there is no feasible and prudent alternative to meet the public need.

Conclusion

Recognizing the important renewable and nonrenewable resource values found in ANWR, the state fully supports the opening of the coastal plain to oil and gas leasing subject to appropriate and effective mitigation based on our firm belief that exploration, development, and production can occur in a manner consistent with the established purposes of ANWR. We look forward to reviewing the final 1002(h) report and actively pursuing a joint consultation process in the near future to resolve specific aspects of concern to the State of Alaska.

Sincerely,



Robert L. Grogan
Director

Enclosure

cc: Lieutenant Governor Steve McAlpine
Commissioner Don Collinsworth, DFG, Juneau
Commissioner Judy Brady, DNR, Juneau
Commissioner Dennis Kelso, DEC, Juneau
John Katz, Office of the Governor, Washington DC
Rod Swope, Office of the Governor, Juneau
Mayor George Ahmaogak, North Slope Borough, Barrow
Mayor Loren Ahlers, Kaktovik

ENCLOSURE A
State Comments on Summary of Recommended
Mitigation for the 1002 Area

The following comments are provided within the context of the federally proposed stipulation package summarized on pages 145-147 of the draft 1002(h) report. Our comments represent the state's position in response to the specific federal proposal and do not represent the state's total concern regarding mitigation requirements. The state reserves the right to comment further on stipulations not yet included or discussed with DOI. In addition to the following major comments on the specific stipulations, there are a number of terms and conditions which should be added.

First, there are mitigative measures for certain "non evaluation" species mentioned in the species discussions in the "Environmental Consequences" chapter of the draft 1002(h) report that are not contained in the summary section. These mitigative measures should be added to the summary section. Second, there are a number of factors which are either not addressed or not handled in sufficient detail in order to provide for an overall effective mitigation program. Examples include the following: coordinated state/federal process for design review, permitting, field surveillance, compliance, and enforcement; rehabilitation; maintenance of public fish and wildlife resource use; material exploration, extraction, and rehabilitation; solid waste management; timing restrictions on activities, and setbacks required for the use of explosives; liquid waste management; hazardous waste management; stream crossings and fish passage; water management; bonding and financial responsibility; right of access; erosion control; oil spill contingency planning; penalty provisions for non-compliance; definitions of key terms; identification of information needs; design criteria and compliance plans; quality assurance/quality control; air quality; and support service industries. These subjects need to be addressed in a comprehensive manner and appropriate mitigative measures described.

In addition, the DOI stipulations do not clearly differentiate between stipulations or restrictions applied to exploration versus development. The state suggests that the DOI reorganize the entire mitigation section into two distinct components: exploration, and development. Implementation of the stipulations should be tied to the type of activity proposed. Stipulations referring to area specific closures may be effective forms of mitigation during exploratory activities but may be ineffective or inappropriate during development. For example, the stipulation on no activity within 1/2 mile of a documented polar bear den could be useful and effective during exploration, but it is unclear how it would be implemented during development when facilities are fixed and certain activity levels are required. There are other stipulations that fall into a similar category

and clarification is needed in order to interpret how and when they will be used and implemented.

Stipulation 1 - Sensitive Habitats and Species:

As written it is unclear how this stipulation would be enforced. DOI should define what is included in the term "non essential facilities."

Stipulation 2 - Road and Drainage Designs:

Roads and other facilities should be designed, constructed, and maintained in such a manner that the following performance standards are achieved: natural drainage is maintained; free passage of fish is provided; gravel fills are stable; upslope ponding and downslope dewatering is prevented; the number of stream crossings is minimized; natural floodplains and flow patterns are maintained; spring areas are avoided; and road alignments are perpendicular to stream flows and sited in areas of minimal floodplain width. Design criteria and specifications to satisfy these performance standards should be developed by the industry and should be approved by the appropriate federal and state agencies.

Stipulation 3 - Exploration Pad Construction:

The state strongly supports the objective of this stipulation to minimize gravel requirements for exploration activities.

