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**COMMUNICATION NUMBER 136811**  
**Mark Richards, Co-Chair**  
**Alaska Backcountry Hunters & Anglers**

Backcountry Hunters and Anglers

November 14, 2011

To: U.S. Fish and Wildlife Service, Arctic NWR  
101 12th Avenue Rm 236  
Fairbanks, Ak 99701-6237

RE: Arctic National Wildlife Refuge  
Draft Comprehensive Conservation Plan

The Alaska chapter of Backcountry Hunters & Anglers (Ak BHA ) is comprised of Alaskan hunters and anglers dedicated to quality and ethical hunting and fishing opportunities in the wild public lands of Alaska, and the protection of big, natural fish and wildlife habitat upon which our great outdoor traditions depend.

Following are our comments on this 2011 phase of the Draft Comprehensive Conservation Plan (CPP) for the Arctic National Wildlife Refuge (Refuge).

Management Alternatives

We Support Alternative E  
(but without the inclusion of Porcupine Plateau WSA)

AK BHA has long supported wilderness designation of the 1002 lands within the coastal plain. So we certainly support a Coastal Plain Wilderness Study Area (WSA). And as the western Brooks Range sees increasing use, particularly in the realm of aircraft access that can cause crowding and conflicts, we support studying wilderness designation there.

**[136811.001 Alternatives Analyzed -- Alternative E: Wilderness]** We would have preferred an alternative management plan that included both the Coastal Plain and Brooks Range WSAs, but did not include the Porcupine Plateau WSA. However, for whatever reason that was not an option within the Draft CCP.

We do not support inclusion of the Porcupine Plateau WSA in Alternative E, as this area south of Brook Range includes a number of privately owned in holdings, permitted cabins, thousands of acres of private Native lands, the Canyon Village town site, and has long been a heavily utilized hunting and fishing trapping destination for many subsistence and other users. We don't believe wilderness designation is appropriate for this area of the Refuge.

We support recommendations for the Kongakut, Hulahula, Marsh Fork Canning, and Atigun for inclusion in the National Wild and Scenic River System.

The issues we are seeing with the Kongakut are also happening on some of these other river systems, and WSR status would mandate a Comprehensive River Management Plan that would likely be more effective in mitigating crowding, overuse, and other impacts along these river corridors.

However, many of these impacts could be mitigated by enforcement of already existing regulations, and the step- down planning process for a more comprehensive Visitor Use Management Plan for all these river corridors, not just the Kongakut.

**[136811.002 Refuge Infrastructure and Administration -- Staffing]** Many of the comments we received from our members, and others, who visit the refuge, guide or hunt in the Refuge, run a permitted commercial air-taxi/transporter within the Refuge, come back to the fact that that Refuge basically has just one pilot/LEO on staff, and for such a large area this prevents adequate enforcement of existing regulations as well as investigating some of the illegal activities going on within the Refuge, such as unpermitted air-taxi operations.

We recommend that the Refuge fully consider funding an additional law enforcement officer/pilot.

#### New Management Guidelines and Goals

Our support for Alternative E (without inclusion of Porcupine Plateau WSA) includes of course our support for the new management guidelines, goals, and objectives outlined in the CCP that are a part of that alternative plan.

**[136811.003 Transportation and Access -- Mode of Transportation]** We did want to add additional thoughts, however, about an issue that greatly concerns us, and that is the possibility of significant motorized land access via snow machine through the western part of the Refuge should the state of Alaska ever allow such access through the Dalton Highway corridor.

Currently ATVs/ORVs are prohibited within the Refuge, and snow machines are allowed. We don't oppose the use of snow machines within the Refuge per se, but continued efforts to open the Dalton corridor to motorized access pose serious concerns about such access should it come in great numbers from the Dalton Hwy into the western portion of the Refuge.

We only ask that Refuge managers look at ways of mitigating or limiting widespread snow machine access into the western boundary ahead of such an occurrence, as part of continued step-down planning efforts and in accordance with "responsible regulations to protect the natural and other values of the Arctic Refuge" that are a part of 43 CFR 36.11.

AK BHA continues to strongly oppose opening the Dalton Highway corridor to motorized access of any kind.

#### Step-down Planning and Visitor Use Management Plans

**[136811.004 Recreation and Visitor Use -- Air Transportation: Flying, Overflights, Landings]** Regarding the step-down plans, visitor use and wilderness stewardship plans that are part of the revised CCP, we look forward to working with Refuge staff on future efforts to mitigate some of the visitor use concerns and conflicts.

The # 1 issue Refuge managers will have to deal with in that regard revolves around aircraft access, and how to fairly regulate aircraft access and visitor numbers in certain areas at certain times so that we curb some of the overcrowding and conflicts that arise, while still allowing everyone that wants to visit the Refuge to do so.

The most common complaint we hear from our membership and other hunters who hunt in the Refuge concerned aircraft access and use for sheep hunting, the low-level scouting of Dall sheep that impacts both sheep and sheep hunters, the lack of real ethical standards and a need for more stringent same-day-airborne regulations that mandate a longer timeframe before one can land and then legally harvest a ram, and/or a mileage component whereby one must be a certain straight-line mileage from the plane before hunting.

We recognize that there is not much Refuge managers can do to regulate such activities, and AK BHA will attempt to work via the Alaska Board of Game process to propose new regulations that govern aircraft access for sheep hunting statewide.

Thank you for the opportunity to comment on future planning efforts for the Arctic National Wildlife Refuge. AK BHA remains committed to securing our backcountry hunting and fishing opportunities on our wild public lands and the protection of the habitat those opportunities depend upon.

Sincerely,  
Mark Richards  
Co-chair Alaska Backcountry Hunters & Anglers  
alaskabha@starband.net

**COMMUNICATION NUMBER 137013**  
**Jack Hession, Senior Campaign Manager**  
**Alaska Chapter Sierra Club**

From: Dan Ritzman  
To: ArcticRefugeCCP  
Subject: Sierra Club and Alaska Chapter DRAFT CCP comments

Sharon,

Please accept the attached comments from the Sierra Club and the Sierra Club Alaska Chapter  
Thanks

Dan

\*\*\*\*\*

Dan Ritzman  
Senior Campaign Manager  
(206) 499-5764 - c

[www.sierraclub.org/habitat](http://www.sierraclub.org/habitat)

- 2011 11 14 CCP DEIS Technical Comments - Sierra Club.docx - Final comments Arctic NWR  
Draft Revised CCP November 2011 SC Chapter.doc

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November 14, 2011

U.S. Fish and Wildlife Service  
Arctic NWR - Sharon Seim  
101 12th Ave., Rm 236  
Fairbanks AK 99701

Please accept these comments on the DRAFT Arctic National Wildlife Refuge CCP from the  
Alaska Chapter of the Sierra Club.

Wild and Scenic Rivers

Significant Issue 2 of the Draft RCCP—should additional Wild and Scenic Rivers be  
recommended [by the FWS] for inclusion in the National Wild and Scenic River System? Yes,  
additional wild rivers should be recommended. **[137013.001 Wild and Scenic Rivers -- Other  
Rivers]** We urge the Service to recommend wild river designation for the following eligible and  
suitable rivers and eligible river segments:

a. Eligible/suitable rivers entirely within Minimum Management areas.

Atigun River. Suitable

Marsh Fork of the Canning River. Suitable.

Porcupine River. Eligible.

b. Eligible/suitable river segments within the 1002 Minimum Management area north of Arctic  
Wilderness.

Canning River. Eligible.

Jago River. Eligible.

Okpilak River. Eligible.  
Hulahula. Suitable.

**[137013.002 Wild and Scenic Rivers -- General]** 4-10. Wild River management of the Wind, Ivishak, and Sheenjek Wild Rivers. The Refuge manages all three under the wild river management category. The Wind and Ivishak are in a minimum management area, but as the Sheenjek is in the Arctic Wilderness, it should be managed under the wilderness management category, since this category affords the highest degree of protection for the river's values.

Management prescriptions for eligible rivers entirely or partially within existing minimum management areas offer additional protection for these rivers and river segments. Neruokpuk Lakes, found eligible despite not being a river, and the Kongakut River are both entirely within the Arctic Wilderness. They do not need wild river designation or management prescriptions.

That wilderness designation provides the highest degree of security for refuge rivers is documented in Table 2.1—Activities, public uses, commercial activities or uses, and facilities in management categories. In the comparison of wilderness management with wild river management, wilderness management emerges as providing the strongest protection for designated wild rivers within wilderness areas.

Wild river designations, which only Congress can modify or revoke, should be reserved for refuge areas in the other management categories, all of which are subject to modification or revocation at the discretion of refuge administrators.

**[137013.003 Wild and Scenic Rivers -- General]** The eligibility and suitability analyses include descriptions of Refuge rivers, and their outstandingly remarkable values. This valuable information deserves to be made separately available to the public as part of the Refuge's public information program, e.g. on the Refuge's website.

Comments and questions on specific sections

**[137013.004 Consultation and Coordination -- State Coordination]** 1-10. Coordination with the State of Alaska. The State had representatives on the FWS planning team for the RCCP (Plan). What did these representatives want included in the Plan, and what was the Service's response?

**[137013.005 Consultation and Coordination -- State Coordination]** The 1982 Service-ADF&G Master Memorandum of Understanding originated under a federal administration notably hostile to ANILCA and conservation. In 2006 the MMOU was renewed, apparently unchanged, by federal and state administrations opposed to ANILCA and conservation in general. Given that the present administration generally supports the missions of the Service and the Refuge System, what changes to the MMOU does the Service consider are necessary to strengthen its hand in dealing with a State bent on implementing intensive management and predator control programs within national wildlife refuges in Alaska?

**[137013.006 Refuge Purposes -- General]** 1-12. Sec. 1.4.1, Initial establishment of the Arctic [National Wildlife] Range and the Purposes set forth; 1-18 Sec 1.4.2 , The Alaska National Interest Lands Conservation Act.

These sections on the initial establishment of the Range and the subsequent establishment of the Refuge omit some important facts. As a result the reader may receive the impression that the Range, established by executive order, offered the same level of protection as the Refuge established 20 years later by Congress.

There are important differences. Public Land Order 2214, which established the Range, did not close the Range to oil and gas leasing. Oil seeps and other indications of the possible presence of economically recoverable oil and gas on the coastal plain lay behind the decision not to close the Range to leasing. Two Interior Department agencies shared jurisdiction, with the Bureau of Land Management responsible for potential oil and gas leasing, and the Fish and Wildlife Service responsible for managing the land.

Although PLO 2214 closed the Range to the location of new mining claims under the Mining Law of 1872, former Secretary Fred Seaton planned to revoke that closure not long after the Range's establishment in 1960 (Kaye 2006). His plan was not adopted by the incoming Kennedy Administration.

Nor did the Range have Wilderness System protection during the 16 years after enactment of the Wilderness Act. In 1980, Congress designated all but 1.5 million acres of the Range as wilderness, and provided what amounts to de facto wilderness for the remaining 1.5 million acres of the coastal plain.

Not until 1969 was the new Range staffed. One of the first actions taken by Refuge Manager Ave Thayer was to ban the State's predator control program in the Range.

In short, the withdrawal for the Range, while an essential and necessary step because it reserved the public land from potential state land selection and other appropriation, was not sufficient. The Range was inadequately protected until Congress took action two decades later.

In 1980 Congress in ANILCA established Arctic National Wildlife Refuge, absorbing the Range in the process. As pointed out in Sec. 1.4.2, the Act added 9.2 million acres to the Range, designated 8 million acres of wilderness, and designated three wild rivers. In addition—and this is what is omitted in Sec. 1.4.2,—ANILCA closed the new Refuge to all forms of appropriation under the public land laws, including the mineral leasing and mining laws.

Most important of all, Congress's action replaced the original 1960 public land order with statutory status for the entire Refuge. No longer was the unit vulnerable to potential changes in boundaries and uses at the discretion of the Executive Branch; any such changes would hereafter require Congressional authorization.

**[137013.007 Refuge Vision and Goals -- Goal 1 (including objectives)] 2-4. Objective 1.9, Water Rights —Establish legal protection for water quality and quantity to ensure Refuge purposes.**

One of the primary purposes of the Refuge as set forth in ANILCA is to ensure “water quality and necessary water quantity.” As the Objective states, “Water of sufficient quality and quantity is a necessary component of fish and wildlife habitat and population management.”

Yet we learn that the Service's 152 applications to the State for instream flow reservations have not been adjudicated by the Alaska Department of Natural Resources. The State and the oil and gas industry want to tap whatever water is needed for oil and gas development should the 1002 area be leased at some future date. Reserving sufficient water quality and quantity for refuge purposes would likely significantly reduce the amount of water available for use in oil and gas extraction.

As it is clear that the State has no intention of cooperating with the Service, we urge the Service to override the State's obstructionism, reserve water of sufficient quality and quantity, and make the decision to do so part of the final RCCP.

**[137013.008 Refuge Vision and Goals -- Goal 1 (including objectives)] 2-6 Objective 1.12, Land Protection Plan. The objective here is to complete a land protection plan within eight years of**

approval of the RCCP. Inasmuch as there has been no plan in the 31 years since the Refuge was established, up to eight more years for plan preparation is excessive. We recommend that the land protection plan be completed with three years of Plan approval.

**[137013.009 Refuge Vision and Goals -- Goal 4 (including objectives)]** 2-13 Objective 4.3, Subsistence Access. ANILCA ensures that snowmobiles, motorboats, and “other means of surface transportation traditionally employed” can be used by rural residents engaged in subsistence activities. Objective 4.3 states that the Refuge will conduct a traditional access study designed to “...help determine where and what activities have occurred on the Refuge.” It is silent on what “other means of surface transportation,” if any, were traditionally employed prior to December 2, 1980 on what is now Refuge land.

The Service is avoiding the question of whether other means of surface transportation were traditionally employed pre-ANILCA on what are is now Refuge land. Other means of surface transportation include off-road vehicles. If prior to the establishment of the Refuge off-road vehicles were traditionally employed for subsistence purposes on what is now refuge land, the vehicles are allowed. In the absence of pre-ANILCA use, off-road vehicles are prohibited.

We recommend that the final Plan include a traditional use determination of other means of surface transportation traditionally employed. Revised CCP’s for other national wildlife refuges in Alaska have included such determinations. Arctic NWR is required under ANILCA to follow suit.

**[137013.010 Management Categories -- Wilderness]** 2-34 Wilderness Management. Exceptions to the general prohibition on permanent structures in wilderness areas “...include historic and cultural resources and, in certain circumstances, administrative structures or cabins that predate ANILCA, cabins that are necessary for trapping activities, and public use cabins necessary for the protection of human health and safety.”

How many cabins of any kind are in the Arctic Wilderness and where are they located? Where are the commercial hunting and fishing seasonal base camps located? A map of the base camps would be a useful addition to the final Plan and to the Refuge’s public information program, as it would give visitors planning a true wilderness experience the option of avoiding the camps.

**[137013.011 Management Categories -- Wild River]** 2-35 Wild River Management. “Any portion of a wild river that is in designated wilderness is subject to the provisions of both the Wilderness Act and the Wild and Scenic Rivers Act; in case of conflict between the provisions of these laws, the more restrictive provisions apply.”

Can the Service identify any provision of the Wild and Scenic River Act that is more restrictive than a comparable provision of the Wilderness Act? As noted above, in Table 2-1 the comparison of wilderness management with wild river management indicates that the provisions of the Wilderness Act are more restrictive.

**[137013.012 Refuge Management Policies/Guidelines -- Cooperation and Coordination with Others]** 2-45 Service Jurisdiction over Waters in Arctic Refuge. “Where water bodies are non-navigable in the Refuge boundaries, the Service has management authority over most activities on water where adjacent uplands are federally owned.” What activities does the Service not have management authority over?

“Where State of Alaska lands exist beneath navigable water bodies or where the State, a Native corporation, or a Native allottee owns the adjacent uplands with the Refuge boundaries where the withdrawal process started after statehood, the Service’s management authority is more limited.” What does the Service’s limited authority consist of?

What uses and activities allowed under state laws can take place on non-wilderness Refuge rivers

determined to be navigable?

What state-authorized uses and activities on the waters and submerged lands of the Wind and Ivishak Wild Rivers can the Service regulate if the two rivers are subject to a state challenge over navigability and the rivers are determined to be navigable?

**[137013.013 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** 2-79 Fishery Enhancement in management categories. In wilderness areas, the Service asserts that it can, subject to a minimum requirements analysis, authorize “activities applied to a fish stock to supplement numbers of harvestable fish to a level beyond what could be naturally produced based upon a determination or reasonable estimate of historic levels.” These activities are not defined, but presumably involve such measures as introducing hatchery fish into wilderness water bodies and lake fertilization in an effort to boost fish production to unnaturally high levels.

We refer the Service to the Tustemena Lake decision in which federal courts held that stocking that Kenai Wilderness lake with hatchery fish is prohibited by ANILCA and the Wilderness Act. By extension, the decision in the Tustemena Lake case applies to all designated wilderness in the Alaska refuges. On what legal grounds is the Service’s fishery enhancement claim for the Refuge based?

**[137013.014 Management Categories -- Wild River]** 4-10 Wild River management of the Wind, Ivishak, and Sheenjek Wild Rivers. The Refuge manages all three under the Wild River Management category. However, the Sheenjek, which is in the Arctic Wilderness, must be managed under the more stringent provisions of the Wilderness Act.

**[137013.015 Alternatives - Issues Considered but Eliminated -- Ecological Issues]** D.3.2 Issue of Hunting effects on Population Structures and Genetics. Refuge biologists think that trophy hunting and “...all forms of hunting (and fishing) could potentially have an effect on population structures and the genetics of animal populations on the Refuge.” The staff has decided “to consider studying the issue through the Refuge’s inventory and monitoring (I & M) or research plans.”

Given the decline in caribou, sheep, muskoxen, and moose in the last two decades (4-119), a decision to merely consider studying the issue is a weak response. We recommend that the Refuge give high priority to research designed to determine if sport (trophy) is having negative effects on genetic makeup and population structures, and whether the effects, if any, could be contributing to the decline in the populations of these animals.

**[137013.016 Alternatives - Issues Considered but Eliminated -- Visitor Use Issues]** D-10 Crowding. The Service recognizes that “...crowding is a concern in only a few areas of the Refuge.” These areas should be identified in the final Plan and as part of the Refuge’s public information program. This information would help visitors seeking a true Alaska wilderness experience to avoid the crowded areas.

Sincerely,

Jack Hession  
Alaska Chapter Sierra Club

**COMMUNICATION NUMBER 136989**

**Donna Osseward, Chair**

**Alaska Coalition of Washington**

From: Website User  
Sent: Monday, November 14, 2011 11:24 AM  
To: arcticrefugeecp@fws.gov  
Subject: Comments from an Organization

Prefix: none  
First Name: Donna  
Last Name: Osseward  
Suffix: none  
Title 1: Chair  
Title 2:  
Organization 1: Alaska Coalition of Washington  
Organization 2:  
Address 1: 12730 - 9th Ave NW  
Address 2:  
City: Seattle  
State: WA  
Postal Code: 98177  
Country: USA  
Additional Info:

Comment: Wilderness:

The Alaska Coalition of Washington supports Alternative C, which would recommend Wilderness designation for the coastal plain. Wilderness designation is of paramount importance for our group to maintain the ecological integrity and balance of the Refuge.

Oil exploration and development would be devastating for the area, as well as totally undermining the whole purpose and intent of those who worked so hard to establish the Wildlife Range in 1960 and for those who have worked so hard since to protect the Refuge.

Those who worked to establish the Refuge like Olaus and Marty Murie, who visited our state many times, did so to preserve a very large area for research on large wildlife. It is essential that the largest intact naturally functioning ecosystem in North America must be totally preserved to have one area to continue the research that started 50 years ago. This is even more necessary today in the era of climate change.

Climate change will result in the loss of some species that can't adapt and the increase of other species. This is a very small area of the Arctic to retain and preserve to monitor scientifically as these changes occur. Most of the vast area to the west including the National Petroleum Reserve is open to oil and gas development.

Wilderness designation keeps a large naturally functioning ecosystem intact that contributes to clean air and water; diversity of flora and fauna; preserves plant and animal gene pools that allow for future research that benefits, biology, botany, medicine, and other valuable scientific research that benefits us all. It provides appropriate human recreation. It additionally preserves 190 species birds that utilize the coastal plain for nesting, molting and staging for migration to 6

continents and all 50 states. So, it would have a global impact and is not only an Alaska issue if this area is destroyed. Without much human effort, wilderness is truly multiple use of land.

Washington State is on the Pacific flyway for many of these birds and so we benefit from the migration of these birds, especially our shorebirds that appear in Washington State, as well as many waterfowl that choose to winter in our protected warmer waters. Tundra swans, geese and loons are other Arctic species that are important winter species here. Birding is important to the many Audubon chapters in our state and to the economy.

The coastal plain is also the calving ground for the caribou and it is essential to their survival and the life of the Gwitch'en people that depend on them. We also have an international Treaty with Canada to preserve the caribou that migrate into two nearby Canadian national parks adjacent to the Refuge making a much larger available area for these migrating animals. The Consul of Canada in Seattle has spoken out here about how important it is to them that we preserve this area. The coastal plain is also provides the polar bear, which the ESA has listed as threatened, with designated critical habitat for terrestrial denning, making it even more important for the preservation of the bear as climate change diminishes its sea ice habitat.

Wilderness designation for the coastal plain adjacent to the other designated Refuge wilderness area is essential to maintain the wilderness character of the whole wilderness area. About ten rivers run from the Brooks Range through the coastal plain to the Beaufort Sea and maintaining these entire river basins intact is essential to maintaining the both the wilderness character as well as the wilderness experience of the whole area.

The Refuge provides our countries most unique and challenging wilderness experience. The challenge is physical, mental and psychological and a replication of the experience of our early explorers and settlers, which built the American strength of character. We need to preserve this place for our own survival as well as the wildlife.

Wild and Scenic Rivers:

As so many rivers travel from the Brooks Range northward to the Beaufort Sea, it is important they are maintained with out any development to keep pollution from the off shore marine waters that are so essential to the sea life there such as the bowhead and beluga whales, the walrus, seals, sea lions, and marine birds. We would support wild and scenic designation for the Hulahula, Kongakut, and Marsh Fork Canning Rivers.

Management:

Recreation: We support education programs as well as materials for all wilderness users that would better explain why wilderness is designated, its value, and the allowed and disallowed activities there.

We believe groups should be limited to 8-12 people in both guided and non-guided parties and the number of groups in a particular river basin limited to prevent overuse and loss of the wilderness experience.

**[136989.001 Recreation and Visitor Use -- Air Transportation: Flying, Overflights, Landings]**

Airplanes should be more strictly restricted in the Refuge. They should be permitted only for Management, Guided Tour drop-off and pick-up, Research and for Rescue missions. All airplanes should be required to land only on designated durable land airstrips except in a emergency conditions and prohibited to land on sensitive tundra and wetland areas. Commercial airplane touring over the Refuge should not be permitted; it destroys the wilderness experience and causes noise pollution. Also, unrestricted camping with the use of airplanes for game spotting and

hunting by plane should not be permitted. All airplanes flying over or landing in the Refuge should obtain permits for allowed activities with dates provided. There needs to be more enforcement of the rules with penalties for non-compliance. Helicopters should not be permitted in the Refuge because of their high impact on sensitive lands and noise.

Predator Control: We support measures taken to control invasive species in all areas including wilderness. We oppose all animal predator control in the wilderness area and think natural predator/prey relationships should be allowed to proceed.

Hunting: We support subsistence hunting by Native and local Alaskans and oppose sport and trophy hunting in all areas of the Refuge.

ORV/ATV's: We oppose their use in the Refuge except by the indigenous groups while doing sustainable hunting.

Email: osseward@gmail.com

**COMMUNICATION NUMBER 97**

**Kate Williams, Regulatory Affairs Representative  
Alaska Oil and Gas Association**

Anchorage Hearing 9/21/2011

Kate Williams, Alaska Oil and Gas Association

MS. WILLIAMS: My name is Kate Williams and I'm the regulatory affairs representative for the Alaska Oil and Gas Association. AOGA is a non-profit trade association whose 15-member companies account for the majority of oil and gas activities in Alaska. We appreciate the opportunity to provide testimony on the draft CCP and EIS for the Arctic National Wildlife Refuge.

AOGA opposes the alternatives identified by the Service that would designate additional wilderness areas in ANWR and believe the Service should include oil and gas development on the coastal plain in its preferred alternative in the final CCP and EIS.

The 1.5 million acre coastal plain represents 8 percent of the total size of the 19.6 million acre Refuge and oil and gas development would likely occur on only 2,000 acres, where about 1/10th of 1 percent of the Refuge's acreage. [97.001 Alternatives Analyzed -- No Oil and Gas Alternative]

We believe the Service violated ANILCA and NEPA and BEPA by failing to consider development on the coastal plain as one of the alternatives in the draft CCP and EIS.

ANILCA specifically requires the Service to consider oil and gas exploration, development and production activities in this area.

Under NEPA, the Service must consider all reasonable alternatives for land management in the Refuge and oil and gas development is a reasonable alternative, particularly since Congress specifically set aside the coastal plain for potential development. Furthermore, [97.002 ANILCA -- Designated Wilderness and ANILCA] 31 reviewing ANWR for wilderness designations violates

ANILCA's no more clause. For the coastal plain, the Service only considered additional wilderness as an alternative and did not consider opening the area to development, a clear violation of Section 1326.

Opening the coastal plain to responsible oil and gas development would help increase

the nation's energy independence, extend the life of the TransAlaska Pipeline, increase tax and royalty revenues to State, local and Federal governments, and create tens of thousands of jobs on an annual basis across the country. Development would help turn the tide against the economic recession the U.S. is now facing.

USGS estimates that the coastal plain could hold up to 16 billion barrels of oil and 18 trillion cubic feet of natural gas. To put this in perspective, to date, approximately 16 billion barrels of oil have been produced from the North Slope. This means oil would be expected to flow through TAPS for at least another 30 years if the coastal plain is open to development. Currently TAPS is operating at one-third capacity and will face operational challenges without additional supply.

Improvements in technology over the past 40 years of development on the North Slope has significantly reduced the surface footprint while expanding the subsurface drillable area. In the '70s, a 20-acre gravel pad was utilized to access the subsurface area of less than one mile. Today's technology allows the subsurface drillable area of over eight miles from a six-acre pad. Additionally, advancements in 3D and 4D seismic technology allow industry to better focus their targets, further reducing surface impacts.

As a final point, Alaskans have consistently recognized the importance of allowing oil and gas development on the coastal plain. Polling over the last 20 years has continually shown that more than 70 percent of Alaskans support development in this area.

Thank you.

**COMMUNICATION NUMBER 32620**  
**Kate Williams, Regulatory Affairs Representative**  
**Alaska Oil and Gas Association**

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Kate Williams, Regulatory Affairs Representative

November 14, 2011

Ms. Sharon Seim  
Planning Team Leader  
Arctic National Wildlife Refuge  
101 12th Avenue, Room 236  
Fairbanks, AK 99701

Re: Comments on the Draft Comprehensive Conservation Plan and Environmental Impact Statement for the Arctic National Wildlife Refuge

Dear Ms. Seim:

The Alaska Oil and Gas Association (“AOGA”) appreciates the opportunity to submit comments on the Draft Comprehensive Conservation Plan (“CCP”) and Environmental Impact Statement (“EIS”) for the Arctic National Wildlife Refuge (“ANWR” or “the Refuge”). AOGA is a private, nonprofit trade association whose 16 member companies account for the majority of oil and gas exploration, development, production, transportation, refining, and marketing activities in Alaska.

AOGA endorses the comments on the draft CCP/EIS being submitted by the American Petroleum Institute (“API”) and the Arctic Slope Regional Corporation (“ASRC”) and encourages the U.S. Fish and Wildlife Service (“USFWS” or “the Service”) to consider and incorporate the recommendations contained therein.

AOGA opposes the alternatives identified by the Service in the draft CCP/EIS that would designate additional wilderness areas or wild and scenic river conservation system units in ANWR. AOGA believes the draft document violates the Alaska National Interest Lands Conservation Act (“ANILCA”) and National Environmental Policy Act (“NEPA”) for the reasons described in more detail below and should, at a minimum, be amended to correct those violations. In addition, [32620.001 Alternatives Analyzed -- No Oil and Gas Alternative] AOGA is greatly concerned by the Service’s failure to consider the vast resources contained in the coastal plain area of ANWR in the draft CCP/EIS. On the contrary, AOGA believes the importance of these resources to U.S. domestic supply and energy needs cannot and should not be ignored. The U.S. Geological Survey (“USGS”) estimates that the coastal plain could hold up to 16 billion barrels of oil and 18 trillion cubic feet of natural gas. To put this in perspective, to date, approximately 16 billion barrels of oil have been produced from Alaska’s North Slope. This means oil might continue to flow through the Trans-Alaska Pipeline System (“TAPS”) for potentially another 30 years if the coastal plain is opened to development.

In 2010, the U.S. consumed 19.1 million barrels of petroleum products per day, importing over 50-percent, costing hundreds of millions of dollars per day and resulting in the export of hundreds of

thousands of jobs. Development of ANWR's potential oil and gas resources would help increase the nation's energy independence, extend the life of TAPS, increase tax and royalty revenues to state, local and federal governments, and create tens of thousands of jobs on an annual basis across the country. The lack of any consideration of ANWR's oil and gas potential should be corrected in the final CCP/EIS.

Furthermore, [32620.002 Consultation and Coordination -- Tribal Coordination/Govt to Govt] the Service failed to recognize the rights and interests of the indigenous people living in and near the Refuge, specifically the shareholders of the Kaktovik Inupiat Corporation and ASRC, who own almost 100,000 subsurface and surface acres in the coastal plain. As mentioned previously, the Service should carefully consider ASRC's comments in the final CCP/EIS.

#### I. THE CCP VIOLATES ANILCA BY CONSIDERING ESTABLISHMENT OF NEW WILDERNESS AND NEW WILD AND SCENIC RIVERS IN ANWR

The proposed ANWR CCP/EIS fundamentally violates the clear directives of controlling legislation, the Alaska National Interest Lands Conservation Act (ANILCA),<sup>1</sup> by considering the establishment of new wilderness and wild and scenic rivers conservation system units in ANWR. The CCP/EIS also specifically violates Section 10022 of ANILCA by giving no effect to the requirements and purposes imposed by Congress with respect to the coastal plain.

[32620.003 ANILCA -- General] ANILCA is the controlling statute which established more than 100 million acres of federal conservation system units in Alaska, including parks, wildlife refuges, wild and scenic rivers, and wilderness. Following years of Congressional and national debate, ANILCA was enacted in December 1980 in the final days of the Carter Administration as a sweeping bipartisan compromise intended to resolve the scope and nature of the federal land conservation system in Alaska. As part of the compromise, and as a Congressional reaction to years of executive branch land "freezes" and withdrawals in Alaska, ANILCA contained well known "no more" clauses disclaiming any need for future establishment of additional conservation system units, and restricting executive authority to consider these except as authorized by ANILCA itself or further acts of Congress. See, e.g., Sections 101(d) and 1326. Moreover, as detailed below, ANILCA specifically controls over any conflicting general provision of the National Wildlife Refuge Administration Act,<sup>3</sup> and specifically governs the CCP process here.<sup>4</sup>

Section 1326(b) of ANILCA expressly prohibits exactly the actions which the CCP is purporting to undertake: new studies considering the establishment of new conservation system units in Alaska. In addition, the time for any proposal for more wilderness in national parks or wildlife refuges under ANILCA was specifically limited under Section 1317 to five years after its enactment. That time has long since run. No provision of ANILCA, or any other controlling law, authorizes such an agency proposal decades later. Instead, Sections 101(d), 1317 and 1326(b) each prohibit it.

ANILCA established the Arctic National Wildlife Refuge in its present form and with its present purposes. The original 9 million acre Arctic National Wildlife Range, created by a public land order in 1960, did not establish any wilderness and did not prohibit mineral leasing. ANILCA doubled its size and designated all of the original Range, except the 1002 coastal plain area, as wilderness under the Wilderness Act of 1964 – a designation that could only be made by Congress. Congress deliberately chose not to make the 1002 area wilderness, and instead in Section 1002 imposed specific "resource assessment" requirements on the U.S. Department of Interior ("DOI").

Section 1002(d) in mandatory terms required USFWS to promulgate regulations to open the coastal plain for oil and gas exploration. Section 1002(c) required baseline studies of fish and wild resources. Most importantly, Section 1002(h) required DOI to prepare a report directly to Congress containing “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.” The 1987 1002(h) Report and Legislative EIS submitted by DOI to Congress<sup>5</sup> recommended exactly that, specifically “making available... the entire Arctic Refuge coastal plain for oil and gas leasing.”<sup>6</sup>

Section 1002 not only imposed mandatory duties on USFWS, its provisions also reflect both the Congressional intent and the statutory purposes for establishment of the 1002 area of the Refuge. These necessarily include the possibility of both exploration and opening the 1002 coastal plain for oil and gas development. These requirements of Section 1002 cannot be ignored. Yet that is precisely what USFWS proposes.

Any action USFWS now proposes to undertake with respect to the coastal plain must first give effect to the DOI duties, Congressional intent and statutory purposes of Section 1002. The CCP fails to do so. The CCP thereby independently violates the requirements of Section 1002. Instead, the CCP undertakes an untimely study of new wilderness not required by Section 1002, which never mentions wilderness, and prohibited by ANILCA.

For many years USFWS maintained the position both to Congress and the public that any further action on the 1002 coastal plain is solely up to Congress. The 1987 1002(h) Report and Legislative EIS and the current CCP restate this many times. Congress did not authorize, and in ANILCA prohibits, further untimely agency consideration of new wilderness and wild and scenic rivers in ANWR. If any further review or new recommendation with respect to the 1002 coastal plain is now permissible, it must include the one Congress actually required: a direct report to Congress pursuant to Section 1002(h) addressing whether to open the coastal plain for oil and gas development.

#### 1. The “No More” Clauses of ANILCA Prohibit Consideration of New ANWR Wilderness And Wild and Scenic Rivers

[32620.004 ANILCA -- General] The “no more” clauses of ANILCA expressly prohibit studies to create new units of wilderness and wild and scenic rivers. The draft CCP/EIS briefly acknowledges this issue, but fails to address the plain language and controlling requirements of ANILCA.

The first of the “no more” clauses is Section 101(d), one of “Purposes” of ANILCA as a whole. This expresses the key principle that the more than 100 million acres of new conservation system units established in Alaska were “a proper balance” which “obviated” the need for new legislation to establish more:

(d) This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

(emphasis added). This plain statement of Congressional intent is then given specific effect in numerous directives and time limits throughout ANILCA.

The most relevant of these here is Section 1326(b), a section addressing “Future Executive Actions.” This provides:

§1326. (b) No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation areas or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.(emphasis added.)<sup>7</sup>

In order to understand the full scope of both sections 102(d) and 1326(b), it is essential to consider the definition of “conservation system units” in ANILCA Section 103(4):

(4) The term "conservation system unit" means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter.

(emphasis added). The plain meaning of this language is unavoidable. “Any unit” means just that: any unit of any of the listed federal systems, including future expansions. The conservation systems are listed disjunctively (“or”). The necessary effect is that any expansion of any of the systems by definition is itself a “conservation system unit.”

Here, under this definition, Section 1326(b) therefore directly prohibits the CCP proposals “considering the establishment” of new additions to both the National Wilderness Preservation System and the National Wild and Scenic Rivers System. It would be nonsense in any event to contend that the implementation of either of these systems does not establish any new conservation system unit. Their very purpose is to impose extraordinary new preservationist regimes which permanently preclude development.

It is equally clear, despite USFWS’ denial,<sup>8</sup> that the wilderness and scenic river “studies” undertaken in the CCP are precisely the kind of “further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit... or for related or similar purposes...” which are prohibited by Section 1326(b). The studies have no other purpose. The wilderness areas are labeled “wilderness study areas.” Both the wilderness and scenic rivers review expressly include “study” stages.<sup>9</sup> If these are not “studies” within the meaning of 1326(b), what possibly could be?

And, contrary to USFWS’ contention, although both studies are for the singular purpose of considering the establishment of new conservation system units, it would not matter in any event if they had other purposes. Section 1326(b) also includes the broad language “or for related or similar purposes.” These words must also be given effect,<sup>10</sup> and there can be no serious contention that the studies of new wilderness and new scenic rivers in ANWR completed as part of the CCP/EIS process do not at least comprise “related” or “similar” purposes.

Finally, it makes no difference that ultimately Congress must approve a recommendation for new wilderness or wild rivers. These are still further studies “considering the establishment” of conservation system units. All the words must be given effect. No completed action is required.<sup>11</sup>A contrary reading would in any event negate Section 1326(b) altogether, since Congress must act to establish any of the conservation units as defined in Section 103(4).

In consequence, Section 1326(b) applies here and expressly prohibits the study of new wilderness and wild rivers in the CCP “unless authorized by this Act or further Act of Congress.” No such authorization exists.

## 2. [32620.005 ANILCA -- Designated Wilderness and ANILCA] ANILCA Prohibits, Not Authorizes, New Proposals for ANWR Wilderness

The only authorization in ANILCA for DOI proposals for wilderness designations in the national parks and wildlife refuges in Alaska is Section 1317. However, this section prohibits the wilderness reviews contained in the CCP/EIS.

Section 1317 mandated review of additional wilderness in the parks and refuges within five years after ANILCA’s enactment:

### GENERAL WILDERNESS REVIEW PROVISION §1317.

(a) Within five years from the date of enactment of this Act, the Secretary shall, in accordance with the provisions of §3(d) of the Wilderness Act relating to public notice, public hearings, and review by State and other agencies, review, as to their suitability or unsuitability for preservation as wilderness, all lands within units of the National Park System and units of the National Wildlife Refuge System in Alaska not designated as wilderness by this Act and report his findings to the President.

(b) The Secretary shall conduct his review, and the President shall advise the United States Senate and House of Representatives of his in accordance with the provisions of §3(c) and §(d) of the Wilderness Act. The President shall advise the Congress of his recommendations with respect to such areas within seven years from the date of enactment of this Act.

(c) Nothing in this section shall be construed as affecting the administration of any unit of the National Park System or unit of National Wildlife Refuge System in accordance with this Act or other applicable provisions of law unless and until Congress provides otherwise by taking action on any Presidential recommendation made pursuant to subsection (b) of this section.

Id. (emphasis added). The authority under this section was time limited: five years for DOI to “review as to their suitability or unsuitability for preservation as wilderness, all lands” in the parks and refuges. The authority to conduct the review expired more than two decades ago. The time limit of Section 1317(a) independently bars any DOI wilderness recommendations outside the authorized time.

Were there any doubt that Congress knew how to instead delegate continuing authority to conduct wilderness reviews when it wanted to, one need look no further than Section 1320 of ANILCA to dispel it. That section solely addresses BLM land management in Alaska<sup>12</sup> and does not apply to national wildlife refuges or USFWS. It provides in relevant part that “the Secretary may identify areas in Alaska which he determines are suitable as wilderness and may, from time to time, make recommendations to the Congress for inclusion of any such areas in the National Wilderness Preservation System...”<sup>13</sup> The language of Section 1320 is dispositive of any contention that Congress, in spite of the express time limit of Section 1317(a), somehow instead intended to authorize or permit new wilderness proposals decades later. It did not.

Finally, the time limit of Section 1317(a), while dispositive here, does not stand on its own. It must be read in conjunction not only with Section 1320, but also with the “no more” clause of Section 1326(b) and the broader policy statement of Section 101(d). Together, these clauses flatly prohibit new studies and recommendations for wilderness in ANWR.

**3. [32620.006 ANILCA -- Wild and Scenic Rivers and ANILCA] No “Further Act of Congress” Authorizes Consideration of New Wilderness and Wild and Scenic Rivers in ANWR**

USFWS cites no “further Act of Congress” subsequent to ANILCA as required by Section 1326(a) to authorize consideration in the CCP of establishment of new conservation system units in the form of new wilderness and wild and scenic rivers. No such authority is apparent.<sup>14</sup>

**[32620.007 ANILCA -- Planning Requirements] 4. ANILCA Controls Over Any Conflicting General Authority Over Refuges, And Specifically Controls the Conservation Planning Process Here**

USFWS in the draft CCP prominently relies upon its authority under the National Wildlife Refuge System Improvement Act Of 1997,<sup>15</sup> which “organically” amends the National Wildlife Administration Act of 1966. However, the USFWS’ own enabling act expressly provides that ANILCA controls over any conflicting general Service authority over refuges, and specifically controls the ANWR CCP.

While ANILCA as the later and more specific act necessarily controls over the earlier 1966 Refuge Act, it is essential to note that clauses in the 1997 Improvement Act expressly and specifically require that, in the event of any conflict, ANILCA controls. Section 9 of the 1997 Act, “Statutory Construction With Respect To Alaska,” subsection(b), “Conflicts of Laws,” provides that “If any conflict arises between any provision of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provision in the Alaska National Interest Lands Conservation Act shall prevail.”

More specifically, Section (e) of the National Wildlife Refuge Administration Act of 1966, as amended by the Section 7 of the 1997 Act, addresses requirements for conservation plans. This section is entitled “Refuge conservation planning program for non-Alaskan refuge lands.” This section expressly provides that “refuge lands in Alaska...shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act...”<sup>16</sup> Thus, the current CCP is governed by ANILCA, not by the National Wildlife Administration Act of 1966 generally.

In addition, the amended Wildlife Refuge Administration Act provides that, “if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the mission of the System.”<sup>17</sup> The purposes of a refuge, in turn, are defined by reference to the law which created it: “The terms “purposes of the refuge” and “purposes of each refuge” mean the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit.”<sup>18</sup>

For ANWR, the purposes of the Refuge must be “the purposes specified in or derived from” ANILCA.

