ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4854 HRES ANWR: BACKGROUND/HISTORY (SEE ALSO SJR 7)

habitat protection for caribou, sheep and wolves.

Area 17 - Reed River: Approximately 110,000 acres of state land in this area is surrounded on three sides by Gates of the Arctic National Park and Preserve. This area contains bear and moose habitat and is used by the Western Arctic caribou herd.

original to Tom — copy To Gus

United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503

IN REPLY REFER TO:
RE/4377e

Tom Hawkins, Director
Division of Land and Water Management
Alaska Department of Natural Resources
555 Cordova Street
Pouch 7-005
Anchorage, Alaska 99510-7005

MAR 12 1986

Dear Mr. Hawkins:

Thank you very much for your 5 February 1986 letter regarding State participation in land exchanges involving Arctic National Wildlife Refuge (NWR).

We reviewed the pool of 17 parcels of State land made available for preliminary exchange consideration and listed the areas in order of acquisition priority. Area 15, "Tetlin NWR Consolidation," was identified as a high priority for acquisition by the Fish and Wildlife Service (FWS). This area contains high density waterfowl nesting habitat and is entirely within the boundary of Tetlin NWR. We believe acquisition of the area would enhance management of the refuge as a whole and would be in the best interest of the State and Federal governments. We would also like to note that other State-owned lands within Tetlin NWR and elsewhere are a higher priority for acquisition than those presently offered. We would be interested in negotiating an exchange which would include these lands as well.

While it is true that all of the areas listed have resource values which make them suitable for refuge status, most of the areas have not been identified as a priority for acquisition by the FWS. Nearly all of the parcels listed are outside the boundaries of Alaska NWR's, some being within the boundary of National Parks. Acquisition of these areas would present additional land administration and management problems. In addition, many of the areas are most important for resident game, a State responsibility, or those marine mammals which are a National Marine Fisheries Service responsibility. Although the FWS is not insensitive to the need for enhancing management of habitats important to these species, it is simply not an FWS priority to actively pursue acquisition of such habitats. In areas recommended for additional protection, such as those on the Bristol Bay coastal plain of the Alaska Peninsula, we believe that in most cases adequate protection could be provided through cooperative management agreements.

If you would like to meet and further discuss this matter please feel free to call me.

Sincerely,

Robert E. Gilmore
Regional Director

MAR
DLWM Directors Office

Attachments

3-17

Attachment 1

3 Mar 86
1/1

Ranked List of State Lands Available for Exchange Consideration With the U. S. Fish and Wildlife Service*

HIGH PRIORITY	PRINCIPAL RESOURCE VALUE
Area 15 Tetlin NWR Consolidation (Tetlin NWR)	Waterfowl nesting.
MEDIUM PRIORITY	
Area 4 Marmot Island (Alaska Maritime NWR)	Marine mammals, seabirds.
Area 7 Tugidak Island (Alaska Maritime NWR)	Harbor seal rookery.
Area 10 Alaska Peninsula (portion within Alaska Peninsula)	Waterfowl nesting/staging.
Area 11 Black Hills	Resident game, waterfowl.
Area 8 Kisaralik River	Salmon, resident game.
Area 1 Trumpeter Swan Nesting Area	Waterfowl.
Area 2 Redoubt Bay	White-fronted goose nesting.
LCW PRIORITY	
Area 6 Shearwater Peninsula	Resident game, seabirds, marine mammals.
Area 9 Nushagak/Iliamna Area	Salmon spawning, resident game.
Area 5 Raspberry Island	Resident game.
Area 12 Kamishak	Resident game.
Area 13 Kokrine Hills/Melozitna River	Resident game.
Area 14 Lower John/Alatna Rivers	Resident game, salmon spawning.
Area 16 Wolf Townships	Resident game. (NPS inholding)
Area 17 Reed River	Resident game. (NPS inholding)
Area 3 McCarthy	Resident game. (NPS inholding)

* List of parcels was developed by Alaska Dept. of Natural Resources and submitted to Fish and Wildlife Service on February 5, 1986.

Attachment 2

3 Mar 86
1/3

Rationale for Ranking of State Lands Available for Exchange Consideration by the U. S. Fish and Wildlife Service (letter from Alaska Dept. of Natural Resources, 5 February 1986).

HIGH PRIORITY

Area 15 - Tetlin NWR Consolidation:

This area is a priority because it would eliminate a large State selection on Tetlin NWR that has high waterfowl nesting densities. Major species are northern pintail, scaup and green-winged teal. Note: other State owned lands within Tetlin are a higher priority for acquisition but were not offered for exchange. Some of the land described on the maps supplied by the State appears to be Native owned.

MEDIUM PRIORITY

Area 4 - Marmot Island:

Identified by refuge staff as a high priority for acquisition. The eastern shore of the island contains a haulout site for about 8,000 Steller's sea lions. There are also several small seabird colonies present. Feral pigs were recently introduced and have begun to impact island vegetation. Management of Steller's sea lions is a National Marine Fisheries Service responsibility.

Area 7 - Tugidak Island:

Identified by refuge staff as a high priority for acquisition. The harbor seal rookery located here is one of the largest in the world. As many as 20,000 animals have been present at one time. Management of harbor seals is a National Marine Fisheries Service responsibility.

Area 10 - Alaska Peninsula:

None of the area described on the maps submitted by the Department of Natural Resources includes land within the boundary of Alaska Peninsula or Becharof NWR's. The area is very large, about 2.9 million acres, and contains a great deal of high quality nesting habitat for tundra swans and sandhill cranes and low density nesting habitat for several duck species. The area includes waterfowl staging habitat near State Critical Habitat Areas (SCHA) that Realty Division recommended for inclusion in expanded SCHA's and not as "new" refuge. Comprehensive Conservation Plans for the area recommend additional protection for large pieces of this area but do not necessarily recommend federal acquisition.

Area 11 - Black Hills:

Most of this area has been recommended for additional protection by Comprehensive Conservation Planning. The Bristol Bay Plan discusses the possibility of a cooperative management agreement or exchange of the area to FWS. None of the area is within Izembek NWR or Alaska Peninsula NWR but is contiguous to both. Major resource values include: calving area for the southern Alaska Peninsula caribou herd and waterfowl and shorebird nesting habitat throughout the Caribou-Sapsuk River lowlands. Migratory bird values are believed to be high based on preliminary surveys but very little work has been done in the area.

LOW PRIORITY

Area 1 - Trumpeter Swan Nesting Area:

One of the best waterfowl nesting areas in the State that was not included in the refuge system. Not in or near an existing NWR. About 25% of the Pacific Flyway trumpeter swans recorded on breeding ground population counts use the Gulkana Basin for nesting.

Area 2 - Redoubt Bay:

This area is located on the west side of Cook Inlet and is not in or near an existing refuge. The area contains most of the (Tule) greater white-fronted goose nesting and fall staging habitat. Resident game values are also high.

Area 8 - Kisaralik River:

This area includes the uppermost portion of the Kisaralik watershed. The parcel is outside the boundary of Yukon Delta NWR. Raptor surveys conducted in 1984 documented very high nesting density and diversity along the Kisaralik downstream from this area. Resident game such as beaver, moose and caribou is the principle wildlife resource value. The river is used by anglers and has high recreational potential.

Area 6 - Shearwater Peninsula:

Near Kodiak NWR this area is now managed as a "refuge" by the State as part of the Terror Lake Agreement (mitigation). The area contains small numbers of nesting seabirds and a few small, marine mammal haulout sites. Some of the coastal streams are brown bear feeding areas.

Area 9 - Nushagak/Iliamna Area:

A very large parcel of almost 7 million acres. Not in or near an NWR. Important area for resident game. The area also contains salmon spawning habitat for the Bristol Bay run and a large and growing sport fishery. Scenic values are very high and the area is adjacent to Lake Clark National Park and Preserve.

Area 5 - Raspberry Island:

Not within a refuge. The State owns about half of the island, the other half being owned by a Native Corporation. The island contains the only elk herd in the Kodiak area that is on public land. Black-tailed deer and brown bear are also present.

Area 12 - Kamishak:

Not within a refuge. Located between McNeil River State Game Area and Katmai National Park and Preserve. Contains several small seabird colonies and some moose habitat. Important area for resident game especially brown bears which use the adjacent McNeil River area for feeding.

Area 13 - Kokrine Hills/Melozitna River:

Not within a refuge. The area is almost all upland and is primarily habitat for resident game species such as moose, brown bear and caribou.

Area 14 - Lower John/Alatna River:

Not within a refuge. The area is primarily upland and is habitat for resident game. Also contains some spawning habitat for king and chum salmon.

Area 16 - Wolf Townships:

Bordered on three sides by Denali National Park and Preserve. Habitat for resident game including wolves, sheep, moose and caribou. National Park Service is interested in acquiring this parcel.

Area 17 - Reed River:

Bordered on three sides by Gates of the Arctic National Park and Preserve. Important habitat for resident game. Used by the western Arctic caribou herd.

Area 3 - McCarthy:

An inholding in Wrangell St. Elias National Park and Preserve. Alleged by the State to be threatened by development.

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES--DIVISION OF LAND AND WATER MANAGEMENT

TO: Bob Arnold
Deputy Commissioner

DATE: May 20, 1986

FILE NO:

TELEPHONE NO: 762-4355

FROM: Tom Hawkins
Director

SUBJECT: ANWR

This memo describes actions taken over the past few months to monitor ANWR land exchange activities and to advance state interest in potential exchange opportunities.

In early February ADF&G and ADNR jointly prepared a listing of candidate lands for possible exchange for presentation to the USF&WS (Appendix I). The list included more than 12,000,000 acres of state land within and adjacent to refuges and other ANILCA units. The listing emphasized lands which were primarily valuable for habitat and recreation resources. In March, Robert Gilmore, Alaska Regional Director for the U.S. Fish & Wildlife Service responded to the state's listing and indicated the interests of his agency.(Appendix II). In short the USF&WS marked 1 state parcel as high priority but indicated considerable interest in 7 additional parcels.

It should be recognized that the state list did not include those valuable state habitat lands that had been designated for long-term retention by the Alaska legislature. For instance the USF&WS has repeatedly expressed its interest in owning the Izembek Lagoon tidelands accorded state refuge status by the legislature in 1972. These and other state lands in critical habitat areas and game sanctuaries were not included in the ADF&G/ADNR proposal because it would take legislative action to make them available for exchange consideration. While the habitat values of these lands would most likely be preserved and protected as well in federal ownership as under current state management ADF&G determined that raiding the state's designated habitat protection system in order to acquire subsurface estate speculatively valuable for oil and gas would create its own set of perception problems.

The USF&WS response offers the state a clear opportunity to proceed to the next stage of an exchange. Land exchange negotiations with the USF&WS should proceed in order to preserve the state's standing in any exchange activities. At the very least efforts to advance the Tetlin townships would keep the state in the midst of the land exchange action. As could be expected the USF&WS did not recognize advantage in acquiring lands that are sought by the National Park Service. These parcels were included on the list to allow the federal government to realize which benefits from possible exchanges in addition to acquiring refuge lands. A second prong of the state initiative should include elevation of the USF&WS lack of interest in these parcels to the attention of Interior department policymakers.

The remainder of the assignment contained in the February 17 memorandum required monitoring of USF&WS exchange activities with parties other than the State of Alaska. USF&WS efforts in this regard began in 1984 when Koniag

broached the subject with the Service and have been conducted on a variety of fronts since that time. DNR met with the USF&WS to find out what was happening in these exchange negotiations. The dual purpose of that meeting was to reiterate the State's position that any land tenure changes on the Arctic coastal plain should involve significant state participation and to present the aforementioned inventory of state land which may be available for exchange consideration should Congress determine that oil and gas development will be permitted in ANWR.

USF&WS's Robert Gilmore conducted the briefing, seemed quite familiar with the State's general interest, and was intrigued by the list of possible exchange land candidates offered by the State. He explained that the Service, through its refuge planning process, had identified numerous parcels of land within and adjacent to refuge system units in Alaska that had significant wildlife values but were not in federal ownership. Gilmore also explained that Koniag made the initial contact with his predecessor Keith Schreiner a number of years earlier. Possibilities for an exchange had been discussed off and on since that time. Map review exercises had been carried out with Koniag, Bristol Bay, Doyon and Arctic Slope regional corporations. The focus was initially on regional corporations because of ANCSA subsurface ownership provisions, including 7(i), and the plans of the Service to only offer Arctic National Wildlife Refuge (ANWR) subsurface estate for exchange purposes.

USF&WS recognized early that village corporations owned many of the Service's land acquisition candidates. Unfortunately region-village institutional arrangements and operating relationships didn't always allow the region to offer swaps of village surface estate. At first the Washington Office of Interior prohibited contact with village corporations. This ban has since been lifted and Gilmore has conducted a series of village contacts including meetings in King Salmon and Ft. Yukon.

Another problem facing USF&WS was the absence of a habitat rating methodology to allow the Service to prioritize among parcels identified by regions in the map review portion of the discussion. The Service has now developed a ranking system which permits them to assess their interest in acquiring particular units of candidate lands. USF&WS utilized the methodology to review the State's candidate acreage. Gilmore believes that the methodology materially advanced the state of the art and usefully substitutes for the regularly confusing array of superlatives normally used to characterize habitat values.

The next dilemma facing the Service was the matter of appraisal. Borrowing from refuges across the country Gilmore assembled a team of Service appraisers and began the task of determining values for about 1 million acres of surface estate held by the subject corporations. Familiarity with Service appraisal standards was not the problem for this task force. Applying the traditional methodology to the immense acreages, remote locations, and other unique Alaskan conditions required special training and adaptations however. The standard discount for large parcels had to be modified for this exercise because it reduced the value of the native land to unacceptable values. The absence of meaningful comparative sales also posed difficulties. Calculation of the discount appropriate for Section 22(g) of ANCSA was done administratively because it also exceeded the experience of the appraisal team. However the initial appraisal work is not essentially complete. The appraisals have been approved by the Washington office and Gilmore has a ball park estimate of the values involved.

Calculating the 22(g) factor was just one of a host of nontraditional aspects of the appraisal assignment. The Service proceeded along the lines of the zone concept developed in the Kodiak Refuge Plan to determine a standard deduction value for the fact that much of the native land was required to be managed according to the adopted refuge plan. This severely restricted the possible uses of the land and lowered its value considerably. Coupled with the fact the acreage was remote and not of great worth in traditional real estate terms, the appraised value of native land was quite low even after Gilmore's efforts to modify the traditional Service methodology.

Low value was not the problem on the other end of the exchange package. Rumors described BLM's appraisal of the subsurface value of the Arctic Coastal Plain as quite high at least in preliminary review stages of the process. When the oil and gas industry points to an area and states that it is the best prospect in the country it is easy to imagine how the folks with access to geological and seismic information from that area might be enthusiastic. But the objective approach to these possibilities places them in terms of probability and must provide for a discount factor. When BLM's analysis is unveiled it can be reviewed and contrasted with the similar study performed by the State of Alaska. As the state has experienced in numerous past exchange situations the F&WS recognized that subsurface valuation was not an exact science. BLM was hesitant to place hard and fast values on the individual lease tracts in their analysis. But without comparative values it is difficult to fashion any kind of a trade package. Gilmore has pressed BLM to offer values that can be utilized in the exchange process. Additionally the Service has had to design a failsafe process so that participating native corporations aren't faced with the risk of losing their land base and finding no oil and gas resources. A mechanism which would guarantee a soft landing in case of exploration failures has been fashioned. None-the-less the exchange process has bogged down because Koniag is unwilling to accept the values that have been assigned to their lands by the USF&WS. Koniag has retained former USF&WS Alaska Director Bob Putz and others to press their case in Washington D.C. They argue that in addition to the real estate value the lands must receive credit for their public interest values. This effort to attach a "blue sky" increment to the land value may be successful because it's permitted by law and Interior's presumed interest in offering ANWR subsurface for development. Most likely the actual exchange will not occur until Congress takes action allowing subsurface development.