Stipulation 4 - Rehabilitation Plan:

The need for rehabilitation plans is clear, but the timing of their submittal and definition of measures necessary to ensure that they will be implemented needs further consideration. Separate rehabilitation plans for exploration and development, including abandonment should be required. Also, requirements for conducting necessary research to develop techniques and measures for the rehabilitation of specific sites (e.g., gravel pads, seismic lines, material sites, etc.) should be addressed.

Stipulation 5 - Off-Road vehicles:

Should be modified to prohibit off-road vehicle use, except for travel by snowmachines, unless otherwise specifically permitted.

Stipulation 6 - Limits on Oil Exploration:

While we agree in principle with this stipulation, as written it may be too restrictive. Exploration includes both surface disturbing and non surface disturbing activities. The stipulation should limit any surface disturbance activities to the winter months and allow only non surface disturbing activities during the summer, provided there are no area or timing restrictions that would dictate otherwise.

Stipulation 7 - Gravel and Water Removal:

The state recommends that DOI address gravel removal and water removal separately. In addition, DOI should prohibit winter water removal from fish-bearing waters, springs and tributaries. We also recommend that DOI modify summer/fall water removal language to read: "During summer and fall, water removal shall be restricted to those operations that will maintain instream flows at levels necessary to provide optimum fish passage and rearing habitat, and water quality. In addition, large surface water reservoirs should be created to provide an adequate supply of fresh water for oil and gas related industrial activity." Deep pit type excavations adjacent to active channels of the streams identified as lacking suitable fish overwintering habitat could provide a winter water source and provide overwintering fish habitat. These reservoir sites should incorporate features that will enhance their value as fish and wildlife habitat (e.g., areas of shallow water, varying shoreline, provide for free movement of fish in and out of sites).

With respect to gravel removal, prohibit removal in all fall spawning fish and overwintering areas. Additionally, prohibit gravel removal from all fish-bearing rivers/streams unless approved on site-specific basis. Plans for gravel removal should include detailed plans for the rehabilitation

of the site and rehabilitation must be conducted in phases concurrent with the removal of gravel. The importance of rehabilitation cannot be overemphasized. At a minimum, any gravel site, whether upland and/or floodplain, should be sited and designed to conform to the guidelines as defined in the Gravel Removal Guidelines Manual for Arctic and Subarctic Floodplains (USFWS, Woodward-Clyde Consultants, 1980).

Stipulation 8 - Pipeline Elevation:

We recommend this stipulation be modified by adding a general statement of intent and then incorporate stipulations 8 thru 11 under that statement, and add an additional item regarding traffic control. Suggested language is as follows:

- (a) Include language as proposed in stipulation No. 9.
- (b) Include language as proposed in stipulation No. 10 except pipelines should be buried where "feasible and prudent" not just where "possible."
- (c) Roads and pipelines should be separated. Offset distances shall be optimum for preventing the synergistic effect of roads and pipelines on caribou movement, based on most current relevant research.
- (d) A surface traffic control plan should be prepared, approved by the Regional Director, and implemented. The plan should consider such measures as convoying, pulsed traffic, and seasonal or daily restrictions.

Stipulation 12 - Restrict Surface Occupancy within 3 Miles of Coastline:

The blanket 3-mile buffer for facilities adjacent to the coast is too stringent as written. Provisions must be made to allow drill pads, flow stations, and other

essential support facilities for offshore development, in this buffer strip. In addition, measures must be taken to ensure free passage of caribou along the coast. Criteria must be established to determine which facilities will be allowed in the buffer area.

Stipulation 13 - Monitoring and Research Requirements:

Modify to make two separate terms. One that states: "The DOI should be responsible for ensuring appropriate monitoring of populations, productivity, movements, and general health of key species in relation to overall oil and gas activities in ANWR." Then add a separate requirement to read: Where there is a possibility that an activity could adversely affect fish and wildlife, "Lessees and permittees may be required to monitor the impacts of the activity on selected species, their habitats, and human uses; to evaluate impact hypotheses and the effectiveness of specific mitigation measures employed; and to develop corrective actions, including improved mitigative techniques, as necessary."