**5.[32620.008 ANILCA -- Planning Requirements] The USFWS’ Own Wilderness Stewardship Policy Provides That Wilderness Studies Under Section 1317 Have Been Completed and New Studies Are Not Required**

While ANILCA is controlling here, it is nonetheless significant to note USFWS’ own formal position on wilderness reviews under Section 1317. This is set forth in the USFWS “Wilderness Stewardship Policy.”<sup>19</sup> This Policy has a separate Section 5 applicable to Alaska refuges which the draft CCP fails to acknowledge. This in turn states:

5.17 Does the Service conduct wilderness reviews of refuge lands in Alaska?

We have completed wilderness reviews for refuges in Alaska in accordance with section 1317 of ANILCA. Additional wilderness reviews as described in the refuge planning policy (602 FW 1 and 3) are not required for refuges in Alaska. During preparation of CCPs for refuges in Alaska, we follow the provisions of section 304(g) of ANILCA, which requires us to identify and describe the special values of the refuge, including wilderness values. Subsequently, the CCP must designate areas within the refuge according to their respective resources and values and specify the programs for maintaining those values. However, ANILCA does not require that we incorporate formal recommendations for wilderness designation in CCPs and CCP revisions.<sup>20</sup>

(emphasis added.) The Policy also acknowledges, as the CCP does not, that ANILCA controls over the Policy in the event of a conflict.<sup>21</sup> The statements that “We have completed wilderness reviews for refuges in Alaska in accordance with Section 1317 of ANILCA” and that “additional reviews ... are not required” independently negate any reliance on Section 1317.<sup>22</sup> Moreover, it demonstrates conclusively USFWS’ own position that its wilderness reviews are at best non-statutorily authorized political actions, not mandatory or even discretionally authorized actions.

#### **6. [32620.009 ANILCA -- Planning Requirements] DOI and USFWS Must Comply With Section 1002 With Respect to the Coastal Plain**

The CCP also fundamentally violates ANILCA by failing to give any effect to Section 1002. Section 1002 contains the controlling provisions of ANILCA with respect to the coastal plain. This is the elephant in the living room which the CCP ignores.

Sections 1002(d) and 1002(h) require promulgation of regulations to permit oil and gas exploration and a report to Congress on potential opening of the coastal plain for oil and gas development. These provisions also conclusively establish that these requirements are among the Congressional purposes of the Refuge with respect to the coastal plain. These are mandatory statutory provisions directly binding upon USFWS.<sup>23</sup>

If USFWS intends to propose altering the status quo of the 1002 area, or contends that ANILCA time limits do not apply, then it must first implement the requirements of Section 1002 with respect to the coastal plain. If ANILCA time limits do not apply and additional studies can be conducted, then the requirements of Sections 1002(d) and (h) must first be reopened. These are not mere discretionary, politically motivated administrative actions such as the present wilderness reviews at most comprise. Nor are they barred by Sections 101(d), 1326(b) and 1317.

Nevertheless, the longstanding position that DOI and USFWS have taken, both to Congress and to the public, has instead been that disposition of the 1002 lands is an issue solely for Congress. The 1988 ANWR CCP, which is still in effect, repeatedly recognized that the disposition of 1002 was an issue for Congress itself, not for USFWS to decide in a CCP: “The Congress will determine the future management of the “1002” area.”<sup>24</sup> The 1987 legislative EIS which contained the 1002(h) report to Congress, while considering wilderness and other alternatives, recommended opening the 1002 lands for oil and gas development. The LEIS expressly concluded that “No further study or public review is necessary for Congress to designate the 1002 area as wilderness. Previous studies and public debate have sufficiently covered the issue.”<sup>25</sup>

All of this is still the case. Instead of undertaking new wilderness studies prohibited by ANILCA, USFWS in the alternative should adhere to its own longstanding position that only Congress can address the disposition of the 1002 coastal plain.

## II. FAILURE TO COMPLY WITH SECTION 1002 AND TO CONSIDER OIL AND GAS DEVELOPMENT IN THE COASTAL PLAIN ALSO VIOLATES NEPA

[32620.010 Alternatives Analyzed -- No Oil and Gas Alternative] The draft CCP/EIS, if finalized as written, would violate NEPA because it does not evaluate a reasonable range of alternatives and because it contains an unlawfully narrow, and incorrect, purpose and need statement. The CCP/EIS' failure to consider opening the 1002 coastal plain for oil and gas development at least as an alternative in the EIS is a fundamental violation of NEPA as well. NEPA regulations, CEQ guidance, and case law require that a NEPA review consider every reasonable alternative to a proposed action. See, e.g., 40 CFR 1502.14(a) (An EIS must "Rigorously explore and objectively evaluate all reasonable alternatives.") Failure to do so defeats the purpose of NEPA, in part by failing to inform the public of all alternatives prior to adopting a course of action.

Here, Congress required USFWS to open the 1002 coastal plain for exploration activity and to report to Congress on whether it should be opened for oil and gas development. Section 1002(d), (h). An alternative which Congress has required the agency conducting the EIS to study is necessarily a reasonable alternative which must be considered in an EIS. Moreover, CEQ guidance on NEPA requires that agencies consider all alternatives including those which require Congressional legislation. A correct approach under NEPA here would be a legislative EIS pursuant to Section 1002(h) and NEPA regulations at 40 CFR 1506.8.

USFWS' claimed justification for its refusal to consider an EIS alternative of development of the 1002 coastal plain area as required by Congress is also wrong. USFWS asserts that "The purpose and need for the CCP is to ensure that activities, actions and alternatives fulfill the legal purposes for which the Refuge was established... It is outside the Refuge's and Service's administrative authority to consider or propose oil and gas development activities." EIS Summary at 15. However, Congress directed DOI, by statute, to consider exactly such an alternative in Section 1002 of ANILCA, which created the 1002 coastal plain as a distinct part of the Refuge. DOI itself recommended this alternative in the 1987 1002(h) Report and Legislative EIS submitted to Congress. The "administrative authority" of the Service here also includes the express duty to promulgate regulations for oil and gas exploration in the coastal plain pursuant to Section 1002(c), an authority the Service acted upon.<sup>26</sup>

To say the least, consideration of oil and gas development cannot therefore be presumptively contrary to the express statutory purposes of the Refuge with respect to 1002.<sup>27</sup> Once again, ANILCA controls consideration of the "purpose" of the Refuge. Nor is DOI lacking "administrative authority" to give effect to the statutory duties imposed on the agency by Congress.

Unfortunately, the failure to inform the public and to consider all reasonable alternatives, including further exploration and potential development in the coastal plain, is so pervasive as to invalidate the public process which has been followed to date. The initial public notice of the CCP stated that "we will not consider or respond to comments that support or oppose [oil and gas] development," thus skewing the public comment process from the beginning. 75 FR 17765, April 10, 2010. Now, despite receiving many such comments, USFWS has refused to consider a Congressionally mandated alternative of potential oil and gas development.

The result is a draft EIS which fails to advise the public of key issues and alternatives, and which is "so inadequate as to preclude meaningful analysis." See 40 CFR 1502.9.

### III. [Preamble 32620.011] THE DRAFT CCP/EIS FAILS TO INCLUDE ANY ANALYSIS OF ANWR'S RESOURCE POTENTIAL OR RECOGNITION OF THE NEED FOR UPDATED ANALYSIS

Despite the Congressional mandate in ANILCA to examine the 1002 coastal plain area for its oil and gas potential very little exploration has taken place. Only about 1500 miles of two-dimensional ("2D") seismic data have been recorded in the 1002 area. These data were recorded in two winter seasons in 1984 and 1985. The only well that has been drilled in 1002 is the Kaktovik Inupiat Corporation #1 well (i.e. "the KIC well") drilled over two seasons in 1985 – 1986. This well was drilled on private (Native Corporation-owned) land by BP and Chevron and the results of this well are highly confidential and have not been released.

The paucity of data in the 1002 area is in sharp contrast to the amount of exploration data that has been obtained on State land to the west of ANWR. Between the Canning and Colville rivers hundreds of exploration wells have been drilled resulting in oil discoveries in a number of different geologic formations. Most of this area has also seen the application of three-dimensional ("3D") seismic data. 3D seismic data provides a much more accurate picture of the subsurface of the earth than does 2D seismic. 2D data can be likened to an X-ray image of the body; it is constrained to one plane of information. 3D is more like a CAT Scan which provides a volume of data which can be manipulated (rotated, sliced) to give the doctor much more accurate and useful information. The same is true for 3D seismic with respect to geological analysis.

Many new discoveries in Alaska (and worldwide) are the direct result of the application of 3D seismic, which is now the standard exploration tool used by industry. Although more costly to obtain initially, it pays off in that the success rate for drilling can improve dramatically. A 10 or 20 percent success rate was fairly typical for exploration wells based on 2D technology. Using 3D data, success rates of 40 or 50 percent are becoming common. This higher rate is naturally a boon to the industry since fewer dry holes will be drilled, thus lowering costs. However, it is also a benefit to the environment; impacts are reduced since fewer wells are drilled.

As important as 3D seismic is to exploration there is something it cannot do; it cannot predict whether oil is actually present in the rocks. 3D seismic can only show the distribution of the rocks in the subsurface. Only drilling can find oil.

The lack of data regarding ANWR's oil and gas resources represents the failure of the federal government to fulfill the Congressional mandate to evaluate the oil and gas potential of the 1002 area. The most recent attempt to unravel the complexities of ANWR geology was made by USGS in 1998 and entailed 3 years of study by 40 scientists. This is the most comprehensive study ever done and incorporated new field work, all the well data available and the information derived from reprocessing and reinterpretation of all the seismic data recorded in ANWR. This assessment contains the best information available to the public.

The results of this study showed an increase in the estimated amount of oil in ANWR compared to earlier assessments. Given the many new discoveries on the North Slope it is not hard to understand why the numbers grew. These new discoveries were, as the assessment concluded, in large part due to the application of new seismic and drilling technologies. According to the study "The increase results in large part from improved resolution of reprocessed seismic data and geologic analogs provided by recent nearby oil discoveries." Simply put, new discoveries on other parts of the North Slope have influenced the USGS reassessment of the 1002 area. This new geologic picture of the North Slope also resulted in the oil resource predicted in ANWR to be "redistributed" compared to earlier assessments. Unlike earlier assessments, now the majority of

oil in ANWR is thought to be in the northwest portion of the 1002 area and thus closer to existing infrastructure. Again, only drilling can confirm this.

In round numbers the study says there are between 6 and 16 billion barrels of technically recoverable oil in the study area. The mean (average) is about 10 billion barrels. Technically recoverable oil is the amount of oil that actually comes out of the ground. At Prudhoe Bay the recovery factor is over 60 percent. The USGS used a very conservative 37 percent recovery factor in their ANWR assessment. If the recovery factor in ANWR fields can match Prudhoe Bay then the technically recoverable average increases to about 18 billion barrels. At today's higher oil prices, and assuming a reasonable recovery factor, the amount of oil economically recoverable, will be very close to the technically recoverable amount, or potentially even greater.

While the 1998 USGS study is based on sound scientific principles, this does not mean it is right. Despite all the studies that have been done, a simple fact remains: the amount of oil in the 1002 area is unknown. Also true is that existing data does show that ANWR is the best onshore oil prospect in the United States. Although ANWR has enormous potential, that potential will remain unrealized until drilling is allowed.

Bottom line, [32620.011 ANILCA -- Planning Requirements] the Congressional mandate contained in ANILCA to evaluate the oil and gas potential of the 1002 coastal plain area has yet to be fulfilled and should be part of, or completed in conjunction with, the CCP/EIS process.

#### IV. [32620.012 Mammals -- Baseline Conditions: Polar Bears] THE DRAFT CCP/EIS CONTAINS MISSTATEMENTS ABOUT THE EFFECTS OF OIL AND GAS ACTIVITIES

The draft CCP/EIS includes statements about the effects of oil and gas activities, particularly with regard to polar bears, which are not consistent with other decisions in which USFWS has made findings that oil and gas activities have, at best, a negligible effect on the species. As USFWS has recognized in a number of regulatory processes and under the Marine Mammal Protection Act ("MMPA") and the Endangered Species Act ("ESA"), as well as in subsequent litigation, oil and gas exploration, development and production activities are not a source of mortality and/or serious injury to polar bears, nor a cause or contributing factor to the listing of the polar bear as a threatened species. Despite this continued recognition by USFWS, the draft CCP/EIS contains a number of contradictory statements which must be corrected in the final document.

For example, the draft CCP/EIS states that oil and gas exploration in and near the Beaufort Sea is a major conservation concern for polar bears. See, e.g. Page 4-111. This contradicts conclusions contained in the USFWS' final rule listing the polar bear as threatened under the ESA.

Oil and gas exploration, development, and production activities do not threaten the [polar bear] species throughout all or a significant portion of its range based on: (1) mitigation measures in place now and likely to be used in the future; (2) historical information on the level of oil and gas development activities occurring within polar bear habitat within the Arctic; (3) the lack of direct quantifiable impacts to polar bear habitat from these activities noted to date in Alaska; (4) the current availability of suitable alternative habitat; and (5) the limited and localized nature of the development activities, or possible events, such as oil spills.

73 Fed. Reg. 28212, 28266 (May 15, 2008). This statement is also inconsistent with the USFWS' final rule establishing incidental take regulations authorizing the nonlethal, incidental take of small numbers of polar bears (and Pacific walrus) associated with oil and gas activities in the Beaufort Sea and adjacent coast, which concluded that expected takings of polar bears during oil and gas activities will have a "negligible" impact on polar bears.

Based on the best scientific information available, the results of monitoring data from our previous regulations (16 years of monitoring and reporting data), the review of the information generated by the listing of the polar bear as a threatened species and the designation of polar bear critical habitat...the results of our modeling assessments and the status of the population, we find that any incidental take reasonably likely to result from the effects of oil and gas-related exploration, development, and production activities...will have no more than a negligible impact on polar bears...

76 Fed. Reg. 47010, 47041 (August 3, 2011). The draft CCP/EIS also included statements indicating that an oil spill associated with development in ANWR could have “important” effects on the southern Beaufort Sea polar bear population. Once again, this is inconsistent with prior USFWS decisions, namely the incidental take regulations referenced above. There are a number of other regulatory decisions as well as court decisions recognizing that the oil and gas industry’s effects on polar bears are negligible.<sup>28</sup> Since no new or contrary evidence regarding industry’s impacts on polar bears was presented in the CCP/EIS, any contradictory statements in the draft document should be corrected.

Lastly, [32620.013 Mammals -- Baseline Conditions: Polar Bears] USFWS makes statements in the draft document that climate change is perhaps the “greatest” current conservation concern for polar bears. See, e.g. Page 4-111. USFWS should clarify and refine this statement to remain consistent with prior decisions, including the incidental take regulations for polar bears in the Beaufort Sea and adjacent coast, which have recognized that the impacts of climate change on polar bear habitat – i.e. sea ice – is a primary cause of polar bear populations declines. Id. at 47020 (“Habitat loss due to changes in Arctic sea ice has been identified as the primary cause of the decline in polar bear populations...”).

Based on the above, AOGA urges USFWS to reconsider provisions in the CCP/EIS related to oil and gas industry impacts on polar bears.

#### V. OTHER COMMENTS AND INADEQUACIES CONTAINED IN THE DRAFT CCP/EIS

AOGA would like to highlight a few additional items which AOGA urges USFWS to consider in the development of the final CCP/EIS.

[32620.014 Mammals -- Species of Concern] Page 4-89, Table 4-8: Terrestrial mammals of Arctic National Wildlife Refuge are of special interest because they are used by humans and are known to be important components of northern ecosystems

This table graphically equates “hunting/trapping” and “viewing” – in the table they are on equal footing. Subsistence use should be given more protection than a pedestrian viewer.

[32620.015 Cultural and Historical Resources -- Cultural History] Page 4-126: Early North Alaskan History

The discussion of Modern Iñupiat is inadequate. At a minimum, placename maps documenting the extensive Iñupiat cultural geography of land areas that are now within the refuge should be included (see “Subsistence Land Use and Place Names Maps for Kaktovik Alaska” by Pedersen et al. 1985). The lack of acknowledgement of the Iñupiat’s extensive use of the landscape for gathering, harvesting, consuming and trading the area’s natural resources is a theme that runs throughout the document. The CCP should be more sensitive to the traditional Iñupiat use of natural resources.

[32620.016 Archaeological Resources -- Area History] Page 4-164, Section 4.4.4: Subsistence Uses

This section, and others, uses a “blended” approach to the history of resource use and puts use by “ancestors of the Inupiat and Athabascan peoples” on seemingly equal footing. This paradigm ignores the archaeological evidence of more intensive year-round use of the landscape by Inupiat people.

The first archaeology done in Arctic Alaska was conducted in June and July 1914 by Diamond Jenness in what is now the Refuge. Large permanent village sites on Barter Island and Arey Island (as opposed to ephemeral sites south of the Brooks Range the CCP document cites) testify to the intensive year-round and permanent ties to the landscape by the ancestors of the Inupiat. This “leavening” approach taken by the authors of the document in regards to the history of land use is not an accurate portrayal of the past and tends to over emphasize the intensity of Athabascan use through time.

**[32620.017 ANILCA -- Designated Wilderness and ANILCA] Page H-27: Wilderness Reviews**

The concept of “symbolic wilderness” is problematic for many reasons, especially if applied to the 1002 coastal plain area. This incorrectly presumes that ANWR should be managed to maintain an abstract symbolic status in the minds of those who have never visited the Refuge. Important to remember is that Congress designated 8 million acres of actual, not symbolic, wilderness in the Refuge. This fulfilled the wilderness purpose of the original Range. The 19 million acre Refuge as a whole is the size of several states, and as contemplated in ANILCA can be managed for different purposes without impacting the actual wilderness Congress established.

To summarize, the draft CCP/EIS contains violations of ANILCA and NEPA which must be corrected in the final document. Furthermore, USFWS failed to consider ANWR’s vast oil and gas resources, particularly in the 1002 coastal plain area, despite ANILCA’s mandate. Given the U.S. need for these resources and the jobs associated with their development, these issues should be considered in the final CCP/EIS. The draft document contains omissions, including an updated resource assessment for ANWR, and inconsistencies, particularly with regard to the oil and gas industry’s impact on polar bears, long established as “negligible” if that, which must be addressed before a final CCP/EIS is released. These issues are simply too important and integral to the CCP process to ignore.

Thank you for the opportunity to comment on the draft CCP/EIS. If you have any questions on these comments, please do not hesitate to contact me.

Sincerely,

KATE WILLIAMS

Regulatory Affairs Representative

1 16 USC 3101 et seq. Additional sections of ANILCA are codified elsewhere as well. For convenience, reference here is to the original section numbers.

2 16 USC 3142.

3 16 USC 668dd et seq.

4 16 USC 668dd (e)(1)(A).

5 Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment, Report and Recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement, U.S. Department of the Interior, April 1987. The Report states that it was

prepared "In accordance with Section 1002 of the Alaska National Interest Lands Conservation Act, and the National Environmental Policy Act" by USFWS, the U.S. Geological Survey, and the Bureau of Land Management.

6 Note to Reader from the Secretary of the Interior. As the Summary more formally states, "The Secretary of the Interior recommends to the Congress of the United States that it enact legislation directing the Secretary to conduct an orderly oil and gas leasing program for the 1002 area at such pace and in such circumstances as he determines will avoid unnecessary adverse effect on the environment."

7 Section 1326(a) independently prohibits executive withdrawals of more than 5,000 acres of Alaska land, even if otherwise authorized by law, without notice to and approval by Congress within a year. This also reflects the intent of the "no more" clauses to limit executive actions adding new restrictions to federal lands in Alaska. The meaning of "withdrawal" in this section is undefined. To the extent that adoption of the new CCP would be used to impose different management standards on the lands, or to otherwise impose new standards on uses and activities either within ANWR or outside it (such as oil and gas development outside ANWR borders), the proposed new wild and scenic rivers or wilderness areas may be considered "withdrawals" under this section.

This is clearly the case with respect to the proposed wild and scenic rivers, since USFWS asserts "In keeping with NWSRS requirements, rivers determined suitable must be managed to maintain their free-flowing character and outstandingly remarkable values until Congress makes a decision about their designation." EIS Summary at 20. It is equally likely that management of new areas proposed in the CCP for wilderness designation will also be significantly affected in the exercise of USFWS discretion both in the Refuge and in fulfilling other federal responsibilities, such as addressing EISs for other actions in the areas near ANWR. As USFWS states, "The Refuge will... prioritize activities that maintain or restore wilderness characteristics on minimal managed lands across the Refuge." CCP page 2-8, Objective 2.4, "Comprehensive Wilderness Management." These are the same lands now considered for wilderness.

8 The EIS asserts only that "These wilderness and wild and scenic river reviews are required of the Refuge and do not violate the "no more" clauses of ANILCA because they are not a withdrawal and are not being conducted for the sole purpose of establishing a new conservation system unit." EIS Summary at 7.

9 For example, USFWS states that it is authorized "to study areas and submit proposals for addition to the [wild and scenic rivers] system." CCP, Introduction at 19.

10 See *United States v. Alaska*, 521 US 1 (1997): "The Court will avoid an interpretation of a statute that 'renders some words altogether redundant.'" *Id.* at 59.

11 See *United States v. Alaska*, 521 US 1 (1997). In that case, the United States Supreme Court held that an exception to Alaska land grants in Section 6(e) of the Alaska Statehood Act for lands "withdrawn or otherwise set apart as refuges" did not require that "the refuge be presently established" in order to reserve federal ownership of submerged lands. Rather, the Court held that a 1957 internal administrative application submitted to the Secretary of the Interior by the DOI Bureau of Sport Fisheries and Wildlife requesting possible approval for withdrawal of land for a potential future Arctic Wildlife Range was sufficient to defeat transfer of submerged lands at statehood, even though the Range itself did not exist until 1960.

12 This was presumably a result of the fact that BLM lands in Alaska had not been as fully studied as the parks and refuges which had received direct review by Congress in enacting ANILCA.

### 13 BUREAU OF LAND MANAGEMENT LAND REVIEWS

§1320. Notwithstanding any other provision of law, §603 of the Federal Land Policy and Management Act of 1976 shall not apply to any lands in Alaska. However, in carrying out his duties under §201 and §202 of such Act and other applicable laws, the Secretary may identify areas in Alaska which he determines are suitable as wilderness and may, from time to time, make recommendations to the Congress for inclusion of any such areas in the National Wilderness Preservation System, pursuant to the provisions of the Wilderness Act...

14 The National Wildlife Refuge Administration Act does not address wilderness, and as will be seen above cannot conflict with ANILCA. The Wilderness Act of 1964 permitted USFWS to make wilderness recommendations for ten years, but that authority antedated ANILCA by 17 years and has expired. Congress has on a number of occasions used specific statutes to delegate authority to undertake wilderness recommendations when it believed these were needed, but none apply to ANWR other than ANILCA.

15 Public Law 105-57, 105th Congress, 1997.

16 16 USC 668dd(e)(1)(A).

17 16 USC 668dd(A)(3)(D).

18 16 USC 668ee 10).

19 See Part 610 Chapters 1-5 of the Fish and Wildlife Service Manual.

20 Policy, Natural and Cultural Resources Management Part 610, Wilderness Stewardship Chapter 5, Special Provisions for Alaska Wilderness (610 FW 5)

21 Id. at 2.2C.

22 Nevertheless, notwithstanding its own policy, USFWS has undertaken exactly such a review here. This is not a consequence of public comments, as USFWS suggested in its September 27 2010 announcement of the wilderness reviews. Instead, a Memorandum from the USFWS Director on January 28, 2010 summarily directed this result.<sup>22</sup> This summary action arbitrarily and capriciously overruled the publicly reviewed Wilderness Stewardship Policy, without any notice to the public, and is yet another reason why the wilderness review is unlawful.

23 The CCP erroneously asserts that Section 1004 “requires the Refuge to maintain the wilderness character of the coastal plain.” EIS Summary at 18. Section 1004 does not apply to ANWR. Section 1004 applies to the “study” of “the Federal lands described in §1001.” Section 1004(a). These comprise “all Federal lands... 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.” (emphasis added.) As already discussed, the meaning of “conservation system units” is broadly defined in Section 101(d) and includes national wildlife refuges and all additions to them. ANWR was a conservation unit established by the Act. See Section 303(2)(B)(“The purposes for which the Arctic National Wildlife Refuge is established and shall be managed include [etc.]”). By express statutory definition, it is excluded from the 1004 study. The actual study conducted by DOI pursuant to Sections 1004 and 1001 confirms that Section 1004 applies to “all federal lands located north of 68 degrees north latitude, east of the western boundary of the National Petroleum Reserve-Alaska (NPR-A) exclusive of the Gates of The Arctic National Park and Arctic National Wildlife Refuge. This area is referred to as the Central Arctic Management Area or CAMA... Section 1004 (c) of ANILCA designated the federal lands within CAMA to be a wilderness study

area (WSA).” DOI, Central Arctic Management Area Wilderness Recommendations, Final Environmental Impact Statement, 1988, at Chapter 1, Introduction, page 1-1 (emphasis added).

24 The Plan covers all of the Arctic Refuge, including the "1002" coastal plain area. However, actions that Congress might take in the "1002" area, including permitting oil and gas development or designating the area as wilderness, are not addressed in this document. Section 1002(h) of ANILCA directed DOI to provide Congress with a separate report on the future management of the "1002" area. The 1002(h) report and Legislative EIS, submitted to Congress on June 1, 1987, analyzes five alternatives and contains the Secretary of the Interior's recommendation that the entire area be made available for leasing. The Congress will determine the future management of the "1002" area. In the interim, in all of the alternatives in the Plan the 1.5 million acres of federally managed lands in the "1002" area are treated as a minimal management area.

25 No further study or public review is necessary for Congress to designate the 1002 area as wilderness. Previous studies and public debate have sufficiently covered the issue. A wilderness review of the Arctic Refuge was conducted in the early 1970's pursuant to the Wilderness Act. A draft report was prepared in 1973...

The issue of wilderness designation for all the Arctic Refuge, including the 1002, was debated extensively by the Congress and the public in widely held hearings from 1976 through 1980 during the development and passage of ANILCA... The Senate view was that designating the area as wilderness was premature until a resource assessment of the oil and gas potential was completed and reviewed by the Congress. The Senate view prevailed and became Section 1002 of ANILCA. *Id.* at 103 (emphasis added).

26 Even if Congress had not done so, CEQ NEPA regulations require that “agencies shall... Include reasonable alternatives not within the jurisdiction of the lead agency,” including proposals which require action by Congress, in an EIS. 40 CFR 1502.14(c).

27 In addition, pursuant to Section 304(g) of ANILCA, one of “special values” which must be considered in a CCP is “geology,” which is given an equal footing with wilderness. The CCP at Section 1.5 erroneously omits geology as a “special value” and fails to analyze it. Congress’ inclusion of this “special value” must be read in light of numerous provisions of ANILCA mandating studies of oil and gas potential, including Section 1002. This is not a concern with “geology” in the abstract, but with its potential for development.

28 See 71 Fed. Reg. 43926 (Aug. 2, 2006) (currently applicable polar bear negligible impact determination and incidental take regulations under MMPA for oil and gas activities in and adjacent to the Beaufort Sea); *Center for Biological Diversity v. Kempthorne*, \_ F.3d \_, 2009 WL 4282025 (9th Cir., Dec. 2, 2009) (sustaining MMPA regulations and negligible impact determination for polar bears); 73 Fed. Reg. 33212 (June 11, 2008) (currently applicable polar bear negligible impact determination and incidental take regulations under the MMPA for oil and gas activities in and adjacent to the Chukchi Sea); 73 Fed. Reg. 76249 (Dec. 16, 2008) (final special polar bear 4(d) rule promulgated by the Service); Final Biological Opinion for Beaufort and Chukchi Sea Program Area Lease Sales and Associated Seismic Surveys and Exploration Drilling (U.S. Fish and Wildlife Service, Sept. 3, 2009) (concluding that mitigation measures associated with MMPA incidental take regulations have proven effective, and are expected to be required for any future oil and gas activity authorizations); Programmatic Biological Opinion for Polar Bears (*Ursus maritimus*) on Chukchi Sea Incidental Take Regulations (U.S. Fish and Wildlife Service, June 3, 2008).

**COMMUNICATION NUMBER 136794**

**Bill Iverson, President  
Alaska Outdoor Council**

From: "Bill Iverson - AOC"  
To:  
Subject: AOC comments on ANWR - due 18th

Please get these comments to the proper person.

Thank you,

Bill Iverson

President

Alaska Outdoor Council

“Protecting your Hunting, Trapping, Fishing and Access Rights”

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AOCgooseSmall

- image003.jpg - ANWR CCP-EIS AOC comments Nov 2011.pdf

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November 10, 2011

U.S. Fish and Wildlife Service

Arctic NWR – Sharon Seim

101 12th Ave, Rm 236

Fairbanks, Alaska 99701-6237

RE: Draft ANWR CCP/EIS

The National Environmental Policy Act (NEPA) requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”

The draft Arctic National Wildlife Refuge CCP does not describe alternatives for a number of conflicting management issues; oil & gas development in 1002, sanitation facilities at transportation hub centers, increased opportunities to participate in wildlife-dependent recreation.

**[136794.001 ANILCA -- Refuge Purposes and ANILCA]**

In Appendix D: Issues Considered but Eliminated from Detailed Study of the draft ANWR CCP and EIS agency staff wrote “There is nothing in the Refuge’s purpose, or mission of the Refuge System, that requires the Service to consider or propose development and utilization scenarios for natural resources, such as oil and gas, as part of the comprehensive conservation planning process.” Is it the policy of the Refuge System to not try and resolve conflicts concerning alternative uses of available resources if they are not stated in the refuge purpose? ANILCA Title III Sec. 303(2)(B). Claiming no responsibility for the decisions on oil and gas development in the Arctic Refuge because it isn’t listed as one of the purposes of the Refuge is contrary to NEPA requirements. Oil and gas development was one of the most commented on conflict between users groups during the ANWR CCP/EIS scoping period.

**[136794.002 Alternatives Analyzed -- Evaluation of Alternatives]** There are no Alternatives in the draft ANWR CCP/EIS to enhance opportunities to participate in wildlife-dependent recreation. Recreational values, while no longer listed as one of the purposes of the federal law create by ANILCA for ANWR, still need to be part of a detailed study in the CCP. The National Wildlife Refuge System and Goals and Refuge Purposes document 601 FW 1 1.8(D) includes providing and enhancing recreational opportunities.

Alaskans don’t want to see any further reduction in public access to public lands. There are other ways to reduce recreational users impacts on Refuge lands and user conflicts that are not part of any of the proposed Alternatives published in the draft ANWR CCP/EIS.

**[136794.003 Alternatives - Issues Considered but Eliminated -- Visitor Use Issues]** Refuge data, draft ANWR CCP/EIS, Chapter 4, 4.4.5 Visitor Use and Recreation, estimates 1,000 to 1,250 visitors to the Refuge per year for the last decade. Of which 90% are supported by commercial concessionaires. None of the draft Alternatives in the CCP/EIS considers ways of reducing: crowding, social conflicts, accumulations of human waste, or site-hardening other than restricting use.

**[136794.004 Wilderness -- Unacceptable Uses / Activities]** There is no Alternative in the current draft ANWR CCP/EIS for responsible outdoors people who recreate in the Refuge to comment on. There is no option for reducing current regulations found under Wilderness designation or Minimal Management that would allow for sanitation facilities to be constructed at high use landing sites. There are no Alternatives to enhance recreational opportunities in areas other than the Kongakut or Hulahula River drainages.

Even the (No Action) Alternative A is a loss of access opportunity. The proposed Goals, Objectives, Management Policies, and Guidelines in Chapter 2 of the draft ANWR CCP/EIS reflect a move toward less of an opportunity to participate in wildlife-dependent recreation. The Refuge Goals and Objectives Chapter 2.1 are to be adopted regardless of which Alternative the Service chooses.

**[136794.005 Refuge Vision and Goals -- Goal 5 (including objectives)]** Goal 5: The Refuge provides a place for wildlife-dependent and wilderness-associated recreational activities that emphasize adventure, independence, self-reliance, exploration, and solitude while protecting the biological and physical environments. Is it the intent of the Refuge staff to keep the recreational use of ANWR down to around 1,000 -1,250 visitors a year? The channeling of management direction by adoption of the Refuge Goals, proposed in Chapter 1.62, would lead to a reduction in wildlife-dependent and wilderness-associated recreational activities within the Refuge.

The Alaska Outdoor Council (AOC) is a statewide conservation organization representing over 10,000 Alaskans who hunt, fish, trap, and actually participate in outdoor recreational activities on federal public lands in Alaska.

**[Preamble 136794.006, 007, 008, 009]** The Alaska Outdoor Council (AOC) recommends that the Service withdraw their draft ANWR CCP/EIS and submit a draft that would be consistent with NEPA regulations regarding the study, development, and submission of appropriate alternatives to recommend a course of action which could resolve conflicts concerning alternative uses of available resources within ANWR.

1. AOC opposes the recommendation to Congress to create any new Wilderness designated Areas in ANWR.

2. AOC opposes the addition of any new rivers in ANWR to the National Wild & Scenic River System.

**[136794.006 Recreation and Visitor Use -- Commercial Operations, General]** 3. AOC recommends the construction of sanitation facilities, hardened camp sites, and aircraft landing sites along the Kongakut that commercial operators and their clients are required to use.

**[136794.007 Refuge Vision and Goals -- General]** 4. AOC recommends that the Refuge Goals be modified to provide and enhance opportunities to participate in wildlife-dependent recreation. The current wording of the many step-down plans; Wilderness Stewardship Plan (Objective 2.3), Comprehensive Wilderness Management Plan (Objective 2.4), Visitor Use Management Plan (Objective 5.3), and the Comprehensive Rivers Management Plan (Objective 3.1) will result in further restrictions for those who participate in outdoor recreational activities if based on the sideboards created by the proposed Refuge goals.

**[136794.008 Alternatives - Issues Considered but Eliminated -- Management Issues]**

5. AOC recommends that an Alternative Management Plan that would encourage hunting, fishing, boating, snowmobiling, wildlife observation and photography on the Refuge be added to the Alternative list, and then made available for public comment.

**[136794.009 Alternatives Analyzed -- Other Alternatives Suggested]** 6. AOC recommends that an Alternative be added to propose development and utilization of resources in the Refuge's Coastal Plain (Area 1002).

AOC appreciates the opportunity to comment. If information is needed to clarify any of our comments please feel free to contact our office.

Sincerely,

Rod Arno, Executive Director, Alaska Outdoor Council

Bill Iverson, President, Alaska Outdoor Council

CC:

Representative Don Young

Senator. Mark Begich

Senator, Lisa Murkowski

Governor Sean Parnell

Daniel Sullivan, Commission ADNR

**COMMUNICATION NUMBER 136792**  
**Cliff Eames, Board Member**  
**Alaska Quiet Rights Coalition**

From: Cliff Eames  
To: arcticrefugeccp@fws.gov  
Subject: Arctic Refuge Draft CCP Plan Revision and DEIS

Dear Ms. Seim,

The attached are the comments of the Alaska Quiet Rights Coalition on the Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan and Draft Environmental Impact Statement. Thank you for the chance to comment on this very important, and we hope historical, planning process.

Sincerely,

Cliff Eames  
Board Member  
Alaska Quiet Rights Coalition

Cliff Eames  
Kenny Lake, Alaska  
HC60 Box 306T  
Copper Center, AK 99573  
(907) 822-3644

- AQRC comments on draft Arctic Refuge CCP revision.doc

Attachment:

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It's the great, big, broad land way up yonder,  
It's the forests where silence has lease;  
It's the beauty that thrills me with wonder,  
It's the stillness that fills me with peace.

-Robert Service

November 15, 2011

U.S. Fish and Wildlife Service  
Arctic NWR – Sharon Seim  
101 12th Ave., Rm 236  
Fairbanks, AK 99701-6237

Re: Comments on Arctic NWR Draft CCP Revision

Dear Ms. Seim:

The following are the comments of the Alaska Quiet Rights Coalition (AQRC) on the Arctic National Wildlife Refuge's draft Comprehensive Conservation Plan revision.

We thank you very much for the opportunity to participate in this planning process for a highly valuable, almost entirely pristine area that is owned by all Americans and is considered by many to be our country's premier wilderness and wildlife area.

Many if not most of our comments you've seen before in our scoping letter. But the focus of the Alaska Quiet Rights Coalition, the Natural Soundscape--the opportunity to hear natural sounds and enjoy natural quiet--is quite specific, and we believe that agencies at all levels of government are paying far too little attention to this fundamental resource, and doing far too little to protect, and where necessary restore, it--and that it would be difficult, if not impossible, for us to say too much about it and its critical importance.

And, in fact, [Preamble 136792.003, 004] we were very disappointed to see that there is almost nothing in the draft Plan and EIS regarding the Natural Soundscape, natural quiet, and natural sounds. In this regard, the Fish and Wildlife Service seems to lag far behind its sister federal land managing agencies. Formal, written National Park Service policy requires that the agency address the Natural Soundscape in its plans and environmental analyses. Even the National Forest Service and the Bureau of Land Management, multiple use agencies with a far less protective mission than the FWS, have, in most recent cases that we're aware of, addressed natural quiet and natural sounds in their planning and environmental documents. We may not always agree with their decisions, but at least they generally acknowledge that the Natural Soundscape is a fundamental ecological resource. We are very surprised, and as we said, disappointed, to see that the Fish and Wildlife Service does not seem to be fulfilling its stewardship responsibilities by at least taking that important first step.

Immediately below are our more general comments about the Natural Soundscape, followed by more specific comments about the draft Plan and EIS.

The Alaska Quiet Rights Coalition is dedicated to protecting the rights of Alaskans to quiet places for the benefit of public land users, home and cabin owners, communities, businesses, wildlife, visitors, and future generations.

Alaska's natural beauty, wildness, wildlife, expanses of undisturbed open space, and peace and quiet are among its most cherished values, and Alaskans, our visitors, and future generations have the right to experience the natural sights, sounds and quiet beauty of our state. In the vast majority of cases, the obtrusive noise, summer landscape degradation and winter snowscape defacement, exhaust, and dangers of motorized recreation are incompatible with those special natural experiences.

Unfortunately, though, natural quiet and the opportunity to hear and enjoy natural sounds are increasingly hard to find in our state—a fact which would surprise the great majority of non-residents for whom Alaska in general, and the Arctic Refuge in particular, are potent symbols of the natural and the wild, not of noisy mechanization. Although there are many places in Alaska that look the same as they did 100 or more years ago, very few sound as they did only 10 or 20 years earlier.

Consequently, we urgently need to protect those quiet areas that still remain. Most of us, until quite recently, took the restorative quiet of the outdoors for granted. We assumed that the backcountry would always provide a quiet refuge from the noise, busyness and artificiality of our towns and cities. That assumption, to our great chagrin, has proven to be false. We now know that natural quiet and natural sounds require our—the public, and the public's stewards, the land managers—constant vigilance if they're to survive even into the middle of our present century.

Ironically, natural quiet can be easier to find in the lower 48, in the many designated Wildernesses where motorized recreation is prohibited, than in supposedly wild Alaska, where many federal land managers erroneously believe that ANILCA requires them to allow obtrusive recreational activities, for example, snowmachining, even in designated Wilderness. Recreational snowmachining, inaccurately characterized as “traditional,” is allowed in spite of its numerous adverse impacts and the conflicts it so often creates with truly traditional, low impact means of access like walking, snowshoeing and cross country skiing. We can and should do better. (See below for more on this issue.)

AQRC believes in a fair and balanced allocation of the state’s public lands for both non-motorized and motorized recreation. At the present time, there is a gross imbalance on the public lands that both unwisely and inequitably favors motorized recreation over muscle-powered recreation. In the interests of both good stewardship and fundamental fairness, this imbalance needs to be rectified. A reasonable proportion (we’ve suggested 50%) of public lands and facilities of all jurisdictions throughout the state should be set aside for quiet recreation—thereby also helping to protect clean air and water, fish and wildlife, soils and vegetation, scenic beauty, and the wilderness character for which Alaska is famous worldwide.

Natural quiet and natural sounds should be recognized by all public land managers as critical resources in and of themselves that deserve no less consideration than clean air and water or fish and wildlife and their habitat. Soundscape plans should be prepared. The analysis of proposed agency actions should include a determination of the possible effects on natural quiet and natural sounds and on the humans and wildlife that enjoy or depend on them. (See below for more on this issue.)

AQRC’s focus has been on motorized recreation, not subsistence. And ANILCA, rightfully so, has more liberal policies for the use of motorized vehicles for necessary subsistence than for non-essential recreation. Subsistence use of motorized vehicles should, nevertheless, be subject, where appropriate, to reasonable regulations (as provided for in ANILCA). (See below for more on this issue.)

Our more particular comments follow:

Overall. We support Alternative E—with the proviso that ANILCA’s provisions protecting subsistence use be fully upheld in order to protect legitimate subsistence activities. All three areas that were assessed, perhaps especially the Coastal Plain, should be recommended to Congress for Wilderness designation, and the four rivers that were evaluated should be recommended for inclusion in the Wild and Scenic Rivers System.

Vision Statement, Goals and Special Values. We support the plan’s vision statement, goals, and special values. Themes that are especially important to us include wilderness/wildness, wildlife, naturalness, pristine and untamed landscapes, heritage, stewardship, solitude, respect, restraint, and a chance to escape from otherwise omnipresent modern technologies. None of these are consistent with recreational motorized vehicle use in this wild, remote refuge.