Koniag's situation is reported here because their train is furthest down the track. Other regions maintain interest in ANWR subsurface and access to current status on all fronts is not available. Most recently CIRI met with Interior officials in Washington and received encouragement to fashion a joint state - ANCSA corporation package for Interior consideration. Most observers agree that such a configuration would be the most saleable package to the Department. CIRI envisions a swap that would give them ANWR subsurface while the USF&WS would acquire state acreage and the state would conclude its Kachemak State park acquisition from Seldovia and CIRI. Alternatively teamed with CIRI or some other ANCSA corporation the state could be more likely to acquire ANWR subsurface. All of these possibilities should be measured against Alaska's current 90% interest in ANWR's mineral resources and its steadfast assertion that it should be considered first in any further decision-making process.

In summary, ~~ADF&G~~ & DNR advanced candidate exchange lands to USF&WS. The Service's positive response calls for further action. We continue to monitor exchange ~~efforts~~ underway and find it would be easier to accomplish these tasks from the midst of the maelstrom than from the edges.

November 14, 1986

Robert E. Gilmore, Regional Director
U.S. Fish and Wildlife Service
1011 E Tudor Road
Anchorage, Alaska 99503

Dear Mr. Gilmore:

Some time has passed since we last discussed state participation in land exchanges involving the Arctic National Wildlife Refuge (ANWR). I feel it is appropriate to renew our discussion.

As you recall, last February I wrote to ask that you consider a large pool of state land for possible exchange. Included in the pool are almost 12 million acres with considerable habitat attributes, located within or adjacent to national park and wildlife refuges in Alaska. In March, you responded to my request by listing these state lands in priority of USFWS acquisition interest. You expressed particular interest in the state lands located within the Tetlin NWR and also indicated an interest in certain remaining state lands within the Tetlin NWR which we had inadvertently failed to include in the pool. Finally, you concluded that most of the state lands are not a priority for acquisition by the USFWS due to various management constraints or because adequate resource protection might be provided through cooperative management agreements.

The possibility of oil and gas development within ANWR and the discussion of associated land trades continues to cast a highly visible profile. Accordingly, the state has clearly articulated its concern that state royalty benefits not be jeopardized if oil and gas development is authorized by Congress. One direct means to preserve these existing benefits is for the state to obtain oil and gas interests in ANWR through land exchanges with the Department of Interior.

Therefore, I am prepared to propose the inclusion of all state land within the Tetlin NWR as well as those state lands noted as "medium priority" in your March correspondence. This includes Marmot Island, Tugidak Island, state land within the Alaska Peninsula NWR, Black Hills, Kisaralik River, Copper River trumpeter swan nesting areas and Redoubt Bay. I am confident that this pool is sufficiently extensive that we can negotiate some combination of the above candidate areas for inclusion in an exchange proposal. In addition, the state continues to be willing to consider the

exchange of state lands in Alaska which may be of interest to other federal agencies, such as the National Park Service (NPS).

The NPS has indicated interest in several tracts of state land and the magnitude of the ANWR decision suggests the exchange discussion should address the broadest possible consolidation of federal interests in the state. We mentioned some of these areas in our earlier correspondence and offer a more complete list of potential candidates in the attached appendix. Although the exact mechanics of this aspect of a possible exchange will require additional staff work, we are eager to proceed with those steps necessary to value these lands for exchange purposes.

Subject to your agreement, I am prepared to draft a preliminary exchange agreement for your consideration. I expect this draft would represent a first step towards negotiating an exchange between our agencies. If you concur in this approach, please let me know. I suspect that we will need to get together again soon to discuss this matter in greater detail.

At your convenience, I would also appreciate an update on the status of your exchange negotiations involving ANCSA corporations. Recent discussion with your staff and others indicate you have made considerable progress. I believe it is extremely important for the state to continue to closely monitor your progress in this regard. In addition, I would also like to coordinate state exchange negotiations with those involving the ANCSA corporations so that the state can afford itself the same ANWR selection opportunity you propose to the corporations.

I appreciate your continued attention to this important matter and await your response.

Sincerely,

Tom Hawkins

Tom Hawkins
Director

cc: Esther C. Wunnicke, CO
John Katz, Washington D.C.

TH/GG/jln

State Lands Within or Adjacent to NPS Lands

1. Wrangell-St. Elias
   °Selections east of Copper River
   °McCarthy

2. Katmai
   °Kamishak

3. Aniakchak Bay area
   °1/4 township north side

4. Lake Clark
   °eastern entrance
   °western boundary
   °upper Chilakarotna
   °west of Stoney River
   °calving areas in Bonanza Hills

5. Denali
   °western boundary Swift Fork
   °Wolf townships

6. Bering Land Bridge
   °Serpentine Hot Springs

7. Gates of the Arctic
   °southern boundary
   °hydrographic divide

8. Glacier Bay
   °Icy Bay

9. Kenai Fjords
   °Nuka Island

BILL SHEFFIELD
GOVERNOR

State of Alaska
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.
December 3, 1985

MEMORANDUM

TO: THE HONORABLE TED STEVENS, U.S. Senate
THE HONORABLE FRANK MURKOWSKI, U.S. Senate
THE HONORABLE DON YOUNG, U.S. House of Reps.

FROM: JLCK JOHN W. KATZ, Director of State/Federal Relations and Special Counsel to the Governor

SUBJECT: ANWR LAND EXCHANGE

As you know, the Interior Department has commenced discussions with various Native corporations about the possibility of exchanging privately owned lands for federal acreage located in the Arctic National Wildlife Refuge (ANWR). We are advised that these discussions are at an early stage. Accordingly, the State has neither been consulted by DOI officials, nor have we taken a position regarding the wisdom of such an exchange.

Nevertheless, the State does have certain interests and concerns which hopefully will be addressed as negotiations continue. Some of these concerns are expressed in the attached correspondence from Governor Sheffield to Bob Gilmore of the U.S. Fish and Wildlife Service.

In essence, we have three specific interests at this point in time. First, as a sovereign State, Alaska should be fully consulted and meaningfully involved in matters, such as ANWR, which are integrally related to important State land use and resource concerns. On the basis of Mr. Gilmore's letter to the Governor and of my conversations with Bill Horn, I believe that such State participation will occur.

Second, the State is concerned about possible adverse impacts on the 90-10 revenue sharing formula which applies to the allocation of federal mineral revenues derived from oil and gas development within wildlife refuges in Alaska. Under this formula, the State receives 90 percent of the

federal share of bonuses, rentals, and royalties attributable to such development. The accompanying memorandum from Tom Koester of the Attorney General's office details the legal and policy reasons which support continuation of the current formula.

Third, as the owner of certain lands located within or adjacent to federal conservation system units, the State may be interested in exchanging some of these lands for federal acreage located on the coastal plain of ANWR. The resource related reasons for discussions regarding such an exchange are similar to those which pertain to certain Native holdings.

I will be meeting with Bill Horn later this week to discuss these matters in greater detail. However, knowing of your longstanding interest in the management and disposition of ANWR lands, I wanted to apprise you of the State's current thinking at this early juncture.

We look forward to working with you and your staffs in the development of a land ownership and management regime for ANWR which adequately balances all of the various considerations. Please let me know if you have any questions or comments concerning the subject matter of this memorandum.

Attachment

cc: Bill Phillips
Greg Chappados
Dennis Fradley
John Moseman
C.J. Zane
Rick Agnew

41 south, range 53 west, sections 1, 2, 11, 12, 13 S. M., Alaska, notwithstanding;" and inserting in lieu thereof the following:

"Township 36 south, range 52 west, all;

"Township 37 south, range 51 west, all;

"Township 37 south, range 52 west, all;

"Township 37 south, range 53 west, sections 1 through 4, 9 through 16, 21 through 24, and the north half of sections 25 through 28;

"Township 38 south, range 51 west, sections 1 through 5, 9, 10, 12, 13, 18, 24, and 25;

"Township 38 south, range 52 west, sections 1 through 35;

"Township 38 south, range 53 west, sections 1, 12, 13, 24, 25, and 26;

"Township 39 south, range 51 west, sections 1, 6, 7, 16 through 21, 28 through 33, and 36;

"Township 39 south, range 52 west, sections 1, 2, 11 through 15, and 22 through 24;

"Township 39 south, range 53 west, sections 33 through 36, and the south half of section 26;

"Township 40 south, range 51 west, sections 2 and 6;

"Township 40 south, range 52 west, sections 6 through 10, 15 through 21, and 27 through 36;

"Township 40 south, range 53 west, sections 1 through 19, 21 through 28, and 34 through 36;

"Township 40 south, range 54 west, sections 1 through 34;

"Township 41 south, range 52 west, sections 7, 8, 9, 16, 17, and 18;

"Township 41 south, range 53 west, sections 1, 4, 5, 8, 9, 11, 12, and 16;

"Township 41 south, range 54 west, section 6, S. M., Alaska;"; and

(2) by striking out "The" in the undesignated paragraph immediately following such description and inserting in lieu thereof "Notwithstanding the".

TITLE X—FEDERAL NORTH SLOPE LANDS STUDIES, OIL AND GAS LEASING PROGRAM AND MINERAL ASSESSMENTS

OVERALL STUDY PROGRAM

16 USC 3141.

SEC. 1001. (a) The Secretary shall initiate and carry out a study of all Federal lands (other than submerged lands on the Outer Continental Shelf) in Alaska north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve—Alaska, other than lands included in the National Petroleum Reserve—Alaska and in conservation system units established by this Act.

(b) The study shall utilize a systematic interdisciplinary approach to—

(1) assess the potential oil and gas resources of these lands and make recommendations concerning future use and management of those resources including an evaluation of alternative transportation routes needed for oil and gas development;

(2) review the wilderness characteristics, and make recommendations for wilderness designation, of these lands; and

(3) study, and make recommendations for protection of, the wildlife resources of these lands.

, sections 1, 2, 11, 12, 13 S. M., Ala
inserting in lieu thereof the following
ange 52 west, all;
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24, and the north half of sections 25

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range 52 west, sections 1 through 35;
range 53 west, sections 1, 12, 13, 24, 25,

ange 51 west, sections 1, 6, 7, 16 through

ange 52 west, sections 1, 2, 11 through 15,

ange 53 west, sections 33 through 36, and
26;
ange west, sections 2 and 6;
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gh 36;
range 53 west, sections 1 through 19, 21
gh 36;
range 54 west, sections 1 through 34;
ange 52 west, sections 7, 8, 9, 16, 17, and

ange 53 west, sections 1, 4, 5, 8, 9, 11, 12,

ange 54 west, section 6, S. M., Alaska;";

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TH SLOPE LANDS STUDIES, OIL
ROGRAM AND MINERAL ASSESS-

L STUDY PROGRAM

shall initiate and carry out a study of
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s characteristics, and make recommen-
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ecommendations for protection of, the
lands.

(c) After completion of the study, the Secretary shall make findings on—

(1) the potential oil and gas resources of these lands;

(2) the impact of oil and gas development on the wildlife resources on these lands, particularly the Arctic and Porcupine caribou herds and the polar bear;

(3) the national need for development of the oil and gas resources of all or any portion of these lands;

(4) the national interest in preservation of the wilderness characteristics of these lands; and

(5) the national interest in protection of the wildlife resources of these lands.

(d) In the course of the study, the Secretary shall consult with the Secretary of Energy and other Federal agencies, the State of Alaska, Native Village and Regional Corporations, the North Slope Borough, the Alaska Land Use Council and the Government of Canada. The Secretary shall provide an opportunity for public review and comment on a draft study and proposed findings prior to their final approval. Public review and comment.

(e) The Secretary shall submit the study and his findings to the President and the Congress no later than eight years after the date of enactment of this Act. The Secretary shall submit annual reports to Congress on the progress in carrying out this title. Report to President and Congress.

(f) Nothing in this title shall be construed as impeding, delaying, or otherwise affecting the selection and conveyance of land to the State pursuant to the Alaska Statehood Act, or any other Federal law referred to in section 102(3)(A) of this Act, and to the Natives pursuant to the Alaska Native Claims Settlement Act and this Act. 48 USC note prec. 21. 43 USC 1601 note.

ARCTIC NATIONAL WILDLIFE REFUGE COASTAL PLAIN RESOURCE ASSESSMENT

SEC. 1002. (a) PURPOSE.—The purpose of this section is to provide for a comprehensive and continuing inventory and assessment of the fish and wildlife resources of the coastal plain of the Arctic National Wildlife Refuge; an analysis of the impacts of oil and gas exploration, development, and production, and to authorize exploratory activity within the coastal plain in a manner that avoids significant adverse effects on the fish and wildlife and other resources. 16 USC 3142.

(b) DEFINITIONS.—As used in this section—

(1) The term "coastal plain" means that area identified as such in the map entitled "Arctic National Wildlife Refuge", dated August 1980.

(2) The term "exploratory activity" means surface geological exploration or seismic exploration, or both, for oil and gas within the coastal plain.

(c) BASELINE STUDY.—The Secretary, in consultation with the Governor of the State, Native Village and Regional Corporations, and the North Slope Borough within the study area and interested persons, shall conduct a continuing study of the fish and wildlife (with special emphasis on caribou, wolves, wolverines, grizzly bears, migratory waterfowl, musk oxen, and polar bears) of the coastal plain and their habitat. In conducting the study, the Secretary shall—

(A) assess the size, range, and distribution of the populations of the fish and wildlife;

(B) determine the extent, location and carrying capacity of the habitats of the fish and wildlife;

(C) assess the impacts of human activities and natural processes on the fish and wildlife and their habitats;

(D) analyze the potential impacts of oil and gas exploration, development, and production on such wildlife and habitats; and

(E) analyze the potential effects of such activities on the culture and lifestyle (including subsistence) of affected Native and other people.

Results and revisions, publication.

Within eighteen months after the enactment date of this Act, the Secretary shall publish the results of the study as of that date and shall thereafter publish such revisions thereto as are appropriate as new information is obtained.

(d) GUIDELINES.—(1) Within two years after the enactment date of this Act, the Secretary shall by regulation establish initial guidelines governing the carrying out of exploratory activities. The guidelines shall be based upon the results of the study required under subsection (c) and such other information as may be available to the Secretary. The guidelines shall include such prohibitions, restrictions, and conditions on the carrying out of exploratory activities as the Secretary deems necessary or appropriate to ensure that exploratory activities do not significantly adversely affect the fish and wildlife, their habitats, or the environment, including, but not limited to—

(A) a prohibition on the carrying out of exploratory activity during caribou calving and immediate post-calving seasons or during any other period in which human activity may have adverse effects;

(B) temporary or permanent closing of appropriate areas to such activity;

(C) specification of the support facilities, equipment and related manpower that is appropriate in connection with exploratory activity; and

(D) requirements that exploratory activities be coordinated in such a manner as to avoid unnecessary duplication.

(2) The initial guidelines prescribed by the Secretary to implement this subsection shall be accompanied by an environmental impact statement on exploratory activities. The initial guidelines shall thereafter be revised to reflect changes made in the baseline study and other appropriate information made available to the Secretary.

(e) EXPLORATION PLANS.—(1) After the initial guidelines are prescribed under subsection (d), any person including the United States Geological Survey may submit one or more plans for exploratory activity (hereinafter in this section referred to as "exploration plans") to the Secretary for approval. An exploration plan must set forth such information as the Secretary may require in order to determine whether the plan is consistent with the guidelines, including, but not limited to—

(A) a description and schedule of the exploratory activity proposed to be undertaken;

(B) a description of the equipment, facilities, and related manpower that would be used in carrying out the activity;

(C) the area in which the activity would be undertaken; and

(D) a statement of the anticipated effects that the activity may have on fish and wildlife, their habitats and the environment.

Publication in Federal Register.