Stipulation 14 - Watercourse Setbacks:

The blanket 3/4-mile buffer for all permanent facilities is too stringent as written. Provisions must be made to allow drill pads, flow stations, and other essential facilities within this 3/4-mile buffer. Criteria must be established to determine which facilities will be allowed in the buffer area.

Stipulation 15 thru 18 - Peregrine Falcon and other Raptors Protection:

The state concurs with the need for special protection for the peregrine falcon, however, stipulations should be modified to incorporate language developed by the federal peregrine falcon recovery team. In addition, the same level of protection provided to the endangered peregrine falcon should not be provided to all raptors.

Stipulation 19 - Polar Bears:

This stipulation should be expanded to require an annual fall monitoring program to follow bears moving ashore and identify den site locations.

Stipulation 20 - Construction Near Coastal Bluffs:

Support language as proposed.

Stipulation 21 - Discharge of Firearms:

Restrictions on the discharge of firearms in the vicinity of structures is necessary to protect human safety and oil field operations, however, the five-mile prohibition may be excessive. Further discussion is needed on the subject and the potential effects on human use of resources in the 1002 area.

Stipulation 22 - Prohibit Surface Occupancy in Sadlerochit Spring Special Area:

In addition to the Sadlerochit Spring Special Area, surface occupancy should be prohibited in the area within 1/2 mile of the Fish Hole No. 1 spring outlet located in the Hulahula River, and extend for 1/4 mile on either side of mean high water for a distance of 3 miles downstream of the outlet.

Stipulation 23 - Protection of Thaspi arcticum:

It is not known how widespread this plant is, so it is impossible to determine how large an area will be placed off limits by this stipulation. Until the plant is placed on the endangered species list and more is known regarding its areal extent, it is premature to impose such a restriction.

Stipulation 24 - Causeways:

Based on the state's case-by-case review and experience in authorizing the Westdock, Endicott and Lisburne causeways, we recommend that the proposed stipulation be revised such that the construction of docks and causeways minimize nearshore hydrographic changes and avoid significant adverse effects on fish populations and movements.

Stipulation 25 - Time and Area Closures for Wildlife:

Although the state generally supports the language as proposed, it should be made clear that the stipulation applies only to exploratory activities, vehicle movements, and other activities that can reasonably be re-scheduled for another period of time.

Stipulation 26 - Overflight Restrictions:

Expand to include aircraft overflight restriction above barrier islands, lagoons, river deltas, and wetlands within one mile of coast between May 15 and September 30 (excluding take-offs and landings). Also make clear that human safety takes precedence over the restrictions.

Stipulation 27 - Reduction of Human/Bear Conflicts:

Modify to read, "Measures must be taken to minimize human/bear interaction and conflict. These measures may include, but not be limited to, the use of bear-proof fencing around certain facilities, special solid waste management plans (such as incineration of putrescible wastes), and employee education programs."

Stipulation 28 - Limit Use of Infrastructure to Official Business:

Support language as proposed.

Stipulation 29 - Inventory Areas for Cultural Resources:

Support language as proposed.

Stipulation 30 and 31 - Air and Water Quality Provisions:

As discussed in our cover letter, the proposed stipulations represent a very small step toward defining what will be needed to provide an appropriate level of air and water quality protection as leasing moves forward. Further consultation between DOI and the state is needed on this subject to jointly develop a workable package of specific measures. Such a process would better acquaint DOI with the extensive body of environmental regulation and provide appropriate forums for decisions about stipulations, plans of operations, and permits. It is crucial to ensure that exploration and

Enclosure A

- 8 -

development is conducted in accordance with environmental standards appropriate for the coastal plain of ANWR.

Stipulation 32 - Environmental Orientation Programs:

Support the language as proposed.

Enclosure A/kfi

ENCLOSURE B

SUMMARY OF MAJOR STATE AUTHORITIES PERTINENT TO ANWR

The State of Alaska defines and regulates the following: .