**[136792.001 Refuge Management Policies/Guidelines -- General]** Natural Soundscape (Natural Quiet and Natural Sounds). Following up on what we said above, these important but too often neglected resources deserve strong protection in the Refuge. If not protected here, where will they be? The draft Plan and EIS should be revised to treat them as completely legitimate and independent resources, and the impact of refuge activities and decisions on them should be fully evaluated, just as is done for other important resources and values such as wildlife, clean air and

water, scenic beauty, wilderness, etc. In addition, the Plan should mandate that a step-down Soundscape Plan be undertaken subsequently.

Wilderness. Wilderness is an important issue for our members, since we assume that the use of noisy and otherwise destructive and conflict-creating motorized vehicles, other than for legitimate access (see below) and well regulated subsistence use, will, at least at some point, not be permitted in refuge Wilderness. We firmly believe that the Congress in passing ANILCA did not intend that its “traditional activities” provision would create a loophole that would make designated Wilderness in Alaska far less wild than in the lower 48. The refuge should remain an example of our wild heritage. Visitors to our state should be able to find peace and quiet in this special place, not the noise and busyness that many of them are trying to escape--and that they assume they will be able to escape when they travel to “wild” Alaska.

**[136792.002 Refuge Management Policies/Guidelines -- Public Access and Transportation Management]** Airplane (not helicopter) drop offs for access to wilderness recreation (as opposed to airplane use for flightseeing or other recreation), and of course access to inholdings, are traditional and appropriate, although such use needs to be carefully regulated. Other non-subsistence motorized use, including of course recreational snowmachining, is inconsistent with Wilderness and with refuge purposes and values and should not be allowed.

Consequently, as we said above, we support recommending to the Congress all three of the areas that were evaluated for Wilderness designation.

**[136792.003 Transportation and Access -- Mode of Transportation]** Balanced Land Management Statewide. Motorized recreational use should be prohibited throughout the Refuge, not just in designated Wilderness or lands managed as Wilderness. The Arctic Refuge should be a counterweight, an alternative, to the vast majority of state-owned lands and BLM lands, and to the many other areas on the federal lands, where such recreational use is allowed, and in all too many cases, is virtually unregulated. The gross imbalance referred to earlier can and should be at least partially righted by managing for non-motorized recreational use on the refuge.

Wildlife. AQRC’s traditional focus has been on the social impacts of motorized, primarily recreational, vehicles, since these issues seem to be so difficult for land managers to resolve responsibly. But an important part of the natural experience that non-motorized recreationists and visitors are seeking is seeing healthy populations of wildlife in a natural, undisturbed setting, and we are increasingly recognizing that advocacy to protect wildlife from unnatural, mechanical sounds is very important and too often neglected. And of course maintaining healthy wildlife populations, unaltered habitat, and biodiversity should be a major refuge goal and is one that we heartily support. Similarly, although our organizational emphasis is not on the preservation of scenic beauty, doing so is critical to a non-motorized user’s enjoyment of his or her outdoor experience.

**[136792.004 Subsistence -- Access]** Subsistence. The promises made in ANILCA to subsistence users should be honored. This includes the use of motorized vehicles for subsistence when such use is not allowed for other purposes. But ANILCA clearly allows the subsistence use of motorized vehicles to be reasonably regulated, and whether there is a need for such regulation should be carefully, but fairly, evaluated during the life of the Plan.

Thank you again for the chance to comment on this important planning process. The Fish and Wildlife Service seems to recognize, in most regards, that they have a very special stewardship responsibility in managing this exceptional place responsibly for both present and future generations of Americans. One glaring failure, though, as we have said, is its almost, as far as we

can tell, complete neglect of the Natural Soundscape. We urge the Service to correct this glaring deficiency in its final plan by, for example, recognizing the Natural Soundscape as a Special Refuge Value; making its protection, and where appropriate, restoration, a Refuge Goal; evaluating it as part of the Affected Environment; and assessing the effect on it of the various alternatives.

Sincerely,

Cliff Eames  
Member, Board of Directors  
Alaska Quiet Rights Coalition

HC 60 Box 306T  
Copper Center, AK 99573

**COMMUNICATION NUMBER 136820**  
**Cindy Shogan, Executive Director**  
**Alaska Wilderness League**

From: Lydia Weiss

To: "ArcticRefugeCCP@fws.gov" ; "Sharon\_Seim@fws.gov"

Subject: Technical Comments on Alternative C from the Alaska Wilderness League

Dear Sharon:

Attached, please find a cover letter and technical comments regarding Alternative C, submitted on behalf of the Alaska Wilderness League. They are submitted on our organizational letterhead with all of our contact information, but if you need more information than that for this organizational submission, please let me know. Both have also been put in the mail, postmarked today.

Thanks very much,

Lydia

ALASKA  
WILDERNESS  
LEAGUE

Attachment 1:

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November 15, 2011

U.S. Fish and Wildlife Service  
Arctic National Wildlife Refuge - Sharon Seim  
101 12th Ave., Room 236  
Fairbanks AK 99701  
Via: ArcticRefugeCCP@fws.gov and U.S. Mail

RE: Arctic National Wildlife Refuge Draft Comprehensive Conservation Plan/ Environmental Impact Statement Comments

Dear Ms. Seim:

Thank you for the opportunity to comment on the Arctic National Wildlife Refuge Draft Comprehensive Conservation Plan/Environmental Impact Statement ("CCP"). The Arctic Refuge is one of America's most unique wilderness areas, and its Coastal Plain in particular holds a special place in our nation's natural heritage. The revised CCP provides the U.S. Fish and Wildlife Service with a historic opportunity to recommend wilderness designation for the Arctic Refuge Coastal Plain Wilderness Study Area. The Alaska Wilderness League urges you to select Alternative C, which includes this important wilderness recommendation.

We also support a number of detailed comments and recommendations in the enclosed letter. Our goal was to provide input to ensure the Arctic Refuge is managed into the future in a manner that best preserves its incredible values, including its wilderness, wildlife, recreation, and subsistence opportunities. The Arctic Refuge contains all of these values in abundance, and we hope a

successfully revised CCP will allow future generations to experience a Refuge that remains wild and thriving.

The enclosed letter contains detailed comments on the following topics:

- \* The FWS Properly Conducted a Wilderness Review of all Non-Wilderness Lands within the Arctic Refuge and We Urge FWS to Recommend the Coastal Plain for Wilderness Designation
- \* FWS Properly Conducted a Wild and Scenic River Review
- \* The Original Arctic National Wildlife Range's Purposes Apply to the Entire Arctic Refuge
- \* The FWS Has Provided Strong Arctic Refuge Special Values, Vision and Goals that should be Retained in the Final CCP
- \* We Support the Goals Identified by FWS In General and Believe That The Goals Identified Will Help FWS Effectively Manage the Arctic Refuge to Preserve its Exceptional Values
- \* Wildlife Management must be Consistent with Arctic Refuge Purposes and FWS Should Preclude Consideration of Any Inconsistent Wildlife Management Proposals
- \* Consideration of Climate Change in the Planning Process
- \* Recreation Issues
- \* Management Policies and Guidelines
- \* FWS Properly Did Not Consider an "Oil and Gas Alternative"
- \* Other Issues Considered by Eliminated From Detailed Study
- \* The CCP EIS Fails to Adequately Consider Cumulative Impacts
- \* The FWS Failed To Consider and Analyze The Cumulative Impacts To The Refuge And Refuge Management From Multiple Reasonably Foreseeable Future Actions
- \* The FWS Failed To Consider the Cumulative Impacts Of The Action In The ANILCA Section 810 Evaluation

Thank you for considering our comments. We look forward to working with you to finalize this important planning effort for the incomparable Arctic National Wildlife Refuge.

Sincerely,

Cindy Shogan, Executive Director  
Alaska Wilderness League  
Washington, D.C.

Attachment 2:

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Alaska Wilderness League

COMMENTS ON  
ARCTIC NATIONAL WILDLIFE REFUGE  
COMPREHENSIVE CONSERVATION PLAN  
AND DRAFT ENVIRONMENTAL IMPACT STATEMENT

November 14, 2011

Submitted by:

Cindy Shogan  
Executive Director

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I. Introduction

The Arctic National Wildlife Refuge (“Arctic Refuge” or “the Refuge”) is the crown jewel of the National Wildlife Refuge System in the United States. It is a place where all the values that the Refuge System is intended to preserve and celebrate are present in a larger-than-life landscape that was uniquely established to protect its wilderness values. The FWS aptly expresses the vision for the Arctic Refuge in this manner:

This untamed arctic landscape continues to sustain the ecological diversity and special values that inspired the Refuge’s establishment. Natural processes continue and traditional cultures thrive with the seasons and changing times; physical and mental challenge test our bodies, minds and spirit; and we honor the land, the wildlife and the native people with respect and restraint. Through responsible stewardship this vast wilderness is passed on, undiminished, to future generations.

U.S. Fish and Wildlife Service, Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan, Draft Environmental Impact Statement, Wilderness Review and Wild and Scenic River Review (June 2011) (“DEIS” or “CCP DEIS”).

The Comprehensive Conservation Plan (“CCP”) for the Arctic Refuge is the critical document that ensures that the integrity of the Refuge is protected now and for future generations so that this vision can continue to be realized. In addition to the legal requirement to revise the CCP, it is an appropriate time to do so because an updated CCP can respond to what we now know about changing human impacts on the Refuge, from global warming to specific Refuge uses. Our greater understanding of the forces that can impact and influence the Arctic Refuge will allow for the adoption of a plan that can meet the challenges ahead, and ensure that the Arctic Refuge retains its fundamental wild character.

The Arctic Refuge is indeed the most wild place in the National Wildlife Refuge system, and therefore we concur with the CCP’s planning context. See CCP at 1-5.

These comments address important overarching issues related to the management of the Arctic Refuge. The comments then move through the CCP as organized by FWS to provide comments, critiques and suggestions to improve the CCP with the goal of ensuring the FWS adopts a plan that recognizes the uniqueness of the Arctic Refuge, appropriately deals with the management

issues confronting the FWS, and ensures that the values for which the Refuge was set aside continue to be preserved for all.

## II. GLOBAL ISSUES

### A. THE FWS PROPERLY CONDUCTED A WILDERNESS REVIEW OF ALL NON-WILDERNESS LANDS WITHIN THE ARCTIC REFUGE

We are very pleased to see that FWS conducted a wilderness review for all non-Wilderness lands in the Arctic Refuge — including the Coastal Plain — as part of the CCP revision process. Wilderness reviews are required by Refuge System policy, and in fact they are required by law, as part of a CCP. Several laws guide the revision of the Arctic Refuge CCP and its wilderness review requirements. These include the Wilderness Act, Alaska National Interest Lands Conservation Act (ANILCA), and the National Environmental Policy Act (NEPA). In 1964, Congress enacted the Wilderness Act to:

assure that an increasing population, accompanied by expanding settlement and growing mechanization, [did] not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition.

16 U.S.C. § 1131(a). To that end, Congress directed the Secretary of the Interior to evaluate every roadless area within all national wildlife refuges for suitability for wilderness designation, and to report Wilderness recommendations to the President. 16 U.S.C. § 1132(c).[1] Since the initial mandate in 1964, that directive has been carried over and implemented during the refuge management CCP planning process and subsequent revisions.

ANILCA further customizes this national mandate to Alaska by directing the Secretary to “prepare and from time to time, revise, a comprehensive conservation plan for each refuge” in Alaska. 16 U.S.C. 304(g)(1). Section 304(g) states:

- (1) The Secretary shall prepare, and from time to time, revise, a comprehensive conservation plan (hereinafter in this subsection referred to as the ‘plan’) for each refuge.
- (2) Before developing a plan for each refuge, the Secretary shall identify and describe – (A) the populations and habitats of the fish and wildlife resources of the refuge; (B) the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge”

Based on the identification of these specific values, each CCP must “designate areas within the refuge according to their respective resources and values.” *Id.* at 304(g)(3)(A)(i).

When Congress enacted ANILCA, it specifically incorporated portions of the Wilderness Act into the statute and carried over the Wilderness Act’s wilderness review mandate for Alaska refuges. ANILCA includes two provisions that direct the Secretary of the Interior to perform wilderness reviews of Alaska lands. ANILCA sec. 1317, 16 U.S.C. § 3205; ANILCA sec. 1004, 16 U.S.C. § 3144. Section 1317(a) directs the Service to study all non-wilderness lands in Alaska refuges and recommend areas suitable for inclusion in the National Wilderness Preservation System:

Within five years from the date of enactment of this Act, the Secretary shall, in accordance with the provisions of section 3(d) of the Wilderness Act relating to public notice, public hearings and review by State and other agencies, review, as to their suitability or unsuitability for preservation as wilderness, all lands within units of the National Park System and units of the National Wildlife

Refuge System in Alaska not designated as wilderness by this Act and report his findings to the President.

16 U.S.C. § 3205. By definition section 1317 governs wilderness reviews for all land within the Arctic Refuge that has not been designated wilderness. 16 U.S.C. § 3205(a). This includes wilderness reviews of the Arctic Refuge coastal plain. Compare 16 U.S.C. § 3205 with 16 U.S.C. § 3142 (neither provision exempts the coastal plain (“1002 area”) from the wilderness review requirement). Thus, FWS was obligated to conduct a wilderness review for the Refuge as part of this process and we are very pleased to see that FWS has in fact done so.

#### B. We Urge FWS to Recommend Wilderness for the Arctic Refuge Coastal Plain

Nearly all of the Arctic Refuge’s non-Wilderness lands possess exceptional values that qualify them for designation as Wilderness under the Wilderness Act, and we urge that these lands be managed to protect and preserve their extraordinary wilderness values. Further, the Coastal Plain of the Arctic Refuge warrants Wilderness designation. The Coastal Plain wilderness study area is an integral part of the adjacent designated Wilderness lands and their intact ecosystems which make the whole Arctic Refuge truly unique among our Nation's natural treasures.

The Coastal Plain was a vital part of the original Arctic National Wildlife Range established in 1960 for the purpose of preserving its “unique ... wilderness values.” The Coastal Plain contains beautiful rivers rushing from the highest peaks in the Brooks Range and Sadlerochit Mountains then coursing north through foothills and hilly coastal plain, braiding across wetland tundra with lakes and ponds to broad river deltas, inter-tidal flats, lagoon and barrier island systems, and bays, spits, and other pristine shorelines along the Beaufort Sea.

The Coastal Plain hides vital winter maternity dens for polar bears, increasing in importance as arctic sea ice vanishes. Its coastal lagoons provide ringed seal pupping lairs. Dolly Varden (formerly known as Arctic char) overwinter and spawn in streams and river channels, primarily where springs flow year round, and then migrate to nearshore coastal waters for summer feeding. The Coastal Plain bursts with life in the summer as migratory wildlife converges on this biological heart of the Refuge — the Porcupine caribou herd along with golden eagles, wolves, and brown bears, and millions of migratory birds for nesting, feeding, molting, and staging.

The Coastal Plain is connected to existing designated Wilderness lands to its east and south through its scenic landscapes, watersheds, rivers, migration of the Porcupine caribou herd to its birthplace and nursery area, and to the lives of the Gwich'in people who depend on the caribou. It is also connected through its wildlife and sweeping landscapes to the broader ecosystem including Canada’s Ivvavik and Vuntut National Parks and other conservation areas in this rich trans-boundary region.

Section 2 c of the Wilderness Act defines wilderness to be “undeveloped Federal land retaining its primeval character and influence ... and which generally appears to have been affected primarily by the forces of nature, with the imprint of man's works substantially unnoticeable.” Clearly, the characteristics and condition of the Coastal Plain wilderness study area meet these requirements. The Coastal Plain therefore has all the essential qualities which make it eminently qualified for designation as Wilderness and we urge FWS to adopt Alternative C and recommend Wilderness for the Coastal Plain.

#### C. WE URGE FWS TO RECOMMEND WILD AND SCENIC RIVER STATUS

In the CCP revision process, FWS must address the eligibility of various rivers in the Arctic Refuge for special status under the Wild and Scenic Rivers of 1968 (P.L. 90-542). That Act

provides that “certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.” 16 U.S.C. 1271. “Wild rivers” represent “vestiges of primitive America,” and can be designated if they “are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.” 16 U.S.C. 1273.

The Refuge is uniquely situated in Alaska to include entire rivers and watershed headwaters from the high peaks of the Brooks Range to the Arctic Ocean in the north and to the Yukon River drainage in the south, and therefore their scenery is dramatic as well as unique. The proximity of the mountains, including the Sadlerochit Range, to the Beaufort Sea coast creates a diversity of habitats along these northward flowing rivers in the refuge. This combines with the close proximity of the boreal forest sloping from the south slopes of the peaks to create river habitat diversities unique in the circumpolar north, so that comparing the Refuge’s rivers between themselves discounts their overall values within the Arctic.

We support the recommendation of the Atigun, Hulahula, Kongakut and Marsh Fork Canning Rivers into the NWSRS. These rivers clearly meet NWSRS requirements, and are appropriately designated under that System.

In fact, **[136820.001 Wild and Scenic Rivers -- Eligibility (includes Appendix D)]** all of the rivers in the Arctic National Wildlife Refuge are emblematic of our nation’s most intact and wildest rivers and the epitome of the standard for protection as Wild Rivers in the National Wild and Scenic River System. All of them are free-flowing, have pure, high quality water, and contain one or more Outstanding Remarkable Values (ORVs) for their scenic, recreational, geologic, historic, cultural, fish, wildlife, wilderness and intact ecological systems at the landscape scale. Ecosystem protection and the wholeness of our nation’s wildest refuge would be enhanced by such designations, and they would also be strong complements to the ultimate Wilderness of the Arctic Refuge. Therefore, all of the Refuge’s rivers should be included in the inventory and maintained so that they retain their ORVs.

At the same time, by excluding rivers that clearly meet the standards, the eligibility list is too limited. The fault originates with the methodology the USFWS used to determine the eligibility of the rivers in the plan, as that methodology does not meet the basic requirements of the Wild and Scenic Rivers Act. The question is whether a river is free-flowing and whether or not it possesses an outstandingly remarkable value of regional or national significance. Instead of assessing the rivers independently of one another as required by the Act, the rivers assessed in the draft Plan were measured against one another, thus resulting in fewer eligible rivers than actually exist. Consequently the FWS’s method only selects those rivers that contain the highest percentage of Outstanding Remarkable Values (ORVs), preventing many otherwise qualified rivers from becoming eligible. If a proper assessment was conducted additional rivers would have been found eligible, such as the Kataktruck and Turner Rivers. The final Plan should include a revised methodology that meets the Act and includes the necessary interim protections afforded rivers found eligible.

**[136820.002 Wild and Scenic Rivers -- Other Rivers]** We also object to the FWS’s treatment of the Canning River. While they have different names, the Canning is the downstream portion of the Marsh Fork of the Canning River, and they both should be found suitable. FWS has noted elsewhere that the Canning “is the longest and has the greatest water volume of the refuge’s north flowing rivers. Both the Canning and its major tributary, the Marsh Fork, have headwaters

access and float through scenic, glaciated valleys.”[2] It is one of the most floated and hiked rivers (USFWS 1993, USFWS April 2010). It is important to fish, birds, and caribou from both the Porcupine and Central Arctic herds, for land denning of polar bears, and has a rich cultural heritage as well as historical significance from early explorers such as Leffingwell and others. In the WSR study, the Canning River should be described to include all of its distributaries and tributaries, particularly within its delta, including the Staines River. The Tamayariak River and its major tributaries joins the Canning River delta in a complex of wetlands, lakes, and complex mudflats that all provide outstanding migratory bird habitat, in addition to the fisheries habitats well documented by FWS studies.

Comments on the draft Eligibility Report submitted by Northern Alaska Environmental Center et al., November 15, 2010 provided additional support for inclusion of the Canning River included as eligible for study. The Canning River should be found suitable as it has the highest score for overall Wildlife ORVs and highest Wildlife Diversity of all 20 rivers found eligible, and the highest Cultural Value ORV as any eligible river in the Arctic Ocean drainage, and as high a diversity of Recreational Uses as any eligible river. This remarkable river has many high ORVs including wildlife and fish; recreation, and culture, according to the Wild and Scenic River Review in Appendix I. While the WSR Review notes that there is value to designation of the Canning River to protect against development outside the Refuge’s boundaries, the FWS has erroneously concluded that activities could take place on the adjacent State of Alaska lands above the common high water mark of the west bank, that this should preclude suitability even though the entire length of the Canning is in Federal ownership and is managed by the Refuge. In fact, the Review states, “Federal ownership of most of the river, its beds, and banks makes it feasible to consider the Canning River for designation and that all its tributaries should be considered for review.” (WSR Review at SUIT-31). We disagree with the preliminary determination that the Canning is not suitable, and find that a poor rationale for this decision is provided: “It would be difficult for the Service to manage the Canning River as part of the NWSRS because of its boundary with State land that has high potential for oil and gas development.” (WSR Review at SUIT-31). Only one comment had opposed designation of the river during the eligibility phase review (WSR Review at SUIT-30).

**[136820.003 Wild and Scenic Rivers -- Suitability (includes Appendix I)]** The discussion of oil and gas activities on the State lands outside The Refuge mistakenly implies that incompatible supporting activities, including water withdrawals, and gravel mining could be allowed and might take place within the Canning River channel (WSR Review at SUIT-29). For clarity, the WSR Review should contain language that oil and gas leasing, exploration, development, and production are prohibited by law within the Arctic Refuge and furthermore that these oil and gas activities could not be permitted in the refuge because they are incompatible with its purposes. In fact, the threats on the adjacent land provide greater rationale for the worthwhile nature of the Canning gaining protections as a Wild River including its interim protections. It is vulnerable and the FWS needs to use all tools at its disposal to prevent degradation of the Canning River’s outstandingly remarkable values. Therefore the benefits to protecting its values are appropriate for achieving the goals of the Wild and Scenic Rivers Act as well as fulfilling Refuge purposes, far offsetting any difficulties that the ownership of adjacent lands might pose.

### III. Specific Comments

#### A. Chapter 1. Arctic Refuge Purposes, Special Values, Vision, and Goals

##### 1. THE ORIGINAL ARCTIC NATIONAL WILDLIFE RANGE'S PURPOSES APPLY TO THE ENTIRE ARCTIC REFUGE

In [136820.004 ANILCA -- Refuge Purposes and ANILCA] the CCP, the FWS states that the purposes for which the original Arctic National Wildlife Range (“Arctic Range”) was established only apply to those lands in the original Arctic Range: “Under Section 305 of the Alaska National Interest Lands Conservation Act (“ANILCA”), the Range’s original wildlife, wilderness, and recreation purposes still apply to those lands in the former Range.”[3] However, under FWS’s own longstanding policy and guidance regarding determining the purpose of each refuge in the National Wildlife Refuge System,[4]the purposes of the original Arctic Range apply to all Arctic Refuge lands. The misinterpretation and misapplication of Refuge purposes pervades the CCP and the management decisions that FWS is considering and proposing. Thus, it is vital that FWS clearly state that the original Arctic Range purposes apply to the entire Arctic Refuge and that the CCP reflect this understanding.

The original Arctic Range was established in 1960 “to preserve unique wildlife, wilderness, and recreational values.”[5] ANILCA expanded the original Arctic Range by adding 9.2 million acres, included additional refuge purposes and re-designated the unit as the Arctic National Wildlife Refuge. These new, additional purposes include:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and graying; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and quantity within the refuge.[6]

ANILCA Section 305 states that:

All proclamations, Executive orders, public land orders and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act.[7]

This is a clear statement from Congress that Public Land Order 2214 — which set forth the Arctic Range purposes — was to remain in effect post-ANILCA unless it is inconsistent with ANILCA. The legislative history of ANILCA indicates that Congress did not intend the purposes included in ANILCA for the expanded Arctic Refuge to be the exclusive refuge purposes: “Sections 301, 302 and 303 set forth the purposes for each designated or redesignated unit and additions to existing units. Enumeration of purposes is not exclusive, but is set forth as a guide for management.”[8]

The purposes set out in Public Land Order 2214 for the Arctic Range are not inconsistent with the purposes set out in ANILCA for the Arctic Refuge; the two authorities set forth overlapping and complimentary purposes recognizing the exceptional wilderness, wildlife, recreation, subsistence

resources, international importance, and water quality of the Refuge.[9] All of the values recognized in both sets of purposes support the other recognized values; for example, recognizing and managing to protect the wildness values of the Arctic Refuge allows for the achievement and furtherance of protecting the wildlife values.

Thus, ANILCA itself and its legislative history indicate that Congress intended that Public Land Order remain in effect for the newly expanded and redesignated Arctic Refuge and that the purposes included in ANILCA were to be inclusive, rather than exclusive, of existing Arctic Refuge purposes.

As FWS's longstanding policy and guidance regarding determining expanded refuge purposes clearly states:

When we acquire an addition to a refuge under an authority different from the authority used to establish the original refuge, the addition also takes on the purpose(s) of the original refuge unless Congress determines otherwise, but the original refuge does not take on the purpose(s) of the addition unless Congress determines otherwise.[10]

In the present case, the Arctic Refuge additions were established under a different authority (ANILCA) than the authority used to establish the original Arctic Range (Public Land Order 2214).

Thus, applying FWS's policy for determining the purposes of a refuge, for FWS's current determination that the Arctic Range purposes only apply to those lands within the original Arctic Range to hold true, there would need to be some indication from Congress that the original Arctic Range purposes should not apply to the entire Arctic Range. [11]

Accordingly the purposes of the original Arctic Range apply to the entire Arctic Refuge. The FWS should correct this mistake in the CCP.

## 2. THE FWS HAS PROVIDED STRONG ARCTIC REFUGE SPECIAL VALUES, VISION AND GOALS THAT SHOULD BE RETAINED IN THE FINAL CCP

**[136820.005 Refuge Values -- Special Values of Refuge]** The Service has provided a strong listing of the special values of the Arctic Refuge, see DEIS Sec. 1.5, pp. 1-20 to 1-22, and we support all of them being retained in the final CCP. These Special Values should be used to guide all management decisions in the Refuge.

We also strongly support the vision statement for the Arctic Refuge set forth in the CCP: This untamed arctic landscape continues to sustain the ecological diversity and special values that inspired the Refuge's establishment. Natural processes continue and traditional cultures thrive with the seasons and changing times; physical and mental challenges test our bodies, minds and spirit; and we honor the land, the wildlife and the native people with respect and restraint. Through responsible stewardship this vast wilderness is passed on, undiminished, to future generations.

See DEIS at Sec. 1.6.1, p. 1-23. We believe that inclusion of the last sentence pertaining to its wilderness values, "through responsible stewardship this value wilderness is passed on, undiminished, to future generations," is essential. We appreciate the acknowledgement of the traditional cultural values and continuing ties of the Native peoples to this land within the vision.

Additionally, we support the excellent Refuge Goals which aptly undergird management of the Arctic Refuge, particularly Goals 1 and 2 for management for natural ecological processes and exceptional wilderness values. See DEIS at Sec. 1.6.2, p. 1-23. Regarding Goal 2, we encourage the

FWS to clarify that the goal that the Arctic Refuge “retains exceptional wilderness values without loss of natural condition and wild character” apply to the entire Refuge.

Finally, we concur with the FWS’s consideration of Significant Planning Issues, see DEIS at Sec. 1.10, p. 1-31, and note that the Service correctly did not analyze oil and gas leasing or development scenarios in the range of alternatives, as we describe in more detail below.

## B. Chapter 2: Goals, Objectives, Management Policies, and Guidelines

### 1. WE SUPPORT THE GOALS IDENTIFIED BY FWS IN GENERAL AND BELIEVE THAT THE GOALS IDENTIFIED WILL HELP FWS EFFECTIVELY MANAGE THE ARCTIC REFUGE TO PRESERVE ITS EXCEPTIONAL VALUES

**[136820.006 Refuge Vision and Goals -- Goal 1 (including objectives)]** We support Goal 1 (Ecosystem Management) with one small but important change. We recommend that the word “essentially” be deleted. See DEIS at 2-1. The goal should be to maintain the Refuge free from the intent to alter the natural processes, with the understating that goals may be difficult to attain.

**[136820.007 Refuge Vision and Goals -- Goal 2 (including objectives)]** Overall, Goal 2 is excellent. However, it needs to clearly address objectives so that the part of the goal aiming to “retain[] its exceptional wilderness values without loss of natural condition and wild character” is met for the entire Arctic Refuge, including non-designated wilderness lands.

Goal 3 is well stated and supports the Wild River refuge purposes.

We support Goal 4 (Continued Subsistence Opportunities) and urge greater coordination and partnership with local communities and tribal governments as part of the strategies for all objectives. **[136820.008 Refuge Vision and Goals -- Goal 4 (including objectives)]** The goal should also address the Refuge’s role in implementation of the International Porcupine Caribou Agreements and should recognize that the rural residents in Alaska who have harvested animals from the Porcupine Caribou Herd for customary and traditional uses “should participate in the conservation of the Porcupine Caribou Herd and its habitat.”

We strongly support Goal 5 (Wildlife-dependent and wilderness-associated recreational activities) and its objectives because it embraces the wildlife and wilderness purposes of the Refuge.

**[136820.009 Refuge Vision and Goals -- Goal 6 (including objectives)]** While we generally support Goal 6 (Evaluation of the Effects of Climate Change), it should be expanded to include the non-intervention policy described in the climate change Management Guidelines to ensure consistency in the CCP’s approach. **[136820.010 Refuge Vision and Goals -- Goal 6 (including objectives)]** Objective 6.1 should also specifically address effects of climate change on polar bears and other marine mammals that depend on refuge habitats. DEIS at 2-20.

We support Goal 7 (Conduct Research and Monitoring in support of Refuge’s role as an internationally recognized benchmark for naturally functioning arctic and subarctic ecosystems)(Sec. 2.1.7, p. 2-22), which correctly emphasizes the significant scientific benchmark the Refuge provides for intact, unbroken ecosystems and that all research and scientific techniques must be carefully evaluated so that this scientific research does not affect the Refuge’s ability to continue to serve as a wilderness control. In general, **[136820.011 Refuge Vision and Goals -- Goal 7 (including objectives)]** the objectives identified to achieve Goal 7 need to better provide the coordination mechanism between projects described here as well as listed as inventory and monitoring and research under other objectives, including those done by the Refuge staff itself, other arms of the Service, other federal agencies, cooperators, collaborators, tribes, local communities, and others.

Goal 8 (Cultural Resources) is an important goal for the Refuge, and we urge consultation with tribes and local communities and incorporation of traditional knowledge in all objectives.

Goal 9 (Providing Refuge information to diverse audiences near and far) is an important goal to further the understanding of the national interest of upholding the Refuge's wilderness and wildlife purposes for these conservation lands.

## 2. WILDLIFE MANAGEMENT MUST BE CONSISTENT WITH ARCTIC REFUGE PURPOSES AND FWS SHOULD PRECLUDE CONSIDERATION OF ANY INCONSISTENT WILDLIFE MANAGEMENT PROPOSALS

The health of the entire ecosystem must be considered in Arctic Refuge wildlife management and we advocate for an ecosystem approach. Preservation of the entire ecosystem was a fundamental purpose for the Refuge's establishment as embodied in its wilderness preservation purpose, and as further described by ANILCA's purpose for the Refuge: "to conserve fish and wildlife populations and habitats in their natural diversity."<sup>[12]</sup> **[136820.012 Consultation and Coordination -- State Coordination]** While we recognize the importance of FWS maintaining involvement in the State of Alaska's fisheries, game, and federal subsistence boards' processes,<sup>[13]</sup> we are concerned with the Alaska Board of Game's ("BOG") tendency to institute regulatory changes that are in direct conflict with Refuge System mandates and federal law. The FWS must state in the Final CCP that Refuge purposes and wilderness values are dominant over conflicting goals of the State of Alaska, and that these purposes and values thus preempt Alaska Fish and Game and Board of Game rules when necessary.

**[136820.013 Refuge Management Policies/Guidelines -- Cooperation and Coordination with Others]** The State of Alaska manages game populations according to the Intensive Management ("IM") statute, which manages game for high levels of human harvest.<sup>[14]</sup> The IM statute allows for predator control activities, which are patently inconsistent with the Service's mission and federal law, as well as the purposes of the Arctic Refuge — which includes the conservation of "fish and wildlife populations and habitats in their natural diversity."<sup>[15]</sup> Thus, intensive management and predator control actions are inappropriate in the Arctic Refuge. To ensure clarity to and to dissuade any attempts by the State of Alaska to pursue IM programs on Refuge lands, the CCP should explicitly preclude artificial manipulation or intensive management of wildlife populations to enhance game populations for human harvest and the use of predator control for this purpose should be prohibited in any form.

The Draft CCP, however, suggests that FWS should consider clearly incompatible Alaska actions on a case-by-case basis: "[s]eparate refuge compatibility determinations addressing specific proposals will be required for State management activities that propose predator management, fish and wildlife control...or any other unpermitted activity that could alter ecosystems" of refuges in Alaska.<sup>[16]</sup> FWS need not and should not initiate a compatibility determination or NEPA process to evaluate State-sponsored predator control in Arctic Refuge. Instead, the FWS should incorporate language into the CCP and the draft Compatibility Determinations clearly stating that any regulation or plan — including the use of predator control— which conflicts with federal law or policy and the purposes of the Arctic Refuge will be preempted in the Refuge.

We have some concerns about the draft compatibility determination contained in Appendix G pertaining to State of Alaska Management Activities (DEIS at G-5). We support the Service's statement that these management activities not be included in this blanket compatibility determination.

“This compatibility determination does not address predator management, fish and wildlife control (with the exception of animals taken in defense of life or property), reintroduction of species, native fish introductions, non-native species introductions, non-native species management, pest management, disease prevention and control, fishery restoration, fishery enhancement, construction of facilities, or any other unpermitted activity that could alter ecosystems in the Refuge. Separate compatibility determinations addressing specific proposals will be required for those activities.”

**[136820.014 Refuge Management Policies/Guidelines -- Compatability Determinations (includes Appendix G)]** The Service needs to provide full information about the state’s activities for management and research in the CCP in order to provide a comprehensive assessment of all the activities that are done within the refuge, including within its designated wilderness. We are concerned about the lack of specificity and lack of analysis for a whole range of activities not being subject to a compatibility determination, as mentioned here:

“All management and research activities conducted by ADFG under a specific cooperative agreement with the Service to fulfill one or more purposes of the Refuge or the Refuge System mission are not subject to a compatibility determination.”

It appears that an inappropriate grandfathering of the State of Alaska’s management and research activities within the refuge is being done based on reliance of the 1982 MOU between the Service and ADFG (DEIS at G-6):

“A compatibility determination is not required for State activities on lands in the Refuge where a pre-established agreement or memorandum of understanding is in place. Refuge staff will monitor State activities in the Refuge. Findings from these monitoring efforts will be used to determine what additional management actions, if any, would be needed to ensure State activities remain compatible with Refuge purposes and in compliance with established agreements.”

Therefore, we recommend that all State of Alaska management and research activities be addressed specifically in the DEIS, including their geographic extent, frequency, and how they intersect with the Service’s own management and research programs. Furthermore, they should be considered along with other permitted inventory, monitoring, and research programs by other agencies or Universities so that a comprehensive assessment of these activities as they support wildlife management decisions can be made.

### 3. CONSIDERATION OF CLIMATE CHANGE IN THE PLANNING PROCESS

We are pleased to see that the Service recognizes climate change as a fundamental challenge for the Arctic Refuge and is using the revision of the CCP as an opportunity to incorporate new scientific information pertaining to climate change into future management decisions.[17] The Service has rightly acknowledged that it is required to do so by Secretarial Orders 3226 and 3289.[18]

The Draft CCP states that “[i]n the foreseeable future, the Refuge will favor a policy of non-intervention, whereby natural systems are allowed to adapt and evolve, accepting that some species may be replaced by others more suited to the changing climate.”[19] With its huge size, diverse array of habitats and elevations, and intact, unfragmented habitats, the Arctic Refuge is in a superior position as compared to other conservation units to be managed for “natural adaptation,” or allowing nature to take its course, even in the face of the accelerated changes experienced at high latitudes. We, therefore, support climate change-related actions focused on scientific research and monitoring, sharing of traditional knowledge, and public awareness.

**[136820.015 Climate and Climate Change -- Cumulative Effect]** Given the wilderness character

of the Refuge, the Service should also guard against increasing other stressors, and proposals for new uses or management activities on the Refuge should be evaluated carefully with respect to potential cumulative impacts on resources potentially threatened by climate change.

Additionally, [136820.016 Climate and Climate Change -- Cumulative Effect] to strengthen the CCP, we recommend that the FWS include additional analysis of the impacts of climate change on wildlife and habitats to ensure robust consideration of climate change impacts on the Arctic Refuge.

#### 4. RECREATION ISSUES

[136820.017 Recreation and Visitor Use -- General] The Service has provided strong rationale in Sec. 1.4.1.3 Recreation Purpose, see DEIS at 1-17, that the Arctic Refuge's wilderness purpose "was intended to offer a special kind of recreation, an authentic wildlands experience of a type increasingly hard to find elsewhere." We support the policy to encourage self-reliance and preservation of opportunities for adventure, discovery, and the experience of solitude and isolation. The Final CCP should strengthen this part of the Management Guidelines (DEIS 2-63 to 2-64) by referencing the Special Values of the Arctic Refuge as a justification for this important approach to recreation and public uses in the Refuge.

#### 5. WILD AND SCENIC RIVERS

[136820.018 Wild and Scenic Rivers -- General] Congress, through section 602 of ANILCA, designated as Wild Rivers portions of the Ivishak, upper Sheenjek, and Wind rivers within the boundaries of the Arctic Refuge. To further its responsibilities under the Refuge Administration Act and the Wild and Scenic River Act, the FWS should more fully describe its management approach to these Wild Rivers. In the CCP, management of the Refuge's Wild Rivers is included in the Management Categories Table, DEIS at 2-73-2-92, and discussed briefly, DEIS at 2-35. While we note that FWS indicates that it will formulate a Comprehensive River Management Plan for the Refuge's designated Wild Rivers as a future step-down plan, DEIS at 6-3, we strongly encourage FWS to more fully discuss the current management regimes for these rivers in the final CCP, as well as describe any detailed measure available to FWS to ensure their continued integrity as Wild Rivers into the future. In this manner, the FWS can assure the preservation of the outstanding values associated with the Refuge's three Wild Rivers.

#### 6. MANAGEMENT POLICIES AND GUIDELINES

We agree that the Arctic Refuge is unique and with the appropriateness of this description regarding management policies: "direction for Arctic Refuge varies more than other comprehensive conservation plans. Because the Service intends to manage Arctic Refuge at the far end of the unaltered spectrum, the Refuge plan calls for a more hands-off approach to management and allows less manipulations of the environment than other refuge plans." (DEIS at 2-31).

[136820.019 Management Categories -- General] This plan should not include categories from its "statewide management template" that are not suitable management categories and list activities that are not appropriate Refuge uses in the Arctic Refuge (DEIS at 2-31 to 2-32 and Table 2-1)). Although lands in other Alaskan refuges fall into five categories, only those categories applicable to the Arctic Refuge should be included in this CCP: Minimal, Wilderness, and Wild River. Due to the Arctic Refuge's Special Values, purposes- particularly its unique wilderness purpose-, and goals, it is inappropriate for this plan to include the Intensive and Moderate Management categories at all. They should not "be available should the plan be amended in the future to include either of these management categories" (DEIS at 2-31) because the categories contain activities

that are incompatible with the fundamental purposes of the Arctic Refuge. This contingency for possible plan amendments does not establish clear and predictable policies in this CCP which have been subject to full review, and inclusion of the Moderate and Intensive Categories sets an expectation that incompatible activities may be allowed in the future. These incompatible, harmful activities as listed in Table 2-1 should include public access via highway vehicles, off-road (all-terrain vehicles like air boars and air-cushion vehicles), helicopters, all weather roads, unimproved roads, designated Off-Road Vehicle Routes and Areas for public use and recreation, roadside exhibits and waysides, constructed and maintained airstrips, docks, visitor contact facilities on refuge lands, developed campgrounds, construction of bunkhouses, construction of aircraft hangers, sale of sand and gravel. Therefore, the Intensive and Moderate Management categories should be removed from this CCP, including from Table 2-1.

We have concerns about some of the existing and proposed activities that the CCP lists as Appropriate Uses (Sec. 2.4.5 , DEIS at 2-40) and for which compatibility determinations were drafted for public review in Appendix G. Our concerns with the compatibility determination for the State of Alaska Management Activities were addressed in the section, above, on wildlife management.

**[136820.020 Refuge Management Policies/Guidelines -- Compatibility Determinations (includes Appendix G)]** We find that further review is needed for the Commercial Shore-fast Sea Ice Access activity (pp. G-57 to G-63) and that a far narrower description of the activity allowed is needed for it to be considered an appropriate use. There is insufficient information and analysis in the DEIS about this existing activity upon which to base this draft Compatibility Determination, including types of vehicles deployed, frequency, exact geographic scope, number and timing of trips, past history of activities including any spills, and other factors.

The DEIS fails to include any description or environmental analysis of this Commercial Use activity except in this draft Compatibility Determination. It does not include any description of this type of transportation activity in the Affected Environment section on transportation (Sec. 4.4.2), or Kaktovik (p. 4-136), nor was any analysis provided in the Environmental Consequences section.

While this access may be necessary to support delivery of goods to the local community, in addition to aircraft and barge deliveries, the draft Compatibility Determination as written does not confine it to those activities. The draft Compatibility Determination needs to narrow its provisions to ensure that is not used for activities that are prohibited in the Refuge, including any industrial activities such as support for offshore oil and gas exploration or development.