(2) Upon receiving any exploration plan for approval, the Secretary shall promptly publish notice of the application and the text of the plan in the Federal Register and newspapers of general circulation in the State. The Secretary shall determine, within one hundred and twenty days after any plan is submitted for approval, if the plan is consistent with the guidelines established under subsection (d). If the

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Secretary determines that the plan is so consistent, he shall approve the plan: except that no plan shall be approved during the two-year period following the date of enactment of this Act. Before making the determination, the Secretary shall hold at least one public hearing in the State for purposes of receiving the comments and views of the public on the plan. The Secretary shall not approve of any plan submitted by the United States Geological Survey unless he determines that (1) no other person has submitted a plan for the area involved which meets established guidelines and (2) the information which would be obtained is needed to make an adequate report under subsection (h). The Secretary, as a condition of approval of any plan under this section—

Public hearing.

Approval condition.

(A) may require that such modifications be made to the plan as he considers necessary and appropriate to make it consistent with the guidelines;

(B) shall require that all data and information (including processed, analyzed and interpreted information) obtained as a result of carrying out the plan shall be submitted to the Secretary; and

(C) shall make such data and information available to the public except that any processed, analyzed and interpreted data or information shall be held confidential by the Secretary for a period of not less than two years following any lease sale including the area from which the information was obtained.

(f) MODIFICATION TO EXPLORATION PLANS.—If at any time while exploratory activity is being carried out under an exploration plan approved under subsection (e), the Secretary, on the basis of information available to him, determines that continuation of further activities under the plan or permit will significantly adversely affect fish or wildlfe, their habitat, or the environment, the Secretary may suspend the carrying out of activities under the plan or permit for such time, make such modifications to the plan or to the terms and conditions of the permit (or both suspend and so modify) as he determines necessary and appropriate.

(g) CIVIL PENALTIES.—(1) Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated any provision of a plan approved under subsection (e) or any term or condition of a permit issued under subsection (f), or to have committed any act prohibited under subsection (d) shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $10,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed, and, with respect to the violator, the history of any prior offenses, his demonstrated good faith in attempting to achieve timely compliance after being cited for the violation, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The

Review.

findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2)(E) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty against him under paragraph (1) after it has become final, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection unless the matter is pending in court for judicial review or recovery of assessment.

(h) REPORT TO CONGRESS.—Not earlier than five years after the enactment date of this Act and not later than five years and nine months after such date, the Secretary shall prepare and submit to Congress a report containing—

(1) the identification by means other than drilling of exploratory wells of those areas within the coastal plain that have oil and gas production potential and estimate of the volume of the oil and gas concerned;

(2) the description of the fish and wildlife, their habitats, and other resources that are within the areas identified under paragraph (1);

(3) an evaluation of the adverse effects that the carrying out of further exploration for, and the development and production of, oil and gas within such areas will have on the resources referred to in paragraph (2);

(4) a description of how such oil and gas, if produced within such area, may be transported to processing facilities;

(5) an evaluation of how such oil and gas relates to the national need for additional domestic sources of oil and gas; and

(6) the recommendations of the Secretary with respect to whether further exploration for, and the development and production of, oil and gas within the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitats, and other resources are avoided or minimized.

(i) EFFECT OF OTHER LAWS.—Until otherwise provided for in law enacted after the enactment date of this Act, all public lands within the coastal plain are withdrawn from all forms of entry or appropriation under the mining laws, and from operation of the mineral leasing laws, of the United States.

PROHIBITION ON DEVELOPMENT

16 USC 3143.

SEC. 1003. Production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress.

WILDERNESS PORTION OF STUDY

Report to President. 16 USC 3144.

SEC. 1004. (a) As part of the study, the Secretary shall review the suitability or nonsuitability for preservation as wilderness of the

Federal lands described in section 1001 and report his findings to the President.

(b) The President shall advise the Senate and the House of Representatives of his recommendations with respect to the designation of the area or any part thereof as wilderness together with a map thereof and a definition of its boundaries. Presidential recommendations to Congress.

(c) Subject to valid existing rights and the provisions of section 1002 of this Act, the wilderness study area designated by this section shall, until Congress determines otherwise, be administered by the Secretary so as to maintain presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System. Already established uses may be permitted to continue, subject to such restrictions as the Secretary deems desirable, in the manner and degree in which the same were being conducted on the date of enactment of this Act.

WILDLIFE RESOURCES PORTION OF STUDY

SEC. 1005. The Secretary shall work closely with the State of Alaska and Native Village and Regional Corporations in evaluating the impact of oil and gas exploration, development, production, and transportation and other human activities on the wildlife resources of these lands, including impacts on the Arctic and Porcupine caribou herds, polar bear, muskox, grizzly bear, wolf, wolverine, seabirds, shore birds, and migratory waterfowl. In addition the Secretary shall consult with the appropriate agencies of the Government of Canada in evaluating such impacts particularly with respect to the Porcupine caribou herd. 16 USC 3145. Consultation with Canadian Government.

TRANSPORTATION ALTERNATIVES PORTION OF STUDY

SEC. 1006. In studying oil and gas alternative transportation systems, the Secretary shall consult with the Secretary of Transportation and shall consider— 16 USC 3146.

(1) the extent to which environmentally and economically feasible alternative routes could be established;

(2) the prospective oil and gas production potential of this area of Alaska for each alternative transportation route; and

(3) the environmental and economic costs and other values associated with such alternative routes.

ARCTIC RESEARCH STUDY

SEC. 1007. (a) The Secretary, the Secretary of Defense, and the Secretary of Energy shall initiate and carry out a study of the mission, facilities and administration of the Naval Arctic Research Laboratory (NARL), at Point Barrow, Alaska. The study shall review the historical responsibilities carried out at NARL and their contribution to applied and basic Arctic research. The study shall specifically address and the Secretary shall make recommendations on the need for redirecting the United States Arctic research policy and the role of the NARL facilities in developing and implementing that policy. 16 USC 3147.

(b) The Secretaries shall assess the future use of NARL in— Naval Arctic Research Laboratory, assessment.

(1) developing relevant scientific information on the Arctic environment and utilizing applied research to (A) deal with the unique problems the Arctic presents in providing public services; (B) minimize the impact of resource development on the environ-

ment and the culture of the Native people; and (C) promote international cooperation among the Nations which share responsibility for the Arctic environment;

(2) assessing the impact of oil and gas exploration, development, and transportation on the Arctic environment, including impact on fish, marine and land mammals, and migratory waterfowl;

(3) developing advanced design technologies, operational practices, and transportation systems to improve the environmental safety and efficiency of oil and gas exploration and production in the Arctic, including offshore activities;

(4) enlarging the body of knowledge on Arctic ice conditions and developing practical and efficient means of dealing with potential oil spills and other hazards associated with resource development in Alaska's Arctic; and

(5) developing a comprehensive Arctic policy for the Federal Government that will accommodate the need for development and use of Arctic resources with appropriate recognition and consideration given to the unique nature of the Arctic environment and the needs of its Native residents.

(c) After completion of the study, the Secretaries shall make recommendations on—

(1) changes in the mission and management of NARL necessary to accomplish the research and policy goals addressed in the study;

(2) the appropriate Federal agency or agencies that should have primary responsibility for management of NARL;

(3) changes in the organizational structure of NARL that would allow greater involvement by State and private organizations in the use, management and/or funding of NARL; and

(4) the appropriate level of Federal funding for scientific and technological research on the Arctic environment and its uses.

Consultation.

(d) In the course of the study, the Secretaries shall consult with representatives of the Department of Navy, the National Oceanic and Atmospheric Administration, the National Science Foundation, the Smithsonian Institution, the State of Alaska, local governments, representatives of public and private institutions conducting Arctic research, and Native Village and Regional Corporations in the areas now affected by the activities of NARL. The Secretaries shall provide an opportunity for public review and comment on the draft report and proposed recommendations prior to final approval, and shall include any recommendations of the local community in the final study.

Public review and comment.

Study submittal to Congress.

(e) The Secretaries shall submit the study and their recommendations to the Congress no later than one year after the date of enactment of this Act.

(f) Pending submission of the study to the Congress, the President is directed to continue the operation of NARL at the level of funding provided for in fiscal year 1979.

OIL AND GAS LEASING PROGRAM FOR NON-NORTH SLOPE FEDERAL LANDS

16 USC 3148.
30 USC 181 note.

SEC. 1008. (a) The Secretary shall establish, pursuant to the Mineral Leasing Act of 1920, as amended, an oil and gas leasing program on the Federal lands of Alaska not subject to the study required by section 1001 of this Act, other than lands included in the National Petroleum Reserve—Alaska. Such program shall not be

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Study.

(b)(1)(A) In such areas as the Secretary deems favorable for the discovery of oil or gas, he shall conduct a study, or studies, or collect and analyze information obtained by permittees authorized to conduct studies under this section, of the oil and gas potential of such lands and those environmental characteristics and wildlife resources which would be affected by the exploration for and development of such oil and gas.

Permits.

(B) The Secretary is authorized to issue permits for study, including geological, geophysical, and other assessment activities, if such activities can be conducted in a manner which is consistent with the purposes for which each affected area is managed under applicable law.

Consultation.

(2) The Secretary shall consult with the Secretary of Energy regarding the national interest involved in exploring for and developing oil and gas from such lands and shall seek the views of the Governor of the State of Alaska, Alaskan local governments, Native Regional and Village Corporations, the Alaska Land Use Council, representatives of the oil and gas industry, conservation groups, and other interested groups and individuals in determining which land should be studied and/or leased for the exploration and development of oil and gas.

(3) The Secretary shall encourage the State to undertake similar studies on lands associated, either through geological or other land values or because of possible transportation needs, with Federal lands. The Secretary shall integrate these studies, to the maximum extent practicable, with studies on Federal lands so that needs for cooperation between the Federal Government and the State of Alaska in managing energy and other natural resources, including fish and wildlife, can be established early in the program.

Report to Congress.

(4) The Secretary shall report to the Congress by October 1, 198[illegible], and yearly thereafter, on his efforts pursuant to this Act regarding the leasing of, and exploration and development activities on, such lands.

(c) At such time as the studies requested in subsection (b)(4) are completed by the Secretary, or at such time as the Secretary determines that sufficient interest has been indicated in exploring an area for oil or gas, and leasing should be commenced, he shall identify those areas which he determines to be favorable for the discovery of oil or gas (hereinafter referred to as "favorable petroleum geological provinces"). In making such determination, the Secretary shall utilize all information obtained in studies conducted under subsection (b) of this section as well as any other information he may develop or require by regulation to be transmitted.

30 USC 181 note.

(d) Pursuant to the Mineral Leasing Act of 1920, as amended, the Secretary is authorized to issue leases, on the Federal lands described in this section, under such terms and conditions as he may, by regulation, prescribe. Areas which are determined by the Secretary to be within favorable petroleum geological provinces shall be leased only by competitive bidding.

(e) At such time as paying quantities of oil or gas are discovered under a noncompetitive lease issued pursuant to the Mineral Leasing Act of 1920, the Secretary shall suspend all further noncompetitive

leasing in the area and shall determine the favorable petroleum geological province in proximity to such discovery. All further leasing in such area shall be in accordance with the requirements of subsection (d) of this section.

Exploration plan.

(f) Prior to any exploration activities on a lease issued pursuant to this section, the Secretary shall require the lessee to describe exploration activities in an exploration plan. He shall approve such plan if such activities can be conducted in conformity with such requirements as may be made by the Secretary for the protection and use of the land for the purpose for which it is managed under applicable law.

(g) Subsequent to a discovery of oil or gas in paying quantities, and prior to developing and producing such oil and gas, the Secretary shall require the lessee to describe development and production activities in a development and production plan. He shall approve such plan if such activities may be conducted in conformity with such requirements as may be made by the Secretary for the protection and use of the land for the purpose for which it is managed under applicable law.

(h) The Secretary shall monitor the performance of the lessee and, if he determines that due to significant changes in circumstances regarding that operation, including environmental or economic changes, new requirements are needed, he may require a revised development and production plan.

Operation suspension and cancellation.

(i) If the Secretary determines that immediate and irreparable damage will result from continuation in force of a lease, that the threat will not disappear and that the advantages of cancellation outweigh the advantages of continuation in force of a lease, he shall suspend operations for up to five years. If such a threat persists beyond such five-year suspension period, he shall cancel a lease and provide compensation to the lease under such terms as the Secretary establishes, by regulation, to be appropriate.

OIL AND GAS LEASE APPLICATIONS

16 USC 3149.

SEC. 1009. (a) Notwithstanding any other provision of law or regulation, whenever the Secretary receives an application for an oil and gas lease pursuant to the Mineral Leasing Act of 1920 for lands in Alaska within a unit of the National Wildlife Refuge System which are not also part of the National Wilderness Preservation System he shall, in addition to any other requirements of applicable law, follow the procedures set forth in this section.

30 USC 181 note.

(b) Any decision to issue or not to issue a lease shall be accompanied by a statement setting forth the reasons for the decision, including the reasons why oil and gas leasing would be compatible or incompatible with the purposes of the refuge.

(c) If the Secretary determines that the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 do not apply to his decision, the Secretary shall render his decision within six months after receipt of a lease application. If such requirements are applicable to the Secretary's decision, he shall render his decision within three months after publication of the final environmental impact statement.

42 USC 4332.

ALASKA MINERAL RESOURCE ASSESSMENT PROGRAM

16 USC 3150.

SEC. 1010. (a) MINERAL ASSESSMENTS.—The Secretary shall, to the full extent of his authority, assess the oil, gas, and other mineral

potential on all public lands in the State of Alaska in order to expand the data base with respect to the mineral potential of such lands. The mineral assessment program may include, but shall not be limited to, techniques such as side-looking radar imagery and, on public lands other than such lands within the national park system, core and test drilling for geologic information, notwithstanding any restriction on such drilling under the Wilderness Act. For purposes of this Act, core and test drilling means the extraction by drilling of subsurface geologic samples in order to assess the metalliferous or other mineral values of geologic terrain, but shall not be construed as including exploratory drilling of oil and gas test wells. To the maximum extent practicable, the Secretary shall consult and exchange information with the State of Alaska regarding the responsibilities of the Secretary under this section and similar programs undertaken by the State. In order to carry out mineral assessments authorized under this or any other law, including but not limited to the National Uranium Resource Evaluation program, the Secretary shall allow for access by air for assessment activities permitted in this subsection to all public lands involved in such study. He shall consult with the Secretary of Energy and heads of other Federal agencies carrying out such programs, to determine such reasonable requirements as may be necessary to protect the resources of such area, including fish and wildlife. Such requirements may provide that access will not occur during nesting, calving, spawning or such other times as fish and wildlife in the specific area may be especially vulnerable to such activities. The Secretary is authorized to enter into contracts with public or private entities to carry out all or any portion of the mineral assessment program. This section shall not apply to the lands described in section 1001 of this Act.

16 USC 1131 note.

Consultation.

Contracts.

(b) REGULATIONS.—Activities carried out in conservation system units under subsection (a) shall be subject to regulations promulgated by the Secretary. Such regulations shall ensure that such activities are carried out in an environmentally sound manner—

(1) which does not result in lasting environmental impacts which appreciably alter the natural character of the units or biological or ecological systems in the units; and

(2) which is compatible with the purposes for which such units are established.

PRESIDENTIAL TRANSMITTAL

SEC. 1011. On or before October 1, 1982, and annually thereafter, the President shall transmit to the Congress all pertinent public information relating to minerals in Alaska gathered by the United States Geological Surveys, Bureau of Mines, and any other Federal agency.

Mineral information, transmittal to Congress. 16 USC 3151.

TITLE XI—TRANSPORTATION AND UTILITY SYSTEMS IN AND ACROSS, AND ACCESS INTO, CONSERVATION SYSTEM UNITS

FINDINGS

SEC. 1101. Congress finds that— 16 USC 3161.

(a) Alaska's transportation and utility network is largely undeveloped and the future needs for transportation and utility systems in Alaska would best be identified and provided for through an orderly,

of each claim allowed and the name and address of the claimant. The Secretary of the Treasury shall pay to such claimant from the Alaska Native Fund the amount certified. No award under this subsection shall bear interest.