<u>Program</u>	<u>Statutes</u>	<u>Definitions</u>	<u>Regulations</u>	<u>Definitions</u>
1) SOLID WASTE	AS 46.03.100-120 800-810	AS 46.03.900 (24)	18 AAC 60 (draft)	18 AAC 60.910 (49)
Construction Waste				(Not defined)
Industrial Waste		AS 46.03.900 (10)		-- --
Other Wastes		AS 46.03.900 (16)		-- --
"Drilling Wastes"		AS 46.03.900 (31-32)		18 AAC 60.910 (16)
Putrescible Waste		-- --		18 AAC 60.910 (40)
Septage, Sewage Sludge Sludge		-- --		18 AAC 60.910 (46) to (48)
Sanitary Waste		-- --		-- --
2) LITTER	AS 46.06	AS 46.06.150 (4)		
3) HAZARDOUS	AS 46.03.296-308 830-833	AS 46.03.299 (a) - (b)	18 AAC 62	

<u>Type of Waste</u>	<u>Statutes</u>	<u>Definitions</u>	<u>Regulations</u>	<u>Definitions</u>
4) OIL and HAZARDOUS SUBSTANCES*	AS 46.03.740 758-760 780-790 822-826 AS 46.04		18 AAC 20 18 AAC 75	
Oil		AS 46.03.758(6) AS 46.03.826(4) AS 46.04-120(9) AS 46.08.900(7)		
Hazardous Substances	AS 46.03.826(3) *	AS 46.08.900(6) AS 46.09.900(4)		
5) WASTEWATER	AS 46.03.100-120		18 AAC 72	
Domestic Wastewater		-- --		18 AAC 72.990(16)
Graywater		-- --		18 AAC 72.990(24)
Non-domestic Wastewater		-- --		18 AAC 72.990(29)
Other Wastes		-- --		18 AAC 72.990(32)
Septage		-- --		18 AAC 72.990(44)
Sludge		-- --		18 AAC 72.990(50)
Spoils		-- --		18 AAC 72.990(52)

* Note new legislation adding AS 46.08, AS 46.09, and amending AS 46.03.745, 758(k), 760(a), 765, 780(a), 790(a) (b) (d) and AS 46.04.010 and 090(b).

<u>Type of Waste</u>	<u>Statutes</u>	<u>Definitions</u>	<u>Regulations</u>	<u>Definitions</u>
6) TOXIC MATERIALS and WASTES are a "special class regulated under the Federal Toxic Substances Control Act and National Emission Standards for Hazardous Air Pollutants.				
7) HABITAT PROTECTION				
Fish Habitat Permit	AS 16.05.840 AS 16.05.870	-- --		
8) COASTAL MANAGEMENT	AS 46.40		6 AAC 50 6 AAC 80 6 AAC 85	6 AAC 50.190 6 AAC 80.900 6 AAC 85.900
9) WATER USE	AS 46.15		11 AAC 93	
10) GRAVEL SALES			11 AAC 76	
a. Near Shore	AS 38.05.110-120			
b. Navigable Rivers	AS 38.05.110-120			
11) PIPELINE RIGHT OF WAY LEASES			11 AAC 80	
a. Near Shore	AS 38.35			
b. Navigable Rivers	AS 38.35			
12) OIL AND GAS LEASES			11 AAC 83	
a. Near Shore	AS 38.05.180			
b. Navigable Rivers	AS 38.05.180			

<u>Type of Waste</u>	<u>Statutes</u>	<u>Definitions</u>	<u>Regulations</u>	<u>Definitions</u>
13) SURFACE LEASES			11 AAC 62	
a. Near Shore	AS 38.05.070-075			
b. Navigable Rivers	AS 38.05.070-075			
14) LAND USE PERMITS				
a. Near Shore	AS 38.05.850		11 AAC 62	
b. Navigable Rivers	AS 38.05.850			
15) CLASSIFICATION				
a. Near Shore	AS 38.04.065-900		11 AAC 55	
b. Navigable Rivers	AS 38.04.065-900			
16) ACCESS ALONG HISTORIC TRAILS	RS 2477			