This activity would be occurring on sea ice in designated Critical Habitat for polar bears at a time when bears are denning, and therefore environmental impact analysis of this activity in the DEIS is necessary because it could result in pollution and disturbance of this habitat within the refuge. Although the draft Compatibility Determination states that Endangered Species Act Section 7 and Marine Mammal Protection Act consultations will be required, they are not contained within this DEIS, and therefore, the draft Compatibility Determination should not be approved without incorporation of such analysis within the EIS.

There are a number of other unanswered questions pertaining to this issue including: Does this commercial access include travel on sea ice within designated Wilderness in the eastern coast of the Refuge adjacent to Canada? How is climate change affecting the reliability of sea ice travel? How often do these haulers end up travelling on land? How often has this been due to emergency conditions when there is open water? How often are these vehicles hauling fuel?

Finally, we recommend that if this activity is found to be appropriate, that any permits should clearly prohibit travel on land, including barrier islands, and require live GPS data of the routes from the vehicles so that their routes during the trip may be accurately tracked to minimize impacts and to ensure compliance on a real-time basis.

**[136820.021 Management Categories -- Special Management Areas]** The section on Alaska Native Claims Settlement Act Section 22(g) (Sec. 2.3.6.2 DEIS at 2-36), is incomplete regarding the nature of commercial activities that can occur on Arctic Slope Regional Corporation and Kaktovik Inupiat Corporation lands. The facts regarding the prohibition on oil and gas development that applies to these lands should be included.

ASRC's lands are subject to specific legal restrictions, namely the laws governing the Arctic Refuge and its purposes and the prohibition on oil and gas development. The "Chandler Lake Exchange" (August 9, 1983 Agreement between ASRC and Interior Secretary James Watt) gave subsurface lands for 92,000 acres within the Arctic National Wildlife Refuge to the Arctic Slope Regional Corporation despite the fact that ANCSA prohibited Regional Corporations from making selections in National Wildlife Refuges. However, the exchange agreement states that oil and gas leasing, development and production on these lands is prohibited unless Congress opens them. Additionally, ASRC currently does not have, and never had, a reasonable expectation that it could produce oil and gas from its speculative (restricted title) subsurface interests.

**[136820.022 Refuge management policies/guidelines -- Land Exchanges]** We recommend that the description of Land Exchanges and Acquisitions (sec. 2.4.3, DEIS at 2-37) include descriptions of major land exchanges due to their great controversy. See Alaska Wilderness League et al. scoping comments dated June 7, 2010 for additional information on past exchanges that we recommend be included in the CCP to enable greater public understanding of the status of the ASRC lands within the refuge. The General Accounting Office concluded the Chandler Lake Exchange was not in the public's best interest. ASRC has already obtained over \$39 million from its speculative oil lease options held by Chevron and BP – more than seven times the value of the Chandler Lake lands ASRC traded (\$5.1 million).<sup>20</sup> GAO said, "Interior used its broad authority to avoid procedural requirements otherwise applicable to land exchanges, such as full public review, preparation of environmental impact statements, and disclosure of the fair market value of the land and interest exchanged."<sup>[21]</sup> Congress held major oversight hearings concerning the Chandler Lake Exchange and another failed proposal, the "Megatrade," and then, in 1988, Congress halted further land exchanges, without Congressional approval, involving the coastal plain of the Arctic National Wildlife Refuge with an ANILCA amendment (Section 201 of PL 100-395; ANILCA Section 1302(h)(2)).

**[136820.023 Refuge Management Policies/Guidelines -- Coastal Zone Consistency]** The CCP needs to address the fact that the Alaska Coastal Management Program ended in 2011 in the discussion on Coastal Zone Consistency (Sec. 2.4.8, DEIS at 2-42). This is of particular concern because there is no longer the ACMP mechanism for community standards and review of activities resulting from the state's Beaufort Sea Areawide Leasing Program in the 3-mile zone immediately offshore the refuge. There will be less scrutiny and lack of a comprehensive mechanism for public review and comment regarding impacts from oil and gas activities on refuge fish and wildlife resources that rely on those nearshore waters, and noise, spills, and other impacts that can degrade and harm refuge habitats, wildlife, subsistence resources and uses, wild lands recreation, and wilderness values due to the absence of this program.

The sections on Habitat Management (Sec. 2.4.11.1, DEIS at 2-5) and Fish and Wildlife Population Management (Sec. 2.4.12, DEIS at 2-52) contain well-written descriptions of the

management approach to meet the refuge goals, including that “the intent of management will be to leave habitats unaltered and unmanipulated” and that the “Refuge focuses on enabling the natural behavior, interactions, and cycles of all native species to continue, with little or no human intervention and manipulation.”

The oil and gas leasing, exploration, development, and production prohibitions are described in the section on Mineral Exploration and Development (Sec. 2.4.18.2, DEIS at 2-66), and in Appendix D, Issues Considered but Eliminated from Further Study.

**[136820.024 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** FWS appropriately states that no exploration activities are allowed on the “1002” Coastal Plain area of the Arctic Refuge, DEIS at 2-66-67, that no Arctic Refuge oil or gas leasing is permitted by law, DEIS at 2-67, and that no oil and gas support facilities are allowed on the Coastal Plain of the Arctic Refuge. *Id.* For additional clarity, the prohibition of support facilities on the Coastal Plain could be added to Table 2-1 (likely at pages 2-89, 90). Further, **[136820.025 Alternatives - Issues Considered but Eliminated -- Policy Issues]** the last clause in footnote 2 to Table D-1 (DEIS at D-19) should be changed to state “issue is one of policy or law” as the current language suggests that there may be more discretion than actually exists on these issues.

**[136820.026 Alternatives - Issues Considered but Eliminated -- Oil and Gas Development]** The final CCP should acknowledge and support the continuation of the existing prohibitions on oil and gas, leasing, development, and production of KIC and ASRC lands. Because all of these points are based in law, see ANILCA Section 1003, these prohibitions cannot be changed. Further, **[136820.027 Alternatives - Issues Considered but Eliminated -- Other Issues]** Section D.6.3 should characterize the types of private lands that exist inside the Arctic Refuge boundary, and explicitly note the ANCSA Section 22g authority that the FWS has to influence activities on those lands.

**[136820.028 Refuge Management Policies/Guidelines -- Minerals Management]** The extraction of sand and gravel for commercial purposes is precluded in the Arctic Refuge. See e.g., Arctic Refuge CCP (1988) at Table 10, p. 183 (prohibition on removal of sand and gravel for commercial purposes). This should be made clear in the final CCP, and the language in the current Draft CCP suggesting otherwise is unnecessary and thus should be removed or qualified, as it is irrelevant to the Arctic Refuge where Intensive and Moderate Management Categories do not exist. Compare DEIS at 2-67 (3rd full paragraph) with Table 2-1 (clearly showing that Moderate and Intensive Management Categories do not apply to the Arctic Refuge).

### C. Chapter 3: Issues and Alternatives

#### 1. FWS PROPERLY DID NOT CONSIDER AN “OIL AND GAS ALTERNATIVE”

FWS correctly did not consider an oil and gas alternative, or scenarios which evaluate impacts of oil and gas exploration, development or production from the refuge.<sup>[22]</sup> NEPA “places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action... [I]t also ensures that the agency will inform the public that it has indeed considered environmental concerns in the decision-making process.” *Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, 524 F.3d 938, 947 (9th Cir. 2008) (citing *Baltimore Gas & Elec. Co. v. Nat’l Res. Def. Coun., Inc.*, 462 U.S. 87 (1983)). NEPA requires that an EIS include “alternatives to the proposed action.<sup>23</sup> To help define the alternatives, CEQ regulations require that the agency “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the

proposed action.”[24] Thus, under NEPA, an agency only needs to consider alternatives that meet the purpose and need for the proposed action.[25]

The purpose of FWS’s proposed action “is to develop a Revised Plan for Arctic Refuge to provide management direction for the next 15 years.”[26] The action is needed to:

- \* Update management direction related to national and regional policies and guidelines used to implement Federal laws governing Refuge management[;]
- \* Describe and protect the resources and special values of Arctic Refuge[;]
- \* Incorporate new scientific information on resources of the Refuge and surrounding areas[;]
- \* Evaluate current Refuge management direction based on changing public use of the Refuge and its resources[;]
- \* Ensure the purposes of the Refuge and the mission of the Refuge System are being fulfilled[;]
- \* Ensure that opportunities are available for interested parties to participate in the development of management direction[;]
- \* Provide a systematic process for making and documenting resource management decisions[;]
- \* Establish broad management direction for Refuge programs and activities[;]
- \* Provide continuity in Refuge management[;]
- \* Establish a long-term vision for the Refuge[;] \* Establish management goals and objectives[;]
- \* Define compatible uses[;]
- \* Provide additional guidance for budget requests[; and]
- \* Provide additional guidance for planning work and evaluating accomplishments.[.][27]

Considering an oil and gas leasing, exploration, development, or production alternative would not achieve any of the management goals or objectives identified by FWS as the need for the agency action. Oil and gas activities are not currently allowed in the Arctic Refuge; ANILCA section 1003 states that the "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 [Refuge] shall be undertaken until authorized by an act of Congress." [28] Further, oil and gas activities are contrary to the purposes of the Refuge, and are inconsistent with the Refuge’s purposes — neither the original purposes establishing the Arctic National Wildlife Range, nor the expanded purposes described in ANILCA.[29] Additionally, the National Wildlife Refuge System Administration Act of 1966, as amended, states that each refuge shall be managed to fulfill both the purposes for which the original refuge was established and the mission of the Refuge System.[30] The revision of the Arctic Refuge CCP must follow these legal guidelines and set forth management regimes that are consistent with the layered Refuge purposes.

Thus, considering an alternative allowing for oil and gas development in the Arctic Refuge would not achieve the purpose and need for the FWS’s revision of the CCP and FWS properly did not consider such an alternative.[31]

## 2. OTHER ISSUES ELIMINATED FROM DETAILED STUDY

As discussed in our scoping comments and by FWS, the following issues were correctly eliminated from detailed study in the CCP DEIS. See e.g., Chapter 3 on issues and alternatives (Sec. 3.1.2, DEIS at 3-6) and Appendix D-1:

- \* Oil and gas development
- \* Updating seismic data on the Coastal Plain
- \* The ANILCA No More Clause

#### D. Chapter 5: Environmental Consequences

##### 1. THE CCP EIS FAILS TO ADEQUATELY CONSIDER CUMULATIVE IMPACTS

NEPA requires that agencies disclose the environmental impacts of an action within the Environmental Impact Statement (EIS). 42 U.S.C. § 4332(2)(C)(i), (ii). See also 40 C.F.R. § 1508.25(c). The environmental impacts of an action include the direct, indirect and cumulative impacts. 40 C.F.R. § 1502.16. Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. To satisfy NEPA’s requirements, the cumulative impacts analysis must be reasonably detailed; as the Ninth Circuit has explained, “[g]eneral statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Neighbors of Cuddy Mountain v. U.S Forest Serv.*, 137 F.3d 1372, 1379-80 (9th Cir. 1998). As the Ninth Circuit stated in *Lands Council v. Powell*, “the general rule under NEPA is that, in assessing cumulative effects, the Environmental Impact Statement must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and the differences between the projects, are thought to have impacted the environment.” 379 F.3d 738, 745 (9th Cir. 2004), rev’d on other grounds, *Lands Council v. Powell*, 395 F.3d 1019 (9th Cir. 2005).

**[136820.029 Environmental Consequences -- Cumulative Effects: General]** The cumulative impacts analysis in the CCP DEIS is insufficient to satisfy NEPA’s requirements to consider and analyze the cumulative impacts of a project. The DEIS purports to consider the cumulative effects, stating “At the end of each alternative, we disclose the anticipated cumulative effects of the alternative on the biophysical and human environments and to reasonably foreseeable future actions. . . . The anticipated positive or negative effects of the reasonably foreseeable activities are discussed first, followed by a discussion of anticipated cumulative effects of each alternative.” DEIS at 5-2.32 However, the discussion of cumulative impacts associated with each alternative with respect to the effects of the alternative and the effects of reasonably foreseeable future actions is lacking. At the end of the discussion of the environmental consequences of each alternative, the DEIS contains a few sentences discussing the impacts of the alternative on the Arctic Refuge and its management, followed by the very cursory statement that “These effects would be cumulative to the effects of climate change, development activities, and management decisions made by other throughout the region.” DEIS at 5-20, 5-32, 5-43, 5-55, 5-67, and 5-75. There is no actual discussion or analysis of the impacts of climate change, development activities or management decision in the region on the Arctic Refuge. As the Ninth Circuit explained,

[i]n accord with NEPA, the Forest Service must ‘consider’ cumulative impacts. [] To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the Forest Service’s decisions, can be assured that the Forest Service provided the hard look that it is required to provide.

*Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379 (9th Cir. 1998) (internal citation omitted)

To the extent that FWS is relying on Appendix C to the DEIS to provide that analysis, FWS must clearly say so. Additionally, review of Appendix C reveals that the analysis of the planning efforts is incomplete and inadequate. First, as explained below, the planning efforts included in Appendix C fail to include multiple current and reasonably foreseeable future actions. Second, the impacts discussed for each planning effort are cursory, generally consisting of statements that the action is not thought to adversely affect Refuge management. See e.g., DEIS at Appendix C: Other Planning Efforts at C-6. As explained above, this cursory discussion does not satisfy NEPA. See *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d at 1379.

To satisfy NEPA, FWS needs to take a hard look at the cumulative impacts of past, present and reasonably foreseeable future actions on Refuge management, objectives and goals. This requires an analysis and discussion of such impacts in the EIS. See *Lands Council*, 379 F.3d at 745. Without such, the DEIS for the Arctic Refuge CCP is inadequate.

**[136820.030 Environmental Consequences -- Cumulative Effects: General]** We also note that a cumulative impact analysis for the Porcupine Caribou Herd is an international obligation. The International Porcupine Caribou Herd Agreement states that “When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyze potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou.”

## 2. The FWS Failed to Consider and Analyze the Cumulative Impacts to the Refuge and Refuge Management from Multiple Reasonably Foreseeable Future Actions

NEPA requires that agencies disclose the environmental impacts of an action within the Environmental Impact Statement (EIS). 42 U.S.C. § 4332(2)(C)(i), (ii). See also 40 C.F.R. § 1508.25(c). The environmental impacts of an action include the direct, indirect and cumulative impacts. 40 C.F.R. § 1502.16. Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. To comply with NEPA, the EIS must contain quantified data and discussion of how the proposed project and reasonably foreseeable future projects will affect the environment. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

As explained by the Ninth Circuit, NEPA “is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” *Kern v. Bureau of Land Management*, 284 F.3d 1062, 1072 (9th Cir. 2002). If “it is reasonably possible to analyze the environmental consequences in an EIS . . . the agency is required to perform that analysis.” *Id.*; see also 40 C.F.R. § 1502.16 (must assess the environmental impacts of all “proposed actions”); 40 C.F.R. 1501.12 (agency must identify effects “in adequate detail”).

In other words, an agency may not “avoid an obligation to analyze in an EIS environmental consequences that foreseeably arise from [a proposed action] . . . merely by saying that the consequences are unclear or will be analyzed later.” *Id.* The agency must also consider the impacts of reasonably foreseeable future actions on the proposed action. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

Reasonably foreseeable future actions under NEPA include proposed projects. *N. Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 980 (9th Cir. 2006), citing *Lands Council v. Powell*, 379 F.3d 738, 746 (9th Cir. 2004), rev'd on other grounds, 395 F.3d 1019 (9th Cir. 2005). NEPA defines a proposed project as one that is "at that stage in the development . . . when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated." 40 C.F.R. § 1508.23. Additionally, projects where an agency has formally announced the project and has issued a summary of the project are reasonably foreseeable. See *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 812 (9th Cir. 1999).

**[Preamble 136820.031, 032, 033]** The Arctic Refuge Draft Environmental Impact Statement for the Draft Revised Comprehensive Conservation Plan fails to account for, and consider the impacts of, multiple reasonably foreseeable future actions, the effects of which will likely impact the FWS's management of the Arctic Refuge. The reasonably foreseeable actions not analyzed in the DEIS are:

**[136820.031 Environmental Consequences -- Cumulative Effects: General]** \* Federal Bureau of Ocean Energy Management 2012-2017 OCS Oil and Gas Leasing Program-The Bureau of Ocean Energy Management is currently in the process of developing a new five year leasing program for outer-continental shelf waters. See <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/Current-Five-Year-Leasing-Plan.aspx> (last visited October 25, 2011). The Proposed Program includes a lease sale in the Beaufort Sea. See Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program 2012-2017 (Oct 2011). Offering additional federal oil and gas leases in the Beaufort Sea could result in additional exploration and development activities in the area, increasing air and water pollution, industrial facilities, and demand for construction resources (i.e., gravel), among other things. The impacts of the leasing and the associated activities will impact the management, objectives and goals of the Arctic Refuge.

**[136820.032 Environmental Consequences -- Cumulative Effects: General]** \* State of Alaska Areawide Oil and Gas Lease Sales-The State of Alaska, Department of Natural Resources recently issued a Notice of Sale for a considerable lease sale for the vast majority of state lands in the Beaufort Sea Areawide, the North Slope Areawide and the North Slope Foothill Areawide areas on December 7, 2011. See <http://dog.dnr.alaska.gov/Leasing/LeaseSales.htm>. The lease sales could result in exploration and development activities in areas adjacent to the Arctic Refuge, increasing air and water pollution, industrial facilities, demand for construction resources (i.e., gravel) and water, among other things. The impacts of the lease sales and the associated activities will impact the management, objectives and goals of the Arctic Refuge.

**[136820.033 Environmental Consequences -- Cumulative Effects: General]**

\* State of Alaska Board of Game Proposal 130 —This proposal authorizes a brown bear predator control program in Game Management Unit ("GMU") 26B, which encompasses the State land on the North Slope as well as a portion of the Arctic Refuge. See Game Management Units/Special Management Units, Unit 26 Arctic Slope, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. The stated purpose of the program is to reduce brown bear predation on muskoxen. See Alaska Board of Game, 2011/2012 Proposal Book Arctic, Western, and Interior Regions, and Statewide Regulations, Cycle B Schedule at 174-76, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. As noted above, intensive management is inconsistent with Arctic Refuge purposes and values, and the FWS cannot allow Alaska to conduct such activities on

the Refuge. That said, a brown bear predator control program on non-Refuge lands within GUM 26B will impact the population of brown bears within the Refuge and affect FWS's management of the Refuge to protect the wildlife.

To comply with NEPA, FWS must consider and analyze the impacts from these reasonably foreseeable future projects (as well as any others that the agency is or becomes aware of) on the management, objectives and goals of the Arctic Refuge.

### 3. The FWS Failed to Consider the Cumulative Impacts of the Action in the ANILCA Section 810 Evaluation

Title VIII of ANILCA recognizes that subsistence uses are a public interest and provides a framework to consider and protect subsistence uses in agency decision making processes. 16 U.S.C. §§ 3111–3126. As the Supreme Court explained:

[t]he purpose of ANILCA § 810 is to protect Alaskan subsistence resources from unnecessary destruction. Section 810 does not prohibit all federal land use actions which would adversely affect subsistence resources but sets forth a procedure through which such effects must be considered and provides that actions which would significantly restrict subsistence uses can only be undertaken if they are necessary and if the adverse effects are minimized.

*Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 544 (1987).

Thus, ANILCA § 810 imposes a two-tiered process to evaluate a project's impacts on subsistence uses. First, the federal agency:

[i]n determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands . . . shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

ANILCA § 810(a), 16 U.S.C. § 3120(a). This initial finding is referred to as the “tier-1” determination, *Hanlon v. Barton*, 470 F. Supp. 1446, 1448 (D. Alaska 1988), and requires the agency to consider the cumulative impacts in making the determination. *Sierra Club v. Penfold*, 664 F. Supp 1299, 1310 (D. Alaska 1897), *aff'd by Sierra Club v. Penfold*, 857 F.2d 1307 (9th Cir. 1988).

If the agency, after conducting the tier-1 analysis, determines that the activity will not “significantly restrict subsistence uses,” 16 U.S.C. § 3120(a), then the agency issues a Finding of No Significant Restriction (FONSR) and the requirements of ANILCA § 810 are satisfied. However, if the agency makes the initial determination that the action would “significantly restrict subsistence uses,” the agency must then make conduct a “teir-2” analysis, *Kunaknana v. Clark*, 742 F.2d 1145, 1151 (9th Cit. 1984); *Hanlon*, 470 F. Supp. at 1448. Under teir-2, the agency must determine whether any restriction on subsistence is necessary, involves the minimal amount of public lands necessary to accomplish the purpose of the use, occupancy or disposition of public lands, and takes steps to minimize the adverse impacts to subsistence uses and resources. 16 U.S.C. § 3120(a)(1)–(3). Thus, as the Ninth Circuit explained, ANILCA § 810 imposes procedural requirements as well as substantive restrictions on the agency's decisions. *Sierra Club v. Marsh*, 872 F.2d 497, 502–03 (9th Cir. 1989).

**[136820.034 ANILCA -- ANILCA Section 810 Evaluation]** In the CCP DEIS Section 810 Evaluation, FWS states that “[n]one of the management alternatives evaluated in this Plan propose actions that would reduce subsistence uses because of direct effects on wildlife or habitat

resources or that would increase competition for subsistence resources.” DEIS at 5-87. While this may be true, the Section 810 Evaluation fails to consider whether the cumulative impacts of the proposed action may have significant restrictions on subsistence uses. To comply with ANILCA, the FWS must consider not only the direct effects, but also the cumulative impacts of the proposed action in making its determination that the proposed action would not have a significant restriction on subsistence uses. See *Sierra Club v. Penfold*, 664 F. Supp at 1310.

#### IV. CONCLUSION

Thank you for providing the opportunity to comment on the Arctic Refuge draft CCP and EIS. We look forward to working with you to finalize this critical planning effort.

1 Of course, a decision not to make a Wilderness recommendation for some or all lands covered in any given planning process does not mean that the lands are not suitable for future wilderness protection.

2 USFWS, 1993, p. 16.

3 DEIS at 1-18. See also U.S. FWS Refuge Purposes Arctic National Wildlife Refuge Map, available at: <http://arctic.fws.gov/pdf/ccppurposesp2011.pdf>.

4 See FWS Refuge Management Part 601 National Wildlife Refuge System, 601 FW 1 at 1.16 (July 26, 2006).

5 Public Land Order 2214 (Dec. 6, 1960).

6 94 Stat. 2390, P.L. 96-487 at §303(2) (Dec. 2, 1980).

7 P.L. 96-487 (Dec. 2, 1980) (emphasis added).

8 House Report No. 96-97(I) at 174 (April 18, 1979) (emphasis added).

9 The fact that the two sets of purposes are complimentary and not inconsistent is evidenced by FWS’s determination that the pre-ANILCA and ANILCA purposes apply concurrently to those lands within the original Arctic Range.

10 601 FW 1 at 1.16.

11 In its general guidance regarding allowable uses of refuges, FWS appears to have contrary guidance regarding the purposes of refuges established by ANILCA. See FWS Refuge Management Part 603 National Wildlife Refuge System, 603 FW 2 at 2.8(B) (Nov. 17, 2000) (stating that “Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA”) ((emphasis added). Because this guidance is found in the FWS manual addressing compatibility of uses of refuges and 601 FW 1 directly addresses identifying or determining the purposes of refuges, 601 FW 1 is the controlling guidance on this issue.

12 ANILCA Sec. 303 (2)(B)(i) (emphasis added).

13 CCP DEIS at 2-4.

14 Alaska Statute § 16.05.255.

15 ANILCA Sec. 303 (2)(B)(i) (emphasis added).

16 CCP DEIS at 2-44 (2.4.9.1 Federal, State, and Local Governments). See also CCP DEIS at 2-55 (stating that “[i]f determined necessary under subsection 2.4.2 (Human Safety and Management Emergencies), Service or State actions involving the killing, relocation, removal, or sterilization of wildlife for the benefit of another species would require appropriate NEPA compliance and an ANILCA Section 810 determination.”).

17 CCP DEIS at 1-2.

18 CCP DEIS at 2-47.

19 CCP DEIS at 2-47 and 4-56.

20 ASRC, 1985, Annual Report.

21 General Accounting Office. October 6, 1989. Federal Land Management: Chandler Lake Land Exchange not in the Government’s best interest. RCED-90-5.

22 See DEIS at 3-6 (stating that “An oil and gas alternative would not satisfy NEPA’s requirement that alternatives meet the purpose and need for the Revised Plan, and the Service has no administrative authority over oil and gas development”).

23 NEPA § 102, 42 U.S.C. § 4332(2)(C)(iii).

24 40 C.F.R. § 1502.13.

25 See *Ilio’ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1097 (9th Cir. 2006) (stating that “The scope of reasonable alternatives that an agency must consider is shaped by the purpose and need statement articulated by that agency. The [agency] must consider all reasonable alternatives within the purpose and need it has defined”). See also *City of Carmel-by-the-Sea v. U.S. Dep’t of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997).

26 DEIS at 1-1.

27 DEIS at 1-1–1-2. See also DEIS Appendix D at D-1 (stating that “[t]he purpose and need for the Revised Plan is to ensure activities, action, and management fulfill the legal purposes for which the Refuge was established, fulfill the statutory mission of the National Wildlife Refuge System [] and provide direction on how the U.S. Fish and Wildlife Service [] will meet these purposes”).

28 16 U.S.C. § 3143.

29 See P.L. 96-487, § 303(2). The original 'Arctic National Wildlife Range' was created in 1960 by Public Land Order 2214 "For the purpose of preserving unique wildlife, wilderness and recreational values." Public Land Order 2214 (Dec. 6, 1960). The purposes added in ANILCA are: (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char [note that those residing in Alaska's North Slope rivers and lagoons are now classified as Dolly Varden] and grayling; (ii) to fulfill the international fish and wildlife treaty obligations of the United States; (iii) to provide the opportunity for continued subsistence uses by local residents; and (iv) to ensure water quality and necessary water quantity within the refuge.

P.L. 96-487, 94 STAT. 2451 (Dec. 2, 1980).

30 16 U.S.C. §§ 668dd(a)(3), 668dd(a)(4)(D).

31 See *Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d at 1097.

32 As an initial matter, this formulation of cumulative effects misstates the role of considering reasonable foreseeable future actions. As described by the FWS in the DEIS, FWS perceives its duty to require it to look at the impacts from the CCP alternatives on reasonably foreseeable future actions but not to require the FWS to look at the impacts of reasonably foreseeable future actions on the CCP alternatives. FWS must also consider the impacts of reasonably foreseeable future actions on the CCP alternatives to satisfy NEPA. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

Arctic National Wildlife Refuge Comprehensive Conservation Plan and Draft Environmental Impact Statement Detailed Comments

**COMMUNICATION NUMBER 136818**  
**Richard Ranger, Senior Policy Advisor**  
**American Petroleum Institute**

From: Peter Tolsdorf  
To: "ArcticRefugeCCP@fws.gov"  
Subject: Arctic National Wildlife Refuge draft CCP and draft EIS

November 14, 2011  
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Arctic NWR  
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Re: Comments, Arctic National Wildlife Refuge Draft CCP and Draft EIS

Dear Ms. Seim:

The American Petroleum Institute (API) offers the following comments on the recommendations of the proposed Comprehensive Conservation Plan (CCP) for the Arctic National Wildlife Refuge (Arctic NWR). API represents more than 470 member companies involved in all aspects of the oil and natural gas industry.

Either directly or indirectly, API member companies have been working to develop our nation's energy resources in an environmentally responsible manner, and are greatly interested in exploring for and developing oil and natural gas resources found in the U.S. Arctic. We believe that the long record of our industry's operations on the Alaska North Slope, on other lands administered by U.S. Fish and Wildlife Service (USFWS) – and on other lands of significance to wildlife – supports the assertion that environmentally responsible development of oil and natural gas resources and appropriate management and protection of habitat, wildlife and other resource values can take place on the coastal plain of the Arctic NWR. We believe that given the potential size of the energy resources at stake that the option of future energy development in the Arctic NWR coastal plain should remain on the table. We urge the USFWS not to adopt any alternative from the CCP and Environmental Impact Statement that would cause the designation of the Arctic NWR coastal plain as wilderness. With this letter, API also endorses comments filed separately by the Alaska Oil and Gas Association.

We base this position on the following premises:

- Global demand for energy will grow and, because existing and developing energy sources will struggle to keep up with demand, oil and gas resources will be needed for American consumers and the American economy for decades to come.
- The crude oil and resource in particular that is believed to lie in geologic strata found below the Arctic NWR coastal plain is generally believed to be the single largest crude oil resource under U.S. dominion. U.S. Geologic Survey (USGS) estimates that between 5.7 and 16.0 billion barrels of technically recoverable crude oil and natural gas liquids are likely to be found in the coastal plain area of the Arctic NWR, with a mean estimate of 10.4 billion barrels of which 7.7 billion barrels lie within USFWS administered refuge lands.
- **[136818.001 ANILCA -- Designated Wilderness and ANILCA]** The Alaska National Interest Lands Conservation Act (ANILCA) restricts the authority to study [or to designate] new federal wilderness areas in wildlife refuges and parks in Alaska, including in the Arctic NWR, without further act of Congress [1]. ANILCA established the Arctic NWR in its present form and with its present purposes, including doubling the size and designating some 8 million acres of the original Arctic National Wildlife Range as wilderness under the Wilderness Act of 1964 – except the coastal plain that is the subject of Section 1002 of ANILCA, and the portion of the Arctic NWR that is the principal concern of this letter. Any action USFWS proposes to undertake with respect to the Arctic NWR coastal plain must observe the statutory requirements of ANILCA. Such actions must also observe Congressional intent and the statutory purposes expressed in Section 1002, and acknowledge the possibility of leasing, exploration and development of oil and natural gas resources on the coastal plain.
- **[136818.002 Land Status -- Effects of Alternatives]** The Arctic NWR coastal plain contains 92,000 acres of private land owned by the Kaktovik Inupiat Corporation (KIC) of Kaktovik, the only human settlement within Refuge borders. The Arctic Slope Regional Corporation (ASRC), an Alaska Native regional corporation, owns the subsurface mineral estate beneath the KIC lands and ASRC's rights to develop these resources continue in force and effect.
- Development of oil and natural gas resources in the Alaskan Arctic can occur in an environmentally responsible way. In over 30 years of oil production at Prudhoe Bay and other fields on the Alaska North Slope, producers have significantly advanced technology in drilling, Arctic engineering, waste disposal and environmental management, and have developed better tools to locate the underground structures that contain oil. Together, these advancements and the commitment to environmental performance by the men and women who work on the Slope have greatly reduced the effects of oil development on the wildlife and surface resources surrounding the production operations, and have reduced the footprint that these operations occupy.
- Americans do not have to choose between development of valuable energy resources or the protection of Arctic species and the habitat on which these species live, feed, breed, rear their young, and migrate.
- With specific reference to the coastal plain of the Arctic NWR, where Congress has not at this time authorized oil and natural gas development to take place, experience in other areas demonstrates that the missions of the USFWS for wildlife conservation and ecosystem management, and oversight of recreational and subsistence uses can be achieved without designation of the coastal plain as wilderness.

API acknowledges the potential value to be gained through revision of the Comprehensive Conservation Plan for the Arctic NWR. The refuge was established in 1960 to implement the vision of Robert Marshall to designate areas in the Arctic of sufficient scale to preserve wildlife and wilderness values. As the USFWS planning update document indicates, in 1980 the passage of ANILCA more than doubled the size of the Refuge to over 19 million acres, an area approximately the size of the state of South Carolina, renamed it, and designated 8 million acres as wilderness (or an area larger than the combined land and water area of Maryland). [136818.003 ANILCA -- Designated Wilderness and ANILCA] In passing ANILCA, Congress recognized the importance of both the environmental and energy resources of the Arctic NWR, by specifying in Section 1002 of ANILCA that about 1.5 million acres of the coastal plain on the Refuge (or about 8 percent of its 19 million acres) should be subject to a thorough resource evaluation. ANILCA mandated USFWS to periodically revisit the issue of oil and gas activity within the so-called “1002 area”. This directive is as clear as the mandate the Service claims to have that requires it to revisit wilderness issues. Until Congress takes action, no production of oil and natural gas from the Refuge is allowed, nor may leasing and development leading to production take place. As will be further detailed in comments to be filed by the Alaska Oil and Gas Association, ANILCA also disclaims the need for future establishment of additional conservation system units (including new wilderness areas) in Alaska. The statute restricts executive authority to consider these except as authorized by ANILCA itself or further acts of Congress. See, e.g., Sections 101(d) and 1326. Section 1326(b) of ANILCA is designed to foreclose exactly the actions which the CCP is purporting to undertake: new studies considering the establishment of new conservation system units in Alaska. In addition, [136818.004 ANILCA -- Designated Wilderness and ANILCA] the time for any proposal for more wilderness in national parks or wildlife refuges under ANILCA was specifically limited under Section 1317 to five years after the statute’s enactment. That time period has long since concluded. No provision of ANILCA, or any other controlling law, authorizes such an agency proposal decades later, and such a proposal is precluded by Sections 102(d), 1317 and 1326(b) of the statute.

From the standpoint of the possibility of future development of energy resources under the coastal plain of the Arctic NWR, ANILCA’s provisions frame the context in which the plans to revise the existing CCP for the refuge take place. API acknowledges that the context for planning for management of the Arctic NWR is also influenced by the 1990 Federal Subsistence Management Program and gradual increase in public use of many portions of the Refuge. In general, we believe that:

- There is no need for additional Wilderness designations in ANWR, given most of the refuge is already closed to development and managed to maintain its wilderness character. Alaska already contains 58 million acres of federal Wilderness and accounts for 53 percent of America’s federal Wilderness areas;
- The management objective to sustain naturally occurring fish and wildlife species in the Refuge, including their interactions, population cycles and ecological roles, can be achieved without designation of the coastal plain as wilderness, consistent with the ability of USFWS to carry out stewardship of fish and wildlife species on other refuge units it administers independent of any wilderness designations;
- [136818.005 Alternatives Analyzed -- No Oil and Gas Alternative] The Service has unreasonably restricted the scope of alternatives and public comment by refusing to consider an oil and gas development alternative in the draft CCP. ANILCA required the Service to study 1002 area’s petroleum resources and consider how oil and gas development could impact wildlife and the environment. It also directed the Secretary of Interior to provide Congress with

recommendations with respect to such development. In 1987, the Department of the Interior concluded oil development would have minimal impact on wildlife and recommended Congress open the coastal plain to development.

- Management of the Refuge to facilitate continued subsistence uses by Alaska Native populations living near the Refuge or having access to it does not depend upon administering the coastal plain as wilderness;
- International treaty obligations related to the conservation of migratory birds, marine mammals, caribou and fish can continue to be carried out without designating the coastal plain as wilderness; and
- Stewardship of surface water resources and water quality can be achieved independently of designating the coastal plain as wilderness.

API believes that these objectives can be accomplished under the current administrative arrangements for Refuge lands. We believe doing so is fully consistent with the capabilities USFWS has demonstrated across the wide variety of National Wildlife Refuges the agency administers where oil and natural gas operations have occurred or are occurring.

About one-quarter, or 155, of the over 500 refuges, wetlands management districts and other lands administered by USFWS, have past or current oil and gas activities, some dating to at least the 1920s, according to an August 2003 report by the Government Accountability Office (GAO) “National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands” (GAO Report 03-517). A 2001 study to ascertain the extent to which wildlife refuges allowed oil and gas activities carried out by USFWS itself found that 77 of the 567 wildlife refuges in 22 states in the federal system had oil and gas activities on their land in 2000. Oil or gas was produced in 45 of the 567 units located in 15 states. The number of producing wells in each unit ranged from one to more than 300 in the Upper Ouachita National Wildlife Refuge in Louisiana.

Operations in these refuge units have included oil and gas exploration, active and inactive drilling and production facilities, and active pipelines transiting refuge lands. These refuges include the Aransas Pass National Wildlife Refuge that provides the winter range of the critically endangered whooping crane, and the Kenai National Wildlife Refuge in south central Alaska, on which the discovery of the Swanson River oil field in the 1950’s proved to be a catalytic event for Alaska’s achievement of statehood. According to the 2003 GAO report, USFWS records indicated that in a period between 1994 and 2002 exploration activities occurred on some 44 different refuges, with the nature of the activities including geologic study, survey, or seismic work. This GAO report also stated that over this long history the environmental effects of oil and gas activities and the associated construction, operation, and maintenance of the infrastructure on wildlife and habitat have varied in severity, duration, and visibility.

Industry also has experience with environmentally responsible operations on lands managed for wildlife conservation purposes by private entities. Two wildlife refuges owned by the National Audubon Society allow such development—the Rainey Wildlife Sanctuary in Louisiana and the Baker Sanctuary in Michigan, a 900-acre wetland that provides hundreds of Sandhill cranes with a critical nesting and staging area. Many of the practices used by Audubon to protect wildlife on their lands were developed on Alaska’s North Slope, including horizontal drilling and part-year production. Royalty revenues are reinvested in programs that help protect the environment and preserve habitat, such as in Audubon’s Rainey Wildlife Sanctuary, which serves as winter habitat for snow geese that migrate every year from the Arctic NWR.

In the existing producing areas of the Alaska North Slope to the west of the Arctic NWR, the industry is demonstrating approaches to production of vital national energy resources, protection of the environment and wildlife, and coordination with residents of the North Slope Borough that are applicable to future USFWS management of the Arctic NWR coastal plain.

At Prudhoe Bay, Alpine, Kuparuk and associated fields, drilling advances and improved waste management techniques have resulted in a marked reduction in the land area needed for oilfield development. Wells that were once spaced about 120 feet apart are drilled as closely as 10 feet. With grind and inject technology, drilling wastes are safely reinjected underground into isolated geologic formations, eliminating the need for surface storage areas or reserve pits that were customary during the early years of the development of the Prudhoe Bay field. Prudhoe Bay development directly covers about 5,000 acres, or less than 2 percent of the field's total surface acreage, nearly all of which remains for use by the abundant mammal and bird life with which industry shares the area. In fact, over the period of development of the existing North Slope fields, the population of the Central Arctic caribou herd has increased by a factor of six, and populations of more than 200 different species of waterfowl migrate to the lands surrounding the North Slope oil fields each spring. As an example of evolving technology, the 40,000 acre Alpine field to the west of Prudhoe Bay, in the ecologically rich Colville River delta, has been developed from facilities covering about 100 acres, or less than .2 of 1 percent of the land. This is analogous to producing subsurface oil and gas resources covering an area roughly the size of the District of Columbia from a footprint slightly larger than the U.S. Capitol grounds. Today exploration drilling is conducted from temporary pads of ice that disappear after the well has been drilled, leaving virtually no trace. Construction of pipelines and other facilities is also done during the winter from ice roads or pads.

Together these experiences show that it is unwise to use the CCP process to designate the Arctic NWR coastal plain as wilderness and to preclude a future opportunity to achieve this balance where the combination of resource concerns – as acknowledged in ANILCA – is of unique significance.

The US Energy Information Administration (EIA) forecasts that by 2025, demand for oil will increase by 39% and demand for natural gas by 34%. The EIA also estimates that oil and natural gas will provide nearly two-thirds of the energy consumed in 2025. Diminished access to domestic energy supplies has already had an impact on a number of important sectors of the economy. The coastal plain, which accounts for only eight percent of the Arctic NWR, may contain as much as 16 billion barrels of oil and 18 trillion cubic feet of natural gas. According to a May 2008 EIA report, the opening of the Arctic NWR coastal plain to oil and gas development could result in an increment of crude oil production ranging from 510,000 to 1.45 million barrels per day for a period extending for approximately 12 years, with continued production for many years thereafter, lowering the nation's import dependency. Jobs and significant revenue benefits to the treasuries of the U.S. government, the state of Alaska and the North Slope Borough would also occur.

The significance of future development of the oil and natural gas resource endowment in the Arctic NWR coastal plain must also be considered in the context of continued operation of the Trans-Alaska Pipeline System ("TAPS"). TAPS has been identified as critical infrastructure for national security because of the transportation link that it provides to present and future development of crude oil resources in Alaska's Arctic regions. Since commencement of its operation in August of 1977, TAPS has proven to be a strategically critical component of America's energy infrastructure. Designed as a 48 inch pipeline, TAPS has transported over 16 billion barrels of American oil from the Alaska North Slope to the Valdez Marine Terminal, from which tankers carry the oil to U.S. West coast terminals and refineries. At its peak in the late

1980s, TAPS was transporting about 2.1 million barrels of crude oil per day, or about 25 percent of our nation's domestic crude oil supply. Since 1989, there has been a steady decline in Alaska North Slope production, and current average TAPS throughput is about 600,000 barrels per day compared to 2 million barrels per day in 1988, or about one-third of its capacity and now approximately 11 percent of our nation's oil production. Over the same period, while production from existing fields has diminished, efforts to find and develop potentially promising new crude oil resources in Alaska and in Alaska's Arctic Outer Continental Shelf have been stymied by regulatory delays and litigation.

While its maintenance and operational record has been exemplary, if production from existing Alaska North Slope fields that now moves through TAPS continues to decline, and administrative and litigation-driven barriers prevent the discovery and development of new crude oil resources in Alaska's Arctic, the continued operation of one of America's energy supply lifelines could be prematurely placed at risk decades before the end of its useful design life. Access to the crude oil resource potential in and offshore Alaska is thus important not only for the additional supplies of domestically produced energy that discovery and development of those resources would bring. The viability of TAPS depends upon increasing safe and environmentally responsible production in and offshore Alaska.