TAXATION

SEC. 21. (a) Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

(b) The receipt of shares of stock in the Regional or Village Corporations by or on behalf of any Native shall not be subject to any form of Federal, State or local taxation.

(c) The receipt of land or any interest therein pursuant to this Act or of cash in order to equalize the values of properties exchanged pursuant to subsection 22(f) shall not be subject to any form of Federal, State or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of such land or interest in land for purposes of any Federal, State or local tax imposed on or measured by income shall be the fair value of such land or interest in land at the time of receipt.

(d) Real property interests conveyed, pursuant to this Act, to a Native individual, Native group, or Village or Regional Corporation which are not developed or leased to third parties, shall be exempt from State and local real property taxes for a period of twenty years after the date of enactment of this Act: *Provided*, That municipal taxes, local real property taxes, or local assessments may be imposed upon leased or developed real property within the jurisdiction of any governmental unit under the laws of the State: *Provided further*, That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenues or proceeds derived from such property interests shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

(e) Real property interests conveyed pursuant to this Act to a Native individual, Native group, or Village or Regional Corporation shall, so long as the fee therein remains not subject to State or local taxes on real estate, continue to be regarded as public lands for the purpose of computing the Federal share of any highway project pursuant to title 23 of the United States Code, as amended and supplemented, for the purpose of the Johnson-O'Malley Act of April 16, 1934, as amended (25 U.S.C. 452), and for the purpose of Public Laws 815 and 874, 81st Congress (64 Stat. 967, 1100), and so long as there are also no substantial revenues from such lands, continue to receive forest fire protection services from the United States at no cost.

23 USC 101 et seq.
49 Stat. 1458.
72 Stat. 548.
79 Stat. 27.
20 USC 631, 236.

MISCELLANEOUS

SEC. 22. (a) None of the revenues granted by section 6, and none of the lands granted by this Act to the Regional and Village Corporation and to Native groups and individuals shall be subject to any contract which is based on a percentage fee of the value of all or some portion of the settlement granted by this Act. Any such contract shall not be enforceable against any Native as defined by this Act or any Regional or Village Corporation and the revenues and lands granted by this Act shall not be subject to lien, execution or judgment to fulfill such a contract.

(b) The Secretary is directed to promptly issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites (43 U.S.C. 682), and who have fulfilled all requirements of the law prerequisite to obtaining a patent. Any person who has made a lawful entry prior to August 31, 1971, for any of the foregoing purposes shall be protected in his right of use and occupancy until all the requirements of law for a patent have been met even though the lands involved have been reserved or withdrawn in accordance with Public Land Order 4582, as amended, or the withdrawal provisions of this Act: *Provided*, That occupancy must have been maintained in accordance with the appropriate public land law: *Provided further*, That any person who entered on public lands in violation of Public Land Order 4582, as amended, shall gain no rights. 34 Stat. 1052.

(c) On any lands conveyed to Village and Regional Corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location under the general mining laws and recorded notice of said location with the appropriate State or local office shall be protected in his possessory rights, if all requirements of the general mining laws are complied with, for a period of five years and may, if all requirements of the general mining laws are complied with, proceed to patent. Mining claims, possessory rights.

(d) The provisions of Revised Statute 452 (43 U.S.C. 11) shall not apply to any land grants or other rights granted under this Act.

(e) If land within the National Wildlife Refuge System is selected by a Village Corporation pursuant to the provisions of this Act, the secretary shall add to the Refuge System other public lands in the State to replace the lands selected by the Village Corporation.

(f) The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged. Land exchanges.

(g) If a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act—which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge.

(h)(1) All withdrawals made under this Act, except as otherwise provided in this subsection, shall terminate within four years of the date of enactment of this Act: *Provided*, That any lands selected by Village or Regional Corporations or by a Native group under section 12 shall remain withdrawn until conveyed pursuant to section 14. Withdrawals, termination dates.

(2) The withdrawal of lands made by subsection 11(a)(2) and section 16 shall terminate three years from the date of enactment of this Act.

(3) The provisions of this section shall not apply to any withdrawals made under section 17 of this Act.

(4) The Secretary is authorized to terminate any withdrawal made by or pursuant to this Act whenever he determines that the withdrawal is no longer necessary to accomplish the purposes of this Act.

(i) Prior to a conveyance pursuant to section 14, lands withdrawn by or pursuant to sections 11, 14, and 16 shall be subject to administration by the Secretary, or by the Secretary of Agriculture in the case of National Forest lands, under applicable laws and regulations, and their authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by the withdrawal.

(j) In any area of Alaska for which protraction diagrams of the Bureau of Land Management or the State do not exist, or which does not conform to the United States Land Survey System, or which has not been surveyed in a manner adequate to withdraw and grant the lands provided for under this Act, the Secretary shall take such actions as are necessary to accomplish the purposes of this Act, and the deeds granted shall note that upon completion of an adequate survey appropriate adjustments will be made to insure that the beneficiaries of the land grants receive their full entitlement.

Land patents in national forests, conditions.

(k) Any patents to lands under this Act which are located within the boundaries of a national forest shall contain such conditions as the Secretary deems necessary to assure that:

(1) the sale of any timber from such lands shall, for a period of five years, be subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and

(2) such lands are managed under the principle of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands for a period of twelve years.

Land selection limitation.

(l) Notwithstanding any provision of this Act, no Village or Regional Corporation shall select lands which are within two miles from the boundary, as it exists on the date of enactment of this Act, of any home rule or first class city (excluding boroughs) or which are within six miles from the boundary of Ketchikan.

REVIEW BY CONGRESS

Reports to Congress.

SEC. 23. The Secretary shall submit to the Congress annual reports on implementation of this Act. Such reports shall be filed by the Secretary annually until 1984. At the beginning of the first session of Congress in 1985 the Secretary shall submit, through the President, a report of the status of the Natives and Native groups in Alaska, and a summary of actions taken under this Act, together with such recommendations as may be appropriate.

APPROPRIATIONS

SEC. 24. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

PUBLICATIONS

Publication in Federal Register. 60 Stat. 237. 5 USC 551 et seq.

SEC. 25. The Secretary is authorized to issue and publish in the Federal Register, pursuant to the Administrative Procedure Act, such regulations as may be necessary to carry out the purposes of this Act.

SAVING CLAUSE

SEC. 26. To the extent that there is a conflict between any provision of this Act and any other Federal laws applicable to Alaska, the provisions of this Act shall govern.

(b) During a period of three years from the date of enactment of this Act, each Village Corporation for the villages listed in subsection (a) shall select, in accordance with rules established by the Secretary, an area equal to 23,040 acres, which must include the township or townships in which all or part of the Native village is located, plus, to the extent necessary, withdrawn lands from the townships that are contiguous to or corner on such township. All selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water, and shall conform as nearly as practicable to the United States Lands Survey System.

(c) The funds appropriated by the Act of July 9, 1968 (82 Stat. 307), to pay the judgment of the Court of Claims in the case of The Tlingit and Haida Indians of Alaska, et al. against The United States, numbered 47,900, and distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970 (84 Stat. 431), are in lieu of the additional acreage to be conveyed to qualified villages listed in section 11. 25 USC 1211.

JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

SEC. 17. (a) (1) There is hereby established the Joint Federal-State Land Use Planning Commission for Alaska. The Planning Commission shall be composed of ten members as follows: Establishment. Membership.

(A) The Governor of the State (or his designate) and four members who shall be appointed by the Governor. During the Planning Commission's existence at least one member appointed by the Governor shall be a Native as defined by this Act.

(B) One member appointed by the President of the United States with the advice and consent of the Senate, and four members who shall be appointed by the Secretary of the Interior.

(2) The Governor of the State and the member appointed by the President pursuant to subsection (a) (1) (B), shall serve as cochairmen of the Planning Commission. The initial meeting of the Commission shall be called by the cochairmen. All decisions of the Commission shall require the concurrence of the cochairmen.

(3) Six members of the Planning Commission shall constitute a quorum. Members shall serve at the pleasure of the appointing authority. A vacancy in the membership of the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) (A) Except to the extent otherwise provided in subparagraph (B) of this subsection, members of the Planning Commission shall receive compensation at the rate of $100 per day for each day they are engaged in the performance of their duties as members of the Commission. All members of the Commission shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission. Compensation.

(B) Any member of the Planning Commission who is designated or appointed from the Government of the United States or from the Government of the State shall serve without compensation in addition to that received in his regular employment. The member of the Commission appointed by the President pursuant to subsection (a) (1) (B) shall be compensated as provided by the President at a rate not in excess of that provided for level V of the Executive Schedule in title 5, United States Code. 80 Stat. 463; 83 Stat. 864. 5 USC 5316.

(5) Subject to such rules and regulations as may be adopted by the Planning Commission, the cochairmen, without regard to the provisions of title 5, United States Code, governing appointments in the 5 USC 101 et seq.

competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power—

80 Stat. 443, 467.
5 USC 5101, 5331.
5 USC 5332 note.

(A) to appoint and fix the compensation of such staff personnel as they deem necessary, and

(B) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

80 Stat. 416.
Hearings.

(6) (A) The Planning Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this section, hold such hearings, take such testimony, receive such evidence, print or otherwise reproduce and distribute so much of its proceedings and reports thereon, and sit and act at such times and places as the Commission, subcommittee, or member deems advisable.

Information, availability.

(B) Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by a cochairman, such information as the Commission deems necessary to carry out its functions under this section.

(7) The Planning Commission shall—

(A) undertake a process of land-use planning, including the identification of and the making of recommendations concerning areas planned and best suited for permanent reservation in Federal ownership as parks, game refuges, and other public uses, areas of Federal and State lands to be made available for disposal, and uses to be made of lands remaining in Federal and State ownership;

72 Stat. 339.
48 USC prec. 21 note.

(B) make recommendations with respect to proposed land selections by the State under the Alaska Statehood Act and by Village and Regional Corporations under this Act;

(C) be available to advise upon and assist in the development and review of land-use plans for lands selected by the Native Village and Regional Corporations under this Act and by the State under the Alaska Statehood Act;

(D) review existing withdrawals of Federal public lands and recommend to the President of the United States such additions to or modifications of withdrawals as are deemed desirable;

(E) establish procedures, including public hearings, for obtaining public views on the land-use planning programs of the State and Federal Governments for lands under their administration;

(F) establish a committee of land-use advisers to the Commission, made up of representatives of commercial and industrial land users in Alaska, recreational land users, wilderness users, environmental groups, Alaska Natives, and other citizens;

(G) make recommendations to the President of the United States and the Governor of Alaska as to programs and budgets of the Federal and State agencies responsible for the administration of Federal and State lands;

(H) make recommendations from time to time to the President of the United States, Congress, and the Governor and legislature of the State as to changes in laws, policies, and programs that the Planning Commission determines are necessary or desirable;

(I) make recommendations to insure that economic growth and development is orderly, planned and compatible with State and national environmental objectives, the public interest in the public lands, parks, forests, and wildlife refuges in Alaska, and the economic and social well-being of the Native people and other residents of Alaska;

(J) make recommendations to improve coordination and consultation between the State and Federal Governments in making resource allocation and land use decisions; and

(K) make recommendations on ways to avoid conflict between the State and the Native people in the selection of public lands.

Report to President and Congress of U.S., Governor and legislature of Alaska.

(8)(A) On or before January 31 of each year, the Planning Commission shall submit to the President of the United States, the Congress, and the Governor and legislature of the State a written report with respect to its activities during the preceding calendar year.

Recordkeeping.

(B) The Planning Commission shall keep and maintain accurate and complete records of its activities and transactions in carrying out its duties under this Act, and such records shall be available for public inspection.

(C) The principal office of the Planning Commission shall be located in the State.

(9)(A) The United States shall be responsible for paying for any fiscal year only 50 per centum of the costs of carrying out subsections (a) and (b) for such fiscal year.

Appropriation.

(B) For the purpose of meeting the responsibility of the United States in carrying out the provisions of this section, there is authorized to be appropriated $1,500,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year.

Final report.

(10) On or before May 30, 1976, the Planning Commission shall submit its final report to the President of the United States, the Congress, and the Governor and Legislature of the State with respect to its planning and other activities under this Act, together with its recommendations for programs or other actions which it determines should be taken or carried out by the United States and the State. The Commission shall cease to exist effective December 31, 1976.

Termination date.

Public easements.

(b)(1) The Planning Commission shall identify public easements across lands selected by Village Corporations and the Regional Corporations and at periodic points along the courses of major waterways which are reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important.

(2) In identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall receive and review statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements: *Provided*, That any valid existing right recognized by this Act shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access.

(3) Prior to granting any patent under this Act to the Village Corporation and Regional Corporations, the Secretary shall consult with the State and the Planning Commission and shall reserve such public easements as he determines are necessary.

(c) In the event that the Secretary withdraws a utility and transportation corridor across public lands in Alaska pursuant to his existing authority, the State, the Village Corporations and the Regional Corporations shall not be permitted to select lands from the area withdrawn.

Unreserved public land, withdrawal.

(d)(1) Public Land Order Numbered 4582, 34 Federal Register 1025, as amended, is hereby revoked. For a period of ninety days after the date of enactment of this Act all unreserved public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining (except locations for metalliferous

minerals) and the mineral leasing laws. During this period of time the Secretary shall review the public lands in Alaska and determine whether any portion of these lands should be withdrawn under authority provided for in existing law to insure that the public interest in these lands is properly protected. Any further withdrawal shall require an affirmative act by the Secretary under his existing authority, and the Secretary is authorized to classify or reclassify any lands so withdrawn and to open such lands to appropriation under the public land laws in accord with his classifications. Withdrawals pursuant to this paragraph shall not affect the authority of the Village Corporations, the Regional Corporations, and the State to make selections and obtain patents within the areas withdrawn pursuant to section 11.

(2)(A) The Secretary, acting under authority provided for in existing law, is directed to withdraw from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, and from selection by Regional Corporations pursuant to section 11, up to, but not to exceed, eighty million acres of unreserved public lands in the State of Alaska, including previously classified lands, which the Secretary deems are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems: *Provided*, That such withdrawals shall not affect the authority of the State and the Regional and Village Corporations to make selections and obtain patents within the areas withdrawn pursuant to section 11.

72 Stat. 339.
48 USC prec. 21 note.

(B) Lands withdrawn pursuant to paragraph (A) hereof must be withdrawn within nine months of the date of enactment of this Act. All unreserved public lands not withdrawn under paragraph (A) or subsection 17(d)(1) shall be available for selection by the State and for appropriation under the public land laws.

Final withdrawal date.

(C) Every six months, for a period of two years from the date of enactment of this Act, the Secretary shall advise the Congress of the location, size and values of lands withdrawn pursuant to paragraph (A) and submit his recommendations with respect to such lands. Any lands withdrawn pursuant to paragraph (A) not recommended for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems at the end of the two years shall be available for selection by the State and the Regional Corporations, and for appropriation under the public land laws.

Report to Congress.

(D) Areas recommended by the Secretary pursuant to paragraph (C) shall remain withdrawn from any appropriation under the public land laws until such time as the Congress acts on the Secretary's recommendations, but not to exceed five years from the recommendation dates. The withdrawal of areas not so recommended shall terminate at the end of the two year period.

(E) Notwithstanding any other provision of this subsection, initial identification of lands desired to be selected by the State pursuant to the Alaska Statehood Act and by the Regional Corporations pursuant to section 12 of this Act may be made within any area withdrawn pursuant to this subsection (d), but such lands shall not be tentatively approved or patented so long as the withdrawals of such areas remain in effect: *Provided*, That selection of lands by Village Corporations pursuant to section 12 of this Act shall not be affected by such withdrawals and such lands selected may be patented and such rights granted as authorized by this Act. In the event Congress enacts legislation setting aside any areas withdrawn under the provisions of this subsection which the Regional Corporations or the State desired to select, then other unreserved public lands shall be made available for alternative selection by the Regional Corporations and the State. Any

U.S. FISH & WILDLIFE SERVICE

ALASKA

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99503 FISH AND WILDLIFE SERVICE

For Release November 24, 1986 Phil Million 343-5634

INTERIOR DEPARTMENT SEEKS PUBLIC COMMENTS ON DRAFT REPORT REGARDING OIL AND GAS POTENTIAL ON ARCTIC NATIONAL WILDLIFE REFUGE

The coastal plain of the Arctic National Wildlife Refuge in Alaska is "the most outstanding oil and gas frontier remaining in the United States," according to a draft report released to the public today by the Department of the Interior.