Enclosure B/kfi

ENCLOSURE C

**A Recommended Approach to
Implementation of ANILCA §810**

March 14, 1986

§810 of ANILCA requires federal agencies to consider the effects of proposed land actions upon people engaged in subsistence uses. Specifically, it requires agencies to:

- 1. Evaluate the effects of the proposed action on subsistence uses and needs;**
- 2. Determine the availability of other lands for the purposes sought to be achieved and assess whether other alternatives are available which would reduce or eliminate the use, occupancy or disposition of public lands needed for subsistence purposes;**
- 3. Determine whether the proposed action would "significantly restrict" subsistence uses;**
- 4. If the proposed action would significantly restrict subsistence uses, to:**
 - a. Meet certain public notice and hearing requirements.**
 - b. Determine that such a restriction meets certain standards, including involving the minimum amount of public lands and minimizing adverse impacts upon subsistence uses and resources.**

This paper describes the basic requirements of §810 and provides a systematic approach to meeting these requirements when making a decision on an OCS oil and gas lease sale.

Evaluating Effects on Subsistence Uses

ANILCA §810 provides, as a starting point, that "in determining whether to...lease...public lands...the head of the federal agency having primary jurisdiction over such lands...shall evaluate the effect of such use, occupancy, or disposition...on subsistence uses and needs...."

This section is clearly intended to require a specific assessment of impacts on subsistence uses. An adequate §810 evaluation must include complete and accurate information about the proposed action and about the subsistence uses of potentially affected wild resources.

Information about the wildlife populations, fish stocks, and geographic areas which could be affected by the proposed action

are needed to determine the scope of potential effects on subsistence. Information about the specific subsistence uses of, and needs related to, these resources and areas is required to identify and evaluate these effects. This includes data on:

1. Who uses the resources which could be affected;
2. Where, when, and how the resources are harvested;
3. How much they use; and,
4. The significance of the harvested resources for meeting socioeconomic and cultural needs.

Maps of community subsistence use areas can provide valuable data about which communities and groups of people use fish and wildlife that could be affected. Each §810 evaluation should include a map and list of communities that use the stocks and populations of resources potentially affected by a proposed action. The Alaska Department of Fish and Game routinely develops maps of subsistence use as it conducts community subsistence studies. The state welcomes opportunities to cooperate with federal agencies in improving the subsistence data base.

Once the area and communities which could be affected by an action are identified, an assessment must be made of the potential effects of the action on uses of fish and wildlife. The potential linkages between the proposed action, fish and wildlife resources, and subsistence uses need to be clearly described. This can be accomplished through developing hypothetical scenarios, and tracing their implications out through the biological system to the people who rely on subsistence uses.

The evaluation of effects should address potential positive, neutral, and negative effects, as well as direct and indirect impacts on subsistence uses resulting from a proposed lease sale. The guidelines for implementation of §810 developed by the Alaska Land Use Council are helpful in identifying several effects which would restrict subsistence uses:

1. A reduction in subsistence uses due to direct impacts on the resource, adverse impacts on habitat, increased competition for the resources, or other factors;
2. A reduction in the subsistence uses due to changes in availability of resources caused by an alteration in their distribution, migration, or location; and
3. A reduction in subsistence uses due to limitations

on the access to harvestable resources, such as by physical or legal barriers.

An adequate §810 assessment must consider the potential effects of the proposed action in each community which would be affected. In some circumstances, however, it may be necessary to examine effects on the subsistence uses of "typical" communities or groups of people within the affected zone.

Biological and socioeconomic data need to be at a level of detail which will allow a meaningful assessment of potential impacts on the people who use resources for subsistence. These effects can occur at the individual, household, community and regional level.