To summarize, the resource potential available in the Arctic NWR coastal plain is first order world class. Industry's ability to operate safely and in an environmentally responsible manner in ecologically sensitive Arctic environments has been demonstrated for five decades. Alaskan oil and gas operations have been a proving ground for technologies that have steadily reduced both the footprint and the impacts of exploration and production activities the industry undertakes. ANILCA, the sweeping statute that established numerous new units of the National Park and National Wildlife Refuge systems, prohibits the administrative declaration of new wilderness areas by executive branch action. API encourages an outcome of the Arctic NWR CCP process that does not preclude the possibility of producing strategic crude oil resources from the refuge coastal plain for the benefit of our nation's security and economy.

Thank you for considering these comments. If you need additional information, please contact Richard Ranger of API at 202.682.8057.

Very truly yours,

Richard L. Ranger  
Senior Policy Advisor, Upstream

1. Public Law 96-487; 16 U.S.C. §3101 et seq., noting especially Sections 101(d), 1317 and 1326.

**COMMUNICATION NUMBER 32629**  
**David Moryc, Senior Director, River Protection Program**  
**American Rivers**

American Rivers  
Rivers Connect Us

November 14th, 2011

U.S. Fish and Wildlife Service  
Arctic NWR – Sharon Seim  
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On behalf of the American Rivers' 100,000 members and supporters nationwide, particularly our active members in State of Alaska, I thank you for the opportunity to comment on the U.S. Fish and Wildlife Service's draft Comprehensive Conservation Plan for the Arctic National Wildlife Refuge (Plan). I appreciate the thorough effort the U.S. Fish and Wildlife Service (FWS) has undertaken to solicit public input in this process through public hearings, via mailings and on the FWS website and I am pleased to submit the following comments for your consideration.

American Rivers is the leading organization working to protect and restore the Nation's rivers and streams. Rivers connect us to each other, nature, and future generations. Our work is driven by a core conviction that a healthy river can be a community's most valuable asset. By protecting and restoring rivers, streams and wetlands we work to make communities and ecosystems more resilient to the impacts of climate change. American Rivers and our members have a longstanding interest in the proper application of federal Wild and Scenic Rivers Act (Act) and the management of the Rivers in the Wild and Scenic River System (NWSRS).

**[32629.001 Wild and Scenic Rivers -- Eligibility (includes Appendix I)]** Among the proposed alternatives, American Rivers support proposed Alternative E; recommending the Atigun, Hulahula, Kongakut and Marsh Fork Canning Rivers into the NWSRS, as well as recommending the Brooks Range, Porcupine Plateau and Coastal Plain Wilderness Study Areas into the National wilderness Preservation System. While this alternative is the most protective among the proposed alternatives we have serious concerns about the underlying methodology used to assess rivers for eligibility in the Plan which may violate the Act.

According to the Plan the eligibility analysis was completed using the following methodology:

1. The team identified a comprehensive list of all named Refuge rivers and river segments from the U.S. Geological Survey (USGS) Geographic Names Information System and the National Hydrology Dataset (USGS 2010). A total of 160 named rivers and creeks were identified, all of which are free-following. With 160 named rivers and creeks were identified on the Refuge, and a general lack of information about most of these named waterways, the team decided to focus on a subset of these rivers at this time[1]...Therefore visitor use is the greatest management concern. For these reasons, the team decided to focus on named waters with visitor use and reliable flow... Therefore 20 waters were identified as having river-related visitor use and were evaluated for eligibility.

2. The purpose of the eligibility evaluation is to compare and contrast each river to other waters in the region of comparison (ROC) for each ORV...A system was developed to rank the analytical results river-by-river for each ORV.[2]

After the initial inventory, 20 “waters with visitor use and reliable flow,[3]” were studied for eligibility. We are concerned that this methodology FWS used to determine the eligibility of the 20 rivers does not meet the basic requirements of the Act for eligibility mainly whether the river is free-flowing and whether or not it possesses an outstandingly remarkable value of regional or national significance.

The Plain language of the Act states:

“A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and regulated adjacent land area that possesses one or more of the values...Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion into the national wild and scenic river system[4],”

Instead of assessing the rivers independently of one another as required, the rivers assessed in the Plan were measured against one another. The Outstandingly Remarkable Values of the rivers considered were scored against each other, resulting in far fewer eligible rivers. As stated in the plan each river was “reviewed by a percent-of-total score for each ORV. A river which received a score of at least 70 percent of the total possible points was assigned that ORV.[5]” While this methodology may succeed in selecting some of the most eligible rivers among the list of rivers in the Plan, the Act maintains that all rivers in the specified areas with at least one ORV be considered eligible. Consequently the FWS’s method only selects those rivers that contain the highest percentage of ORVs, preventing many otherwise qualified rivers from becoming eligible. If a proper assessment was conducted we believe additional rivers would have been found eligible including the scenic Kataktruck and Turner Rivers. The final Plan should include a revised methodology that meets the Act and includes the necessary interim protections afforded rivers found eligible.

**[32629.002 Wilderness -- Wilderness Review (includes Appendix H)]** American Rivers believes that the strongest protection for rivers and their riparian lands can be achieved through a combination of wild and scenic and wilderness designations[6]. Each of these management tools provides unique but complimentary protections. When applied together the more restrictive provisions will apply[7]. A wild and scenic designation provides the critical protection of a river’s attributed ORVs, water quality and water quantity. The Wild and Scenic and Wilderness Acts provide complimentary but unique protections and overlapping designations in ANWR would provide the strongest protections for both the rivers and riverside landscapes.

Finally, **[32629.003 Wild and Scenic Rivers -- Eligibility (includes Appendix D)]** American Rivers also support wilderness protection for the Coastal Plain, Brooks Range and Porcupine Plateau in order to protect these lands as an intact ecosystem. In addition to the wilderness designation recommendations, further recommendations for inclusion of the Atigun, Hulahula, Kongakut and Marsh Fork Canning Rivers into the NWSRS would benefit the protection of these rivers, their watersheds and the integrity of their basins including the adjacent coastal ecosystems.

Please keep me informed of future actions relating to the Final Arctic Refuge Revised Comprehensive Conservation Plan. I look forward to working with you on these issues in the future.

Sincerely,  
[ Signature]

David Moryc  
Senior Director  
River Protection Program  
American Rivers

1 U.S. Fish and Wildlife Service (Department of the Interior). Arctic Refuge Draft Revised Comprehensive Conservation Plan: Wild and Scenic River Eligibility Report. (February 2011).

2 U.S. Fish and Wildlife Service (Department of Interior). Arctic Refuge Draft Revised Comprehensive Conservation Plan: Wild and Scenic River Eligibility Report. (February 2011).

3 Ibid

4 The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) as set forth herein consists of Public Law 90-452 (October 2, 1968) and amendments thereto.

5 Ibid

6 Kerr, Andy and Salvo, Mark. Overlapping Wilderness and Wild and Scenic River Designations Provide Maximal Conservation Protection for Federal Public Lands. Environmental Law Online: Vol. 38:1. 2008.

7 Ibid

**COMMUNICATION NUMBER 136785**  
**Daid Moryc, Senior Director, River Protection Program**  
**American Rivers**

From: Fay Augustyn  
To: "ArcticRefugeCCP@fws.gov"  
Subject: American Rivers' Arctic Refuge Draft CCP Comments

To Whom It May Concern:

Attached you will find American Rivers' comments on the draft CCP for the Arctic Refuge. We appreciate the opportunity to provide comments to you. Please let me know if you have any additional questions.

Best,

Fay Augustyn

Fay Augustyn | Conservation Associate  
1101 14th St. NW Suite 1400  
Washington, DC 20005  
P: 202.347.7550 ext. 3069 | F: 202.347.9240 |  
faugustyn@americanrivers.org

[Description: [cid:image001.jpg@01CBC2F6.FD99CE90](#)]

Learn why 2011 is the Year of the River at [www.AmericanRivers.org/YearOfTheRiver](http://www.AmericanRivers.org/YearOfTheRiver).

American Rivers | Rivers Connect Us |  
[www.americanrivers.org](http://www.americanrivers.org)

Please consider the environment before printing this e-mail.

- American Rivers ANWR CCP Comments 11-14-11.pdf

Attachment:

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November 14, 2011

U.S. Fish and Wildlife Service  
Arctic NWR - Sharon Seim  
101 12th Ave., Rm 236  
Fairbanks AK 99701

On behalf of American Rivers' 100,000 members and supporters nationwide, particularly our active members in State of Alaska, I thank you for the opportunity to comment on the U.S. Fish and Wildlife Service's draft Comprehensive Conservation Plan for the Arctic National Wildlife Refuge (Plan). I appreciate the thorough effort the U.S. Fish and Wildlife Service (FWS) has undertaken to solicit public input in this process through public hearings, via mailings and on the FWS website and I am pleased to submit the following comments for your consideration.

American Rivers is the leading organization working to protect and restore the nation's rivers and streams. Rivers connect us to each other, nature, and future generations. Our work is driven by a core conviction that a healthy river can be a community's most valuable asset. By protecting and restoring rivers, streams and wetlands we work to make communities and ecosystems more

resilient to the impacts of climate change. American Rivers and our members have a longstanding interest in the proper application of the federal Wild and Scenic Rivers Act (Act) and the management of the rivers in the Wild and Scenic Rivers System (NWSRS).

**[136785.001 Wild and Scenic Rivers -- Eligibility (includes Appendix D)]** Among the proposed alternatives, American Rivers supports proposed Alternative E; recommending the Atigun, Hulahula, Kongakut and Marsh Fork Canning Rivers into the NWSRS, as well as recommending the Brooks Range, Porcupine Plateau and Coastal Plain Wilderness Study Areas into the National Wilderness Preservation System. While this alternative is the most protective among the proposed alternatives we have serious concerns about the underlying methodology used to assess rivers for eligibility in the Plan which may violate the Act.

According to the Plan the eligibility analysis was completed using the following methodology:

1. The team identified a comprehensive list of all named Refuge rivers and river segments from the U.S. Geological Survey (USGS) Geographic Names Information System and the National Hydrography Dataset (USGS 2010). A total of 160 named rivers and creeks were identified, all of which are free-flowing. With 160 named rivers and creeks identified on the Refuge, and a general lack of information about most of these named waterways, the team decided to focus on a subset of these rivers at this time... Therefore visitor use is the greatest management concern. For these reasons, the team decided to focus on named waters with visitor use and reliable flow. Therefore 20 waters were identified as having river-related visitor use and were evaluated for eligibility.

2. The purpose of the eligibility evaluation is to compare and contrast each river to other waters in the region of comparison (ROC) for each ORV... A system was developed to rank the analytical results river-by-river for each ORV. 2

After the initial inventory, 20 “waters with visitor use and reliable flow,<sup>3</sup>” were studied for eligibility. We are concerned that this methodology FWS used to determine the eligibility of the 20 rivers does not meet the basic requirements of the Act for eligibility mainly whether the river is free-flowing and whether or not it possesses an outstandingly remarkable value of regional or national significance.

The plain language of the Act states:

“A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values... Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion into the national wild and scenic river system<sup>4</sup>,”

Instead of assessing the rivers independently of one another as required, the rivers assessed in the Plan were measured against one another. The Outstandingly Remarkable Values of the rivers considered were scored against each other, resulting in far fewer eligible rivers. As stated in the plan each river was “reviewed by a percent-of-total-score for each ORV. A river which received a score of at least 70 percent of the total possible points was assigned that ORV.<sup>5</sup>” While this methodology may succeed in selecting some of the most eligible rivers among the list of rivers in the Plan, the Act maintains that all rivers in the specified areas with at least one ORV be considered eligible. Consequently the FWS’s method only selects those rivers that contain the highest percentage of ORVs, preventing many otherwise qualified rivers from becoming eligible. If a proper assessment was conducted we believe additional rivers would have been found eligible including the scenic Kataktruck and Turner Rivers. The final Plan should include a revised methodology that meets the Act and includes the necessary interim protections afforded rivers found eligible.

American Rivers believes that the strongest protection for rivers and their riparian lands can be achieved through a combination of wild and scenic and wilderness designations<sup>6</sup>. Each of these management tools provides unique but complimentary protections. When applied together the more restrictive provisions will apply<sup>7</sup>. A wild and scenic designation provides the critical protection of a river's attributed ORVs, water quality and water quantity. The Wild and Scenic and Wilderness Acts provide complimentary but unique protections and overlapping designations in ANWR would provide the strongest protections for both the rivers and riverside landscapes.

Finally, American Rivers also supports wilderness protection for the Coastal Plain, Brooks Range and Porcupine Plateau in order to protect these lands as an intact ecosystem. In addition to the wilderness designation recommendations, further recommendations for inclusion of the Atigun, Hulahula, Kongakut and Marsh Fork Canning Rivers into the NWSRS would benefit the protection of these rivers, their watersheds and the integrity of their basins including the adjacent coastal ecosystems.

Please keep me informed of future actions relating to the Final Arctic Refuge Revised Comprehensive Conservation Plan. I look forward to working with you on these issues in the future.

Sincerely,

David Moryc  
Senior Director  
River Protection Program  
American Rivers

1 U.S. Fish and Wildlife Service (Department of Interior). Arctic Refuge Draft Revised Comprehensive Conservation Plan: Wild and Scenic River Eligibility Report. (February 2011).

2 U.S. Fish and Wildlife Service (Department of Interior). Arctic Refuge Draft Revised Comprehensive Conservation Plan: Wild and Scenic River Eligibility Report. (February 2011).

3 Ibid

4 The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) as set forth herein consists of Public Law 90-452 (October 2, 1968) and amendments thereto.

5 Ibid

6 Kerr, Andy and Salvo, Mark. Overlapping Wilderness and Wild and Scenic River Designations Provide Maximal Conservation Protection for Federal Public Lands. Environmental Law Online: Vol. 38:1. 2008.

7 Ibid

**COMMUNICATION NUMBER 136980**

**Gail Mayo, President**

**Arctic Audubon**

From: gail mayo

Sent: Monday, November 14, 2011 7:29 PM

To: ArcticRefugeCCP@fws.gov

Subject: Comments on the Draft CCP for AMWR from Arctic Audubon

**ARCTIC AUDUBON COMMENTS ON THE DRAFT COMPREHENSIVE CONSERVATION PLAN FOR ARCTIC NATIONAL WILDLIFE REFUGE**

Arctic Audubon is a chapter of the National Audubon Society. Our membership covers the area in Alaska north of the Alaska Range and reaches to the Beaufort Sea. Our chapter formed in 1979 and has always included a membership concerned with the Arctic National Wildlife Refuge. Our current membership is about 266. Our comments are our own and not necessarily those of the national organization. We are grateful to be given a chance to comment on the Draft Comprehensive Conservation Plan (CCP) for the Arctic National Wildlife Refuge (ANWR).

**ALTERNATIVES:**

We support that Alternative E be adopted for the future Management of ANWR. Alternative E fulfills the mission of the refuge system to protect and conserve ecosystems. This alternative meets the stated goals and objectives for the Arctic Refuge best. In addition we feel that wilderness designation for the Coastal Plain, the Brooks Range and the Porcupine Plateau will also provide statutory protection for this amazing refuge. This protection will help to maintain the refuge during times of budget cuts, staff turnover and political vicissitude.

**THE DRAFT PLAN:**

The 20 page summary of the draft CCP for ANWR has made the draft plan available to many, and we applaud its coverage. The entire plan provides an amazing and valuable amount of historic, legal and basic information on ANWR. It provides the background to guide the stewardship of the Refuge for the next 15 years. It sets the standards by which the refuge can be managed for future generations. The goals and objectives are solid, well stated, and even inspirational. They set high standards by which ANWR is to be managed. The special values of ANWR found in section 1 is especially well done. These value statements best describe the uniqueness of the refuge and should guide all refuge management decisions. The wilderness values of the refuge and the conservation of natural diversity are values that should never be compromised. We urge that the final plan includes section 1.

**ISSUES:**

**[136980.001 Step-Down Plans -- Visitor Use Management Plan]** In the Issues section it appears that the most difficult issues to resolve and manage are to do with visitor impacts. Some of these issues are long standing yet they are deferred to step-down plans with no time line attached (at least in the summary). The CCP for ANWR needs to include assurances that these step-down plans will be prioritized to address the most pressing issues in a timely way. Congestion at jumping off points and problems with aircraft landing sites are unresolved issues of long standing and certainly need attention now. The popularity of visiting the Refuge is not likely to diminish in the next 15 years.

Issues revolving around the native communities of northeastern Alaska are important ones that need to be resolved between the native communities and refuge managers. Alaska's Natives have legitimate interest in continuing their cultural uses on refuge lands. This is an important reason to preserve the wilderness character of the land. Other, sometimes conflicting Native people's issues deserve attention and resolution where possible.

**[136980.002 Alternatives Analyzed -- No Oil and Gas Alternative]** The BIG issue of oil and gas assessment and possible development on the coastal plain should be addressed up front in the plan with the understanding that any development on the coastal plain would be a Congressional prerogative and would require environmental impact studies.

#### MANAGEMENT:

**[136980.003 Wildlife -- Predator Control]** In the Management section under the topic of State and Federal game management the plan should firmly state that predator control will not be considered on any ANWR lands. We have noticed that in other sections of the plan there are clear statements of prohibited activities, eg., use of off-road vehicles or public use of helicopters is NOT ALLOWED. This same clear statement should be included in the final CCP: Predator control will NOT BE ALLOWED. **[136980.004 Refuge Management Policies/Guidelines -- Fish and Wildlife Population Management]** In a similar vein in a clear prohibition should also be applied to use of herbicides or other chemical controls; they also should NOT BE ALLOWED for any reason.

#### PRIORITIES:

**[136980.005 Refuge Management Policies/Guidelines -- General]** Our final concern with the draft plan is that it does not provide for priorities within the alternatives. Our choice, Alternative E sets in motion a great deal of study and work that will need to be done. Budgetary and other possible constraints may not allow all of these actions to proceed at once. If Alternative E is supported, and we hope it is, there will need to be priorities set. Recommendation to Congress for wilderness designation of the Coastal Plain should be top priority, closely followed by the wilderness recommendations to Congress for the Brooks Range and the Porcupine Plateau.

Thank you for the opportunity to comment on the Draft CCP for ANWR. It has been an inspiring and educational experience for us, and a reminder that there is still a chance to preserve for future generations a unique part of the world's diverse heritage in northeast Alaska.

Arctic Audubon Society  
PO Box 82098  
Fairbanks, Alaska

Gail Mayo, President

## **COMMUNICATION NUMBER 32636**

**Matthew Fagnani, Member, Board of Directors, Executive Committee  
Arctic Power**

TESTIMONY TO THE USFWS (Agency)  
Re the Arctic National Wildlife Refuge's Draft CCP  
Anchorage, Alaska September 21, 2011

Good afternoon my name is Matthew Fagnani and I represent Arctic Power as a member of the Board of Directors, Executive Committee. Thank you for the opportunity to speak at this Arctic National Wildlife Refuge Comprehensive Conservation Plan hearing. As a resident of Alaska for 30 years I have been involved in the ANWR debate since it's beginning. **[32636.001 ANILCA -- Designated Wilderness and ANILCA]** Alternatives "c" and "E" of the Draft CCP recommend the additional inclusion of the 10-02 Coastal Plain for Wilderness status.

This recommendation conflicts with the "No More Clause" of Alaska National Interest Lands Conservation Act (ANILCA), ANWR's creation bill, which specifically prohibits the study and designation of new land in Alaska as wilderness without express permission from congress. The draft defends itself from conflict with the "No More Clause" by stating the USFWS does not view the CCP as a study for inclusion of "new" land, because it claims the land within the ANWR border is already protected by refuge system rules thus it is not "new".

The intention of the debate when the "no more clause" was adopted was to prevent the study or declaration of wilderness of additional federal land within the state by any other government entity besides Congress. By claiming that the 10-02 Coastal Plain is not new land, the USFWS is ignoring the intent of congress when ANILCA was put forward. The 10-02 Area was set aside with the intent to study potential development for oil and gas.

**[32636.002 Alternatives Analyzed -- No Oil and Gas Alternative]** In the past 30 years of oil production at Prudhoe Bay, producers have significantly and safely advanced technology in oil and gas drilling, Arctic engineering, waste disposal and environmental management. With these advancements the Fish and Wildlife Service and state should be able to pursue a 10- 02 area comprehensive management plan that does not designate the ANWR coastal plain as wilderness. The USFWS CCP report limits the scope of alternative management practices and includes no natural resource development alternatives.

Alternative management proposals should include scenarios in which the USFWS and the state of Alaska jointly pursue a plan of action that would responsibly and safely complete the original intended use of the 10-02 coastal plain, the eventual development of its oil and gas reserves. Within the 10-02 area according to the 1998 USGC report there is an estimated 16 billion barrels of oil and 18 trillion cubic feet of natural gas. It would be irresponsible of the federal government to lock up the 10-02 area; so rich in resources that America needs. Especially, at a time when America and the economy is hurting and need for jobs is so great. To think that the USFWS would deliberately lockup the 10-02 area is unthinkable.

**[32636.003 ANILCA -- Designated Wilderness and ANILCA]** The purpose of the ANILCA clause is to allow the USFWS to mitigate impact land use and not lock up new land. Recommending the designation of wilderness violates the precedent set by ANILCA and goes against the intended purpose of the 10-02 Coastal Plain.

Thank you for allowing my comments on this CCP draft.

Matthew Fagnani  
Executive Board Member, Arctic Power  
2559 Loussac Dr  
Anchorage, Alaska 99517  
907-250-2313

**COMMUNICATION NUMBER 74**  
**Gail Phillips, Board of Directors**  
**Arctic Power**

Anchorage Hearing 9/21/2011  
Gail Phillips, Arctic Power

MS. PHILLIPS: Ladies and gentlemen.  
Thank you for giving Alaskans this opportunity to testify on the draft revised CCP document. My name is Gail Phillips. I'm a lifelong Alaskan and speaking today on behalf of the board of directors of Arctic Power. I've been involved with the ANWR debate for the past 25 years.

To say that Alaskans are disappointed in this draft document is a gross understatement. In my opinion, the two main problems with this draft are, number one, the Fish and Wildlife Service's biased alternative management proposals and, two, the blatant violation of ANILCA's no more clause as clearly outlined in Title I of ANILCA law.

[74.001 Alternatives Analyzed -- No Oil and Gas Alternative] After the hearing in Anchorage in May of 2010, it was our understanding that the purpose of the agency's scope of work on the draft was to find a way to strike a balance between critical habitat and ecosystems and the production of critical energy resources.

The current CCP draft in its current form only addresses the issue of wildlife and ecosystem protection and completely ignores any alternative uses regarding oil and gas development. The CCP draft excludes any practices that would include working with the State of Alaska to manage both wildlife protections in conjunction with responsible resource development. Additionally, the current non-wilderness status of the 1002 coastal plain does not hinder the Services mission to protect critical habitat and wildlife.

Under the NEPA Act, Federal agencies must study, develop and describe appropriate alternatives to recommend courses of action and any proposal which involves unresolved conflicts concerning alternative uses of available resources.

It's blatantly apparent that the Service has not and is not following established law regarding the conflict surrounding ANWR by virtue of

the fact that none of these alternatives you've offered for this revised draft plan provide for options for responsible resource development.

It is obvious that the Service has instead opted to ignore the Federal law outlined in ANILCA and has discarded the State of Alaska's opposition to the addition of any wilderness designations in the 1002 area. I feel that the Agency has grievously overreached their legal authority and should be directed to consider oil and gas development as alternative management practices.

This revised draft document is an insult to Alaskans and a violation of established Federal law. I would encourage you to consider formulating new alternatives that would open the coastal plain to oil and gas development. Placing the coastal plain into wilderness status and prohibiting future oil and gas development would gravely jeopardize our national energy security picture.

Thank you very much for giving me this opportunity to testify.

**COMMUNICATION NUMBER 32641**  
**Gail Phillips, Executive Board Member**  
**Arctic Power**

TESTIMONY TO THE USFWS (Agency)  
Re The Arctic National Wildlife Refuge's Draft CCP  
Anchorage, Alaska September 21, 2011

Ladies and Gentlemen:

Thank you for giving Alaskans this opportunity to testify on this draft revised ANWR CCP document. My name is Gail Phillips - I am a life-long Alaskan and am speaking on behalf of the Board of Directors of Arctic Powers. I have been involved in the ANWR debate for the past twenty-five years.

To say that Alaskans are disappointed in this draft document is a gross understatement. In my opinion, the two main problems with this CCP draft are:

- (1) the USFWS's biased alternative management proposals; and
- (2) the blatant violation of ANILCA's "no more clause" as clearly outlined in Title I of the ANILCA law.

**[32641.001 Alternatives Analyzed -- No Oil and Gas Alternative]** After the hearing in Anchorage in May 2010, it was our understanding that the purpose of the Agency's scope of work on the ANWR draft was to find a way to strike a balance between critical habitat and ecosystems and the production of critical energy resources.

The CCP draft in its current form only addresses the issue of wildlife and ecosystem protection and completely ignores any alternative uses regarding oil and gas development.

The CCP draft excludes any practices that would include working with the State of Alaska to manage both wildlife protections in conjunction with responsible resource development.

Additionally, the current non-wilderness status of the 10-02 Coastal Plain does not hinder USFWS's mission to protect critical habitat and wildlife. Under the National Environmental Policy Act (NEPA), federal agencies must "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources". It's blatantly apparent that the USFWS has not and is not following established law regarding the conflicts surrounding ANWR by virtue of the fact that none of the alternatives you've offered for this revised draft plan provide for options for responsible resource development.

ANILCA (the Law) also specifically directs USFWS to "provide for a comprehensive and continuing inventory of the assessment of the fish and wildlife resources ..... and an analysis of oil and gas exploration development". Section 1005 of ANILCA states that the Secretary (of Interior) "shall work closely with the State of Alaska and Native Village and Regional Corporations in evaluating the impacts of oil and gas exploration, development and production".

It is obvious that the USFWS has instead opted to ignore the federal law outlined in ANILCA and has discarded the State of Alaska's opposition to the addition of any wilderness designations in the 10-02 area. I feel that the Agency has grievously overreached their legal authority and should be directed to consider oil and gas development as an alternative management practice.

This revised draft document is an insult to Alaskans and a violation of established federal law. I would encourage you to consider formulating new alternatives that would open the Coastal Plain to oil and gas development. Placing the Coastal Plain into "wilderness status" and prohibiting future oil and gas development would gravely jeopardize our national energy security picture.

Thank you for giving me the time to present my opinion at this hearing.

Gail Phillips  
Former Speaker, Alaska House of Representatives  
Executive Board Member, Arctic Power  
1231 W. Northern Lights Blvd., #906  
Anchorage, Alaska 99503  
907-277-4867

**COMMUNICATION NUMBER 73**  
**Beth Peluso, Communications Manager**  
**Audubon Alaska and National Audubon Society**

Anchorage Hearing 9/21/2011  
Beth Peluso, National Audubon Society

MS. PELUSO: Thank you for the opportunity to comment on the draft Comprehensive Conservation Plan for the Arctic National Wildlife Refuge. My name is Beth Peluso and I am the communications manager for Audubon Alaska and I'm speaking on behalf of the National Audubon Society.

Founded in 1905, Audubon is one of the oldest conservation organizations in the country and is supported by half a million members in 470 chapters, with staff in 37 states. Audubon and our membership have been actively engaged in issues concerning the conservation of lands in America's arctic for more than three decades and we have had an Alaska office since 1976.

The Arctic National Wildlife Refuge is an outstanding example of an intact arctic and subarctic ecosystem on a landscape scale. The exceptional biogeographic character of the area and its eco regions, including lowland tundra, freshwater wetlands, coastal marshes, mountains and lagoons, make the Arctic Refuge unique among conservation units in the United States.

The revised conservation plan should ensure protection of the wildlife and wilderness values that inspired creation of the Refuge. The best way to accomplish this is with formal wilderness designation.

Audubon supports the plan's vision statement and the goals and objectives outlined in the draft, especially those goals that emphasize long-term ecological monitoring, wilderness stewardship, subsistence and traditional cultural resource management, upholding wildlife and wilderness recreational values and monitoring the ecological effects of climate change and maintaining the Refuge's role as a globally significant benchmark for ecological integrity in the arctic.

Audubon endorses Alternative C because it adequately addresses the three issues of additional wilderness, Wild and Scenic Rivers, and the management

of the Konugut River. Alternative C would adopt the Refuge management objectives, management policies and guidelines, while providing a balanced approach for managing our nation's arctic resources.

This alternative includes a recommendation that the coastal plain wilderness study area be included in the National Wilderness Preservation System. Audubon strongly supports this recommendation.

The coastal plain is the biologic heart of what is now an intact arctic ecosystem from the Arctic Coast to the South Slope of the Brooks Range. This important area provides calving grounds for the Porcupine Caribou Herd, post-calving habitat for the Porcupine and Central Arctic Caribou Herds, nesting habitat for hundreds of thousands of migratory birds and denning habitat for polar bears.

Audubon supports management of the Refuge's most biologically productive region, the coastal plain, in a manner that protects its high biological values and maintains its wilderness character for future generations.

**[73.001 Wild and Scenic Rivers -- Atigun River]** The plan should additionally recommend the Atigun River for inclusion in the National Wild and Scenic River system in order to maintain its free-flowing character and outstanding values. Due to its size, remote location, wilderness character and diversity of ecologically significant landscapes and wildlife, the Arctic Refuge is an irreplaceable national treasure that serves as a globally significant benchmark, ecological integrity in the arctic.

In closing, Audubon strongly supports the U.S. Fish and Wildlife Service's Comprehensive Conservation Plan effort and the management recommendations outlined in Alternative C.

Thank you.

**COMMUNICATION NUMBER 136809**  
**William C. Reffalt, Vice President and Issues Coordinator**  
**Blue Goose Alliance**

November 14, 2011

U.S. Fish and Wildlife Service  
Arctic NWR – Sharon Seim  
101 12th Ave, Rm 236  
Fairbanks, AK 99701-6237

Sent by email to: ArcticRefugeCCP@fws.gov

Dear Ms. Seim:

The following comments are submitted on behalf of the Blue Goose Alliance, a national private, non-profit organization under the laws of the United States and of New Mexico. The Alliance is dedicated to increasing the stature of the National Wildlife Refuge System, protecting its integrity, fostering its strategic planning, growth, proper administration and management, and advocating for the necessary resources to ensure its capabilities to accomplish its mission and provide benefits to all Americans. The Alliance has Affiliates, members and supporters in nearly every state comprised of retired refuge administrators, managers, friends, volunteers, and other supporters.

**Authors Background**

The author of these comments, William C. Reffalt, served with the FWS for 24 years, including 8 years directing the development proposals, legislative language for, and advocating passage of the 1980 Alaska National Interest Lands Conservation Act (ANILCA). My staff and I were specifically responsible for provisions of the law affecting the fish, wildlife and plant resources and their habitats, and numerous provisions affecting the FWS and NWRs in Alaska. I also served two years as Chief of Refuge Management with responsibility for policy direction and planning for the NWRS. After leaving the FWS in 1984, I worked 15 years with The Wilderness Society as Program Director for the National Wildlife Refuge System and Alaska Lands where I helped develop and foster national policy for the NRWS and Alaska Refuges, Wilderness, Wild and Scenic Rivers and National Parks. I have traveled extensively in Alaska in all seasons of the year, including winter on the North Slope and Arctic National Wildlife Refuge. In all, I have visited the refuge or conducted on more than a half dozen occasions observational over- flights of the refuge and also have hiked and camped in the refuge several times. I have studied the long-term history of the area included in the Arctic NWR and closely followed the Arctic NWR planning efforts, the controversies associated with the Refuge's coastal plain, and other issues affecting its management.

**Summary and Explanation of BGA Comments**

A concise summary of our comments is that the Blue Goose Alliance strongly supports Alternative E, the recommendation by FWS for establishment by the Congress of Wilderness for the Arctic National Wildlife Refuge Coastal Plain, Brooks Range, and Porcupine Plateau and recommended designation of Wild River status for the Atigun, Hulahula, Kongakut, and Marsh Fork of the Canning rivers.

We believe that the concepts of Manager's restraint and humility should prevail in the administration of the entire spectrum of Arctic and Sub-arctic ecosystems found within the

boundaries of this one-of-a-kind National Wildlife Refuge. Its role in national and international phases of fish, wildlife, plant, and habitat conservation is vital as partial fulfillment of our Nation's commitments regarding migratory birds, migratory caribou herds, polar bears, significant wetlands and riparian systems, and other elements of this unique arctic and subarctic environment. Its value as a scientific baseline by which to gauge global climate change is enormous, as is its general value to science in numerous disciplines related to living natural resources, as well as archeological and cultural resources and features. The contributions of the refuge to continuing self-determination within the Inupiat and Gwich'in communities that participate in the traditional harvest and use of natural resources fostered and protected within refuge habitats and its management programs are uniquely important. The refuge contains unsurpassed qualifications for the designations to be recommended pursuant to Alternative E. Underpinning all of these features and opportunities is the legislated functions of the Arctic Refuge as set forth in the Refuge Purposes in ANILCA, its responsibilities to the Mission statement found in the NWRS Administration Act, and the purposes found in the 1960 Executive Order establishing the Arctic National Wildlife Range (affecting lands and waters within that Arctic Range). Atop all other primary refuge purposes is "...to conserve fish and wildlife populations and habitats in their natural diversity including but not limited to: the Porcupine caribou herd, etc." We believe that designated Wilderness in the Arctic and Subarctic biomes is fully supportive of wildlife conservation.

#### **[Preamble 136809.002, 003] Comments Directed to Specific Planning Issues**

Beyond that summary and brief explanation, the Alliance herein offers a number of observations and comments regarding sections of the CCP that we believe have need of improved explanations or corrections to inadequate presentations in the current draft. We offer these in the spirit of assisting Refuge personnel in making the final CCP as informative, factual and friendly to the reader as possible. The CCP document is obviously a complex compilation of factual materials and explanations of intended future management protocols which includes compliance with the regulations of the Council on Environmental Quality regarding Environmental Impact Statements and public outreach. Overall, this draft demonstrates a major effort by the staff involved in its creation and we offer our compliments and appreciation to them on their informative product..

#### **[136809.001 Alternatives - Issues Considered but Eliminated -- Oil and Gas Development] I. The so-called "no more clauses".**

A. Section 101(d): The discussions in the draft document (Chapter 3, Section 1.3 and Appendix D, Section 2.1) pertaining to this perceived policy issue are inaccurate and incomplete. Given that the FWS believes this to be an important "policy issue", it is important that the text accurately presents and explains it.

Section 101(d) is primarily addressed to potential future Congressional actions rather than the Executive. The final clause in the legislative language states: "...and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby."

In fact, the statement has little legal or legislative effect. It is a statement of a "sense of the 96th Congress" made on December 2, 1980, however it is a precept of Congress that no single congress has power to bind or prevent a future Congress' decision to pass legislation. Time passes and things change, therefore conditions may bring fresh need or even urgency for actions by congress. Now, 31 years since passage of ANILCA, the current or any future congress may decide to create new conservation system units without in any way violating the statement made by the 96th Congress in Section 101(d).

As verification of these statements, I refer refuge staff to Section 102(4) of ANILCA—the definition of conservation system unit: “The term “conservation system unit” means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated or expanded hereafter.” (Emphasis added)

If the same 96th Congress that postulated the conditions expressed in Section 101 (d) and the provisions discussed below did not contemplate that some future Congress might pass legislation to create one or more new conservation units or to expand such units then it would not have had need to include the provisions regarding future additions or units established “hereafter”. The explanation in the CCP should recognize that 101(d) neither is directly addressed to the Executive Branch nor generally affects its interactions with future congresses. 101(d) should be quoted in full in an Appendix of the CCP and limits of its reach explained.

**[136809.002 ANILCA -- Designated Wilderness and ANILCA] B. Section 1326 (a) and 1326 (b):** The discussion in the Draft CCP is not accurate and, in fact, is misleading. It would be more informative to quote the provisions in the Act.

Section 1326 (a) is actually an authorization for withdrawals, under existing provisions of law (such as the 1906 National Monuments authority of the President, or the authorities found in Section 204 of the Federal Land Policy Management Act), when such lawful withdrawals contain more than 5,000 acres of public lands. It places two provisos on such withdrawals—1) that the “...withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress” and, 2) that “Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress.”

Many land designations are not “withdrawals” and therefore would not be affected by this section. For example, the recent decision by FWS to establish a Landscape Conservation Cooperative (LCC) does not abridge, in the view of this author (and apparently in the view of FWS), Section 1326 (a) constraints and, therefore does not require the Federal Register notice or a notice to both houses of Congress. In the same light, designation within the Arctic National Wildlife Refuge of an area “Free of Commercial Activity and Mechanization” in the Firth-Mancha RNA as discussed in the Draft CCP in Appendix D (at D-7) would not be contrary to Section 1326 (a). It would entail designation of a special regulations area within an established “Conservation System Unit”, rather than “withdrawal” of some new area on otherwise general public lands. The Refuge has ample authority to accomplish the ends it believes desirable in such a designation. The provision of “natural quiet” and an area free from mechanization would be a truly welcome relief to many hikers and campers and I can think of no better place to install such an area within the NWRS than in the Arctic NWR.

Section 1326 (b) constrains itself with the condition that the studies to be prohibited include only those that would be for the single purpose of considering the establishment of a new conservation system unit (CSU), etc. Thus, studies that have broader purposes but may include such consideration of a new CSU, would not violate the provision.

In both Subsections 1326 (a) and (b) the emphasis is placed on new CSUs. Thus, within existing CSUs, such as the Arctic NWR, by normal logic and legislative inference, the prohibitions would not apply. There are numerous provisions in the Act calling upon the implementing agencies to conduct studies, consider future designations such as Wilderness and Wild and Scenic River, etc.,

that clearly place an expectation in Congress that agencies will conduct such work and make appropriate recommendations to the Congress. If such was not intended, Section 1326 (a) would contain an opening proviso: “Notwithstanding other provisions of law, including this Act ....” The lack of that proviso is strong evidence that the 96th Congress was not attempting to circumvent agency requirements and activities under the numerous laws by which they must abide, including ANCSA and ANILCA.

Discussion of these matters, along the lines contained herein, would be more illuminating and helpful to the general public interested in this Refuge and its future programs.

#### [136809.003 ANILCA -- Refuge Purposes and ANILCA] II. Cooperation and Coordination With Others (Sections 1.3.1 – 1.3.5)

Several sections in Chapter One provide inaccurate information regarding the provisions of ANILCA, the authority and responsibility of the Refuge in its administration of the refuge and its resources and its role in coordination and cooperation with the numerous stakeholders.

The following discussion of Federal Court decisions related to Constitutional Law include the basics needed to understand the legal foundations for federal management of National Wildlife Refuges and the fish, wildlife, plants and their respective habitats found therein (and the numerous other resources and responsibilities delegated to the Secretary of the Interior by Congress, and re-delegated to the Director of FWS and thence down the chain of command to the Refuge Manager).

Chapter 2 of Michael Bean’s third edition of *The Evolution of National Wildlife Law*<sup>1</sup> discusses the legal framework for the development of Federal wildlife law and presents the key provisions of the Constitution and Federal Court cases that establish the foundation for it. Of primary importance are the provisions in the Constitution known as the Property Clause, the Treaty-making power and the Commerce Clause. Bean and Rowland find that “[t]he *Kleppe* decision and *Missouri v. Holland* clearly establish the property clause and the treaty-making power as sound sources of authority for federal wildlife law, notwithstanding the state ownership doctrine.” (Bean and Rowland, *Ibid.* p.23) Following a two page discussion of several court decisions regarding federal authorities under the Commerce Clause, the authors state, “In Light of these decisions, it is clear that federal authority to regulate wildlife under the commerce clause is of equal stature to that conferred by the property clause. Accordingly, federal regulation of wildlife pursuant to the commerce clause is unrestrained by the state ownership doctrine. In fact, the contention that state ownership bars federal wildlife regulation has received no authoritative judicial support since the 1912 decision in *The Abby Dodge*, a decision that, though never overruled, has been given a quiet interment.” (Bean and Rowland, *Ibid.* pp. 24-25)

To avoid wordy and complicated restatement of important decisions of the Federal Courts regarding these matters, I have elected to simply quote key findings from the pertinent court decisions on the Constitutional basis of Federal authorities to manage fish, wildlife, plants and habitats on National Wildlife Refuges:

The Property Clause authority and Congressional delegation in the National Wildlife Refuge System Administration Act : On August 24, 1999, the U.S. District Court in Cheyenne, Wyoming for the District of Wyoming held for the U.S. position on all counts in a lawsuit initiated by the State of Wyoming against the United States related to management of the National Elk National Wildlife Refuge. In that case (No. 98-CV-037B), the State of Wyoming asserted a claim to primacy with respect to the management of Elk on the National Wildlife Refuge (NENWR). Although the

Judge was clearly sympathetic to the claims of the State, he ruled in favor of the position taken by the Federal Government on every issue.