William P. Horn, Assistant Secretary for Fish and Wildlife and Parks, said he was making the draft report and legislative environmental impact statement (LEIS) on the oil and gas potential of the Arctic refuge available for public review so that public comments can be considered before a final report and LEIS are submitted to Congress next spring.

The report, "Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment," predicts that the 1.5-million acre coastal plain area within the 19-million-acre refuge could contain more than 29.4 billion barrels of oil and 64.5 trillion cubic feet of gas in-place. The refuge coastal plain, which constitutes about 8 percent of the Refuge, also has outstanding wildlife values and is perhaps best known to the public as part of the calving grounds for a large, migratory caribou herd. Other species using the area include musk oxen, polar and brown bears, and many kinds of migratory birds.

The Interio Department prepared the report to fulfill the requirements of Section 1002(h) of the Alaska National Interest Lands Conservation Act (ANILCA). Section 1002(h) required the Interior Department to study the wildlife and energy values of the coastal plain and report to Congress on the study results. Section 1002(h) also asked the Secretary of the Interior to make recommendations to Congress concerning future management of the coastal plain.

Since ANILCA was enacted in 1980, the U.S. Fish and Wildlife Service has studied the biological resources of the area extensively, and the U.S. Geological Survey, the Bureau of Land Management, and exploration crews from private industry have conducted surface geologic studies. Approximately 1300 gravity readings and more than 1300 line miles of seismic data also were acquired by industry under special-use permits issued by the Fish and Wildlife Service, which administers the refuge. The analyses of these biological and geological data represent the efforts of more than 50 Interior Department scientists.

(over)

Horn said the range of alternatives identified in the draft report includes leasing the entire area for oil and gas development; leasing a limited area; permitting additional exploration, including exploratory wells; taking no action regarding oil and gas activity but including the area in the comprehensive conservation planning process for the Arctic refuge; or designating the coastal plain as wilderness. The report also examines the potential environmental consequences of each alternative.

Horn said that, on the basis of the draft report's findings, he is proposing to recommend that the entire coastal plain be made available for oil and gas leasing, with necessary environmental safeguards. Horn's proposed recommendation is being circulated as a part of the draft report and LEIS for public review and comment. He emphasized that the final recommendation to Congress will be made by Secretary Hodel and that the final decision about management of the area will be made by Congress.

"Based on the analyses presented, on the national need for domestic sources of oil and gas, and on the ability of industry to minimize damage as learned from oil and gas activities elsewhere in the Alaskan arctic, I am proposing full leasing of the coastal plain," Horn said. "To afford the special protection necessary to conserve the high natural resource values of the coastal plain, the recommendation asks for authority to impose restrictions to ensure environmental integrity during oil and gas operations. Development must result in no unnecessary adverse effects, and unavoidable habitat losses should be fully compensated.

Public comments are being solicited to assist Secretary Hodel in making his final recommendation. Comments will be included as a part of the final report and LEIS to Congress. By releasing the draft report and LEIS at this time, the Interior Department is commencing the administrative requirements imposed by the district court's February 25, 1986, order in Trustees for Alaska, et al. v. Donald Hodel, et al., (D.AK), a case brought under the National Environmental Policy Act (NEPA) to challenge the Department's plans for the preparation of the report. The district court ruled that the Department is required by NEPA to provide the public an opportunity to participate in the preparation of the report in advance of its submission to Congress. The Department has appealed the district court's order to the ninth circuit court of appeals, but no decision on the appeal has been rendered yet. In initiating the steps necessary under the court's order to permit the submission of the final report and LEIS by next spring, the Department does not feel that its action makes the appeal moot.

Copies of the report may be obtained from Clay Hardy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; or from Noreen Clough, Division of Refuge Management, Room 2343, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Written comments should be sent to the U.S. Fish and Wildlife Service, Attention: Division of Refuge Management, 2343 Main Interior Building, 18th and C Streets NW., Washington, DC 20240, by January 20, 1987.

(continued)

The Fish and Wildlife Service plans to hold public meetings in Anchorage and Kaktovik, Alaska, and Washington, DC, to receive public comments. The Washington, DC, meeting will be held January 9, 1987, at 1:30 p.m., in the Interior Building auditorium. Dates and locations of the Kaktovik and Anchorage meetings will be announced at a later date.

The final report and LEIS is scheduled to be released to the public in March 1987, after which it will be forwarded to Congress.

-DOI-

PRELIMINARY PETROLEUM RESOURCE APPRAISAL

OF THE

WILLIAM O. DOUGLAS

ARCTIC WILDLIFE RANGE IN ALASKA

U.S. DEPARTMENT OF THE INTERIOR

JULY 1980

Preliminary Petroleum Resource Appraisal of the William O. Douglas Arctic Wildlife Range, Alaska U.S. Department of the Interior

July 1980

Summary

The Department of the Interior has completed a preliminary petroleum resource appraisal of the William O. Douglas Arctic Wildlife Range as requested by the Chairman of the U.S. Senate Committee on Energy and Natural Resources. The appraisal was conducted by two teams of geologists assembled by the U.S. Geological Survey, a Geologic Assessment Committee and a Resource Appraisal Review Committee, using a methodology developed for the economic and policy analysis of the National Petroleum Reserve in Alaska (NPR-A).

The petroleum potential of the Wildlife Range is highly uncertain. With no subsurface geologic and seismic data for that area, the appraisal is based almost entirely on extrapolation from data acquired in areas adjacent to the Range. The appraisal was further complicated because the Wildlife Range may lie in a major geologic transition zone.

The results of the preliminary appraisal are a range of probabilities that certain amounts of oil and gas in place exist in the Wildlife Range. As shown in Table 1, there is a 50 percent chance that there would be at least 2.7 billion barrels of oil in place, a 5 percent chance of 17.0 billion barrels of oil in place, and a 95 percent chance of .16 billion barrels of oil in place. By way of comparison, the most recent appraisal for the National Petroleum Reserve in Alaska, based on substantial geologic and seismic data, indicates a 50 percent chance that there would be 5.2 billion barrels of oil in place.

It must be emphasized that these estimates are for resources in place. The average recovery rate for conventional crude oil is about 32 percent. However, based on speculation that oil in the Wildlife Range may be heavier than conventional crude oils, only about 20 to 25 percent of this oil might actually be recovered. Furthermore, no estimates have been made of the probability that oil and gas might be discovered.

Geologic Assessment

Methodology. A Geological Assessment Committee, a team of geologists with expertise in the geology and geophysics of northern Alaska, reviewed all available surface geological data and magnetic anomaly data which have been compiled over the years from field studies in the Wildlife Range. The committee also examined all available geologic information on areas adjacent to the Wildlife Range, extending west of its boundaries

into the Prudhoe Bay area and eastward into Canada. Information relating to the geology of the petroleum-producing areas of the Mackenzie Delta and the Canadian part of the Beaufort Sea was provided by the Canadian Geological Survey and Dome Petroleum of Canada. Through representation on the Geological Assessment Committee, data were also provided by the State of Alaska. The most recent seismic data collected by the USGS in the Beaufort Sea offshore from the Wildlife Range was carefully reviewed in light of the possible continuity of the geology onshore into the Wildlife Range.

No subsurface geologic or seismic data exist for the Wildlife Range itself. Subjective extrapolations of the geology to the west, to the east, from offshore and from analogous areas had to be considered. The diversity in the interpretations of the subsurface geology, in the absence of subsurface data, and the related potentials for the probable occurrence of petroleum, account for the large range in uncertainty in the estimates.

Findings. The area of the Wildlife Range that may have petroleum lies between the Brooks Range and the Beaufort Sea and covers roughly 3,000 square miles, or less than one-third of the total Wildlife Range (see Figure 1). This area is about one-tenth the size of the National Petroleum Reserve in Alaska, much of which is believed to have petroleum potential. The potential sedimentary section may consist of from 15,000 feet to 25,000 feet of sediments in some parts of the Wildlife Range.

The Wildlife Range is located in an area where there may be a major transition in the geology from a Mesozoic-Paleozoic rock sequence similar to the Prudhoe Bay area to that of a major Tertiary sequence similar to the geology of the Canadian Mackenzie Delta-Beaufort Sea petroleum province. This generates two different sets of geologic scenarios and great uncertainty as to which might actually exist. If the Mesozoic-Paleozoic rock sequence similar to the Prudhoe Bay area should have a major extension into the Wildlife Range, it is possible that Prudhoe Bay-type conditions may exist. On the other hand, if the major Tertiary rock sequence occurs similar to the conditions in Canada just east of the Wildlife Range and to the geology immediately offshore in the Beaufort Sea, then the conditions that provide the petroleum potential of the Canadian Mackenzie Delta-Beaufort Sea areas may occur in the Wildlife Range.

Resource Appraisal

Methodology. The methodology used for this preliminary petroleum resource appraisal had earlier been developed by the Interior Department's Office of Minerals Policy and Research Analysis for use in the economic and policy evaluation studies of the National Petroleum Reserve in Alaska. These studies, required by Section 105(b) of the Naval Petroleum Reserves Production Act of 1976, were used in developing recommendations to the Congress on development of the Reserve.

This methodology first requires a determination of the number of possible petroleum plays [1/] within the Range; subjective probability estimates are then made of various geologic parameters to determine the number of prospects that might exist in each play and which of those prospects might contain oil and gas. The Geologic Assessment Committee defined 10 plays within the Wildlife Range and compiled subjective estimates of the values of each of the geologic parameters for each of the 10 plays. These estimated geologic values were entered into a computer model to calculate the petroleum resources.

A Resource Appraisal Committee, consisting of some of the geologists from the Geological Committee and additional USGS staff knowledgeable in resource appraisal methods and procedures, then reviewed the geology and geologic assessments of the 10 possible petroleum plays. It also reviewed and further refined the estimated distributions from the computer model for each of the 10 individual plays and for the aggregated resource estimates for the Wildlife Range.

Findings. As can be seen in Table 1, the wide range of geological interpretations and the uncertainties that went into the resource appraisal process are reflected in the range of probabilities for occurrence of oil and gas. There is a 50 percent probability that at least 2.7 billion barrels of oil are in place, a 95 percent chance of .16 billion barrels and a 5 percent chance of 17.03 billion barrels. Similarly, estimates of gas in place range from a 95 percent probability of 1.4 trillion cubic feet (tcf) to a 5 percent probability of 33.9 tcf, with a 50 percent chance that 8.4 tcf of gas are in place.

No estimates were made of the probability of actually finding the resources nor were predictions made of recovery rates. The Geological Survey team of geologists, however, indicated that recovery rates may be lower than the average rate of recovery for conventional crude oil, which is normally about 32 percent. They speculate that there may be heavier crude oils in the Wildlife Range with recovery rates in the range of 20 to 25 percent.

Full documentation of the geologic data for each of 10 exploration plays for the William O. Douglas Arctic Wildlife Range and the individual resource assessments for each of the plays are being prepared by the U.S. Geological Survey and will be available upon request.

1/ A play is defined as a geologic formation or stratigraphic unit consisting of one or more prospects in a common or relatively homogeneous geologic setting which can be explored for by using geological, geochemical, and geophysical techniques. A prospect is a potential hydrocarbon accumulation, or field.

TABLE 1

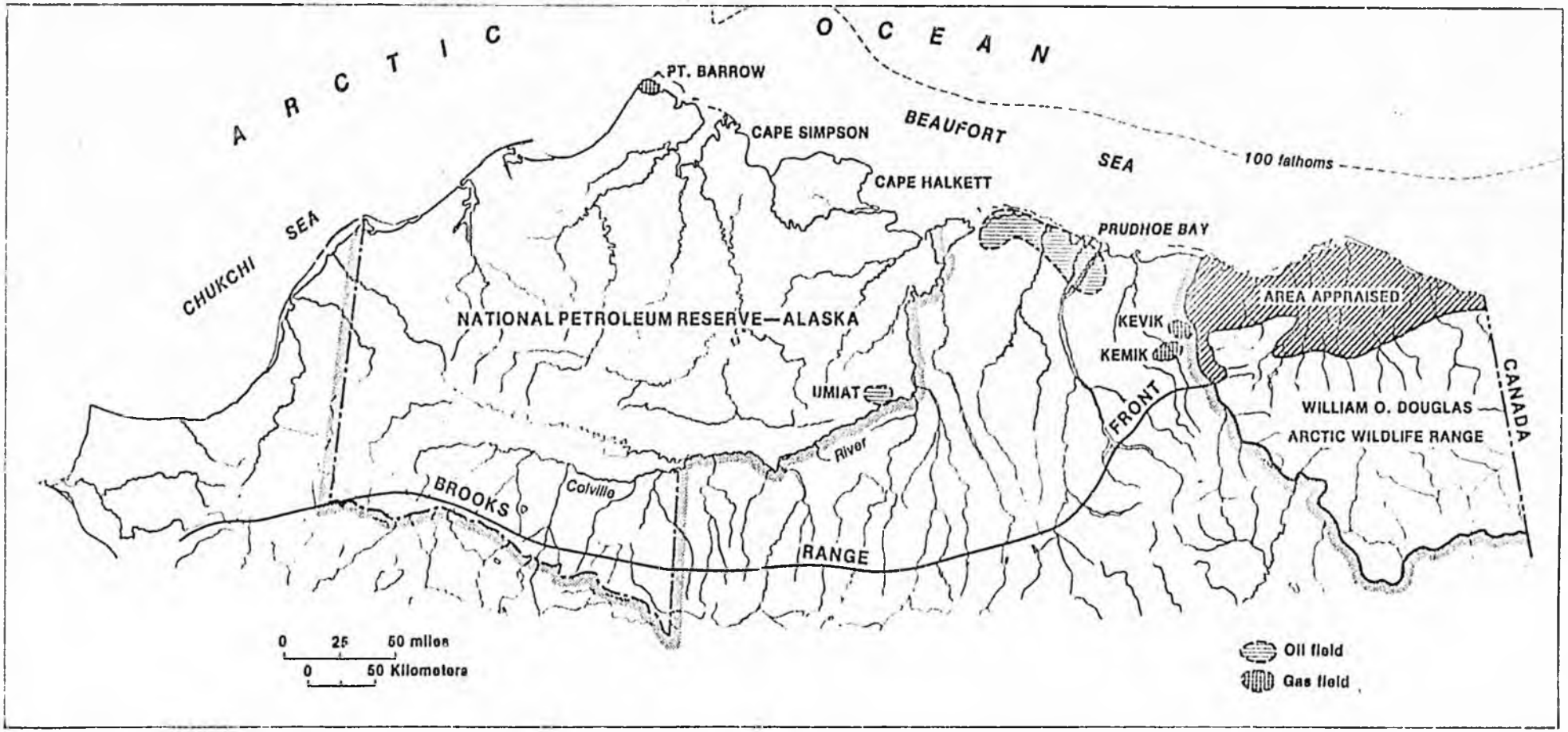
Preliminary Distribution of Estimated
Oil and Natural Gas Resources In Place
in the William O. Douglas Arctic Wildlife Range

(June 1980)

Probability that Quantity is at Least Given Value	Oil In Place (Billions of Barrels)	Gas In Place (Trillions of cubic feet)	Barrels of Oil Equivalent In Place* (Billions of Barrels)
95%	.16	1.44	.86
75%	1.12	4.33	2.48
50%	2.71	8.41	4.74
25%	5.87	15.14	8.52
5%	17.03	33.93	20.53
Mean	4.85	11.90	6.94

* Barrels of oil equivalent are obtained by converting the estimated gas in place to the energy equivalent in oil and adding the resulting value to the estimated oil in place.