A working document has been developed by the Alaska Land Use Council which identifies minimum data standards for making an adequate §810 assessment. (Alaska Land Use Council, Working Group II; November 28, 1984, Draft Standards and Guidelines for the Collection, Analysis, and Presentation of Subsistence Use Information for ANILCA §810 Determination, pp. 5-6.) In some cases existing data on subsistence uses may not be adequate to conduct a §810 analysis. Agencies must anticipate these special data needs at the earliest stages in the EIS process. Public meetings may be useful in compiling additional data on subsistence uses and needs. Additional research may also be necessary to address particular data gaps. New studies should be closely coordinated with the State of Alaska as required by ANILCA §812.

The §810 evaluation must thoroughly describe and document data about subsistence resources and uses so that all concerned parties can ascertain which resources and subsistence uses could be affected by a proposed action.

Identifying Alternatives

§810(a) also requires federal agencies to evaluate "...the availability of other lands for the purposes to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes."

In ANILCA §802 Congress states its policy that the "...utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands...." It is therefore important that §810 analyses fully identify and explore alternative areas and approaches which would minimize adverse impacts on rural residents.

Determining Whether Actions Would "Significantly Restrict" Subsistence Use

Once the potential effects of the lease sale upon subsistence uses have been described, the next step required by §810 is to determine whether these effects could "significantly restrict subsistence uses...."

The legislative history of ANILCA gives no clue to the intended meaning of "significantly restrict." The closest parallel to the "significantly restrict" standard appears to be the requirement of the National Environmental Policy Act (NEPA) to analyze actions which may "significantly affect" the environment. Regulations of the Council on Environmental Quality (CEQ) for implementing NEPA state that both the context and intensity of impacts must be considered in deciding significance.

The people who would be affected, and the roles that the particular resources play in their lives provide the obvious context for evaluating significance in relation to restrictions on subsistence uses. The "intensity" of effects also has to be evaluated in relation to use of specific resources by people.

In §810 Congress recognized that subsistence uses are essential to many rural Alaskans, and intended federal land actions to have the least adverse impact possible upon them.

When considered in relation to this mandate, a "significant" restriction to subsistence uses is an effect which imposes a meaningful burden or hardship on particular people.

A determination of "significance" therefore requires discussion of such factors as socioeconomic circumstances, the degree to which harvest of particular resources could be reduced by the proposed action, and the consequences of the frequency, timing, and location of restrictive effects. These need to be evaluated in the context of the people who actually harvest and use the potentially affected resources, and in the context of what would constitute a meaningful burden to those people.

A hypothetical example may be useful in demonstrating the approach suggested above:

During an EIS study a proposed lease sale is determined potentially to affect local salmon stocks. The studies suggest that the activity will not have a major impact on regional salmon populations or regional harvest levels, but depending on its timing and precise location, it could reduce a particular stock or run. It is impossible, given uncertainty about where or when the activity will occur, to predict exactly which salmon stock might be affected. However, the EIS has identified 20 communities and groups of people who make subsistence use of the

salmon runs which migrate through the general impact area and could be affected. The §810 evaluation therefore identifies these communities and the potential risks. It then examines what effect a reduction in a local salmon run could have for households within typical communities, perhaps dividing the communities into four or five categories, based on location, degree of reliance on subsistence resources, and so forth.

In the hypothetical example, the FEIS concludes that the proposed action could substantially reduce local stocks of king salmon for one or more seasons. As subsistence uses have been shown to occur on these stocks the §810 analysis would then identify this as a potential restriction and then go on to determine whether the action would "significantly restrict" the subsistence use of king salmon. In this analysis king salmon are one of the first fresh foods available to particular households in early summer, and the loss of king salmon for one or more seasons would be a meaningful burden on families in the communities. The §810 analysis, after weighing the risks to subsistence use of king salmon against the important role of king salmon to the people, might conclude that the action could "significantly restrict" subsistence use of king salmon in several of the communities.

Meeting Notice and Hearing Requirements

§810(a) requires the head of each federal agency to meet certain notice and hearing requirements before allowing an action which would significantly restrict subsistence uses. The appropriate state agency and appropriate local committees and regional councils established under §805 must be notified, and a hearing must be held in the vicinity of the area involved.