Some key holdings by Judge Brimmer:

1. The Property Clause of the Constitution, Article IV, Section 3 “permits an exercise of the complete power which Congress has over public property entrusted to it...[and that] necessarily includes the power to regulate and protect the wildlife there.” (quoting from *Kleppe v. New Mexico* – 426 U.S. 529 (1976), a decision by the U.S. Supreme Court)
2. “Kleppe provides that the authority to regulate wildlife on federal public lands was not a power left to the several States.” (quoting Wyoming Judge Brimmer)
3. “Further, the Supreme Court, in *Kleppe*, determined that managing wildlife on federal land was not a power reserved to the States; it was taken by the Federal Government under the auspices of the Property Clause. Simply put, Wyoming does not have the sovereign power to manage wildlife on Federal lands and the provisions of the Refuge Act do not grant Wyoming that power.” (again quoting Judge Brimmer)
4. “The mission of the Refuge Act is to provide a national network of lands whereby wildlife can be managed and preserved for future generations.... Allowing each state to manage wildlife on the national refuges within its borders would thwart the goal of creating a nationwide network of lands to be managed by one entity.” (Judge Brimmer)
5. “Wyoming does not have mutual rights to manage wildlife on the Elk Refuge.”
6. “The Property Clause gives the Federal Government complete power over particular public property that Congress has entrusted to it...the Refuge Act grants the authority to manage wildlife on refuge lands to the Secretary of the Interior. Congress has intended, through the sweeping general language of the Refuge Act, to vest such authority in the Secretary.” (Judge Brimmer)
7. “Congress has undoubtedly envisioned a nationwide, cohesively administered network of lands and waters where wildlife would be managed and conserved under the direction of the Secretary. There is no indication in these provisions that Congress intended to curtail the Secretary’s power or leave any residual power to the States.” (Judge Brimmer)
8. “A more reasonable interpretation of the ‘saving clause’ (in the Refuge Improvement Act) is that it reflects a Congressional intent for states to retain their role as primary managers of hunting and fishing of resident wildlife within their borders as consistent with State law ‘to the extent practicable’.” (Judge Brimmer)

The Commerce Clause authority

In general, the States have relied upon a Supreme Court decision rendered in 1896 entitled *Geer v. Connecticut* - 161 U.S. 519 (1896) which expounded a state ownership doctrine. However, over the years since that decision, there have been a number of decisions eroding the concept and, in a decision rendered by the Supreme Court in 1979, it was bluntly overruled:

The Supreme Court held in *Hughes v. Oklahoma*, 441 U.S. 322 (1979):

“The Oklahoma statute is repugnant to the Commerce Clause. (*Hughes v. Oklahoma*, pp. 325-339) “(a) *Geer v. Connecticut* ... is overruled. Time has revealed the error of the result reached in *Geer* through its application of the 19th Century legal fiction of state ownership of wild animals. Challenges under the Commerce Clause to state regulations of wild animals should be considered according to the same general rule applied to state regulations of other natural resources.

(Hughes v. Oklahoma, pp. 326-335) “(b) Under that general rule, this Court must inquire whether the challenged statute regulates evenhandedly with only ‘incidental’ effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect; whether the statute serves a legitimate local purpose; and, if so, whether alternative means could promote this local purpose as well without discriminating against interstate commerce. (Hughes v. Oklahoma, p. 336) “(c) The Oklahoma statute on its face discriminates against interstate [441 U.S. 322, 323] commerce.... (Hughes v. Oklahoma, pp. 336-338) “(d) States may promote the legitimate purpose of protecting and conserving wild animal life within their borders only in ways consistent with the basic principle that the pertinent unit is the Nation; and when a wild animal becomes an article of commerce, its use cannot be limited to the citizens of one State to the exclusion of citizens of another state. (Hughes v. Oklahoma, pp. 338-339)

### The Treaty-Making power

The seminal decision of the Supreme Court regarding the Treaty-making powers of the Federal Government and its application to wildlife management occurred in *Missouri v. Holland*, 252 U.S. 416 (1920). Bean and Rowland (pp. 17-19) present the key findings and provide a brief discussion: “Justice Oliver Wendell Holmes, writing for the seven-member majority that included Justice Louis Brandeis and even Chief Justice White, easily disposed of Missouri’s ownership argument: ‘The State ... founds its claim of exclusive authority upon an assertion of title.... No doubt it is true that as between a State and its inhabitants the State may regulate the killing and sale of such birds, but it does not follow that its authority is exclusive of paramount powers. To put the claim of the State upon title is to lean upon a slender reed. Wild birds are not in the possession of anyone; and possession is the beginning of ownership....

...

‘But for the treaty and the statute [i.e. the Migratory Bird Treaty of 1916 and MBT Act of 1918] there soon might be no birds for any powers to deal with. We see nothing in the Constitution that compels the Government to sit by while a food supply is cut off and the protectors of our forests and our crops are destroyed. It is not sufficient to rely upon the States. The reliance is vain.’ (Quoting from the decision, pp. 434-435)

“*Missouri v Holland* established beyond question the supremacy of the federal treaty-making power as a source of authority for federal wildlife regulation. More importantly, it forcefully rejected the contention that the doctrine of state ownership of wildlife barred federal wildlife regulation, and it invited the question of what further sources of federal power might be used in developing a body of federal wildlife law.”

Given the above Supreme Court and Federal District Court decisions, the information in the draft CCP in a number of locations is decidedly biased against Federal authorities granted to the Refuge in the Constitution and current law. Changes should be made to sections dealing with refuge authority to exert increased regulatory and other control of commercial and other visitors, public uses of refuge resources, the ability to require permits conditioned by limits that better protect refuge lands and waters, and related matters, including limiting overcrowding and related problems in some public uses including river usage, fuel and other storage caches, and hunting (which may be affecting refuge wildlife populations and wildlife habitats). While cooperation and coordination are reality in America’s land management milieu, the strong position of refuge management – and the responsibilities placed upon it pursuant to its primary purposes and several other statutes – should leave no doubt that the authority necessary to correct overuse, crowding, damage to refuge land, conflicts between users, etc., rests firmly and unequivocally with the Refuge Manager.

In closing, the Blue Goose Alliance again expresses its appreciation for this opportunity to comment in this very important process. We believe the draft document correctly sets the broad outline for the Comprehensive Conservation Plan required in its guiding legislative mandate. We have offered several suggestions for needed corrections and better explanations in an array of chapters and sections. We have also presented the legal and logical arguments in favor of the needed changes. We hope the involved Refuge staff and other contributors to the next document find this information helpful and constructive.

Sincerely yours,

William C. Reffalt  
Vice President and Issues Coordinator  
Blue Goose Alliance

1 Bean, Michael J. and Melanie J. Rowland, 1997 (3rd Ed); The Evolution of National Wildlife Law. A Project of the Environmental Defense Fund and World Wildlife Fund – U.S.; Praeger Publishers, CT, pp. 14-27.

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**COMMUNICATION NUMBER 136796**  
**Julie Kates, Refuge Associate, Federal Lands Program**  
**Defenders of Wildlife**

To  
"arcticrefugeccp@fws.gov"  
cc  
"Sharon\_Seim@fws.gov"  
Subject  
Arctic National Wildlife Refuge draft CCP and draft EIS

Dear Ms. Seim,

Please accept the attached comments from Defenders of Wildlife regarding the draft comprehensive conservation plan for the Arctic National Wildlife Refuge.

Sincerely,

Julie Kates

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[attachment "Arctic Refuge Draft CCP - Defenders comments 11.15.11.pdf"]

Attachment:

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November 15, 2011

Sharon Seim  
Planning Team Leader  
Arctic National Wildlife Refuge  
U.S. Fish and Wildlife Service  
101 12th Avenue, Room 236  
Fairbanks, AK 99701

Via U.S. Mail and Electronic Mail (ArcticRefugeCCP@fws.gov)  
RE: Comments on the Draft CCP for the Arctic National Wildlife Refuge

Dear Ms. Seim,

We appreciate the opportunity to provide comments on the draft of the Comprehensive Conservation Plan ("CCP") for the Arctic National Wildlife Refuge ("Arctic Refuge" or "Refuge"). Defenders of Wildlife ("Defenders") is a national, nonprofit, public interest conservation organization representing more than one million members and supporters nationwide, of which more than 4,000 reside in Alaska. Established in 1947, Defenders is dedicated to the protection and restoration of all wild animals and plants in their natural communities. We have been

substantively involved in National Wildlife Refuge System policy and individual refuge issues for decades.

The U.S. Fish and Wildlife Service (“Service”) has developed a strong Draft CCP for the Arctic Refuge, and we are generally supportive of the agency’s draft goals and objectives for managing the Refuge. Defenders urges the Service to select Alternative C because it recognizes the special wilderness value of the Arctic Refuge’s Coastal Plain Wilderness Study Area and would appropriately pursue a recommendation that it be designated wilderness. We offer the following comments and recommendations to assist the Service in finalizing this important plan.

## I. THE DRAFT CCP COMPLIES WITH THE SERVICE’S LEGAL REQUIREMENTS FOR REFUGE PLANNING

Defenders supports and recognizes the value of the refuge planning process, which is clearly articulated in law. As required by the Alaska National Interest Lands Conservation Act (ANILCA), the Secretary of the Interior must “prepare, and from time to time, revise, a comprehensive conservation plan for each refuge” in Alaska.<sup>1</sup> Throughout the CCP revision process for the Arctic Refuge, several individuals and organizations have misinterpreted and/or misrepresented the laws relating to the Service’s obligations to develop management alternatives and its authority to conduct wilderness reviews. Defenders asserts that the Service has thus far complied with its legal responsibilities on these issues.

### A. The Service Presented a Reasonable Range of Alternatives

A CCP is intended to guide refuge management in a way that achieves the conservation mission of the National Wildlife Refuge System and the legal purposes for which the refuge was established.<sup>[2]</sup> The Arctic National Wildlife Range was set aside in 1960 “for the purpose of preserving unique wildlife, wilderness, and recreational values.”<sup>[3]</sup> In addition to expanding this area and renaming it the Arctic National Wildlife Refuge, the Alaska National Interest Lands Conservation Act of 1980 (“ANILCA”) added four additional purposes:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;

(ii) to fulfill the international fish and wildlife treaty obligations of the United States;

(iii) to provide the opportunity for continued subsistence uses by local residents; and

(iv) to ensure water quality and necessary water quantity within the refuge.<sup>[4]</sup>

Despite claims by some individuals that the Service has failed to consider a suitable range of alternatives by neglecting to provide an option for oil and gas development, such an alternative would be inappropriate, as energy development activities are incompatible with the System’s mission and Refuge purposes. In accordance with the National Environmental Policy Act (NEPA), the Service has offered a range of alternatives that address these purposes.

### B. The Service Has Rightly Conducted a Wilderness Review as Part of the CCP Process

Defenders applauds the Service for undertaking a wilderness review and identifying areas suitable for wilderness recommendation during the revision of the Refuge’s CCP, despite incorrect claims by some parties that such actions violate ANILCA. In reality, the law provides the Service with the opportunity, and indeed the obligation, to conduct critically important

wilderness reviews. ANILCA requires that “the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge” be identified and described early in the CCP process.[5] The CCP must then “(i) designate areas within the refuge according to their respective resources and values; [and] (ii) specify the programs for conserving fish and wildlife and the programs relating to maintaining” the previously described wilderness and other special values.[6]

Section 1317 of ANILCA also states that “[w]ithin five years from the date of enactment of this Act, the Secretary shall...review, as to their suitability or nonsuitability for preservation as wilderness, all lands within units of the National Park System and units of the National Wildlife Refuge System in Alaska not designated as wilderness by this Act and report his findings to the President.”[7] This requirement was never met, as the Secretary of the Interior never forwarded the findings of this review to the President. Although section 1317 provides a five-year timeline for the completion of the review, nowhere does the law prevent the Service from conducting future wilderness reviews to fulfill its management responsibilities.

## II. DEFENDERS SUPPORTS THE REFUGE VISION STATEMENT

Service policy states that the refuge vision statement laid out in the CCP “will reflect planning unit purposes.”[8] The vision “should focus on what will be different in the future because of our efforts, capture the essence of what we are trying to do, and why. It should be future-oriented, concise, clear, compelling, and give a sense of purpose to our efforts.”[9] Defenders supports the Service’s draft vision statement for the Arctic Refuge:

This untamed arctic landscape continues to sustain the ecological diversity and special values that inspired the Refuge’s establishment. Natural processes continue and traditional cultures thrive with the seasons and changing times; physical and mental challenges test our bodies, minds and spirit; and we honor the land, the wildlife and the native people with respect and restraint. Through responsible stewardship this vast wilderness is passed on, undiminished, to future generations.[10]

This forward-looking vision reflects the Refuge’s purposes, reaffirms a commitment to protect the Refuge as an intact wilderness for the public, and implies a management approach that allows habitats to adapt to changing conditions in the absence of human manipulation. Defenders urges the Service to adopt this statement in the final plan.

## III. DEFENDERS SUPPORTS GOALS AND MANAGEMENT GUIDELINES THAT AIM TO PROTECT THE REFUGE’S ECOLOGICAL VALUES

Defenders strongly supports the Service’s intent to administer the Refuge in a manner that safeguards its wild character and allows natural processes to continue without interference, as articulated in several goals and management guidelines throughout the Draft CCP, including:

- Goal 1: “Ecological processes shape the Refuge, and its management remains essentially free of the intent to alter the natural order, including natural population densities and dynamics, and levels of variation of native fish, wildlife, and plants.” [11]
- Goal 2: “The Refuge retains its exceptional wilderness values without loss of natural condition and wild character and manages designated wilderness consistent with the intent of the Wilderness Act and ANILCA.” [12]
- Goal 3: “The Refuge’s designated wild rivers flow freely through unaltered corridors; their ecological functions, character, and values are protected; and opportunities for recreation and traditional uses are consistent with the Wild and Scenic Rivers Act and ANILCA.” 13
- Management Guideline 2.4.11, which states that Refuge habitats will be left “unaltered and

unmanipulated...[and] will not be modified or improved to favor one species over another.”[14]

- Management Guideline 2.4.12, which states that “the Refuge focuses on enabling the natural behavior, interactions, and cycles of all native species to continue, with little or no human intervention and manipulation.”[15]

- Management Guideline 2.4.12.7, which states that “the Refuge will not employ or allow any management technique intended to interfere with natural wildlife dynamics by reducing the abundance of some species to increase the abundance of others.”[16]

Adopting and adhering to these statements will help ensure the Arctic Refuge remains a paragon of biological integrity, diversity, and environmental health within the National Wildlife Refuge System. As landscapes and wildlife populations across the nation – and throughout Alaska – continue to be altered through development or manipulated for human benefit, it is vital to recognize that there are places where such conditions are neither appropriate nor desired. National wildlife refuges in Alaska have the potential to maintain the most naturally functioning ecosystems in the world. An emphasis on preserving natural ecological processes should remain the fundamental standard for management of the Arctic Refuge and all refuges throughout Alaska.

#### IV. THE SERVICE SHOULD CLOSE GAPS IN THE CCP THAT COULD ALLOW FOR INAPPROPRIATE WILDLIFE MANAGEMENT

**[136796.001 Wildlife -- Predator Control]** Defenders recognizes the importance of the Service’s objective to maintain involvement in the State of Alaska’s fisheries, game, and federal subsistence boards processes.[17] We encourage cooperation where suitable; however, we are concerned over the Alaska Board of Game’s (BOG) tendency to institute regulatory changes that are in direct conflict with Refuge System mandates and federal law. Under such circumstances, we do not feel that cooperation is either legal or appropriate.

In particular, the State of Alaska manages game populations according to the Intensive Management (IM) statute, whose sole intent is to manage game for high levels of human harvest.<sup>18</sup> The IM statute dictates that the BOG may not decrease the harvest of a game population without also adopting regulations for intensive management actions to increase that population for human harvest. Predator control is one form of intensive management pursued by the State that is particularly controversial and can have potentially devastating effects on ecosystem function and health. Widespread manipulation of predator populations for the benefit of human harvest is inconsistent with the Service’s mission and federal law, and such actions would be inappropriate and contrary to your authority for managing the Arctic Refuge.

Consistent with the Refuge’s ANILCA purposes and other federal laws and policies that direct the Refuge’s administration, the CCP should explicitly preclude artificial manipulation or intensive management of wildlife populations meant to enhance game populations for human harvest. The use of predator control for this purpose should be prohibited in any form, including but not limited to aerial gunning, liberalized bag limits, or liberalized hunting and trapping periods or methods.

A. The Service Should Articulate and Exercise Its Authority to Preempt Intensive Management by the State of Alaska on the Arctic Refuge

**[136796.002 Wildlife -- Predator Control]** According to the Draft CCP, “[s]eparate refuge compatibility determinations addressing specific proposals will be required for State management activities that propose predator management, fish and wildlife control...or any other unpermitted activity that could alter ecosystems” of refuges in Alaska.<sup>19</sup> In addition, “[i]f determined necessary under subsection 2.4.2 (Human Safety and Management Emergencies), Service or State

actions involving the killing, relocation, removal, or sterilization of wildlife for the benefit of another species would require appropriate NEPA compliance and an ANILCA Section 810 determination.”[20] In 2009, the Alaska Department of Fish and Game (ADF&G) and BOG declared that immediate action was necessary to protect a declining caribou herd on Unimak Island because subsistence use on the island was threatened. As a result of the request by ADF&G to pursue wolf control, the Service undertook a NEPA process and ultimately determined that such action was not warranted because it was inconsistent with federal law and Service policy. Defenders asserts that the Service has the legal authority and responsibility to deny such a request outright without further administrative action when dealing with such predator control proposals on Alaska refuges in general, and the Arctic Refuge in particular. Indeed, Service policy states that “the refuge manager should deny a proposed use without determining compatibility” if, for example:

- (a) The proposed use conflicts with any applicable law or regulation (e.g., Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act);
- (b) The proposed use conflicts with any applicable executive order, or written Department of the Interior or Service policy; [or]
- (c) The proposed use conflicts with the goals or objectives in an approved refuge management plan (e.g., comprehensive conservation plan, comprehensive management plan, master plan or step-down management plan)...[21]

Predator control actions proposed by the State of Alaska have focused on increasing game populations without consideration to the context of natural population fluctuations, the health of altered game or predator populations, and even whether predation is a major factor limiting the game population. Defenders believes that such an action would not only violate the Service’s responsibility under the National Wildlife Refuge System Improvement Act to maintain “the biological integrity, diversity, and environmental health of the System,”[22] but would also be incompatible with the Arctic Refuge’s purpose under ANILCA “to conserve fish and wildlife populations and habitats in their natural diversity.”[23]

In order to preclude inappropriate proposals for predator control actions by the State, we urge the Service to incorporate language into the CCP which clearly articulates that any State regulation or plan involving the use of predator control to increase ungulate abundance for human harvest would conflict with federal law and would be preempted by such law within the Refuge. By being clear with State managers that the Service will use its authority to preempt the State’s programs when such programs conflict with Refuge purposes and mandates, the Service can prevent wasting State and federal agency time and resources pursuing or defending against such actions.

Moreover, even if the Service tried to ignore its legal responsibilities and authority for the Arctic Refuge and actively considered approving such a predator control proposal, it would first have to make a compatibility determination and prepare an Environmental Impact Statement under NEPA, providing solid justification for why such an action was lawful and appropriate. Any decision by the Service to pursue predator control must be based on sound scientific data and analysis, and must comply with applicable federal laws and policies.

#### **B. [Preamble 136796.003, 004] The Service Should Offer Stricter Criteria for a Management Emergency**

**[136796.003 Refuge Management Policies/Guidelines -- Human Safety & Management Emergencies]** The Draft CCP outlines that emergency situations may make it necessary to deviate from policies and guidelines discussed in the plan. Defenders has strong concerns over

what sort of emergencies would require action. According to the plan, “emergency situations could also arise, whereby threatened or endangered species, natural diversity, water quality and/or quantity or subsistence resources are seriously jeopardized, or the introduction of an invasive species potentially necessitate actions not normally permissible.”[24]

In our view, a decline in the quantity of resources does not warrant an emergency action that could disrupt the natural diversity of fish and wildlife populations on the Refuge. A particular concern is that State managers consider any reduction in big game harvest to be an “emergency.” Sections in the CCP containing language that allows action in the face of such emergencies leave the door open for the State to claim that subsistence resources are threatened if a decline in ungulates occurs and, therefore, pursue predator control. Considering the vulnerability of subsistence resources to climate change, availability of subsistence resources such as caribou may be affected over time; control of predation to prevent potential declines due to climate factors is inappropriate on the Refuge. Further, if the Refuge’s Coastal Plain were to be opened to oil and gas development, subsistence resources such as caribou could be significantly impacted, and it would be inappropriate to undertake predator control to mitigate losses to caribou populations resulting from development of oil and gas on the Refuge.

**[136796.004 Refuge Management Policies/Guidelines -- Human Safety & Management Emergencies]** As stated in our comments below, Defenders recognizes and supports the subsistence harvest rights of federally qualified subsistence users. However, ANILCA clearly states that subsistence opportunities on the Arctic Refuge must be consistent with the purposes “to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd...polar bears, grizzly bears...wolves, wolverines...” and “to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats...”<sup>25</sup> Further, subsistence is to be provided only when it is “consistent with sound management principles, and the conservation of healthy populations of fish and wildlife...”<sup>26</sup> The Service must, therefore, ensure that no actions are taken to provide subsistence opportunities or conserve subsistence resources if doing so will violate ANILCA’s primary purposes.

## V. DEFENDERS SUPPORTS STRONG CONSIDERATION OF CLIMATE CHANGE IN THE PLANNING PROCESS

We are pleased to see that the Service recognizes climate change as a fundamental challenge for the Arctic Refuge and is using the revision of the CCP as an opportunity to incorporate new scientific information pertaining to climate change into future management decisions.<sup>27</sup> The Service has rightly acknowledged that it is required to do so by Secretarial Orders 3226 and 3289.<sup>28</sup> The Draft CCP includes few actions for responding to climate change impacts on Refuge habitats and species. Rather, the plan repeatedly states that “[i]n the foreseeable future, the Refuge will favor a policy of non-intervention, whereby natural systems are allowed to adapt and evolve, accepting that some species may be replaced by others more suited to the changing climate.”<sup>29</sup> Indeed, many of the strategies that have typically been developed elsewhere, such as enhancing connectivity, acquiring additional protected areas, or reducing other anthropogenic stressors, have little applicability within one of the largest and most pristine areas in the world.

With its huge size, diverse array of habitats and elevations, and intact, unfragmented habitats, the Arctic Refuge is perhaps in a much better position than many other places to be managed for “natural adaptation,” or allowing nature to take its course, even in the face of the accelerated changes experienced in the arctic. Defenders, therefore, supports climate change-related actions focused on scientific research and monitoring, sharing of traditional knowledge, and public

awareness. Given the wilderness character of the Refuge, the Service should also guard against increasing other stressors, and proposals for new uses or management activities on the Refuge should be evaluated carefully with respect to potential cumulative impacts on resources potentially threatened by climate change.

**[136796.005 Climate and Climate Change -- General Impacts]** Defenders recently developed a set of criteria for evaluating how well climate change is incorporated into final CCPs. As the Service finalizes the plan for the Arctic Refuge, we recommend that planning staff refer to these criteria to ensure that consideration of climate change is comprehensive. The fact sheet, “Climate Change and National Wildlife Refuge Conservation Planning,” that includes these criteria is appended to these comments. We also offer further comments and recommendations below to strengthen consideration of climate change in the CCP.

A. The CCP Should Include Greater Analysis of Climate Change Impacts on Wildlife and Habitats

**[136796.006 Climate and Climate Change -- Cumulative Effect]** The Draft CCP comprehensively details the past, current, and projected future climate on the Refuge using models and scenarios specific to Alaska.[30] It does a good job of outlining climate change impacts to various Refuge resources and ecological processes, including permafrost, fire regime, lakes and wetlands, coastal habitats, and nutrient cycling and mobilization of contaminants.[31] The Draft CCP also covers a broad suite of potential impacts to vegetation, including changes in phenology, alterations in the distribution and composition of communities, treeline shifts, spread of invasive species, and pest and pathogen outbreaks. However, we recommend that the Service give additional attention to the interactions among these various impacts. For instance, how will the interactions of forest pests and fire affect forest health in a warmer environment? How will drying interact with loss of permafrost to impact tundra communities? How will coastal erosion interact with other changes on the tundra?

**[136796.007 Climate and Climate Change -- Cumulative Effect]** The Draft CCP is less detailed in its treatment of how well-documented habitat impacts will affect the Refuge’s wildlife. For instance, the discussion of the Refuge’s birds contains narratives on many species of interest, including swans, loons, snow goose, common eider, long-tailed duck, raptors and others.[32] However, despite numerous threats documented to multiple bird species, both on the Refuge and on migration and wintering grounds, climate change is discussed only briefly in this section: one reference to the impacts of tundra shrub succession and coastal erosion on shorebirds, and another reference to the possibility that changes in woody vegetation will impact Smith’s longspurs, with unknown effects. Potential impacts to birds, as well as to freshwater biota, have been documented at length by Kittel et al.[33] Defenders has also discussed threats to the red-throated loon in our Navigating the Arctic Meltdown series.[34]

The Draft CCP’s discussion of Refuge mammals similarly gives only brief attention to climate change impacts on most species.[35] Climate change is given substantial treatment only as a threat to polar bears because, as the Draft CCP rightly states, “[c]limate change is perhaps the greatest current conservation concern for polar bears.”[36] However, it is mentioned only in passing as a potential threat for caribou, Dall sheep, and rodents and hares. Defenders conducted a detailed vulnerability analysis for the entire mammal fauna of the Refuge using the NatureServe Climate Change Vulnerability Index (CCVI) to evaluate species based on their exposure to climate changes and a variety of sensitivity traits. We found that nearly half the mammal species of the Refuge are either “Extremely Vulnerable” or “Highly Vulnerable” to climate change in the Refuge over the next 50 years. We have appended to our comments a copy of the resultant report, titled “No Refuge From Warming.”[37]

## B. The Service Should Develop a Monitoring and Research Agenda that Prioritizes Climate Change Information

Defenders supports Goal 6, which seeks to use scientific research and monitoring to evaluate the effects of climate change on Refuge resources, and its associated objectives of evaluating impacts, considering climate change and other stressors in management decisions, monitoring vulnerable biological components, and collaborating on research and monitoring.[38] [136796.008 **Refuge Vision and Goals -- Goal 6 (including objectives)**] The Service's own research and monitoring agenda will rely heavily on Objective 1.2 to revise the Refuge's Inventory and Monitoring (I&M) Plan, Objective 1.3 to develop a Research Plan, and Objective 1.4 to conduct an Ecological Review.[39] Defenders supports these objectives and suggests that they be cross-referenced with relevant objectives under Goal 6, adding language to explicitly state that the Ecological Review must identify species and habitats that are vulnerable to climate change.

[136796.009 **Step-Down Plans -- Inventory & Monitoring Plan**] We urge the Service to be as detailed as possible in developing and carrying out studies investigating the effects of climate change, and strongly encourage conducting formal vulnerability assessments on key Refuge species and communities, or incorporating those conducted by others. This information will be critical in crafting effective I&M and Research Plans, and should feed into the Refuge's Ecological Review. Based on the findings of Defenders' report "No Refuge from Warming," we offer several suggestions for research in the Refuge:

- Investigate the population dynamics of the muskox lung nematode and its impacts on muskox growth, reproduction, and survival.
- Study the potential for red fox range expansion on the North Slope: model and observe changes in vegetation structure, track red fox locations and behavior, and ascertain competitive interactions with arctic foxes.
- Study vegetation community change on the tundra, including dynamics of small wetland areas, and determine the impacts on small mammal populations (particularly voles and lemmings) and population cycling.
- Continue to study the impacts of climate change on polar bears.
- Study winter conditions and their impact on caribou and muskox foraging success.

## C. The Service Should Commit to Broader Actions for Sharing Climate Change Information

[136796.010 **Refuge Vision and Goals -- Goal 9 (including objectives)**] The Arctic Refuge, home to some of America's most iconic wildlife, is located on the front lines of climate change and serves as an early sentinel for the rest of the world. Refuge staff, therefore, have the unique opportunity to serve as a witness and a voice for the resources being impacted. The stories of the impacts of climate change occurring here should be central to the information the Refuge provides to the public through the internet, media, and other outreach resources.

Goal 9 in the Draft CCP states that the Arctic Refuge will inform "diverse audiences, near and far, to enhance their understanding, appreciation, and stewardship of the Refuge and its resources, and reflecting the nation's interest in this place."<sup>40</sup> Defenders supports this goal, but we urge the Service to expand its scope to more broadly include climate change. While climate change is mentioned with respect to educational materials and programs in Objective 9.6, it should be recognized as an important issue that deserves integration across the full range of information sharing objectives, such as Objective 9.1 to inform the public and Objective 9.2 to inform Refuge users.[41]

## VI. DEFENDERS SUPPORTS A WILDERNESS RECOMMENDATION FOR THE COASTAL PLAIN WILDERNESS STUDY AREA

Defenders recognizes the extraordinary wilderness character associated with the whole of the Arctic National Wildlife Refuge. We agree with the Service's findings in its review that the Brooks Range, Porcupine Plateau, and Coastal Plain Wilderness Study Areas (WSAs) all meet the criteria for "wilderness" as defined in the Wilderness Act of 1964 and are suitable for wilderness designation. However, given its high degree of both biological productivity and threats, Defenders believes that the Coastal Plain WSA should be the highest priority for a wilderness recommendation by the Service. We, therefore, urge the Service to select Alternative C.

The variety of elevations and habitats condensed in the narrow distance between mountains and sea is what helps make the Coastal Plain the most important area of the Refuge for wildlife. Notably, it serves as the calving ground of the Porcupine caribou herd, which has sustained the Gwich'in for thousands of years. In the winter, it serves as the most important onshore denning habitat for America's threatened polar bears – hiding mothers and cubs from view beneath its snows. Approximately 150 bird species have been documented in the area. And deep pools along its rivers provide overwintering habitat for fish.

There is no better example of wilderness than the Arctic Refuge's Coastal Plain and no place more deserving of wilderness protection. It is the target of persistent calls for oil and gas development that, if successful, would at a minimum leave the landscape fragmented and degraded. Furthermore, while natural systems and organisms exhibit a certain level of resiliency in the face of such challenges, the additional pressure of climate change can push them toward thresholds beyond which they will be unable to recover.[42] Northern Alaska is warming more rapidly than anywhere else on the continent, and as its wildlife is exposed to the region's rapidly changing climate, wilderness status would keep the Coastal Plain protected from the habitat degradation and fragmentation that accompany oil and gas development – impacts that would weaken species' ability to adapt. A wilderness recommendation for the Coastal Plain, as prescribed in Alternative C, would represent an important step toward securing a permanent wilderness designation.

Defenders recognizes that the Refuge is a vast, intact landscape whose component parts are intricately connected to one another, and failure to protect the wilderness values of one part of the Refuge could compromise these values throughout. The minimal management that Alternative C lays out for the Brooks Range and Porcupine Plateau WSAs will preserve their wilderness character, while also allowing for sustainable, traditional access and use by the Gwich'in people.

## VII. DEFENDERS SUPPORTS SUBSISTENCE USE OF THE REFUGE CONSISTENT WITH CONSERVATION AND INTERNATIONAL TREATY PURPOSES

Subsistence harvest rights for Alaska Natives and rural Alaskans are protected under ANILCA, which mandates that the Refuge be managed to "provide...the opportunity for continued subsistence uses by local residents," consistent with the conservation of fish and wildlife populations and habitats, as well as fulfillment of international fish and wildlife treaty obligations.[43]

Defenders recognizes and fully supports subsistence use and accepted traditional harvest practices for federally qualified subsistence users, and we are pleased to see the Service's commitment to providing these opportunities, as stated in Goal 4 of the Draft CCP.[44] **[136796.011 Refuge Vision and Goals -- Goal 4 (including objectives)]** We support the Service's plan to compile data pertaining to subsistence use, as outlined in Objective 4.4 of the Draft CCP.45

We urge the Service to apply the compiled information as well as to fill information gaps in order to ensure that the rights of federally qualified subsistence users will be preserved, while also assuring the protection and long-term viability and natural diversity of wildlife and their associated habitats within the Refuge.

#### VIII. THE SERVICE SHOULD ENSURE MANAGEMENT OF VISITOR USE AND ACCESS PROTECTS THE REFUGE'S ECOLOGICAL INTEGRITY

**[136796.012 Alternatives Analyzed -- Alternative C: Kongakut River Visitor Management]** As Defenders outlined in our Arctic Refuge CCP scoping comments, recreational use of the Refuge is increasing with improved access. While wildlife viewing, backpacking, and rafting are generally considered low-impact activities, recreation does have the potential to significantly disturb wildlife and detract from the wilderness experience valued so highly by visitors to the Refuge. We believe the visitor use management actions outlined in Alternative C will help the Service to better protect the ecological integrity of the Refuge while providing high-quality, wilderness-associated visitor experiences. However, to the extent that budget and staffing allows, we encourage the Service to add to Alternative C the additional provisions related to Kongakut River visitor use provided in Alternatives D and E, namely to:

- Increase efforts to educate about compliance and then enforce compliance of Special Use Permit conditions and existing visitor use regulations.
- Redistribute the number of groups on the river during heavy use periods (late June and mid-August) by working with commercial guides to voluntarily modify their use of the river basin throughout the season.

• Work with commercial air-taxi operators to avoid flight-seeing activities and to disperse commuting flight paths in and out of the Kongakut valley, subject to safe aircraft operation, inclement weather conditions, and takeoff and landing approach requirements.<sup>46</sup> **[136796.013 Step-Down Plans -- Visitor Use Management Plan]** Defenders supports the development of a Wilderness Stewardship Plan (WSP) and Visitor Use Management Plan (VUMP) for the Arctic Refuge, as prescribed in Objective 2.3 and Objective 5.3, respectively.<sup>[47]</sup> As stated in our scoping comments, we encourage the Service to carefully consider current and future use of the Refuge and outline appropriate user restrictions, including group size limits and daily visitor limits, when necessary to protect wildlife resources, habitat, and visitor experience. The Service should also identify and consider the species that are particularly sensitive to recreational disturbance, activities most disturbing to wildlife, seasonal disturbance most likely to negatively impact wildlife, and areas of the Refuge most important for sensitive species. The Service should consider seasonal closures or restrictions for areas where sensitive species are found and during vulnerable periods such as breeding and parturition. Because the Draft CCP defers many of the details regarding access and visitor use to step-down plans, the Service should seek broad public input on the WSP and VUMP before finalizing them.

**[136796.014 Recreation and Visitor Use -- Air Transportation: Flying, Overflights, Landings]** With respect to aircraft landings, Defenders supports the Service's intent to assess conditions and trends regarding their impacts to sensitive vegetation.<sup>[48]</sup> We understand that a balance must be struck to provide reasonable and safe access to wilderness users. However, where aircraft landings are causing excessive damage to tundra vegetation or wilderness character, the Service must prioritize preservation over access.

## IX. CONCLUSION

Defenders appreciates the opportunity to participate in the planning process. We hope our comments are helpful in finalizing the plan.

Sincerely,

Julie Kates  
Refuge Associate, Federal Lands Program  
Defenders of Wildlife

Theresa Fiorino  
Alaska Representative  
Defenders of Wildlife

Defenders of Wildlife Attachments:

- Climate Change and National Wildlife Refuge Conservation Planning
- No Refuge from Warming: Climate Change Vulnerability of the Mammals of the Arctic National Wildlife Refuge

1 Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, §304(g)(1), 94 Stat. 2394 (1980).

2 See Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, §304(g), 94 Stat. 2394-95 (1980); see also U.S. Fish and Wildlife Service, 602 FW 3 Comprehensive Conservation Planning Process (2000).

3 Public Land Order 2214 (1960).

4 Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, §303(2), 94 Stat. 2390 (1980).

5 Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, §304(g)(2)(B), 94 Stat. 2394 (1980).

6 Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, §304(g)(3)(A), 94 Stat. 2395 (1980).

7 Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, §1317(a), 94 Stat. 2485-2486 (1980).

8 U.S. Fish and Wildlife Service, 602 FW 3 Comprehensive Conservation Planning Process (2000).

9 U.S. Fish and Wildlife Service, 602 FW 3 Comprehensive Conservation Planning Process (2000).

10 Draft CCP at 1-23.

11 Draft CCP at 2-1 (Goal 1).

12 Draft CCP at 2-7 (Goal 2).

13 Draft CCP at 2-10 (Goal 3).

14 Draft CCP at 2-50 (Fish and Wildlife Habitat Management).

- 15 Draft CCP at 2-52 (Fish and Wildlife Population Management).
- 16 Draft CCP at 2-55 (Fish and Wildlife Control).
- 17 Draft CCP at 2-4.
- 18 Alaska Statute § 16.05.255.
- 19 Draft CCP at 2-44 (2.4.9.1 Federal, State, and Local Governments).
- 20 Draft CCP at 2-55 (2.4.12.7 Fish and Wildlife Control).
- 21 U.S. Fish and Wildlife Service, 603 FW 2 Compatibility (2000).
- 22 16 U.S.C. § 668dd(a)(4)(B).
- 23 Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, §303(2), 94 Stat. 2390 (1980).
- 24 Draft CCP at 2-37 (2.4.2 Human Safety and Management Emergencies).
- 25 ANILCA § 303(2)(B).
- 26 16 U.S.C. § 3112(1) (emphasis added); see also 16 U.S.C. § 3125(1) (emphasis added) (allowing subsistence uses may not “be inconsistent with the conservation of healthy populations”).
- 27 Draft CCP at 1-2.
- 28 Draft CCP at 2-47.
- 29 Draft CCP at 2-47 and 4-56.
- 30 Draft CCP at 4-22 to 4-30.
- 31 Draft CCP at 4-56 to 4-59.
- 32 Draft CCP at 4-71 to 4-86.
- 33 T.G.F. Kittel et al., Climate Vulnerability of Ecosystems and Landscapes on Alaska’s North Slope, 11 (Supplement 1) REGIONAL ENVIRONMENTAL CHANGE S249-S264 (2011).
- 34 See Defenders of Wildlife, Navigating the Arctic Meltdown: Red-throated Loons (2007). Available at:  
[http://www.defenders.org/resources/publications/programs\\_and\\_policy/science\\_and\\_economics/global\\_warming/navigating\\_the\\_arctic\\_meltdown\\_arctic\\_loon.pdf](http://www.defenders.org/resources/publications/programs_and_policy/science_and_economics/global_warming/navigating_the_arctic_meltdown_arctic_loon.pdf).
- 35 Draft CCP at 4-86 to 4-119.
- 36 Draft CCP at 4-111.
- 37 See Defenders of Wildlife, No Refuge from Warming: Climate Change Vulnerability of the Mammals of the Arctic National Wildlife Refuge (2011). This report and accompanying supplementary materials and summary report are available at:  
[http://www.defenders.org/programs\\_and\\_policy/climate\\_change/publications](http://www.defenders.org/programs_and_policy/climate_change/publications).
- 38 Draft CCP at 2-20 to 2-21.
- 39 Draft CCP at 2-2 (Objective 1.2 Inventory and Monitoring of Wildlife and Habitats) and 2-3 (Objective 1.3 Applied Research).
- 40 Draft CCP at 2-27.
- 41 Draft CCP at 2-27 to 2-30.

42 CCSP, *Thresholds of Climate Change in Ecosystems, A Report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research* [D.B. Fagre, C.W. Charles, C.D. Allen, C. Birkeland, F.S. Chapin III, P.M. Groffman, G.R. Guntenspergen, A.K. Knapp, A.D. McGuire, P.J. Mulholland, D.P.C. Peters, D.D. Roby, and G. Sugihara], U.S. Geological Survey, Reston, VA (2009).

43 Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, §303(2), 94 Stat. 2390 (1980).

44 Draft CCP at 2-12.

45 Draft CCP at 2-14.

46 Draft CCP at 3-45 (Table 3-1).

47 Draft CCP at 2-7 and 2-16.

48 Draft CCP at 2-19 to 2-20 (Objective 5.9).

**COMMUNICATION NUMBER 136783**  
**Mindy Rowland, Executive Director**  
**First Things First Alaska Foundation**

From: "Mindy Rowland"  
Sent: Wednesday, September 21, 2011 3:38 PM  
To:  
Subject: Public Testimony

Please accept the attached document as public testimony on the Draft ANWR Comprehensive Conservation Plan. I'm happy to respond to any questions.

Thank you  
Mindy

Mindy Rowland  
Executive Director  
First Things First Alaska Foundation  
907.209.1797 office  
907.723.4636 cell  
PO Box 240605  
Douglas AK 99824  
mindy@ftffoundation.org  
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[IMAGE]

[ATTACHMENT]

---

Executive Director  
Mindy Rowland  
mindy@ftffoundation.org

P.O. Box 240605  
Douglas, AK 99824

907.209.1797 phone  
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First Things First Alaska Foundation is a 501 (c)3 nonprofit organization dedicated to preserving the economic viability and future of Alaska through education

September 21,2011

Sharon Seim  
Arctic National Wildlife Refuge  
101 12th Ave Room #236  
Fairbanks, AK 99701-6237

RE: Opposition to Any Wildlife Designations Proposed in the Draft ANWR Comprehensive Conservation Plan

Dear Ms. Seim,

**[136783.001 Alternatives Analyzed -- No Oil and Gas Alternative]** The Board of Directors of the First Things First Alaska Foundation adamantly opposes changing all or any part of the status of the Arctic National Wildlife Refuge (ANWR) to a wilderness designation or wild and scenic river designation.

Such designations would violate the "no more" clauses of the Alaska National Interest Lands Conservation Act (ANILCA) and would be contrary to the intent of Congress in passing this law. ANILCA was accepted in good faith by the people of Alaska with the explicit understanding that no further lands would be removed for potential development. ANILCA mandates that the Department of the Interior periodically revisit the issue of oil and gas activity within the coastal plain of ANWR, and in fact has determined that such activities could occur with minimal impact on wildlife. The US Fish and Wildlife Services' proposed comprehensive conservation plan is in clear violation of that charge in that it would eliminate any opportunity for future development and does not allow for an oil and gas development alternative.