Figure 1



INDEX MAP: NATIONAL PETROLEUM RESERVE—ALASKA AND WILLIAM O. DOUGLAS ARCTIC WILDLIFE RANGE

MEMORANDUM OF UNDERSTANDING BETWEEN THE
UNITED STATES DEPARTMENT OF THE INTERIOR
AND THE STATE OF ALASKA

1.0 Parties.

The parties to this Memorandum of Understanding (hereinafter MOU) are:

1.1 The United States Department of the Interior (hereinafter Interior), acting by and through the Secretary of the Interior (hereinafter the Secretary). As used in this MOU, "Interior" means any of the component bureaus and offices of Interior which has expertise in, or responsibility for, oil and gas assessment or land management, and which has a need for access to the data and information subject to this MOU in connection with the performance of the official business of Interior.

1.2 The State of Alaska (hereinafter Alaska), acting by and through the Alaska Department of Natural Resources (hereinafter DNR) and the Commissioner of Natural Resources. As used in this MOU, "DNR" means the Division of Geological and Geophysical Surveys (hereinafter DGGS) or the Division of Oil and Gas (hereinafter DO&G) or both and their line

supervisors within the government of the State of Alaska. Nothing in this MOU precludes an agreement on oil and gas data sharing between Interior and another division or office within the Department of Natural Resources or another state agency.

2.0 Premises.

2.1 Section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (hereinafter ANILCA), 94 Stat. 2449, as amended by section 110 of Pub. L. 97-394, 96 Stat. 1982, 16 U.S.C. § 3142, provides for a comprehensive and continuing inventory and assessment of the fish and wildlife resources of the coastal plain of the Arctic National Wildlife Refuge (hereinafter ANWR). It also authorizes surface geological and geophysical exploration for oil and gas within the coastal plain in a manner that avoids significant adverse effects on the fish and wildlife and other resources. As used in this MOU, "coastal plain" means the area referred to in section 1002(b)(1) of ANILCA and described in Appendix I to 50 C.F.R. Part 37.

2.2 Under 50 C.F.R. § 37.53 any person authorized pursuant to section 1002 of ANILCA and 50 C.F.R. Part 37 to conduct exploratory activities on the coastal plain is required to submit to the Regional Director, Region 7, United States Fish and Wildlife Service (hereinafter FWS) free of charge all data and information obtained as a result of carrying out such activities at the time and in the form specified therein.

2.3 Section 1002(h) of ANILCA requires the Secretary to submit to Congress, not earlier than December 2, 1985 nor later than September 2, 1986, a report containing:

2.3.1 The identification, by means other than drilling of exploratory wells, of those areas within the coastal plain that have oil and gas production potential and estimate of the volume of the oil and gas concerned;

2.3.2 The description of the fish and wildlife, their habitats, and other resources that are within the areas identified under paragraph 2.3.1;

2.3.3 An evaluation of the adverse effects that the carrying out of further exploration for, and the development and production of, oil and gas within such areas will have on the resources referred to in paragraph 2.3.2;

2.3.4 A description of how such oil and gas, if produced within such area, may be transported to processing facilities;

2.3.5 An evaluation of how such oil and gas relates to the national need for additional domestic sources of oil and gas; and

2.3.6 The recommendations of the Secretary to Congress with respect to whether further exploration for, and the development and production of, oil and gas within the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitats, and other resources are avoided or minimized.

2.4 FWS, which has the lead responsibility within Interior for administering the section 1002 program, has through a tripartite agreement established interagency procedures enabling it to use the technical assistance of the Geological Survey (hereinafter GS) and the Bureau of Land Management (hereinafter BLM) in analyzing data and information obtained as a result of exploratory activities authorized by FWS pursuant to section 1002 of ANILCA and in preparing the report to Congress required by section 1002(h) of ANILCA. Under the agreement, GS has the lead role in providing assistance to FWS in completing those portions of the report addressing the requirements of section 1002(h)(1), and BLM has the lead role in providing assistance to FWS in completing those portions of the report addressing the requirements of sections 1002(h)(4) and (5). In addition, FWS has delegated to the Alaska State Director, BLM, the responsibility for the storage, physical security, transfer, and disclosure of such data and information, with the stipulation that, whenever BLM transfers any proprietary or confidential data to any other agency or party, the transferee must

assume sole responsibility for maintaining the confidentiality of such data at the time of transfer.

2.5 DGGS and DO&G have the expertise to determine, examine, classify and evaluate geologic structures and mineral resource production potential, including the oil and gas production potential of ANWR. DGGS and DO&G have developed an extensive professional staff and the technical means and methodologies for such evaluations, and have already assembled some oil and gas data and information for areas in and offshore of Alaska adjacent to ANWR.

2.6 Under section 1003 of ANILCA, 94 Stat. 2452, 16 U.S.C. § 3143, oil and gas production, leasing and any other development leading to production within ANWR are prohibited until authorized by an act of Congress.

2.7 The United States and Alaska each have important and distinct interests which will be affected by executive and congressional decisions on the future

use and administration of ANWR. These interests will best be served by seeking to ensure that such executive and congressional decisions are based upon information which is as comprehensive and reliable as current technology, data, science and law will allow. Both Interior and DNR have access to important oil and gas data and information not readily available to the other. Therefore, to the extent that Interior and DNR share such data and information, each agency's knowledge and capacity to make sound administrative decisions about the lands and resources for which each is responsible will be enhanced. It is the purpose of this MOU to advance these governmental interests by providing for the sharing of oil and gas data and information and geophysical and geological expertise and analyses to the fullest extent permissible under Alaska and federal law. By executing this MOU, it is not Interior's intent to seek, nor is it DNR's intent to offer, DNR's advice or recommendations on either the content of the section 1002(h) report or on the Secretary's recommendations to Congress concerning any

further exploration for and development and production of oil and gas within the coastal plain. However, nothing in this MOU is intended to preclude Alaska from participating in public discussions over the future use and management of the ANWR's coastal plain to the extent that Alaska's use and disclosure of any oil and gas data and information obtained by it pursuant to this MOU are consistent with section 1002 of ANILCA, 50 C.F.R. Part 37, and this MOU.

3.0 Authorities.

This MOU is authorized by 50 C.F.R. § 37.54(b) and (c), AS 38.05.020, AS 41.08.040 and 11 AAC 96.220(2) and is entered into with the following understandings with respect to these authorities:

3.1 To the extent that under this MOU DNR inspects and/or obtains any data and information which qualifies as "raw data and information" as that term is defined in 50 C.F.R. § 37.2(p), 50 C.F.R. § 37.54(b) shall govern DNR's access to and use of such data and information and DNR's compliance with the terms and conditions of this MOU

shall be deemed to satisfy DNR's obligations thereunder not to disclose such data and information, and any interpretations and analyses derived therefrom, to any third party without Interior's consent. DNR shall be liable to Interior and the permittee that submitted such data and information to Interior for any unauthorized disclosure of such data and information and any interpretations and analyses derived therefrom which divulge confidential data and information to and any unauthorized use thereof by third parties. Whenever DNR inspects and/or obtains such data and information directly from the permittee, rather than indirectly through Interior, DNR's exercise of such direct access shall constitute notice to the permittee of Interior's disclosure of such data and information to DNR. Whenever DNR inspects and/or obtains such data and information from BLM, BLM shall, if practicable, give advance notice of such disclosure to the permittee.

3.2 To the extent that under this MOU DNR inspects and/or obtains any data and information which qualifies as "processed, analyzed and interpreted data or information"

(hereinafter processed data) as that term is defined in 50 C.F.R. § 37.2(o), 50 C.F.R. § 37.54(c) shall govern DNR's access to and use of such processed data and DNR's compliance with paragraph 4.7 hereof shall be deemed to constitute a proper request thereunder. DNR shall be responsible for maintaining the confidentiality of such processed data and any interpretations and analyses derived therefrom which divulge such processed data in accordance with section 1002 of ANILCA, 50 C.F.R. Part 37, and this MOU.

4.0 Data and Information Sharing by Interior.

4.1 To the extent that Geophysical Service Inc. (hereinafter GSI) is required by 50 C.F.R. § 37.53, its exploration plan or its special use permit to submit such data to FWS without charge, Interior hereby authorizes DNR to obtain directly from GSI, provided that DNR pays GSI for its costs in duplicating such data and information, duplicates of all processed data obtained by GSI as a result of its exploration of the coastal plain pursuant to section 1002 of ANILCA, including, but not limited to, full-scale final stack and

migrated seismic sections, half-scale velfilt seismic sections, half-scale velocity analyses and its velocity tape with tape format, processed gravity data, and shot-hole sample geochemical and paleontological analyses, and duplicates of all data, whether raw or processed, obtained by GSI from its exploration of the coastal plain which are essential to DNR's use of such processed data, including, but not limited to, its navigation tape with tape format and a reproducible shot-point base map.

4.2 To the extent that International Technology, Ltd. (hereinafter Itech) is required by 50 C.F.R. § 37.53, its exploration or its special use permit to submit such data to FWS without charge, Interior hereby authorizes DNR to obtain directly from Itech, provided that DNR pays Itech for its costs in duplicating such data and information, duplicates of all processed data obtained by Itech as a result of its exploration of the coastal plain pursuant to section 1002 of ANILCA, including, but not limited to, processed gravity data, and duplicates of all data, whether raw or

processed, obtained by Itech from its exploration of the coastal plain which are essential to DNR's use of such processed data, including, but not limited to, its navigation tape with tape format.

4.3 At its option, DNR may obtain duplicates of the data and information described in paragraphs 4.1 and 4.2 hereof directly from BLM, provided that DNR pays BLM for its duplication costs.

4.4 To the extent that DNR wishes to obtain from GSI or Itech data and information obtained as a result of its exploration of the coastal plain in a format or medium different than that in which such data and information are required to be submitted to FWS, DNR may request GSI or Itech to reproduce such data and information in such format or medium, provided that, if GSI or Itech grants DNR's request, DNR shall pay both the costs, if any, for altering their format or medium and the duplication costs.

4.5 Nothing in this MOU shall be construed to authorize DNR to obtain oil and gas data and information obtained as a result of the exploration of ANWR from other FWS permittees, including, but not limited to, the participants to GSI's special use permit, or to require such permittees to furnish such data and information to DNR. In addition, nothing in this MOU shall be construed to limit DNR's ability otherwise to obtain such data and information in accordance with applicable law.

4.6 Whenever arrangements can be made to the mutual satisfaction of DNR and BLM or the permittee actually furnishing DNR with access to oil and gas data and information under the terms and conditions of this MOU, DNR may, if it wishes, inspect and use such data and information on the premises of BLM or the permittee.

4.7 Nothing in this MOU shall be construed to require GSI, Itech, FWS, GS or BLM automatically to share with DNR oil and

gas data and information obtained from exploration of the coastal plain upon their becoming available to that permittee or bureau. Rather, in order to maintain accountability and security, DNR shall in writing notify GSI, Itech, or BLM, as appropriate, whenever it wishes to inspect and/or obtain duplicates of such data and information in accordance with this MOU, reasonably describe the data and information to which it seeks access, and provide the Alaska State Director, BLM, with an informational copy of such notice. Upon DNR's request, BLM will assist DNR in identifying oil and gas data and information obtained from exploration of the coastal plain pursuant to section 1002 of ANILCA which DNR may wish to obtain under paragraphs 4.1, 4.2, 4.3 and 4.4 hereof. Upon the receipt of DNR's written notice and description, the appropriate permittee or BLM shall within 30 days therefrom, if practicable, make the requested data and information available to DNR in the manner requested by DNR, i.e., by affording DNR the opportunity to inspect if the requirements of paragraph 4.6 hereof have been satisfied, or

by providing duplicates of such data and information if the requirements of paragraph 4.1, 4.2, 4.3 or 4.4 hereof, whichever paragraph is applicable, have been satisfied, or both. Whenever DNR inspects or receives duplicates of any data and information from a permittee pursuant to this MOU, DNR shall thereafter promptly provide the Alaska State Director, BLM, with an itemized inventory of such data and information which has been verified and countersigned by the entity disclosing such data and information to DNR. Whenever DNR inspects or receives duplicates of any data and information from BLM pursuant to this MOU, BLM shall make an itemized inventory of such data and information which shall be verified and countersigned by DNR. BLM shall provide a copy of such countersigned inventory to the permittee(s) that originally submitted the data and information covered thereby to FWS as soon thereafter as is practicable.

4.8 Nothing in this MOU shall be construed to require Interior to exercise any authority or remedy available to it to obtain data and information required to be submitted to it by

section 1002 of ANILCA and 50 C.F.R. Part 37 in order to enable it to perform its obligations to DNR under this MOU or to ensure that it does in fact perform such obligations.

4.9 Nothing in this MOU shall be construed to require or affect the sharing by Interior with Alaska of any oil and gas data and information which may be obtained from any area within ANWR and submitted to Interior pursuant to any legislation that may hereafter be enacted by Congress to permit any further exploration for or development or production of oil and gas within ANWR.

5.0 Data and Information Sharing by Alaska.

5.1 DNR shall use its best efforts to provide Interior to the maximum extent possible with access to all oil and gas data and information obtained from state and private lands, including, but not limited to all geological, geophysical, geochemical and paleontological data and information, and all ancillary data and information, such as engineering and economic data, whether such

data and information were submitted to Alaska by a state contractor, permittee, licensee, or lessee, or derived by Alaska or its agent from data and information so submitted, which are not required to be held confidential by DNR under state law or the terms of any permit or any agreement to which Alaska is a party, and which in the judgment of Interior are relevant to the evaluation and administration of the hydrocarbon resources of federal lands within Alaska and of the federal Outer Continental Shelf offshore of Alaska. DNR shall provide such access to Interior by cooperating in the identification of the existence and location of such data and information, permitting Interior to inspect such data and information on DNR's premises or, if mutually satisfactory arrangements can be made between Interior and the person or organization submitting them, on the submitter's premises, and providing Interior with such duplicates thereof as Interior may request, provided that Interior pays the costs of duplicating any materials normally not distributed to the public or Interior free of charge. DNR shall provide Interior with access in the manner requested

by Interior to such data and information in its possession within 30 days, if practicable, of receiving Interior's request therefor. However, if DNR has already provided duplicates of the requested data and information to a component bureau or office of Interior and there is no limitation or prohibition on the subsequent transfer of such data and information within Interior, DNR may meet its obligations under this paragraph by notifying the requesting bureau or office within 30 days, if practicable, of the identity and location of the Interior bureau or office to which such duplicates have already been provided. Where the data and information described herein are held by another agency, DNR shall, at Interior's request, use its best efforts to assist Interior in obtaining access thereto from that agency.

5.2 DNR shall use its best efforts to assist Interior in obtaining access to all oil and gas data and information obtained from state and private lands which are required to be held confidential under state law or the terms of any permit or any agreement to which

Alaska is a party, including, but not limited to, all confidential geological, geophysical, geochemical and paleontological data and information, all confidential ancillary data and information, such as engineering and economic data and information, and all data and information derived from such confidential data which must also be held confidential under state law or the terms of any permit or any agreement to which Alaska is a party because they divulge the original confidential data and information from which they were derived, that in the judgment of Interior are relevant to the evaluation and administration of the hydrocarbon resources of federal lands within Alaska and of the federal Outer Continental Shelf offshore of Alaska. Such assistance shall, upon Interior's request, include cooperating in the identification of the existence and location of such data and information to the extent that DNR is able to do so without divulging data and information required to be held confidential under state law or the terms of any permit or agreement to which Alaska is a party; identifying the person or organization thought to have the authority to

waive or modify any provisions of state law or the terms of any permit or any agreement to which Alaska is a party which would otherwise preclude or inhibit Interior's access to and use of such data and information, including, but not limited to, provisions relating to the requirement for the submitter's consent to such disclosure, the identity of the bureaus to which such data and information can be disclosed, the site of inspection, duplication, and other procedures for disclosure; and cooperating in the development and/or negotiation of such waivers or modifications and stipulations concerning Interior's use and disclosure of such data and information with the appropriate persons and organizations. Where such data and information are held by another state agency, DNR shall, at Interior's request, use its best efforts to help Interior to obtain that agency's assistance in obtaining access to such data and information. DNR shall provide such assistance as is requested by Interior under this paragraph within 30 days, if practicable, of receiving Interior's request. Nothing in this paragraph shall require DNR

or any other Alaska state agency to disclose confidential data or information to Interior unless state law or the terms of permit or any agreement to which Alaska is a party permits such disclosure or a valid waiver of state confidentiality requirements has been obtained.