In ANILCA §801 Congress clearly stated its intent that rural residents, who have knowledge of local conditions and subsistence requirements, should have a meaningful role in decisions affecting subsistence uses and needs. The specific requirements of §810 are intended to ensure that federal agencies have the best available information about the potential effects of proposed actions on rural residents. They also seem, when taken in conjunction with §810(a)(3), to be intended to ensure that local knowledge and experience is brought to bear on the requirement that adverse impacts on subsistence be minimized.

Again, a community focus in evaluating effects would simplify the notice and hearing requirements. Each §810 evaluation should include a map and list of the communities potentially affected, and identify those where subsistence uses could be significantly restricted. In this way §810 assessment itself would indicate many of the groups which should be notified.

It is ~~advisable~~ for agencies to follow the §810 procedures for public involvement in instances where a determination of significance is not clear or where there may be significant restriction even though certain data may not yet be available to support the finding.

Public notification of hearings following a determination of significant restriction should follow several avenues, including:

1. Notice published in local and regional newspapers;
2. Notice mailed to local fish and game advisory committees, regional councils, local governments, and Native organizations;
3. Notice aired on local radio and/or television broadcasts;
4. Notice posted in community halls and other local meeting places; and
5. Personal communications with individuals or groups known by the land manager to have an interest in the action.

Minimizing unavoidable adverse impacts upon subsistence uses and resources

§810(a)(3) requires three findings before an action which would significantly restrict subsistence uses can proceed.

1. That such a significant restriction of subsistence uses is necessary, consistent with sound management principles, for the utilization of public lands.

This finding of necessity should be specific to the proposed action, and should be based upon an analysis of the potential impacts upon subsistence uses and the relative value of the proposed action in meeting the goals for the use of public lands.

2. That the proposed activity will involve the minimal amount of public land necessary to accomplish its purposes.

The finding of necessity should exclude all public lands that are not necessary to achieving the proposed purpose.

3. That reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources.

Identification and consideration of possible mitigation measures are required to minimize the adverse impacts to subsistence uses that could result from the proposal to use, occupy, or dispose public lands. These can take many forms, and as noted above, public involvement can play a key role in developing suitable mitigation measures.

The following categories represent a broad range of types of mitigation measures:

1. Alternatives for deleting public lands from the proposed action to reduce the risk of potential subsistence resource restriction.
2. Alternatives for reducing impact to seasonal camps and other harvest and use locations;
3. Alternatives for reducing habitat changes that may reduce species abundance and decrease harvest opportunity;
4. Alternatives for reducing numbers of people living in, working in, or passing through area;
5. Alternatives for reducing numbers of people competing for resources;
6. Alternatives for reducing disturbance, roads, noise, water quality degradation, etc., that may affect distribution of species;
7. Alternatives for reducing land classification and ownership changes;
8. Alternatives for reducing changes in access routes to use areas; or
9. Alternatives for compensating people for losses.

Time and area restrictions on activity may frequently be useful in mitigating effects on subsistence uses.

Summary

Federal agencies can satisfy the requirements of ANILCA §810 by following the systematic approach outlined above. An adequate §810 evaluation for an OCS oil and gas lease sale would clearly meet the following standards:

1. Identify the people who make subsistence use of all wild resources which would be affected by the proposed action;
2. Identify the nature of their subsistence uses and needs for these resources;
3. Describe the potential effects of the proposed action on wild resources and upon community subsistence uses and needs, and identify which of these effects could be restrictions;
4. Make a determination of whether potential restrictions would be "significant" in the context of the meaning of the affected resources to the people who use them, and the role the resources play in their lives;
5. Identify alternatives that would minimize adverse impacts on rural residents;
6. If the proposed action could significantly restrict particular subsistence uses:
 - a. meet notice and hearing requirements;
 - b. make findings that:
 1. the necessity for the proposed action outweighs the risks to subsistence;
 2. the proposed action will involve the minimal amount of public lands needed to accomplish its purpose;
 3. reasonable steps will be taken to minimize adverse impacts upon subsistence uses and needs.
7. Thoroughly document all data and findings so that concerned parties have access to them.

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