The health of Alaska's economy is almost solely dependent on the ability, or potential future ability, to develop its natural resources. Seventy-eight percent of Alaskans, including every Alaskan Governor, every legislature, and every elected congressional representative and senator from Alaska, support oil exploration in the ANWR coastal plain 1002 area. ANWR is estimated to hold sufficient oil and gas reserves to refill the Trans-Alaska Pipeline System, which is operating at only one-third of its capacity and continually declining. Refilling TAPS is vital to the State of Alaska's capability to continue providing basic government services and creating new infrastructure. Alaska simply has no other viable tax base.

Sincerely,

Executive Director  
Mindy Rowland

## **COMMUNICATION NUMBER 77**

**David Raskin**

**Friends of Alaska National Wildlife Refuges**

Anchorage Hearing 9/21/2011

David Raskin, Friends of Alaska National Wildlife Refuges

MR. RASKIN: I'm Dr. David Raskin representing the Friends of Alaska National Wildlife Refuges. We appreciate this opportunity to provide comments in the draft CCP for the Arctic National Wildlife Refuge. We have 300 volunteer members throughout Alaska, 25 states and six countries assist the U.S. Fish and Wildlife Service to maintain and enhance wildlife habitat and species in all 16 Alaska refuges. The Arctic Refuge was established 50 years ago under President Eisenhower as the only refuge with a designated purpose of, quote, preserving unique wildlife, wilderness and recreational values.

The claims of politicians, the State of Alaska and the oil industry, that new wilderness designations violate the "no more" clause of ANILCA are disingenuous and misleading. Additional wilderness designation with an established Federal conservation unit is clearly permitted.

The Arctic Coastal Plain Wilderness Study Areas are a biological heart of the Refuge and must be protected as a designated wilderness. All receive wilderness designation.

### **[77.001 Refuge Management Policies/Guidelines -- Subsistence Management] 42**

Management of refuge lands must allow the continuation of traditional activities of Alaska Natives and other local residents, including timber harvest for local use and travel within the refuge.

**[77.002 Wildlife -- Predator Control]** Guidelines must promote the continuation of natural processes and population dynamics of all species and prohibit habitat and species manipulation and predator control.

Coordination with the Alaska Department of Fish and Game must recognize the primacy of the refuges' purposes and management goals, especially with regard to predator control and species manipulation.

**[77.003 Recreation and Visitor Use -- Visitor Experience]** Recreation opportunities must be managed to preserve the wilderness experience for visitors and the wilderness character of the refuge.

Oil and gas exploration and development and other primarily commercial activities have no place in the Arctic Refuge and must continue to be prohibited by law and by Fish and Wildlife Service management policies.

The entire 19.8 million acres of our nation's wildest and most magnificent refuge must continue to be managed to maintain the natural biodiversity, ecological processes, wilderness character and traditional lifestyles and cultures that make the Arctic Refuge the crown jewel of America's public lands.

We thank you very much for this opportunity and we will be submitting much more detailed written comments in the future.

**COMMUNICATION NUMBER 136968**  
**Don Ford, Alaska Director**  
**National Outdoor Leadership School**

From: Website User  
Sent: Monday, November 14, 2011 7:14 PM  
To: arcticrefugeccp@fws.gov  
Subject: Comments from an Organization

Prefix: none  
First Name: Don  
Last Name: Ford  
Suffix: none  
Title 1: Alaska Director  
Title 2:  
Organization 1: National Outdoor Leadership School  
Organization 2:  
Address 1: P.O. Box 981  
Address 2:  
City: Palmer  
State: AK  
Postal Code: 99645  
Country: USA  
Additional Info:

Comment: Thank you or this opportunity to comment on this part of the plan.

Overall, we believe that Alternative E would best serve the mission and goals of the Arctic National Wildlife Refuge for the life of the plan. NOLS offers courses in the western region of the Refuge. It is our experience that every criteria that we can imagine has been met for wilderness quality in this area. Wilderness is the natural resource of our courses and we strongly believe that this area should be recommended for Wilderness designation. While we rarely have courses in the coastal plain, we have visited this area and have the same recommendation for Wilderness designation. The area contains the wilderness qualities that meet the criteria for Wilderness designation.

**[136968.001 Refuge Vision and Goals -- Goal 9 (including objectives)]** Under goal 9, we believe that the Refuge should work closely with the organizations permitted to take visitors into the Refuge. This relationship can function as a partnership in which the permitted organization can provide a hands-on education to visitors that a short orientation or written materials cannot. We believe that the visitor that wants to experience the Refuge on a NOLS course with experienced instructors/teachers should be valued equally with the individual that wants to visit the Refuge. It has been our experience that NOLS can do a better job of resource protection than some untrained private visitors can.

NOLS would like to participate in the public process that is planned for the upcoming step down plans.

Thank you again for the effort placed in this public process.

**COMMUNICATION NUMBER 136801**  
**Pamela Miller, Arctic Program Director**  
**Northern Alaska Environmental Center**

From: Pamela Miller  
Sent: Tuesday, November 15, 2011 11:58 PM  
To: 'ArcticRefugeCCP@fws.gov'  
Cc: Pamela Miller  
Subject: Arctic Refuge CCP comments from NAEC

Pamela A. Miller, Arctic Program Director  
Northern Alaska Environmental Center  
830 College Road  
Fairbanks, AK 99708  
Phone 907-452-5021 x24  
Cell 907-441-2407  
Fax 907-452-3100  
www.northern.org

[attachment "NAEC Comments Arctic Refuge CCP 11-15-2011 FINAL.pdf"- NAEC Comments Arctic Refuge CCP 11-15-2011 FINAL.docx]

Attachment:

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November 15, 2011  
Richard Voss, Refuge Manager  
U.S. Fish and Wildlife Service  
Arctic National Wildlife Refuge  
Attn: Sharon Seim  
101 12th Ave, Rm 236  
Fairbanks, AK 99701  
Sent via E-mail: ArcticRefugeCCP@fws.gov

RE: Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan, EIS, Wilderness Review, and Wild and Scenic River Review

Dear Mr. Voss:

Our organization and our members care deeply about protecting the wilderness, wildlife, and other special values of the whole Arctic National Wildlife Refuge and keeping it wild and free, forever. It is a refuge and wilderness of incalculable value that makes us proud to be part of a nation that had the foresight to protect it.

These comments are provided on behalf of the Northern Alaska Environmental Center ("Northern Center"). This year we celebrate our 40th anniversary of education and advocacy for conservation of the environment in Interior and Arctic Alaska. This review covers the Arctic National Wildlife Refuge Comprehensive Conservation Plan Draft Environmental Impact Statement, Wilderness Review, and Wild and Scenic River Review (hereafter: "Conservation Plan," "CCP" or "DEIS") in response to your public notice (76 FR 50490-50492; August 15, 2011).

The Northern Center, a non-profit conservation organization, has 1,500 members most of whom live in Alaska and was established in 1971 by community leaders, scientists, business people, sportsmen, and conservationists. Our founders were key players in the original establishment of the Arctic National Wildlife Range in 1960. We also served a vital role in laying the ground work to secure landmark protections through the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Ever since, the Northern Center has worked to achieve the visionary purposes ANILCA set out for its conservation system spanning Alaska, including:

“To preserve in their natural state unaltered arctic tundra, boreal forest...to preserve unrivaled scenic... values associated with natural landscapes... to provide for .. those species dependent on vast relatively undeveloped areas; to protect the resources related to subsistence needs; to preserve wilderness resource values... within large arctic and subarctic wildlands and on freeflowing rivers; and to maintain opportunities for scientific research and undisturbed ecosystems.”

### Imagining a Legacy for Future Generations

Deep Fairbanks and northern Alaskan roots of the Northern Center and other people have been essential in the fight to preserve this corner of Alaskan wilderness and set its course in a way that valued the wholeness of the intact land and also recognizes its value to people. The Gwich'in and Inupiat have sustained their culture in the lands that are now the Arctic Refuge and lived for thousands of years with barely a visible trace on the land. As these became threatened, their leaders and communities voiced their concerns about the changes, as Jonothon Solomon from Fort Yukon said, “it is our belief that the future of the Gwich'in and the future of the caribou are the same. We cannot stand by the let them sell our children's heritage to the oil companies.”<sup>1</sup>

Long-time Fairbanks resident Ginny Hill Wood, now 94 years old, was a pioneering conservationist and recently awarded the Congressional Gold Medal for her World War II role in the Women's Airforce Service Pilots. She worked tirelessly for the refuge establishment and wrote in 1958,

“This is the last great wilderness left under the American flag, almost the world. Our children and their children deserve to find some of it as wild, unspoiled, as unique, and as exciting as we have found it.”

Wood later testified in 1959 to these values of the Arctic Refuge:

The esthetic, spiritual, recreation, and educational values of such an area are those one cannot put a price tag on any more than one can on a sunset, a piece of poetry, a symphony, or a friendship...”<sup>2</sup>

Mardy Murie understood the fundamental value of these lands to all of us when she said, “wilderness itself is the basis of all our civilization.”<sup>3</sup> Deeply rooted in Fairbanks, Murie became the first woman graduate of the University of Alaska and later in life recipient of an honorary doctorate as well as winner of the Presidential Medal of Freedom. In Fairbanks, she joined her husband Olaus Murie -- a renowned caribou biologist -- to rally Alaskans in support of establishing the refuge. She wrote decades later:

“Ivishak, Okpilak, Aichilik, Kongakut. These rivers have kept their Native names, and for me they have magic... There, in those arctic valleys, there is room for pure unadulterated adventure and learning, for present and future generations. That is one reason for protecting the Refuge. But more important, to my mind, would be our having courage enough, in the face of all challenges, to protect this region for the sake of the land itself, and the wildlife it supports.”<sup>4</sup>

Alaskans saw change coming fast from industrial pressures of all sorts and responded with considerable support for the proposed refuge. Prior to Alaska statehood, the lands were set aside in 1957 for the purpose of establishing the wildlife refuge. Even the Fairbanks Daily News-Miner (October 23, 1959) and Anchorage newspaper (December 12, 1960) editorialized in favor of it!

In 1960, President Eisenhower's Interior Secretary established the original refuge, then called the Arctic National Wildlife Range, "for the purpose of preserving unique wildlife, wilderness and recreational values." At same time as he designated the new nearly 9 million-acre new refuge, he opened over 20 million acres of prime lands to the oil industry and the State of Alaska – including the "prize" of Prudhoe Bay. Alaskans today often ignore the balance that was struck in land use for the North Slope at that time.<sup>5</sup>

Last year we celebrated the 50th anniversary of the Arctic Refuge, and through our work today we hope that someone 50 years from now can "what vision they had!" If we all do our jobs well this living wilderness will live on as our predecessors set in motion.

#### An Important Plan for the Wildest Refuge

We commend the Arctic Refuge staff for the strong Conservation Plan. It presents an enduring vision and goals for this unique place within the National Wildlife Refuge System – its northernmost unit and the only refuge established to specifically preserve its wilderness values.

The Arctic Refuge is indeed the wildest place in the National Wildlife Refuge system, and we concur with the CCP's planning context which recognizes its unique contribution.

The CCP for the Arctic Refuge is the critical document to ensure that the integrity of the Refuge is protected now and for future generations so that this vision can continue to be realized. In addition to the legal requirement to revise the CCP, it is an appropriate time to do so because an updated CCP can respond to what we now know about changing human impacts on the Refuge, from global warming to specific Refuge uses. Our greater understanding of the forces that can impact and influence the Arctic Refuge will allow for the adoption of a plan that can meet the challenges ahead, and ensure that the Arctic Refuge retains its fundamental wilderness character.

We applaud the Service for completing the Wilderness Review for all lands within the Arctic Refuge not yet designated Wilderness. We urge finalization of the Review and urge that all the lands be managed to retain their wilderness character and suitability. Nearly all of the Arctic Refuge's non-Wilderness lands possess exception values that qualify them for designation as Wilderness under the Wilderness Act except for those around the villages. The Brooks Range and Porcupine Plateau Wilderness Study Area Wilderness Reviews beautifully describe these values and it is important for the Refuge to manage these vital lands in a way that sustains the Gwich'in people's subsistence uses and cultural values at the same time as it protects their extraordinary wilderness character into the future.

Because the Service failed in the last CCP in 1988 to include the Coastal Plain of the Refuge in its Wilderness review, it deserves special mention here. This is not to take away from the importance of the reviews done for the more southerly portions of the Arctic Refuge but to provide some perspective.

#### The Historic Opportunity

Before us is an historic chance to advance full protection for the Coastal Plain area which was left out of Wilderness designation afforded the rest of the original Arctic Refuge by ANILCA. It is also the time to correct the mistake made 22 years ago when a Wilderness Review for the Coastal

Plain was not done for the CCP. The Interior Department's political decision to drop the required Wilderness Review for the Coastal Plain back in 1988 attempted to sever the fabric of this land whose remarkable wholeness was the root of its value. "The Muries believed that the protection of wildlands was the protection of natural processes, the unseen presence in wilderness," notes Terry Tempest Williams.<sup>6</sup>

As a vital beating heart, the Coastal Plain links caribou, clean air, pure water, birds, and freedom across time and vast landscapes for future generations. It connects natural processes of a vast, intact ecosystem, from the Coastal Plain to existing designated Wilderness lands on its east and south through scenic landscapes, watersheds, rivers, and tundra. The migrations of the Porcupine caribou herd join their birthplace and nursery to the lives of the Gwich'in and other indigenous people who depend on the animals and these lands for their subsistence and cultural traditions. The wildlife travels across sweeping landscapes and corridors to the Beaufort Sea, moves over the arch of the Continental Divide and through drainages flowing past tundra and boreal forest to the Yukon River as well as across the vast ecosystem they require which includes Canada's Ivvavik and Vuntut National Parks and other conservation areas in a rich trans-boundary region. The way the land is managed now severs these natural processes.

So, what difference would it make to move forward the recommendation for Wilderness designation for the Coastal Plain? It's simple. We have before us the best chance in a generation to knit back together the lands of the entire original Refuge with Wilderness protection and cease its biological heart remaining severed apart as "Coastal Plain," with a separate management regime from the protected wilderness. This would be significant because the Coastal Plain is the only area of the original refuge not yet designated Wilderness. Yes, we understand that the Service can just take the first step (to recommend Wilderness designation). But it would be a strong step that affirms its wilderness values and makes clear to the world as a matter of U.S. Fish and Wildlife Service management policy that the Coastal Plain deserves and should have permanent protection as Wilderness. And, it is an essential step forward by the Obama Administration that can move a Coastal Plain Wilderness recommendation forward to Congress!

While the status quo thankfully keeps the Refuge Coastal Plain safe from oil drilling by law (and the American public insists time and time again that it stay that way), imagine the bolder legacy of sending the Wilderness recommendation which says Yes! The Arctic Refuge is worth saving for all time! Yes, there is a need for additional Wilderness designation in the Arctic Refuge.

We ask that you have the courage and foresight to make the land whole again by designating the Coastal Plain as Wilderness.

One of the bequest values of Arctic Refuge wilderness for future generations is "about passing on a legacy of hope and encouragement."<sup>7</sup> This kind of hope has been embodied in the brave defense of the Coastal Plain of the Arctic Refuge from threatened oil drilling for decades by a community of people "educating the world in a good way," as it is put by Gwich'in leader Sarah James. While the proactive work towards the goal of permanent protection as Wilderness seems daunting at times because it is by necessity it is a long-term fight, we need to keep the idealism alive that takes over the long haul. On this front, Mardy Murie offered apt words to Terry Tempest Williams, "Don't worry about what you will do next. If you take one step with all the knowledge you have, there is usually just enough light shining to show you the next step."<sup>8</sup>

The Arctic Refuge similarly has valuable lessons for imagining a future legacy given our 21st century challenges to live sustainably and bring new energy paths to fruition that don't require extraction of fossil fuels in our treasured landscapes such as the Arctic Refuge and that can reduce global warming pollution. The Refuge with its time, freedom, and space along with

millennial old cultures rooted in this place offer recurring lessons. This is a human value of wilderness that is our obligation to pass on.

In conclusion, for these and additional reasons below, we strongly support Wilderness Recommendation for the Coastal Plain Wilderness Study Area and select CCP Alternative C. The Coastal Plain is an integral part of the adjacent designated Wilderness lands and the full range of intact ecosystems which make the Arctic Refuge whole and truly unique among our Nation's natural treasures.

In the attachment, we present further general comments on important overarching issues on refuge management and the CCP's major issues and then provide General and Specific more detailed comments on the CCP. We urge that refuge management policies and guidelines all be strengthened in terms of their protection of the wilderness and wildlife for the whole refuge compared with those from 1988, so that incompatible activities are not allowed to tarnish this incredible, wild place for not only the next 15 years, but generations to come.

Thank you for this opportunity to comment.

Sincerely,

Pamela A. Miller  
Arctic Program Director

## GENERAL AND SPECIFIC COMMENTS

Our General Comments address important overarching issues related to the management of the Arctic Refuge. Management of the Arctic Refuge must be accomplished consistent with the purposes of the Refuge, in line with the various laws that govern Refuge management.

In Specific Comments, we then move through the CCP as organized by FWS to provide concerns, critiques and suggestions to improve the CCP with the goal of ensuring the FWS adopts a plan that recognizes the uniqueness of the Arctic Refuge, appropriately deals with the management issues confronting the FWS, and ensures that the values for which the Refuge was set aside continue to be preserved for all.

Our input on important elements of management is intended to ensure that the Service fully addresses its Refuge stewardship responsibilities through the CCP process and in its final plan for wilderness, wildlife, and other values, along with the integrity of the ecosystem as a whole.

### I. GENERAL COMMENTS

#### A. The FWS Properly Conducted a Wilderness Review of all Non-Wilderness Lands within the Arctic Refuge

We are very pleased to see that FWS conducted a wilderness review for all non-Wilderness lands in the Arctic Refuge — including the Coastal Plain — as part of the CCP revision process. Wilderness reviews are required by Refuge System policy, and in fact they are required by law, as part of a CCP. Several laws guide the revision of the Arctic Refuge CCP and its wilderness review requirements. These include the Wilderness Act, Alaska National Interests Lands Conservation Act (ANILCA), and the National Environmental Policy Act (NEPA). In 1964, Congress enacted the Wilderness Act to:

assure that an increasing population, accompanied by expanding settlement and growing mechanization, [did] not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition.

16 U.S.C. § 1131(a). To that end, Congress directed the Secretary of the Interior to evaluate every roadless area within all national wildlife refuges for suitability for wilderness designation, and to report Wilderness recommendations to the President. 16 U.S.C. § 1132(c).<sup>9</sup> Since the initial mandate in 1964, that directive has been carried over and implemented during the refuge management CCP planning process and subsequent revisions.

ANILCA further customizes this national mandate to Alaska by directing the Secretary to “prepare and from time to time, revise, a comprehensive conservation plan for each refuge” in Alaska. 16 U.S.C. 304(g)(1). Section 304(g) states:

(1) The Secretary shall prepare, and from time to time, revise, a comprehensive conservation plan (hereinafter in this subsection referred to as the ‘plan’ for each refuge.

(2) Before developing a plan for each refuge, the Secretary shall identify and describe – (A) the populations and habitats of the fish and wildlife resources of the refuge; (B) the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge”

Based on the identification of these specific values, each CCP must “designate areas within the refuge according to their respective resources and values.” Id. at 304(g)(3)(A)(i).

When Congress enacted ANILCA, it specifically incorporated portions of the Wilderness Act into the statute and carried over the Wilderness Act’s wilderness review mandate for Alaska refuges. ANILCA includes two provisions that direct the Secretary of the Interior to perform wilderness reviews of Alaska lands. ANILCA sec. 1317, 16 U.S.C. § 3205; ANILCA sec. 1004, 16 U.S.C. § 3144. Section 1317(a) directs the Service to study all non-wilderness lands in Alaska refuges and recommend areas suitable for inclusion in the National Wilderness Preservation System:

Within five years from the date of enactment of this Act, the Secretary shall, in accordance with the provisions of section 3(d) of the Wilderness Act relating to public notice, public hearings and review by State and other agencies, review, as to their suitability or nonsuitability for preservation as wilderness, all lands within units of the National Park System and units of the National Wildlife Refuge System in Alaska not designated as wilderness by this Act and report his findings to the President.

16 U.S.C. § 3205. By definition section 1317 governs wilderness reviews for all land within the Arctic Refuge that has not been designated wilderness. 16 U.S.C. § 3205(a). This includes wilderness reviews of the Arctic Refuge coastal plain. Compare 16 U.S.C. § 3205 with 16 U.S.C. § 3142 (neither provision exempts the coastal plain (“1002 area”) from the wilderness review requirement). Thus, FWS was obligated to conduct a wilderness review for the Refuge as part of this process and we are very pleased to see that FWS has in fact done so.

#### B. We Urge FWS to Recommend Wilderness for the Arctic Refuge Coastal Plain

Nearly all of the Arctic Refuge’s non-Wilderness lands possess exception values that qualify them for designation as Wilderness under the Wilderness Act, and we urge that these lands be managed to protect and preserve their extraordinary wilderness values. Further, the Coastal Plain of the Arctic Refuge warrants Wilderness designation. The Coastal Plain Wilderness Study Area is an integral part of the adjacent designated Wilderness lands and their intact ecosystems which make the whole Arctic Refuge truly unique among our Nation's natural treasures.

The Coastal Plain was a vital part of the original Arctic National Wildlife Range established in 1960 for the purpose of preserving its “unique ... wilderness values.” The Coastal Plain contains beautiful rivers rushing from the highest peaks in the Brooks Range and Sadlerochit Mountains then coursing north through foothills and hilly coastal plain, braiding across wetland tundra with lakes and ponds to broad river deltas, inter-tidal flats, lagoon and barrier island systems, and bays, spits, and other pristine shorelines along the Beaufort Sea.

The lands on the Coastal Plain today are stitched together within the original refuge from Arctic sea coast up rivers and sloping tundra to Brooks Range flanks (although invisible lines on the land cast doubt for the future) and the existing Wilderness.<sup>10</sup>

The Coastal Plain hides vital winter maternity dens for polar bears, increasing in importance as arctic sea ice vanishes. Its coastal lagoons provide ringed seal pupping lairs. Dolly Varden (formerly known as Arctic char) overwinter and spawn in streams and river channels, primarily where springs flow year round, and then migrate to nearshore coastal waters for summer feeding. The Coastal Plain bursts with life in the summer as migratory wildlife converges on this biological heart of the Refuge — the Porcupine caribou herd along with golden eagles, wolves, and brown bears, and millions of migratory birds for nesting, feeding, molting, and staging.

Finally, as a vital component of the greater Refuge ecosystem, the Coastal Plain supports cultural, ecological, and wilderness values consistent with the purposes for which the Arctic Refuge was created. For this reason, wilderness values retain vitality as a category of resources and values that the Service properly reviewed during the CCP revision process to comply with the mandates of the law.

Section 2 c of the Wilderness Act defines wilderness to be “undeveloped Federal land retaining its primeval character and influence ... and which generally appears to have been affected primarily by the forces of nature, with the imprint of man's works substantially unnoticeable.” Clearly, the characteristics and condition of the Coastal Plain wilderness study area meet these requirements. The Coastal Plain therefore has all the essential qualities which make it eminently qualified for designation as Wilderness and we urge FWS to adopt Alternative C and recommend Wilderness for the Coastal Plain.

### C. Wild and Scenic River Reviews

In the CCP revision process, FWS must address the eligibility of various rivers in the Arctic Refuge for special status under the Wild and Scenic Rivers of 1968 (P.L. 90-542). That Act provides that “certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.” 16 U.S.C. 1271. “Wild rivers” represent “vestiges of primitive America,” and can be designated if they “are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.” 16 U.S.C. 1273.

The Refuge is uniquely situated in Alaska to include entire rivers and watershed headwaters from the high peaks of the Brooks Range to the Arctic Ocean in the north and to the Yukon River drainage in the south, and therefore their scenery is dramatic as well as unique. The proximity of the mountains, including the Sadlerochit Range, to the Beaufort Sea coast creates a diversity of habitats along these northward flowing rivers in the refuge. This combines with the close proximity of the boreal forest sloping from the south slopes of the peaks to create river habitat diversities unique in the circumpolar north, so that comparing the Refuge's rivers between

themselves discounts their overall values within the Arctic, and in fact their outstanding qualities among rivers in the entire United States.

The Atigun, Hulahula, Kongakut and Marsh Fork Canning Rivers (including the Canning and all its distributaries) clearly meet NWSRS requirements, and may appropriately be designated under that System.

**[136801.001 Wild and Scenic Rivers -- Eligibility (includes Appendix D)]** In fact, all of the rivers in the Arctic National Wildlife Refuge are emblematic of our nation's most intact and wildest rivers and the epitome of the standard for protection as Wild Rivers in the National Wild and Scenic River System. All of them are free-flowing, have pure, high quality water, and contain one or more Outstanding Remarkable Values (ORVs) for their scenic, recreational, geologic, historic, cultural, fish, wildlife, wilderness and intact ecological systems at the landscape scale. Ecosystem protection and the wholeness of our nation's wildest refuge could be enhanced by such designations, and they could also complement the penultimate Wilderness of the Arctic Refuge. Therefore, all of the Refuge's rivers should be included in the inventory and maintained so that they retain their ORVs.

At the same time, by excluding rivers that clearly meet the standards, the eligibility list, and then suitability list is too limited. The fault originates with the methodology the USFWS used to determine the eligibility of the rivers in the plan, as that methodology does not meet the basic requirements of the Wild and Scenic Rivers Act. The question is whether a river is free-flowing and whether or not it possesses an outstandingly remarkable value of regional or national significance. Instead of assessing the rivers independently of one another as required by the Act, the rivers assessed in the draft Plan were measured against one another, thus resulting in fewer eligible rivers than actually exist. Consequently the FWS's method only selects those rivers that contain the highest percentage of Outstanding Remarkable Values (ORVs), preventing many otherwise qualified rivers from becoming eligible. If a proper assessment was conducted additional rivers would have been found eligible, such as the Katakturuk and Turner Rivers, and others (see comments submitted on the draft Eligibility Report by Northern Alaska Environmental Center et al., November 15, 2010). The final Plan should include a revised methodology that meets the Act and includes the necessary interim protections afforded rivers found eligible.

**[136801.002 Wild and Scenic Rivers -- Other Rivers]** We also object to the FWS's treatment of the Canning River. While they have different names, the Canning is the downstream portion of the Marsh Fork of the Canning River, and they both should be found suitable. FWS has noted elsewhere that the Canning "is the longest and has the greatest water volume of the refuge's north flowing rivers. Both the Canning and its major tributary, the Marsh Fork, have headwaters access and float through scenic, glaciated valleys."<sup>11</sup> It is one of the most floated and hiked rivers (USFWS 1993, USFWS April 2010). It is important to fish, birds, and caribou from both the Porcupine and Central Arctic herds, for land denning of polar bears, and has a rich cultural heritage as well as historical significance from early explorers such as Leffingwell and others. In the WSR study, the Canning River should be described to include all of its distributaries and tributaries, particularly within its delta, including the Staines River. The Tamayariak River and its major tributaries joins the Canning River delta in a complex of wetlands, lakes, and complex mudflats that all provide outstanding migratory bird habitat, in addition to the fisheries habitats well documented by FWS studies.

Comments on the draft Eligibility Report submitted by Northern Alaska Environmental Center et al., November 15, 2010 provided additional support for inclusion of the Canning River, which

FWS found eligible but not suitable. The Canning River should be found suitable as it has the highest score for overall Wildlife ORVs and highest Wildlife Diversity of all 20 rivers found eligible, and the highest Cultural Value ORV as any eligible river in the Arctic Ocean drainage, and as high a diversity of Recreational Uses as any eligible river. This remarkable river has many high ORVs including wildlife and fish; recreation, and culture, according to the Wild and Scenic River Review in Appendix I.

While the WSR Review notes that there is value to designation of the Canning River to protect against development outside the Refuge's boundaries, the FWS has erroneously concluded that activities could take place on the adjacent State of Alaska lands above the common high water mark of the west bank, that this should preclude suitability even though the entire length of the Canning is in Federal ownership and is managed by the Refuge. In fact, the Review states, "Federal ownership of most of the river, its beds, and banks makes it feasible to consider the Canning River for designation and that all its tributaries should be considered for review." (WSR Review at SUIT-31). We disagree with the preliminary determination that the Canning is not suitable, and find that a poor rationale for this decision is provided: "It would be difficult for the Service to manage the Canning River as part of the NWSRS because of its boundary with State land that has high potential for oil and gas development." (WSR Review at SUIT-31). Only one comment had opposed designation of the river during the eligibility phase review (WSR Review at SUIT-30).

The discussion of oil and gas activities on the State lands outside the Refuge, mistakenly implies that incompatible supporting activities, including water withdrawals, and gravel mining could be allowed and might take place within the Canning River channel (WSR Review at SUIT-29). For clarity, the WSR Review should contain language that oil and gas leasing, exploration, development, and production are prohibited by law within the Arctic Refuge and furthermore that these oil and gas activities could not be permitted in the refuge because they are incompatible with its purposes. In fact, the threats on the adjacent land provide greater rationale for the worthwhile nature of the Canning gaining protections as a Wild River including its interim protections. It is vulnerable and the FWS needs to use all tools at its disposal to prevent degradation of the Canning River's outstandingly remarkable values. Therefore the benefits to protecting its values are appropriate for achieving the goals of the Wild and Scenic Rivers Act as well as fulfilling Refuge purposes, far offsetting any difficulties that the ownership of adjacent lands might pose.

#### D. Kongakut River Visitor Management and Wilderness Stewardship

**[Preamble 136801.003, 004]** We appreciate the inclusion of Kongakut River Visitor Management in the CCP. **[136801.003 Step-Down Plans -- Visitor Use Management Plan]** Over the past decades, visitor use has degraded wilderness qualities here and at several areas of the Refuge. Since this is an issue which has been raised for decades, "step down" plans were called for by the 1988 plan, and concern about conditions continues, it is important for this plan to firmly commit to the Visitor Use and Wilderness Stewardship Plans which are comprehensive throughout the Refuge (not just the Kongakut), and that the CCP provide a timeline for the plan which is far sooner than the 8-10 years it is projected to take place. **[136801.004 Step-Down Plans -- Visitor Use Management Plan]** How will this plan interface with local communities and people who interface with many visitors due to their gateway locations for trips into the Refuge as well as incorporating their concerns about changes to the land and animals?

#### **[136801.005 Significant Issues -- Kongakut River Management]**

We appreciate the attention in the plan to the highly visited Kongakut River and the importance of maintaining and restoring the pristine qualities of this designated Wilderness area. It is popular

for many reasons but especially as a prime location for witnessing caribou on the move to and from this calving and nursery grounds as well as their large aggregations migrating later in the season (a reason that should be mentioned in the CCP, p. 3-4). **[136801.006 Recreation and Visitor Use -- Monitoring]** The planning effort to protect the resources also needs to include objectives and goals for avoiding disturbance of the herd and its migration, especially during calving and post-calving, including from aircraft flights and other human caused intrusions. How will this be evaluated and monitored in a way that does not itself add more human intrusion? Education of visitors is best achieved prior to their arrival regarding best practices in this and other particularly sensitive areas.

**[136801.007 Recreation and Visitor Use -- Impacts of recreation (waste)]**

If there are problem campsites already in existence due to poor human waste disposal practices, has the Refuge considered encouragement of service trips by volunteers non-profit organizations, or guides who use this area frequently outside of the prime season to conduct cleanups?

E. FWS Properly Did Not Consider An “Oil and Gas Alternative”

FWS correctly did not consider an oil and gas alternative, or scenarios which evaluate impacts of oil and gas exploration, development or production from the refuge.<sup>12</sup> NEPA “places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action... [I]t also ensures that the agency will inform the public that it has indeed considered environmental concerns in the decision-making process.” *Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, 524 F.3d 938, 947 (9th Cir. 2008) (citing *Baltimore Gas & Elec. Co. v. Nat’l Res. Def. Coun., Inc.*, 462 U.S. 87 (1983)). NEPA requires that an EIS include “alternatives to the proposed action.<sup>13</sup> To help define the alternatives, CEQ regulations require that the agency “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”<sup>14</sup> Thus, under NEPA, an agency only needs to consider alternatives that meet the purpose and need for the proposed action.<sup>15</sup>

The purpose of FWS’s proposed action “is to develop a Revised Plan for Arctic Refuge to provide management direction for the next 15 years.”<sup>16</sup> The action is needed to:

- \* Update management direction related to national and regional policies and guidelines used to implement Federal laws governing Refuge management[;] \*\*\*
- \* Describe and protect the resources and special values of Arctic Refuge[;] \* Incorporate new scientific information on resources of the Refuge and surrounding areas[;] \*\*\*
- \* Evaluate current Refuge management direction based on changing public use of the Refuge and its resources[;] \*\*\*
- \* Ensure the purposes of the Refuge and the mission of the Refuge System are being fulfilled[;]
- \* Ensure that opportunities are available for interested parties to participate in the development of management direction[;]
- \* Provide a systematic process for making and documenting resource management decisions[;] \* Establish broad management direction for Refuge programs and activities[;]
- \* Provide continuity in Refuge management[;]
- \* Establish a long-term vision for the Refuge[;] \* Establish management goals and objectives[;]
- \* Define compatible uses[;]

\* Provide additional guidance for budget requests[; and]

\* Provide additional guidance for planning work and evaluating accomplishments[.][17]

Considering an oil and gas leasing, exploration, development, or production alternative would not achieve any of the management goals or objectives identified by FWS as the need for the agency action. Oil and gas activities are not currently allowed in the Arctic Refuge; ANILCA section 1003 states that the "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 [Refuge] shall be undertaken until authorized by an act of Congress."<sup>18</sup> Further, oil and gas activities are contrary to the purposes of the Refuge, and are inconsistent with the Refuge's purposes — neither the original purposes establishing the Arctic National Wildlife Range, nor the expanded purposes described in ANILCA.<sup>19</sup> Additionally, the National Wildlife Refuge System Administration Act of 1966, as amended, states that each refuge shall be managed to fulfill both the purposes for which the original refuge was established and the mission of the Refuge System.<sup>20</sup> The revision of the Arctic Refuge CCP must follow these legal guidelines and set forth management regimes that are consistent with the layered Refuge purposes.

Thus, considering an alternative allowing for oil and gas development in the Arctic Refuge would not achieve the purpose and need for the FWS's revision of the CCP and FWS properly did not consider such an alternative.<sup>21</sup>

## II. Specific Comments

In this section, broader issues for each Chapter are included at its beginning, then are followed by more specific comments given by page number.

Broader issues addressed in the comments below include:

- \* The Original Arctic National Wildlife Range's purposes apply to the entire Arctic Refuge.
- \* The Service has provided strong Arctic Refuge special values, vision and goals that should be retained in the Final CCP.
- \* Wildlife Management must be consistent with Arctic Refuge purposes and the Service should preclude consideration of inconsistent wildlife management proposals.
- \* The Management Policies and Guidelines need improvement.

## VOLUME 1

### Chapter 1. Introduction: Arctic Refuge Purposes Special Values, Vision, and Goals

#### **[136801.008 ANILCA -- Refuge Purposes and ANILCA] A. The Original Arctic National Wildlife Range's Purposes Apply to the Entire Arctic Refuge**

In the CCP, the FWS states that the purposes for which the original Arctic National Wildlife Range ("Arctic Range") was established only apply to those lands in the original Arctic Range: "Under Section 305 of the Alaska National Interest Lands Conservation Act ("ANILCA"), the Range's original wildlife, wilderness, and recreation purposes still apply to those lands in the former Range."<sup>22</sup> However, under FWS's own longstanding policy and guidance regarding determining the purpose of each refuge in the National Wildlife Refuge System,<sup>23</sup> the purposes of the original Arctic Range apply to all Arctic Refuge lands. The misinterpretation and misapplication of Refuge purposes pervades the CCP and the management decisions that FWS is considering and proposing. Thus, it is vital that FWS clearly state that the original Arctic Range purposes apply to the entire Arctic Refuge and that the CCP reflect this understanding.

The original Arctic Range was established in 1960 “to preserve unique wildlife, wilderness, and recreational values.”<sup>24</sup> ANILCA expanded the original Arctic Range by adding 9.2 million acres, included additional refuge purposes and re-designated the unit as the Arctic National Wildlife Refuge. These new, additional purposes include:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and graying; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and quantity within the refuge.<sup>[25]</sup>

ANILCA Section 305 states that:

All proclamations, Executive orders, public land orders and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act.<sup>[26]</sup>

This is a clear statement from Congress that Public Land Order 2214 — which set forth the Arctic Range purposes — was to remain in effect post-ANILCA unless it is inconsistent with ANILCA. The legislative history of ANILCA indicates that Congress did not intend the purposes included in ANILCA for the expanded Arctic Refuge to be the exclusive refuge purposes: “Sections 301, 302 and 303 set forth the purposes for each designated or redesignated unit and additions to existing units. Enumeration of purposes is not exclusive, but is set forth as a guide for management.”<sup>27</sup>

The purposes set out in Public Land Order 2214 for the Arctic Range are not inconsistent with the purposes set out in ANILCA for the Arctic Refuge; the two authorities set forth overlapping and complimentary purposes recognizing the exceptional wilderness, wildlife, recreation, subsistence resources, international importance, and water quality of the Refuge.<sup>28</sup> All of the values recognized in both sets of purposes support the other recognized values; for example, recognizing and managing to protect the wilderness values of the Arctic Refuge allows for the achievement and furtherance of protecting the wildlife values.

Thus, ANILCA itself and its legislative history indicate that Congress intended that Public Land Order remain in effect for the newly expanded and redesignated Arctic Refuge and that the purposes included in ANILCA were to be inclusive, rather than exclusive, of existing Arctic Refuge purposes.

As FWS’s longstanding policy and guidance regarding determining expanded refuge purposes clearly states:

When we acquire an addition to a refuge under an authority different from the authority used to establish the original refuge, the addition also takes on the purpose(s) of the original refuge unless Congress determines otherwise, but the original refuge does not take on the purpose(s) of the addition unless Congress determines otherwise.<sup>[29]</sup>

In the present case, the Arctic Refuge additions were established under a different authority (ANILCA) than the authority used to establish the original Arctic Range (Public Land Order 2214).

Thus, applying FWS's policy for determining the purposes of a refuge, for FWS's current determination that the Arctic Range purposes only apply to those lands within the original Arctic Range to hold true, there would need to be some indication from Congressional that the original Arctic Range purposes should not apply to the entire Arctic Range. 30

Accordingly the purposes of the original Arctic Range apply to the entire Arctic Refuge. The FWS thus should correct this mistake throughout the CCP.

## Sec. 1.2 Planning Context.

p. 1-5 We concur that this is the appropriate context for Arctic Refuge planning. The Arctic Refuge indeed provides a special place within the National Wildlife Refuge system as its wildest refuge – a wilderness refuge-- and the only refuge explicitly established for the purpose of protecting wilderness values.

Furthermore, an ecological context to the area's wildlife and wilderness that includes natural and evolutionary processes, various behavioral characteristics, and interactions between species and their environment was set in the executive order establishing the Refuge and reinforced by ANILCA's goal to conserve wildlife in "their natural diversity." This requirement specifically addresses the special values, species diversity, and ecological context of the Arctic Refuge, and is consistent with the Refuge Improvement Act of 1997. For the Arctic Refuge, this mandates that its unique naturalness, wildness, and undisturbed condition be preserved and maintained. Because of the remoteness of its intact ecosystems, the Arctic Refuge is unique in the entire Refuge System. It functions as a model for wild nature and for what it contributes to the entire National Wildlife Refuge System, especially in protecting health and productivity of migratory species.

## Sec. 1.3 Legal and Policy Context

### Sec. 1.3.1 Legal Guidance

**[136801.009 Legal and Policy Context (Appendix A) -- Legal Guidance (International Treaties)]** p. 1-9. Para 1. This should list the Wilderness Act of 1964 among the most important laws and the role of the Arctic Refuge within the National Wilderness Preservation System. It should also list the key international treaties including the Migratory Bird Treaty Act, Agreement on the Conservation of Polar Bears, International Porcupine Caribou Herd Agreement, and the Yukon River Salmon Agreement contained in Appendix A, because they are fundamental to the refuge addressing a specific purpose of the Arctic Refuge "to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats." (ANILCA Sec. 303(2)(B)(ii). This would improve public understanding of the broad legal context the Arctic Refuge, including its international significance for the wildlife as well as people in other countries which who management obligations are shared.

**[136801.010 Legal and Policy Context (Appendix A) -- Legal Guidance (International Treaties)]** p. 1-9. Para 2. This section should explain that the purpose for the original refuge, "to preserve its unique wilderness values" while correctly retained for the original refuge, it also applies to the whole refuge, including the refuge expansion made through the ANILCA additions.

P. 1-9. We concur that the Wild and Scenic River Review was an appropriate, as well as legally required, component of the CCP.

### Sec. 1.3.2. Policy Guidance

p. 1-10. We concur that the health of the entire ecosystem must be considered in refuge management and an ecosystem approach. As we described above, this was a fundamental purpose at the refuge's establishment as embodied in its wilderness preservation purpose, and as further described by ANILCA's purpose for the refuge, "to conserve fish and wildlife populations and habitats in their natural diversity" emphasis added (ANILCA Sec. 303 (2)(B)(i)).