5.3 At Interior's request, DNR shall provide Interior with its appraisal of the oil and gas production potential of the ANWR's coastal plain, which appraisal shall include DNR's identification of the areas within the coastal plain thought to have oil and gas production potential and its estimates of the volume of oil and gas in such areas, and a description of the methodology and sources of information used to arrive at such appraisal. Unless Interior otherwise stipulates to a later date or dates by 30 days advance notice to DNR, DNR shall provide such appraisal to Interior no earlier than January 1, 1986, and no later than March 1, 1986. In addition, at the time of DNR's disclosure of its appraisal to Interior, all reports setting forth, summarizing, and explaining DNR's appraisal then in existence shall be provided to

Interior and any additional reports, revisions and supplements thereto as may at any time thereafter be prepared for a period up to two years following the termination of this MOU pursuant to paragraph 9.8 hereof, which use or reflect data and information obtained by Alaska under this MOU, shall be provided to Interior as soon as possible, provided, however, that DNR may segregate and delete therefrom any specific data and information required to be held confidential under state law or the terms of any permit or any agreement to which Alaska is a party. DNR will use its best efforts to prepare such appraisal, reports, revisions and supplements thereto in a manner such as to facilitate, and to obtain whatever waivers of state confidentiality requirements that are necessary to facilitate, their maximum disclosure to Interior, while at the same time maintaining their credibility. To the extent that such appraisal, reports, revisions or supplements divulge data and information submitted to FWS under section 1002 of ANILCA, Interior shall apply the same

measure of confidentiality thereto as it is required to apply to the underlying section 1002 data or derivative information.

5.4 Any appraisal, report, revision or supplement thereto generated by Alaska which concerns the oil and gas production potential of the ANWR's coastal plain will not be disclosed by Alaska to any person or entity outside of the government of the State of Alaska other than Interior until after the Secretary has formally submitted to Congress the report required by section 1002(h) of ANILCA, and in no event shall Alaska disclose to any person or entity other than Interior in such appraisal, report, or revision or supplement thereto any data or information obtained by Alaska pursuant to this MOU which are required by federal law or this MOU to be held confidential. Before Alaska discloses any such appraisal, report, revision or supplement thereto to any person or entity outside of the government of the State of Alaska other than Interior, Alaska shall afford Interior the opportunity to review it for the purpose of commenting on whether in Interior's judgment such document divulges

data or information obtained by Alaska pursuant to this MOU which are required by federal law or this MOU to be held confidential.

6.0 Consultation.

It is agreed that intergovernmental consultation may enhance the quality of mineral resource assessments performed by both Interior and Alaska. Accordingly, it is agreed that, upon the effective date of this MOU, personnel of Alaska and Interior authorized to have access to any confidential oil and gas data and information that are covered by this MOU will be available to consult with each other with regard to the interpretation and analysis of those data and information which are authorized to be shared under this MOU.

7.0 Confidentiality.

7.1 To the extent permitted by law, Alaska and Interior each agree to maintain the confidentiality of any data or information obtained from the other pursuant to this MOU, which are required by the laws of

the party transferring such data or information to be held confidential, in accordance with the requirements for preserving such confidentiality applicable to the transferring party and this MOU. In addition, Alaska shall not make any commercial use of, or allow any person or entity who obtains such data or information from Alaska to use for any commercial purpose, including, but not limited to, participation in a lease sale including the area from which such data or information were obtained, any data or information required to be submitted to FWS by 50 C.F.R. § 37.53 and obtained by Alaska pursuant to this MOU.

7.2 DNR and Interior each shall use such standards of care for maintaining the security and confidentiality of any data and information shared under this MOU which are required to be held confidential by the laws of the transferring party as are equivalent to or more stringent than the standards and procedures for maintaining the security of Proprietary/Confidential Information set forth in BLM Manual Section 1273, a copy of which is attached hereto as

Appendix I and incorporated herein, to the extent that such BLM standards and procedures are not inconsistent with this MOU, section 1002 of ANILCA or 50 C.F.R. Part 37. Whichever DNR division initially receives such data or information from Interior or a FWS permittee pursuant to this MOU and whichever Interior bureau initially receives such data or information from Alaska or a state contractor, permittee, licensee or lessee pursuant to this MOU shall be regarded as the "Office of Control", as that term is used in BLM Manual Section 1273, for those data or information. DGGS and DO&G may share confidential data and information obtained pursuant to this MOU with each other and with their line supervisors within the government of the State of Alaska, but DGGS, DO&G, and their line supervisors shall not divulge such data and information, and any interpretations and analyses derived therefrom which divulge such data and information, to any other division or office within the Department of Natural Resources or any other state agency without obtaining Interior's prior written

consent and without giving prior written notice to the FWS permittee that originally acquired such data and information. Upon request, Alaska and Interior shall each be provided theopportunity to review and comment upon the facilities, standards and procedures the other uses for maintaining the security and confidentiality of such data and information.

7.3 DNR and Interior each shall, upon written request, promptly provide to the other a list showing the name, title, organization and locale of each person authorized to have access to or use any data or information obtained under this MOU which are required by the laws by the transferring party to be held confidential, and describing for each person listed the type of data and information to which such person is authorized to have access or use.

8.0 Retention of Data and Information.

Any data or information obtained by DNR or Interior pursuant to this MOU may be retained and used by each to carry out its authorized activities, subject to the continuation of all

applicable obligations established hereunder concerning the confidentiality and commercial use of such data or information. Such data and information may be destroyed whenever in the judgment of the party possessing them they are no longer needed, provided that, when data or information required to be held confidential under the terms and conditions of this MOU are being destroyed, such party documents the dates of their destruction, the specific data or information destroyed, whether there are any remaining copies thereof under that party's control, and, if so, by whom they are possessed.

9.0 Other Administrative Matters.

9.1 Alaska agrees to be responsible for its own acts and the results thereof, and assumes all risk and liability to itself, its agencies, officers, employees, and agents, Interior, its officers and employees, GSI and Itech, and their officers and employees, for any injury to any person, organization or property resulting in any manner from the conduct of its own operations, and the operations of its agencies, officers, employees or agents, under the MOU, and for any loss, cost, damage or expense resulting at any time from any and all causes due to any act or acts, negligence, or the failure

to exercise proper precautions, of or by itself or its agencies, officers, employees or agents while using any data or information or otherwise acting under or pursuant to this MOU. In any action commenced against Alaska pursuant to this paragraph, Alaska shall not raise as a defense any claim of sovereign immunity or any claim that any officer, employee or agent who revealed data or information required by this MOU to be held confidential was acting outside the scope of his employment or agency in revealing such data or information. Interior's liability shall be governed by the provisions of the Federal Tort Claims Act, as amended, 28 U.S.C. § 2671 et seq. (1982).

9.2 The parties agree that non-compliance with this MOU on the part of either party hereto shall be subject to those judicial remedies available at law and in equity.

9.3 The parties may severally and jointly take those steps that are necessary and proper to carry out the intent of this MOU, provided that they are not contrary to this MOU or applicable law.

9.4 Implementation of this MOU shall be subject to the availability of appropriated funds and personnel. Each party shall bear its own costs for implementing this MOU.

9.5 This MOU shall be modified only by a written document executed by both parties hereto.

9.6 No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this MOU or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this MOU if made with a corporation for its general benefit.

9.7 This MOU shall be effective on that date upon which the last of the signatories hereto signs the MOU.

9.8 This MOU may be terminated by written notice of either party to the other party hereto at any time after the Secretary formally submits the report required by section 1002(h) of ANILCA to Congress, provided that, as to any data or information obtained hereunder, those terms and conditions of the MOU concerning

the confidentiality and commercial use thereof shall continue in effect until the underlying laws on which they are based are no longer applicable to such data or information, and provided further that such termination shall not extinguish any claims or remedies accruing hereunder.

THE UNITED STATES DEPARTMENT OF THE INTERIOR

February 19, 1985
(Date)

By: Donald Paul Hodel
Secretary of the Interior

THE STATE OF ALASKA

March 5, 1985
(Date)

By: Esther C. Wunnicke
Commissioner of Natural Resources

Attachment

For Publication

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRUSTEES FOR ALASKA, et al., Plaintiffs-Appellees, vs. DONALD P. HODEL, Secretary, United States Department of the Interior, et al., Defendants-Appellants.	No. 86-3738 DC No. CV-A-85-551 OPINION

Argued and Submitted:
September 3, 1986 -- Anchorage, Alaska

Before: Joseph T. Sneed, Anthony M. Kennedy and Charles E. Wiggins, Circuit Judges.

Appeal from the United States District Court
for Alaska
Laughlin E. Waters, District Judge, Presiding

WIGGINS, Circuit Judge:

Section 1002(h) of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3142(h), concerns the resources of the 1.5 million acre coastal plain of the Arctic National Wildlife Refuge (ANWR). Section 1002(h) requires that the Secretary of Interior (Secretary) submit a report to Congress (1002 report) containing: (1) specific information about potential oil and gas production and fish and wildlife within the coastal plain of the ANWR; and (2) recommendations concerning

possible exploration, development, and production of oil and gas within the coastal plain, and what additional legal authority would be necessary to protect fish and wildlife if such development were to take place.[1/] The Secretary had five years and nine months from the effective date of the statute to complete the 1002 report, which was due no later than September 2, 1986.[2/]

The Secretary and the Fish and Wildlife Service seek review of the district court's order enjoining them from submitting the 1002 report to Congress until they comply with the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370(a) (NEPA), and its implementing regulations. The Secretary and the Service contend that: (1) the environmental groups lack standing; (2) the issues are not ripe for review; and (3) NEPA and its implementing regulations do not require public comment on a legislative proposal before its submission to Congress. We disagree on all three grounds and affirm.

BACKGROUND

On October 2, 1985, five environmental groups -- Trustees for Alaska, American Wilderness Alliance, Defenders of Wildlife, Northern Alaskan Environmental Center, and the Wilderness Society (the Trustees) -- filed an action for declaratory and injunctive relief against the Department of Interior, the Secretary, the Fish and Wildlife Service, and the Director and Regional Director of the Fish and Wildlife Service (the Department). The Trustees sought a declaration requiring the Department to submit an

environmental impact statement (EIS) pursuant to section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C), before the Secretary submitted the 1002 report to Congress. The Trustees also sought a mandatory injunction requiring that the Secretary follow all necessary public participation procedures in preparing the EIS. The Trustees alleged that under NEPA and the regulations of the Council on Environmental Quality (CEQ), the Department must circulate a draft EIS for public notice and comment before submitting the 1002 report to Congress. Finally, the Trustees alleged that the Department failed to comply with the Freedom of Information Act (FOIA), 5 U.S.C. § 552.[3/]

All parties filed motions for partial summary judgment on the NEPA claims. In the amended answer, the Department alleged that it would prepare a legislative environmental impact statement (LEIS), but would not circulate the 1002 report and LEIS for public comment until the report was submitted to Congress. After oral argument, the district court granted the Trustees' motion for partial summary judgment. The court determined that the Department's decision to submit the 1002 report and LEIS without first providing an opportunity for public notice and comment violated NEPA and its implementing regulations. The court's order directed the Department to prepare a draft 1002 report and LEIS, and provide for full public review and comment of the draft documents. The order further directed the Department to respond to and incorporate the public comments and suggestions into the

report. The court ordered the Department to publish its responses locally before or at the time it released the final 1002 report.

The district court determined that there was no just reason for delay and entered judgment for the Trustees pursuant to Fed. R. Civ. P. 54(b) on March 6, 1986. The Department filed a timely notice of appeal on April 4, 1986.

ANALYSIS

I
Standard Of Review

We review the district court's grant of partial summary judgment de novo. See Lojek v. Thomas, 716 F.2d 675, 677 (9th Cir. 1983). We review the Secretary's action to see if it was "arbitrary, capricious, an abuse of discretion, or . . . without observance of procedure required by law." 5 U.S.C. §§ 706(2)(A), (D); see Sagebrush Rebellion, Inc. v. Hodel, 790 F.2d 760, 763 (9th Cir. 1986).

II
Standing

The Department contends that the Trustees lack standing because actual or potential impairment of their members' use of the coastal plain can only be accomplished by Congress choosing to eliminate the current statutory prohibitions against gas and oil development in the ANWR. The Department argues that mere speculation on the contents of the 1002 report and its effect on Congress does not confer standing.

The Department's characterization of this case is incorrect. The Trustees alleged in their complaint that their members had a procedural right under NEPA and the CEQ regulations to comment on the LEIS and 1002 report before the Secretary submits the report to Congress. The Trustees have standing to challenge alleged agency violations of these procedural rights. See Western Oil & Gas Ass'n v. EPA, 633 F.2d 803, 808 n.4 (9th Cir. 1980); City of Davis v. Coleman, 521 F.2d 661, 671-72 (9th Cir. 1975).

III
Ripeness

The Department contends that the issues raised by the Trustees' claimed rights to comment on the draft LEIS are not ripe. It argues that the 1002 report may recommend that Congress take no action concerning the coastal plain. As current law prohibits production of gas and oil in the ANWR, 16 U.S.C. § 3143, the no-action recommendation would mean that the 1002 report would not contain a "proposal for legislation." If the report does not contain a "proposal for legislation," then no LEIS is required under NEPA, see 42 U.S.C. § 4332(2)(C), and the Trustees' claims are not ripe.

The doctrine of ripeness is intended "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." Abbott

Laboratories v. Gardner, 387 U.S. 136, 148-49 (1967). Ripeness requires an evaluation of "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." Id. at 149. A claim is fit for decision if the issues raised are primarily legal and do not require further factual development and the challenged action is final. See Friedman Brothers Investment Co. v. Lewis, 676 F.2d 1317, 1319 (9th Cir. 1982).

Under Abbott Laboratories, this case is ripe for review. The disagreement here is concrete. The Department will not provide presubmission public review and comment. Its decision is clear and final and the issue is therefore fit for judicial review. Moreover, a denial of review at this point may impose substantial hardship on the Trustees. Once Congress acts on the information submitted to it, the Trustees will lose their right to comment on the draft LEIS at the administrative level.

The Department is being less than candid in arguing that the 1002 report may not contain a "proposal for legislation." The Department has already decided to provide an LEIS with the 1002 report, presumably because it expects the 1002 report to contain a "proposal for legislation."[4/] Further, an LEIS appears necessary, because the no-action alternative is unlikely. The express language of section 1002(h) provides for a five-year study and requires specific recommendations on the future use of the coastal plain. Since the purpose of the 1002 report is to determine either to allow further oil and gas development or to designate

the coastal plain for wilderness preservation, see S. Rep. No. 413, 96th Cong., 2d Sess. 240-41, reprinted in 1980 U.S. Code Cong. & Ad. News 5070, 5184-85, the report will likely recommend some change in the status quo and so will likely contain a "proposal for legislation."[5/] Waiting until the Department actually submits the 1002 report to Congress could cause the Trustees to lose their claimed rights to presubmission comment. Waiting is also unnecessary in view of the Department's decision to submit an LEIS with the report.[6/]

IV

Procedural Rights Under NEPA

NEPA is essentially a procedural statute designed to insure that environmental issues are given proper consideration in the decisionmaking process. See City of Davis v. Coleman, 521 F.2d 661, 670 (9th Cir. 1975). Section 102(2)(C) of NEPA requires agencies to include a detailed environmental impact statement with "proposals for legislation and other major federal actions significantly affecting the quality of the human environment . . . ." 42 U.S.C. § 4332(2)(C). Congress has directed that the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies of NEPA "to the fullest extent possible." 42 U.S.C. § 4332; Lathan v. Brinegar, 506 F.2d 677, 687 (9th Cir. 1974) (en banc).

By Executive Order, the CEQ issued regulations to federal agencies for implementing NEPA. Exec. Order No. 11991, 42 Fed. Reg. 26,967 (1977). The CEQ regulations are binding on all

federal agencies and provide formal guidance to the courts for interpreting NEPA requirements. 43 Fed. Reg. 55,978 (1978). The CEQ's interpretation of NEPA is entitled to substantial deference. Andrus v. Sierra Club, 442 U.S. 347, 358 (1979). Thus, the Trustees may have a right to comment on the draft LEIS before the Secretary submits the 1002 report to Congress if the CEQ regulations require such a procedure.

A. Modified Procedures for Legislative Proposals

The CEQ regulations provide for several stages in the preparation of an EIS. Generally, an agency must prepare a draft EIS and obtain comments on the draft from the appropriate federal agency. 40 C.F.R. § 1503.1 (1985). An agency must also request comments from state and local agencies, and the public, and affirmatively solicit comments from interested or affected persons and organizations. Id. In preparing a final EIS an agency must consider and respond to the comments. 40 C.F.R. § 1503.4 (1985). The comments must be included with the final EIS. Id.

Section 1506.8 establishes a modified procedure for preparing an EIS on legislative proposals. Except for specified exceptions, section 1506.8 permits an agency to transmit a single LEIS to Congress and to federal, state, and local agencies, and the public for review and comment. No final, revised EIS is necessary. 43 Fed. Reg. 55,978, 55,987 (1978).

B. Exception to Modified Procedures for Study Processes

The Trustees contend that the proposal here falls within one of the specified exceptions set forth in section 1506.8 and

federal agencies and provide formal guidance to the courts for interpreting NEPA requirements. 43 Fed. Reg. 55,978 (1978). The CEQ's interpretation of NEPA is entitled to substantial deference. Andrus v. Sierra Club, 442 U.S. 347, 358 (1979). Thus, the Trustees may have a right to comment on the draft LEIS before the Secretary submits the 1002 report to Congress if the CEQ regulations require such a procedure.

A. Modified Procedures for Legislative Proposals

The CEQ regulations provide for several stages in the preparation of an EIS. Generally, an agency must prepare a draft EIS and obtain comments on the draft from the appropriate federal agency. 40 C.F.R. § 1503.1 (1985). An agency must also request comments from state and local agencies, and the public, and affirmatively solicit comments from interested or affected persons and organizations. Id. In preparing a final EIS an agency must consider and respond to the comments. 40 C.F.R. § 1503.4 (1985). The comments must be included with the final EIS. Id.

Section 1506.8 establishes a modified procedure for preparing an EIS on legislative proposals. Except for specified exceptions, section 1506.8 permits an agency to transmit a single LEIS to Congress and to federal, state, and local agencies, and the public for review and comment. No final, revised EIS is necessary. 43 Fed. Reg. 55,978, 55,987 (1978).

B. Exception to Modified Procedures for Study Processes

The Trustees contend that the proposal here falls within one of the specified exceptions set forth in section 1506.8 and

therefore the Department must provide presubmission public comment. Subsection 1506.8(b)(2)(ii) provides that proposals resulting from a "study process required by statute" must follow the normal draft/final procedures established in section 1503.1.[7/]

The Department contends that the 1002 report is not a "study process required by statute" within the meaning of the regulations. It asks the court to contrast the 1002 report with the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287, and the Wilderness Act, 16 U.S.C. §§ 1131-1136, the two examples of a "study process" given in subsection 1506.8(b)(2)(ii). The Department contends that unlike section 1002(h), these Acts require outside participation in formulating their respective studies. Here, the Department argues, Congress does not desire outside participation but has specifically requested information and recommendations from the Secretary alone.[8/]

We find that section 1002(h) is a study process required by statute under subsection 1506.8(b)(2)(ii). Section 1002(h) contains a "study process" within the ordinary meaning of the term. Section 1002(h) sets forth detailed requests for information that require research, and grants the Secretary five years and nine months in which to gather the information and present it to Congress. The example Acts contain similar requests for information within set time frames and also require submission of various reports to Congress. See 16 U.S.C. §§ 1132, 1136, 1275(a). The detailed research request and the extended time provided for that research in section 1002(h) convinces us

that the 1002 report is part of a "study process required by statute."[9/]

Moreover, the CEQ regulations make clear that the main reason for following a modified procedure for legislative statements is a concern that the LEIS be submitted to Congress before Congress acts. In its summary of major innovations in the regulations, the CEQ states that the regulations provide accelerated procedures for legislative proposals "to fit better with Congressional schedules." 43 Fed. Reg. 55,978, 55,979 (1978). In its comments to section 1506.8, the CEQ states that the timing of votes and hearings for legislative proposals is not within the agency's control. 43 Fed. Reg. 55,978, 55,988 (1978). Section 1500.5(j) states that agencies shall reduce delay by using accelerated procedures for proposals for legislation. 40 C.F.R. § 1500.5(j) (1985). This time concern does not exist when a "study process" includes a set time frame that permits the agency to anticipate and plan for congressional schedules. In fact, it is doubtful that when Congress specifically requests information and recommendations from an agency in the context of a study process -- as it did here and in the two example Acts -- that Congress will act without the agency's report.

Congress requires federal agencies to comply with the policies of NEPA to the fullest extent possible. 42 U.S.C. § 4332. One of the policies of NEPA is to encourage and facilitate public involvement in decisions concerning environmental issues. 40 C.F.R. § 1500.2(d) (1985). In fact, the

CEQ regulations interpret NEPA to require public comment generally. See, e.g., 40 C.F.R. §§ 1500.1(b), 1500.2(b), (d), 1503.1, 1506.6. The modified procedures for legislative proposals appear to be a narrow exception, not the norm. In view of the stated purpose of NEPA, we hold that the Department failed to comply with subsection 1506.8(b)(2)(ii) by deciding to submit the 1002 report without an opportunity for public comment.[10/]

V

Attorneys' Fees

The claim by the Trustees for attorneys' fees is denied. The claim is made under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). EAJA provides that attorneys' fees are available to a prevailing party in a civil action against the United States unless "the position of the United States was substantially justified." 28 U.S.C. § 2412(d)(1)(A). Although we rule against the Department, it argued forcefully and well for its position. Its position was at all times justified, although erroneous.

AFFIRMED.

FOOTNOTES

1/ Section 1002(h) provides:

> Not earlier than five years after December 2, 1980, and not later than five years and nine months after such date, the Secretary shall prepare and submit to Congress a report containing--
>
> (1) the identification by means other than drilling of exploratory wells of those areas within the coastal plain that have oil and gas production potential and estimate of the volume of the oil and gas concerned;
>
> (2) the description of the fish and wildlife, their habitats, and other resources that are within the areas identified under paragraph (1);
>
> (3) an evaluation of the adverse effects that the carrying out of further exploration for, and the development and production of, oil and gas within such areas will have on the resources referred to in paragraph (2);
>
> (4) a description of how such oil and gas, if produced within such area, may be transported to processing facilities;
>
> (5) an evaluation of how such oil and gas relates to the national need for additional domestic sources of oil and gas; and
>
> (6) the recommendations of the Secretary with respect to whether further exploration for, and the development and production of, oil and gas within the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitats, and other resources are avoided or minimized.

16 U.S.C § 3142(h).

2/ The Assistant Secretary for Fish and Wildlife and Parks stated in a letter to the Chairman of the Committee on Interior and Insular Affairs that the Secretary intends to withhold action on the 1002 report until the outcome of this case.

3/ The complaint consists of two counts: the first count alleges NEPA violations and the second count alleges violations of FOIA. At the time of this appeal, the FOIA claim and additional FOIA claims contained in the amended complaint are still pending before the trial court.

4/ The Department intends to prepare an LEIS, which will be integrated into the 1002 report.

5/ The congressional request for specific recommendations within a specific region distinguishes this case from Kleppe v. Sierra Club, Inc., 427 U.S. 390 (1976), a case in which the Court determined that the contemplation of a project is insufficient to require an EIS under NEPA. It is also significant that here the Secretary has already agreed to submit an LEIS, thus disposing of the Court's concern in Kleppe that premature and unnecessary statements will be filed. 427 U.S. at 406.

6/ The Department relies on Bennett Hills Grazing Ass'n v. United States, 600 F.2d 1308, 1309 (9th Cir. 1979), for its argument that this case is not ripe. This court's decision in Bennett Hills is, however, distinguishable. In Bennett Hills, this court vacated the district court's order enjoining the Bureau of Land Management (BLM) from preparing a final EIS until the appellees had ninety days in which to comment on BLM's draft statement. In Bennett Hills, however, the BLM complied with the regulations and solicited comments on its draft EIS. 600 F.2d at 1309. Here, the Department has made its position clear that it will not permit any public comments on the draft LEIS before it is submitted to Congress.

The Department also relies on CEQ regulation section 1500.3, which states that "[i]t is the Council's intention that judicial review of agency compliance with the regulations [providing for public comment on draft statements] not occur before an agency has filed the final environmental impact statement . . . ." Ripeness is, however, a constitutional doctrine. Here, there is no indication that in creating the CEQ Congress intended to give the Council the power to limit judicial review. See 42 U.S.C. §§ 4342, 4344.

7/ Section 1506.8(b)(2) provides that the procedures requiring both a draft and final EIS with agency requests for public comment shall be followed when:

> (ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. § 1271 et seq.) and the Wilderness Act (16 U.S.C. § 1131 et seq.)).

40 C.F.R. § 1506.8(b)(2)(ii) (1985).

8/ The Department also contends that by preconditioning the Secretary's report to Congress, the district court's injunction unconstitutionally hinders the legislative process. This argument assumes, however, that the district court's injunction requires a procedure not found in the CEQ regulations. If the CEQ regulations require public comment at the administrative level, then the district court's order simply enforces Congress's mandate under NEPA and does not violate the separation of powers doctrine.

9/ Section 1002(h) is also part of a larger study, the Federal North Slope Lands Study Program. S. Rep. No. 413, 96th Cong., 2d Sess. 239-43, 292-96, reprinted in 1980 U.S. Code Cong. Ad. News 5070, 5183-87, 5236-41. That study is indistinguishable from the Wild and Scenic Rivers Act and the Wilderness Act in that it too provides for outside participation in certain sections. See, e.g., 16 U.S.C. § 3142(c), (e)(2). To require specific reference to outside participation in section 1002(h) itself, however, interprets the term "study process required by statute" too narrowly.

10/ The Department argues that the Chairman of the CEQ agrees with its interpretation of subsection 1506.8(b)(2)(ii) and that the court must give the Chairman's interpretation of the CEQ regulations "controlling weight." Compare Udall v. Tallman, 380 U.S. 1, 16-17 (1965); Sierra Club v. Clark, 756 F.2d 686, 690 (9th Cir. 1985). Although asked to do so repeatedly at oral argument, the Department was unable to point to any basis for the Chairman's authority to interpret the regulations, other than the affidavit of the CEQ's General Counsel stating that the current CEQ Chairman has assumed sole responsibility for issues involving NEPA and that the General Counsel consults with the Chairman on the interpretation of the CEQ regulations. The statute creating the Chairman's position makes no reference to his duties. 42 U.S.C. § 4342. The statute designating the duties of the Council refers to the Council as a whole. 42 U.S.C. § 4344. Executive order

11991 authorizing the Council to promulgate regulations does not grant the Chairman any special powers to interpret or administer the regulations. Exec. Order No. 11991, 42 Fed. Reg. 26,967-68 (1977). Thus, we are not convinced that the Chairman's interpretation is "controlling" or correct in this case.

Trustees for Alaska v. Hodel - No. 86-3738

SNEED, Circuit Judge, Dissenting:

I respectfully dissent from the portion of the opinion that concludes that the 1002 report is a "study process" within the meaning of 40 C.F.R. § 1506.8(b)(2)(ii).

The majority decides that the Secretary must prepare a draft LEIS, request comments, and respond to the comments in its final LEIS in order to comply with NEPA. See 40 C.F.R. §§ 1503.1-1503.4. This is a considerable gloss on the language of NEPA, which asks only for "a detailed statement by the responsible official" describing the environmental impact. 42 U.S.C. § 4332(2)(C). The only authority for the gloss is the CEQ regulations. The chairman of the CEQ, however, has determined that only one LEIS is necessary under section 1002(h). 1 E.R. at 48. Because the chairman of the CEQ is an officer charged with administering the regulation, his interpretation of the regulation has "controlling weight." Udall v. Tallman, 380 U.S. 1, 16 (1965); Buschmann v. Schweiker, 676 F.2d 352, 355 (9th Cir. 1982). No additional basis for the chairman's interpretative authority is necessary, contrary to the majority's intimations in footnote 10.

Even without the chairman's guidance, I would be reluctant to conclude that the 1002 report is a study process. The language of section 1002(h), augmented by the pertinent legislative history, is too slight a skeleton to bear the weight of the procedures that the majority imposes. The regulation gives two examples of statutes that require a study process. One

explicitly provides for public participation. 16 U.S.C. § 1132(d). The other explicitly mentions "studies" and provides for participation by the heads of other federal agencies and state governors. 16 U.S.C. § 1275. The statute at issue here briefly outlines the contents of the required report and names no participant except the Secretary. 16 U.S.C. § 3142(h). Despite the generous length of time that the statute gives the Secretary to complete his report, I do not find that Congress here describes a study process.

November 14, 1986

Dr. Ruth Frye
U.S. Department of Energy
Route 118
Germantown, Maryland 20874

Dear Ruth:

This letter is written in reference to publication of 'Structure, Stratigraphy, and Generalized Geology of the East-central Arctic Slope, Central Brooks Range, and Eastern Koyukuk Basin: A guide to the Geology of the Dalton Highway Corridor, Yukon River to Prudhoe Bay, Alaska.' This report represents a substantial contribution to the understanding of the oil-and-gas potential of the North Slope of Alaska, and as such, may fall within the parameters of Annex V of the Memorandum of Understanding signed between the State of Alaska and the U.S. Department of Energy in August 1985.

The volume was prepared for the 60th annual meeting of the Pacific Section of the American Association of Petroleum Geologists, the Society of Economic Paleontologists and Mineralogists, and the Society of Exploration Geophysicists held in Anchorage in May 1985. In conjunction with the meetings, the conference conducted a four-day field trip from Fairbanks to Prudhoe Bay that included a tour of the Prudhoe Bay oil field. A preliminary draft of the volume was presented to each participant on the field trip.

The report was initially prepared as part of the Division of Geological and Geophysical Surveys series of guides to the geology of various parts of Alaska, particularly as a companion volume to Guidebook 4, 'Elliott and Dalton Highways, Fox to Prudhoe Bay, Alaska: Guidebook to Permafrost and Related Features.' We anticipate that it will be the primary source document for a geologic field trip conducted in northern Alaska in conjunction with the International Geological Congress, which will meet in the United States in 1989.

Even more significant than the 'guidebook' aspect of this document is the fact that the report represents a significant contribution to the geologic knowledge of the North Slope of Alaska. In addition to a road log and geologic maps from the Yukon River to Prudhoe Bay, it contains 19 chapters by 12 authors from the Alaska Division of Mining and Geological and Geophysical Surveys, the University of Alaska, Atlantic Richfield Company, Standard Alaska Production Company, and Standard Oil Production Company. Three chapters describe the generalized structural and stratigraphic framework of the east-central Arctic Slope, the central Brooks Range, and the eastern