#### **[Preamble 136801.015] Sec. 1.3.3 Coordination with the State of Alaska**

**[136801.011 Consultation and Coordination -- State Coordination]** p. 1-10 We are extremely concerned about the major role the Service has given the State of Alaska, particularly its membership on the core planning team. Given that the State of Alaska has wildlife management policies and practices that differ in a number of fundamental ways, including its intensive management law that favor one species over another, and subsistence management laws that are inconsistent with ANILCA's Title 8 provisions, that the federal government has responsibility for subsistence fisheries management on navigable waters, and that the State is aggressively promoting activities in the Arctic Refuge like opening the Arctic Refuge to oil and gas development which is fundamentally incompatible with the refuge purposes, it was inappropriate for the State of Alaska to have been on the core planning team (see Appendix L-5), nor to be in attendance at the core team's meetings. This team should have been solely U.S. Fish and Wildlife Service staff.

We urge FWS to change the make-up of the core planning team for the final EIS so that the public can have confidence that the plan was not unduly influenced by the presence of State of Alaska officials. We are particularly concerned about the scale of influence the State of Alaska may have had in the development of the CCP with respect to proper management practices and goals for addressing the Arctic Refuge's purpose "to conserve fish and wildlife populations and habitats in their natural diversity" emphasis added (ANILCA Sec. 303 (2)(B)(i)).

The health of the entire ecosystem must be considered in Arctic Refuge wildlife management and we advocate for an ecosystem approach. Preservation of the entire ecosystem was a fundamental purpose for the Refuge's establishment as embodied in its wilderness preservation purpose, and as further described by ANILCA's purpose for the Refuge: "to conserve fish and wildlife populations and habitats in their natural diversity."<sup>31</sup>

**[136801.012 Consultation and Coordination -- State Coordination]** While we recognize the importance of FWS maintaining involvement in the State of Alaska's fisheries, game, and federal subsistence boards' processes,<sup>32</sup> we are concerned with the Alaska Board of Game's ("BOG") tendency to institute regulatory changes that are in direct conflict with Refuge System mandates and federal law. The FWS must state in the Final CCP that Refuge purposes and wilderness values are dominant over conflicting goals of the State of Alaska, and that these purposes and values thus preempt Alaska Fish and Game and Board of Game rules when necessary.

**[136801.013 Consultation and Coordination -- State Coordination]** The State of Alaska's management objectives for wildlife habitats and populations differ greatly from those mandated for the Service and as contained in the refuge purposes. While the DEIS states that "the Service and ADFG recommitted to this formal agreement in 2006," it fails to include the current agreement. This should also be provided in Appendix B so that it is available to the public.

**[136801.014 Refuge Management Policies/Guidelines -- Compatibility Determinations (includes Appendix G)]** It is not clear how this plan is addressing the fundamental issues surrounding the "Master Memorandum of Understanding" signed March 13, 1982, including its

compatibility with refuge purposes. The Service needs to provide full information about the state's activities for management and research in the CCP in order to provide a comprehensive assessment of all the activities that are done within the refuge, including within its designated wilderness. We are concerned about the lack of specificity and lack of analysis for a whole range of activities not being subject to a compatibility determination, as mentioned here:

“All management and research activities conducted by ADFG under a specific cooperative agreement with the Service to fulfill one or more purposes of the Refuge or the Refuge System mission are not subject to a compatibility determination.”

It appears that an inappropriate grandfathering in of the state's management and research activities within the refuge without a full and proper compatibility analysis is being done based on reliance of the 1982 MOU between the Service and ADF&G (see Appendix G, p. G-6):

“A compatibility determination is not required for State activities on lands in the Refuge where a pre-established agreement or memorandum of understanding is in place. Refuge staff will monitor State activities in the Refuge. Findings from these monitoring efforts will be used to determine what additional management actions, if any, would be needed to ensure State activities remain compatible with Refuge purposes and in compliance with established agreements.”

**[136801.015 Consultation and Coordination -- State Coordination]** Given that subsistence is one of the purposes of the Arctic Refuge (ANILCA Sec. 303(2)(B) iii, and that the State of Alaska's management of subsistence is inconsistent with ANILCA, this section needs to better explain the role of Federal subsistence management including for fisheries in navigable waters, the Federal Subsistence Board, and Federal Subsistence Regional Advisory Committees and their context in the complicated system.

**[136801.016 Biological Environment -- General, multiple resources (fish, wildlife, plants)]** Because of the dual management practices for fish and wildlife between the Service and ADF&G, this plan should include the Service's goals, not simply rely on ADF&G management objectives for the Refuge's big-game and fish populations described in Chapter 4.

**[136801.017 Consultation and Coordination -- State Coordination]** The explanation of ADNR's authority over management (DEIS p. 1-10) fails to mention the limitations of the lands, water, surface and subsurface resource management within the refuge. For example, lands for the original Arctic National Wildlife Range were withdrawn prior to Alaska's statehood and the state does not have navigable waters, submerged lands, or any surface or subsurface resources within for that area. Furthermore, there are other limitations to ADNR's management authorities over other aspects of management and for the refuge additions. The way this paragraph is written exaggerates the ADNR management authority over lands within the external boundary of the Arctic National Wildlife Refuge.

## Sec. 1.4 Arctic Refuge Establishment and Purposes

### Sec. 1.4.1.2 Wilderness Purpose

**[136801.018 Refuge Purposes -- General]** p. 1-17. This section on the Wilderness Purpose should also include the indigenous cultural values of “wilderness ... land that is still the way the creator made it,” as Gwich'in leader Sarah James has described. She elaborated this value in her scoping testimony at the Anchorage hearing in 2010,

“As Gwich'in people, as a Gwich'in nation, we are surrounded by wilderness all around us. We've been living in the wilderness all our life. We took care of the land. We – this is what wilderness to us. For thousand of years we use this land, wild land that is still how it is – still is the way the

creator made it. We took care of it and live it the way it is with no trace. We respect the land, the animals and keep – keep the land clean, air clean, clean water for the future generation. Wilderness is to leave the land it is. We can still hunt, fish, berry picking, trap like we always did. That doesn't change the land to designate the wilderness.... We – they spoke loud and clear repeatedly to protect the Arctic National Wildlife Refuge, the coastal plain of Arctic National wildlife of the Arctic National Wildlife as a wilderness protection and for the permanent protection forever.” (testimony 19-166)

#### Sec. 1.4.1.3 Recreation Purpose.

p. 1-17. The Service has provided strong rationale that this wilderness purpose “was intended to offer a special kind of recreation, an authentic wildlands experience of a type increasingly hard to find elsewhere.”

#### Sec. 1.4.2 ANILCA

**[136801.019 ANILCA -- Refuge Purposes and ANILCA]** p. 1-18. “Under Sec. 305 of ANILCA, the Range’s original wildlife, wilderness, and recreation purposes still apply to those lands in the former Range. ANILCA also added new purposes that pertain to the entire Refuge.”

We agree that “the Refuge’s ANILCA purposes are consistent with and complementary to the original purposes for the Arctic National Wildlife Range,” but have provided ample documentation that the original Range purposes should also undergird the purposes of the entire refuge (see Section above)

Oil and gas exploration, development, and production are not purposes of the Arctic Refuge; the Service correctly did not include these as purposes of the Arctic Refuge.

#### Sec. 1.5 Special Values of Arctic Refuge

**[136801.020 Refuge Values -- Special Values of Refuge]** pp. 1-20 to 1-22. The Service has provided a strong listing of the special values of the Arctic Refuge and we support all of them being retained in the final CCP. These Special Values should be used to guide all management decisions in the refuge.

#### Sec. 1.6 Arctic Refuge Vision and Goals

##### Sec. 1.6.1 Refuge Vision Statement

p. 1-23. We strongly support the Vision statement set forth in the CCP:

This untamed arctic landscape continues to sustain the ecological diversity and special values that inspired the Refuge’s establishment. Natural processes continue and traditional cultures thrive with the seasons and changing times; physical and mental challenges test our bodies, minds and spirit; and we honor the land, the wildlife and the native people with respect and restraint. Through responsible stewardship this vast wilderness is passed on, undiminished, to future generations.

We believe inclusion of its last sentence pertaining to its wilderness values, “through responsible stewardship this value wilderness is passed on, undiminished, to future generations,” is essential. We appreciate the acknowledgement of the traditional cultural values and continuing ties of the Native peoples to this land within the vision.

##### Sec. 1.6.2 Refuge goals

p. 1-23. We support the the goals identified by the Service and believe that the goals identified will help the Service effectively manage the Arctic Refuge to preserve its exceptional values.

In particular, Goals 1 and 2 are excellent refuge goals for management for natural ecological processes and exceptional wilderness values. (see discussion in Chapter 2 for details and one important change for Goal 1). [136801.021 Refuge Vision and Goals -- Goal 2 (including objectives)] Regarding Goal 2, we encourage the FWS to clarify that the goal that the Arctic Refuge “retains exceptional wilderness values without loss of natural condition and wild character” apply to the entire Refuge (we provided additional rationale in our technical letter Alaska Wilderness League et al.

## Sec. 1.10 Significant Planning Issues

p. 1-31. We concur that the Service correctly did not analyze oil and gas leasing or development scenarios in the range of alternatives. See our discussion in Chapter 3, p. 3-6 regarding that issue.

### Chapter 2: Goals, Objectives, Management Policies, and Guidelines

We support the goals identified by the Service in general and believe that the goals identified are important for the agency to effectively manage the Arctic Refuge to preserve its wildlife, wilderness, and other exceptional values.

#### 2.1 Refuge goals and objectives

We support the refuge goals and objectives, particularly objectives 1 and 2, and find that the plan provides good rationale supporting their inclusion to undergird refuge management. Because the Arctic Refuge purposes as well as the vision statement are so central to this discussion, we reiterate our support that the wilderness purpose extends throughout the entire refuge, as detailed for Chapter 1 and in our technical comments with Alaska Wilderness League et al.

##### 2.1.1. Goal 1: Ecological Processes

[136801.022 Refuge Vision and Goals -- Goal 1 (including objectives)] p. 2-1. We support Goal 1 with one small but important change, that the word “essentially” should be deleted. The goal should be to maintain the refuge free from the intent to alter the natural processes, with the recognition that goals may be difficult to attain. We strongly support Objective 1.1 on how Refuge Management will address this goal.

[136801.023 Refuge Vision and Goals -- Goal 1 (including objectives)] pp. 2-2 to 2-7. For Objectives 1.2 to 1.13, the Service needs to address potential partnerships with tribes and communities in or bordering the refuge, consultations with tribal governments, and how it will seek and use Traditional Ecological Knowledge by having elders and others engaged, including for scientific review panels. There also should be coordination by Arctic Refuge scientists and managers on an annual basis with the local, affected communities for scoping of research projects, solicitation of inventory, monitoring, and research topics, involvement in projects, and reporting of findings. Could projects save scarce funding, transportation fuels, and provide more local employment through these endeavors?

[136801.024 Refuge Vision and Goals -- Goal 1 (including objectives)] p. 2-2. Objective 1.2 The plan needs to address how it will coordinate with and support the efforts of the International Porcupine Caribou Management Board on monitoring and management of this herd. We suggest that a new objective is appropriate due to the international significance of the refuge’s sensitive habitats.

[136801.025 Refuge Vision and Goals -- Goal 1 (including objectives)] p. 2-3. Objective 1.3 – Applied Research. The plan fails to describe how applied research differs from Inventory and Monitoring studies, and how they will be integrated together. How will these research projects be

coordinated with other arms of the Service including Migratory Birds, Conservation Planning, Marine Mammal Management, and Fisheries?

**[136801.026 Refuge Vision and Goals -- Goal 1 (including objectives)]** p. 2-3. Objective 1.5. Climate Change and other stressors. How will this objective's projects coordinate with the Service's Arctic Landscape Conservation Cooperative, especially in its formative stage (this entity is only addressed in Objective 1.11 in the 5-8 year time frame)?

**[Preamble 136801.027, 028]** p. 2-4. Objective 1.8, Water Quality and Quantity. **[136801.027 Refuge Vision and Goals -- Goal 1 (including objectives)]** Additional water quantity surveys should be done for the Canning River, and all other Coastal Plain rivers not yet done in order to have adequate baseline data. There are development pressures adjacent to the refuge Coastal Plain's west and northern boundaries, and it is important to be able to assess any changes from adjacent development.

A shorter time frame is needed for conducting follow-up surveys for water quality data where it had been previously done. Furthermore, this objective should address the need for new or additional water quality baseline surveys, in rivers where they were not previously done, and for especially of near shore waters including lagoons, bays, and river deltas, given the fact that offshore oil drilling is proposed for sites only a few dozen miles offshore the refuge boundary in federal OCS waters, and may be closer in future years given the locations of State of Alaska and OCS leases, as well as future proposed lease sales. Furthermore, on land drilling could take place on the State of Alaska lands west of the Canning River and along the Staines River boundary and a spill from drilling, transportation, or other activities could contaminate these rivers. If there is an oil spill, does the Service have adequate water quality information to assess damages, as well as long-term impacts for these coastal waters, including designated wilderness waters in Demarcation Bay and elsewhere in the easternmost part of the refuge?

**[136801.028 Refuge Vision and Goals -- Goal 1 (including objectives)]** Is there adequate baseline water quality and quantity data for the refuge's drainages and lakes in the Yukon River drainage system?

**[136801.029 Refuge Vision and Goals -- Goal 1 (including objectives)]** p. 2-6 Objective 1.12 Land Protection Plans. These plans should include the options of conservation easements and other cooperative management planning.

**[136801.030 Refuge Vision and Goals -- Goal 1 (including objectives)]** p. 2-6. Objective 1.13. Long-term Ecological Monitoring. It is unclear how this goal will be integrated throughout the entire process of inventory and monitoring and research. How will the refuge use past data collected, including tundra bird habitat plot data from the 1980's, lagoon bird surveys, migratory bird surveys, and other monitoring in its development of the long-term ecological monitoring.

#### Sec. 2.1.2. Goal 2: Refuge Wilderness

This is an excellent goal that is central to proper management of the Arctic Refuge. However, it needs to clearly address objectives so that the part of the goal aiming to "retain its exceptional wilderness values without loss of natural condition and wild character" is met for the entire Arctic Refuge, including non-designated wilderness lands.

Because wilderness designation alone does not guarantee protection of all the Arctic's special values, and since only Congress may designate additional wilderness, the standards set in the CCP for managing both the designated and potential Wilderness will contribute to retaining the incomparable wilderness values of these pristine lands for years to come.

**[136801.031 Refuge Vision and Goals -- Goal 2 (including objectives)]** p. 2-7 to 2-11. This goal needs to clearly address objectives so that the first part of this goal is met for the entire refuge including non-designated wilderness lands: “The Refuge retains its exceptional wilderness values without loss of natural condition and wild character.” (See discussion in Chapter 1 that the Arctic National Wildlife Range’s purposes apply to the entire Arctic Refuge). All of the objectives in this section focus on management of existing designated Wilderness lands. Adding a new objective is particularly important for management of the Coastal Plain lands as they are an integral part of the original refuge established to “preserve its unique... wilderness values” and failure to address the goal here is a particularly serious oversight. While Objective 2.4 provides provisions for comprehensive wilderness management, the emphasis there seems to stress how activities on lands not yet designated wilderness may affect the designated Wilderness, and insufficiently manages for the wilderness values on all refuge lands.

**[136801.032 Refuge Vision and Goals -- Goal 2 (including objectives)]** p. 2-7 Objective 2.2 Wilderness Training. There should also be a component of this, or a separate objective, to provide public education about all the public uses that are allowed in Arctic Refuge designated wilderness, including hunting, fishing, trapping, and traditional and customary subsistence activities. This program should involve consultation with local communities and have a focus of Alaskan education.

**[136801.033 Refuge Vision and Goals -- Goal 2 (including objectives)]** p. 2-9 Objective 2.5. Administrative Facility at Peter’s Lake. We urge that consideration of removal of all the buildings (with the possibly exception of the outhouse) be undertaken by this plan. This objective should also consider removal of the buildings at Big Ram Lakes.

**[136801.034 Refuge Vision and Goals -- Goal 2 (including objectives)]** A new objective should be added to address monitoring of the character of the existing designated Wilderness coastal waters, including water quality and other resources, from harm caused by offshore spills from offshore drilling, tankers, and ships.

**[136801.035 Refuge Vision and Goals -- Goal 1 (including objectives)]** p. 2-5. Objective 1.9. Water Rights. The Service should expeditiously conduct water quantity surveys for the Canning River, including the Staines, to complete surveys for all of the Coastal Plain rivers, so that it can file the additional instream flow reservations for fish and wildlife purposes with the Alaska Department of Natural Resources.

### Sec. 2.1.3 Goal 3: Wild Rivers

This goal is stated well and supports the relevant refuge purposes.

**[136801.036 Refuge Vision and Goals -- Goal 3 (including objectives)]** p. 2-10. Objective 3.1. Please explain how the important baseline studies of the three Wild Rivers will be meshed with the Inventory and Monitoring studies called for by Objective 1.8, Climate Change studies in Objective 1.5, and long-term monitoring of Objective 1.13. How will local people be involved in logistical and providing Traditional Ecological Knowledge for the field studies?

**[136801.037 Refuge Vision and Goals -- Goal 4 (including objectives)]** Sec. 2.1.4 Goal 4: Continued Subsistence Opportunities

We support this goal, and urge greater coordination and partnership with local communities and tribal governments as part of the strategies for all objectives.

**[136801.038 Refuge Vision and Goals -- Goal 4 (including objectives)]** The goal should also address the refuge’s role in implementation of the International Porcupine Caribou Agreement’s

including that the rural residents in Alaska who have harvested Porcupine Caribou for customary and traditional uses “should participate in the conservation of the Porcupine Caribou Herd and its habitat.”

**[136801.039 Refuge Vision and Goals -- Goal 4 (including objectives)]** Objective 4.2. In addition to the RIT positions, we also urge there be a long-term goal for additional professional level staff be hired from and be stationed in the local communities.

**[136801.040 Refuge Vision and Goals -- Goal 4 (including objectives)]** This section should also address how the refuge coordinates with polar bear management, including conflict avoidance, education of visitors, and the polar bear patrols. How does the refuge coordinate with the Service’s Marine Mammal Management program? How are local people involved?

Sec. 2.1.5 Goal 5: Wildlife-dependent and wilderness-associated recreational activities. We strongly support this goal and its objectives because it embraces the wildlife and wilderness purposes of the refuge in a way that proposed to perpetuate opportunities for visitors to experience adventure, challenge, solitude, independence, and freedom with minimal interference from management.

**[136801.041 Refuge Vision and Goals -- Goal 5 (including objectives)]** Objective 5.2. There should not be signs, structures, and installations in the refuge as this would detract from the wilderness-associated recreational experiences in the refuge, and they should not be allowed under any management category in the Arctic Refuge.

**[136801.042 Refuge Vision and Goals -- Goal 5 (including objectives)]** Objective 5.3 Visitor Use Management Plan. Please do not use the Acronym (VUMP)! How about “Visitor” Plan instead for short. The plan should contain the time-line by which this plan will be accomplished.

**[136801.043 Refuge Vision and Goals -- Goal 5 (including objectives)]** This plan should also engage and consult at each step of the planning process with those knowledgeable and experienced with visiting the refuge, including commercial guides, independent travelers, hunters and fishermen, air taxi operators, local experts in the adjacent communities who travel the coasts and rivers, and conservation and environmental organizations whose members are common refuge visitors.

**[136801.044 Refuge Vision and Goals -- Goal 5 (including objectives)]** Objective 5.5 Visitor Management Coordination with Neighbors.

This objective should also include strategies for better engagement with communities that are “gateway” locations, especially Arctic Village and Kaktovik. Do they want to host a full refuge Visitor Center off refuge, on lands in their communities (more than the kiosks at the airport)? Are they interested in developing a visitor center as a means of improving sustainable economies? What are their ideas? While the facilities are listed in

While community visitor centers in gateway communities are mentioned in Objective 5.8, they are not well developed there. What is the role of the interagency Coldfoot Visitor Center? What role in Arctic Refuge education and engagement does the Alaska Public Lands Information Center, housed at the Morris Thompson Cultural and Visitor Center in Fairbanks and visited by over 100,000 people in 2010, play?<sup>33</sup>

Objective 5.8 Visitor Use Management.

See General Comments, above.

**[136801.045 Refuge Vision and Goals -- Goal 6 (including objectives)]** Sec. 2.1.6 Goal 6: Evaluation of the Effects of Climate Change We support this goal but it should be expanded to include the non-intervention policy described in the climate change Management Guidelines so that the plan is consistent in its approach.

We are pleased to see that the Service recognizes climate change as a fundamental challenge for the Arctic Refuge and is using the revision of the CCP as an opportunity to incorporate new scientific information pertaining to climate change into future management decisions.<sup>34</sup> The Service has rightly acknowledged that it is required to do so by Secretarial Orders 3226 and 3289.<sup>35</sup>

The Draft CCP states that “[i]n the foreseeable future, the Refuge will favor a policy of non-intervention, whereby natural systems are allowed to adapt and evolve, accepting that some species may be replaced by others more suited to the changing climate.”<sup>36</sup> With its huge size, diverse array of habitats and elevations, and intact, unfragmented habitats, the Arctic Refuge is in a superior position as compared to other conservation units to be managed for “natural adaptation,” or allowing nature to take its course, even in the face of the accelerated changes experienced at high latitudes. We, therefore, support climate change-related actions focused on scientific research and monitoring, sharing of traditional knowledge, and public awareness. Given the wilderness character of the Refuge, the Service should also guard against increasing other stressors, and proposals for new uses or management activities on the Refuge should be evaluated carefully with respect to potential cumulative impacts on resources potentially threatened by climate change.

Additionally, **[136801.046 Climate and Climate Change -- Cumulative Effect]** to strengthen the CCP, we recommend that the FWS include additional analysis of the impacts of climate change on wildlife and habitats to ensure robust consideration of climate change impacts on the Arctic Refuge.

**[136801.047 Refuge Vision and Goals -- Goal 6 (including objectives)]** p. 2-20. Objective 6.1 This section should also specifically address effects of climate change on polar bears and other marine mammals that depend on refuge habitats.

**[136801.048 Refuge Vision and Goals -- Goal 6 (including objectives)]** p. 2-21 Objective 6.4 Collaboration on Climate Change. We urge the Refuge to develop another objective focused on partnerships and work with local villages and tribes to involve them in not only collecting traditional ecological knowledge, but plans for integrating the people and their knowledge in an ongoing basis (TEK is not a static “thing” it is a process) for each of the other objectives in this section.

Sec. 2.1.7 Goal 7: Conduct Research and Monitoring in support of Refuge’s role as an internationally recognized benchmark for naturally functioning arctic and subarctic ecosystems. We support Goal 7 which emphasizes the aspect of the scientific benchmark the refuge provides for intact, unbroken ecosystems and its circumpolar value as a naturally functioning, diverse, protected array of Arctic and subarctic ecosystems. All research and scientific techniques must be carefully evaluated so that this work does not affect its aspects as a wilderness control.

**I[136801.049 Refuge Vision and Goals -- Goal 7 (including objectives)]** n general, the objectives need to better provide the coordination mechanism between projects described here as well as listed as inventory and monitoring and research under other objectives, including those done by the refuge staff itself, other arms of the Service, other federal agencies, cooperators, collaborators, tribes, local communities, and others.

We suggest that an additional objective is needed to create a more robust and transparent coordination plan for the Arctic Refuge with its other Service offices and branches, to address overlapping outreach, inventory, monitoring, and research functions that support Management goals. These sister offices include: Refuges, Conservation Planning—in its implementation of the Fish & Wildlife Coordination Act and other laws to uphold FWS trust resource values, Endangered Species Act consultations and other responsibilities, Marine Mammals Management for polar bears regarding critical habitat, incidental take/incidental harassment authorizations, etc, along with Fisheries and Realty, as well as the adjacent Yukon Flats Refuge. Doing so would optimize opportunities to advocate in multiple arenas with other stakeholders including to address threats from beyond the refuge boundary including offshore oil exploration and development that would affect the integrity of the Refuge and its purposes.

#### **[136801.050 Refuge Management Policies/Guidelines -- Human Safety & Management Emergencies]**

Further, as the response to the BP Deepwater Horizon Gulf of Mexico disaster demonstrated because the shorelines or fish and wildlife resources of dozens of National Wildlife Refuges were oiled, proactive Refuge-related efforts by the Service are also prudent in these areas to preserve the pristine qualities of the Refuge:

- \* Designations of environmentally-sensitive areas for the entire Refuge coastline.
- \* Involvement in spill contingency planning.
- \* Protecting clean air through Clean Air Act permits for nearby oil drilling.
- \* Protecting the Refuge's anadromous fish migrations and their nearshore habitats from changes caused by ports, docks, or dredging offshore.
- \* FWS obtaining its own means of doing oil spill trajectory modeling.

#### **p. 2-22 Objective 7.1 Encouraging Scientific Research by Cooperators**

**[136801.051 Refuge Vision and Goals -- Goal 7 (including objectives)]** We strongly urge that any data collected in the refuge be provided to the refuge as a public record as a condition of the special use permitting or partnership agreements for cooperators, collaborators, etc.

We strongly encourage an annual meeting and presentation by scientists involved in refuge projects to present their project goals prior to field work, and to report back their results in Fairbanks, and presentations to the local communities including through the schools. We encourage a mechanism for coordination so that there is not duplication in research projects, aircraft support, and needless intrusive impacts. We also urge scientists to consider local hiring to the extent feasible, and to integrate and consider traditional ecological knowledge as a consideration of projects, especially early in new endeavors.

**[136801.052 Refuge Vision and Goals -- Goal 7 (including objectives)]** p. 2-23 Objective 7.3 International Treaties and Agreements. Because upholding obligations of international treaties is one of the specific purposes of the refuge, this section should have objectives spelled out for each major treaty and agreement describing how the refuge and Service's other offices work to further its work implementing these treaties, particularly habitat protection obligations. Work related to the Agreement on the Conservation of Polar Bears should be included in this section.

**[136801.053 Refuge Vision and Goals -- Goal 7 (including objectives)]** p. 2-23. Baseline Water Quality Study. We urge that this project be started sooner due to the presence of many planned exploration and development projects outside the refuge that could affect the water quality of

refuge lakes, ponds, wetlands, rivers and coastal lagoon waters due to air borne pollutants and spills.

**[136801.054 Refuge Vision and Goals -- Goal 8 (including objectives)] Sec. 2.1.8 Goal 8 Cultural Resources**

This is an important goal for the refuge given its subsistence purpose, and we urge consultation and incorporation of traditional knowledge, tribes, and local communities in all objectives.

**Sec. 2.1.9. Goal 9: Refuge Information to Diverse audiences.**

Providing Refuge information to diverse audiences near and far is an important goal, including to further understanding of the national interest of upholding the refuge's wilderness and wildlife purposes for these conservation lands.

**Sec. 2.2 Overview of Management Policy and Guidelines**

p. 2-31. We agree that the Arctic Refuge is unique and with the appropriateness of this description regarding management policies: "direction for Arctic Refuge varies more than other comprehensive conservation plans. Because the Service intends to manage Arctic Refuge at the far end of the unaltered spectrum, the Refuge plan calls for a more hands-off approach to management and allows less manipulations of the environment than other refuge plans."

**Sec. 2.3 Management Categories**

The plan provides good rationale and supporting evidence that Minimal Management, Wilderness, and Wild and Scenic River are the only categories that are appropriate and compatible with the refuge purposes. We address further comments on this topic later in our discussion for Sec. 2.5 Management Categories Table and the State USFWS template and Table 2-1.

**[136801.055 Management Categories -- General]** p. 2-31. This plan should not include categories from its "statewide management template" that are not suitable management categories or list activities that are not appropriate Refuge uses in the Arctic Refuge (DEIS at 2-31 to 2-32 and Table 2-1). Although lands in other Alaskan refuges fall into five categories, only those categories applicable to the Arctic Refuge should be included in this CCP: Minimal, Wilderness, and Wild River. Therefore, Sec. 2.3.1 Intensive Management (DEIS p. 2-31) and Sec. 2.3.2 Moderate Management (DEIS p. 2-32) should be removed from the final CCP.

Due to the Arctic Refuge's Special Values, purposes? particularly its unique wilderness purpose?, and goals, it is inappropriate for this plan to include the Intensive and Moderate Management categories at all. They should not "be available should the plan be amended in the future to include either of these management categories" (DEIS at 2-31) because the categories contain activities that are incompatible with the fundamental purposes of the Arctic Refuge. This contingency for possible plan amendments does not establish clear and predictable policies in this CCP which have been subject to full review, and inclusion of the Moderate and Intensive Categories sets an expectation that incompatible activities may be allowed in the future.

**[136801.056 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]**

These incompatible, harmful activities as listed in Table 2-1 should be clearly not allowed in any Arctic Refuge Management Category: public access via highway vehicles, off-road (all-terrain vehicles like air boars and air-cushion vehicles), helicopters, all weather roads, unimproved roads, designated Off-Road Vehicle Routes and Areas for public use and recreation, roadside exhibits and waysides, constructed and maintained airstrips, docks, visitor contact facilities on refuge lands, developed campgrounds, construction of bunkhouses, construction of aircraft hangers, sale of sand and gravel. Therefore, those activities should be listed as "not allow," and we recommend

that the Intensive and Moderate Management categories should be removed from this CCP, including from Table 2-1.

**[136801.057 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** The Administration Sites and Visitor Facilities management guidelines and text should be modified to prohibit construction of any new buildings in the refuge.

**[136801.058 Transportation and Access -- Mode of Transportation]** The management guideline prohibiting helicopter landing for recreation is excellent, and not only correctly interprets the aircraft access provisions in ANILCA with respect to recreation but will help avoid future conflicts that could arise as cruise ships and other vessels ply the Beaufort Sea more frequently due to sea ice loss from climate change. However, specific criteria regarding agency use of helicopters, including limits, should be specified.

**S[136801.059 Management Categories -- Special Management Areas]** ec. 2.3.6.2 Alaska Native Claims Settlement Act Section 22(g) p. 2-36. This section is incomplete regarding the role of the Fish & Wildlife Service to implement ANCSA Sec. 22(g) and the nature of commercial activities that can occur on Arctic Slope Regional Corporation and Kaktovik Inupiat Corporation lands. The facts regarding the prohibition on oil and gas development that applies to these lands should be included.

ASRC's lands are subject to specific legal restrictions, namely the laws governing the Arctic Refuge and its purposes and the prohibition on oil and gas development. The "Chandler Lake Exchange" (August 9, 1983 Agreement between ASRC and Interior Secretary James Watt) gave subsurface lands for 92,000 acres within the Arctic National Wildlife Refuge to the Arctic Slope Regional Corporation despite the fact that ANCSA prohibited Regional Corporations from making selections in National Wildlife Refuges. However, the exchange agreement states that oil and gas leasing, development and production on these lands is prohibited unless Congress opens them. Additionally, ASRC currently does not have, and never had, a reasonable expectation that it could produce oil and gas from its speculative (restricted title) subsurface interests.

## Sec. 2.4 Management Policies and Guidelines

### Section 2.4.1 Introduction

**[136801.060 Refuge Management Policies/Guidelines -- General]** p. 2-37. The Wilderness Act should also be listed in this section due to its important management policies and guidelines within the refuge.

**[136801.061 Refuge management policies/guidelines -- Land Exchanges]** Sec. 2.4.3 Land Exchanges and Acquisitions

P. 2-37. We recommend that this section add descriptions of past major land exchanges due to their great controversy. Please also consider the information we provided in our technical scoping comments, Alaska Wilderness League et al., June 7, 2010 regarding past exchanges including those that were not completed due to controversy, to enable greater public understanding of the status of the ASRC lands within the refuge. The General Accounting Office concluded the Chandler Lake Exchange was not in the public's best interest.<sup>37</sup> ASRC has already obtained over \$39 million from its speculative oil lease options held by Chevron and BP – more than seven times the value of the Chandler Lake lands ASRC traded (\$5.1 million).<sup>38</sup> GAO said, "Interior used its broad authority to avoid procedural requirements otherwise applicable to land exchanges, such as full public review, preparation of environmental impact statements, and disclosure of the fair market value of the land and interest exchanged."

Congress held major oversight hearings concerning the Chandler Lake Exchange and another

failed proposal, the “Megatrade,” and then, in 1988, Congress halted further land exchanges, without Congressional approval, involving the coastal plain of the Arctic National Wildlife Refuge with an ANILCA amendment (Section 201 of PL 100-395; ANILCA Section 1302(h)(2)). This major constraint regarding future land exchanges in the ANILCA amendment should be mentioned in the CCP.

**[136801.062 Refuge management policies/guidelines -- Land Exchanges] Sec. 2.4.4 Land Protection Plans**

p. 2-38. We recommend that specific consideration of acquisition of conservation easements be mentioned as an alternative.

**[136801.063 Refuge Management Policies/Guidelines -- Appropriate Refuge Use] Sec. 2.4.5 Appropriate Refuge Uses**

p. 2-40. We have concerns about some of the existing and proposed activities that the CCP lists as Appropriate Uses and for which compatibility determinations were drafted for public review in Appx G.

**[136801.064 Refuge Management Policies/Guidelines -- Cooperation and Coordination with Others]**

p. 2-40. State of Alaska Management Activities. We reiterate the concerns we raised on these issues earlier in Sec. 1.3.3 (DEIS p. 1-10) that the Service must state in the Final CCP that Refuge purposes and wilderness values are dominant over conflicting goals of the State of Alaska, and that these purposes and values thus preempt Alaska Fish and Game and Board of Game rules when necessary.

The State of Alaska manages game populations according to the Intensive Management (“IM”) statute, which manages game for high levels of human harvest.<sup>39</sup> The IM statute is patently inconsistent with the Service’s mission and federal law, as well as the purposes of the Arctic Refuge — which includes the conservation of “fish and wildlife populations and habitats in their natural diversity.”<sup>40</sup> Thus, intensive management is inappropriate in the Arctic Refuge. To ensure clarity to and to dissuade any attempts by the State of Alaska to pursue IM programs on Refuge lands, the CCP should explicitly preclude artificial manipulation or intensive management of wildlife populations to enhance game populations for human harvest.

**[136801.065 Refuge Management Policies/Guidelines -- Cooperation and Coordination with Others]** We are concerned about the draft compatibility determination contained in Appendix G pertaining to State of Alaska Management Activities (DEIS p. G-5) and General Hunting (DEIS p. G-80) due to the complexity of overlapping management regimes and the state’s different legal mandates from those of this unit of National Wildlife Refuge System.

We support the Service’s statement that these management activities not be included in this blanket compatibility determination because they are contrary to the ANILCA’s purpose for the Refuge: “to conserve fish and wildlife populations and habitats in their natural diversity”<sup>41</sup>: “This compatibility determination does not address predator management, fish and wildlife control (with the exception of animals taken in defense of life or property), reintroduction of species, native fish introductions, non-native species introductions, non-native species management, pest management, disease prevention and control, fishery restoration, fishery enhancement, construction of facilities, or any other unpermitted activity that could alter ecosystems in the Refuge. Separate compatibility determinations addressing specific proposals will be required for those activities.”

However, the Service need not and should not initiate a compatibility determination or NEPA process to evaluate incompatible State-sponsored management, including implementation of its intensive management goals in Arctic Refuge.

The Service needs to provide full information about the state's activities for management, monitoring, research, hunting regulations, law enforcement, etc. in the CCP in order to provide a comprehensive assessment of all the activities that are done within the refuge, including within its designated wilderness. We are concerned about the lack of specificity and lack of analysis for a whole range of activities not being subject to a compatibility determination, as mentioned here:

“All management and research activities conducted by ADFG under a specific cooperative agreement with the Service to fulfill one or more purposes of the Refuge or the Refuge System mission are not subject to a compatibility determination.”

It appears that an inappropriate grandfathering of the State of Alaska's management and research activities within the refuge is being done based on reliance of the 1982 MOU between the Service and ADF&G (DEIS at G-6):

“A compatibility determination is not required for State activities on lands in the Refuge where a pre-established agreement or memorandum of understanding is in place. Refuge staff will monitor State activities in the Refuge. Findings from these monitoring efforts will be used to determine what additional management actions, if any, would be needed to ensure State activities remain compatible with Refuge purposes and in compliance with established agreements.”

Therefore, we recommend that all State of Alaska management and research activities be addressed specifically in the DEIS, including their geographic extent, frequency, and how they intersect with the Service's own management and research programs. Furthermore, they should be considered along with other permitted inventory, monitoring, and research programs by other agencies or Universities so that a comprehensive assessment of these activities as they support wildlife management decisions can be made.

**[136801.066 Refuge Management Policies/Guidelines -- Compatibility Determinations (includes Appendix G)]** p. 2-40. Commercial Shore-fast Sea Ice Access. Further review is needed for the activity (pp. G-57 to G-63) and that a far narrower description of the activity allowed is needed in order that it could be considered an appropriate use.

There is insufficient information and analysis in the DEIS about the existing activity for commercial sea-fast sea ice access upon which to base this draft Compatibility Determination, including types of vehicles deployed, frequency, exact geographic scope, number and timing of trips, past history of activities including any spills, and other factors.

The DEIS fails to include any description or environmental analysis of this Commercial Use activity except in this draft Compatibility Determination. It does not include any description of this type of transportation activity in the Affected Environment section on transportation (Sec. 4.4.2), or Kaktovik (p. 4-136), nor was any analysis provided in the Environmental Consequences section.

While this access may be necessary to support delivery of goods to the local community, in addition to aircraft and barge deliveries, the draft compatibility determination as written does not confine it to those activities. The draft Compatibility Determination needs to narrow its provisions to ensure that is not used for activities that are prohibited in the refuge, including any industrial activities such as support for offshore oil and gas exploration or development.

This activity would be occurring on sea ice in designated Critical Habitat for polar bears at a time when bears are denning, and therefore environmental impact analysis of this activity in the DEIS is necessary because it could result in pollution and disturbance of this habitat within the refuge. Although the draft Compatibility Determination states that Endangered Species Act Section 7 and Marine Mammal Protection Act consultations will be required, they are not contained within this DEIS, and therefore, the draft Compatibility Determination should not be approved without incorporation of such analysis within the EIS.

Does this commercial access include travel sea ice within designated Wilderness in the eastern coast of the Refuge adjacent to Canada? How is climate change affecting the reliability of sea ice travel? How often do these haulers end up travelling on land? How often has this been due to emergency conditions when there is open water? How often are these vehicles hauling fuel?

Finally, we recommend that if this activity is found to be appropriate, that any permits should clearly prohibit travel on land, including barrier islands, and require live GPS data of the routes from the vehicles so that their routes during the trip may be accurately tracked to minimize impacts and to ensure compliance on a real-time basis.

#### **[136801.067 Refuge Management Policies/Guidelines -- Coastal Zone Consistency] Sec. 2.4.8. Coastal Zone Consistency**

p. 2-42. The CCP needs to address the fact that the Alaska Coastal Management Program ended in 2011 in this section, and it is suggested that this section instead be entitled Coastal Zone Management to address how the federal government plans to manage the coastal zone and whether there are other applicable tools of the federal Coastal Zone Management Act. The final EIS should also describe the impacts loss of this program, including its coordination and cooperation functions, and the program's enforceable standards may have on the Arctic Refuge fish, wildlife, subsistence, recreation, and wilderness values.

We are concerned because there is no longer the ACMP mechanism for community standards and review of activities resulting from the state's Beaufort Sea Area-wide Leasing Program in the 3-mile zone immediately offshore the refuge and on State lands along refuge's western boundary. There will be less scrutiny and lack of comprehensive mechanism for public review and comment due to the absence of this program regarding impacts from oil and gas activities on refuge fish and wildlife resources that rely on those nearshore waters, and noise, spills, and other impacts that can degrade and harm refuge habitats, wildlife, subsistence resources and uses, wild lands recreation, and wilderness values.

#### **[136801.068 Consultation and Coordination -- State Coordination] Sec. 2.4.9 Cooperation and Coordination with others**

##### **Sec. 2.4.9.1 Federal, State, and Local Governments**

p. 2-45 Please also address our concerns about the MOU with the Alaska Department of Fish and Game in this section, as well, that we provided above, for DEIS p. 2-40, State of Alaska Management Activities. The 1982 MOU is clearly outdated for a variety of reasons, and particularly with respect to application to the Arctic Refuge.

#### **[136801.069 Refuge Management Policies/Guidelines -- Cooperation and Coordination with Others] Sec. 2.4.9.6 Other Constituencies**

Conservation and environmental organizations should be listed as constituencies, and particularly regional Alaskan organizations such as ours. We are concerned that we were not considered stakeholders when the Refuge circulated the Wild and Scenic Rivers Review draft Eligibility

Report in November, 2010, nor were we acknowledged in the CCP's Wild and Scenic River Review list of stakeholders in the CCP.

**[136801.070 Refuge Management Policies/Guidelines -- Ecosystem and Landscape Management]** Sec. 2.4.10 Ecosystem and Landscape Management

This section should also address the other components of the ecosystem management approach, including an ecological context to the area's wildlife and wilderness that includes natural and evolutionary processes, various behavioral characteristics, and interactions between species and their environment as was set in the executive order establishing the Refuge and reinforced by ANILCA's goal to conserve wildlife in "their natural diversity."

**[136801.071 Refuge Management Policies/Guidelines -- Ecosystem and Landscape Management]** Furthermore, the whole Arctic Refuge clearly must also have a clear management goal of maintaining intact habitat and ecosystem diversity at the landscape scale to achieve the purposes of its establishment. Ecosystem management must address the connections throughout the refuge from north to south and east to west of the migratory routes and use by fish and wildlife, recreational and subsistence users that depend on intact ecosystems, and the watersheds and river basins that may be separated by the Continental Divide or national boundaries that perform vital functions in total. For example, while the Arctic Landscape Conservation Cooperative (LCC) addresses the broader North Slope context, it is not sufficient to address all climate change impacts and partnerships appropriate for the whole Arctic Refuge, since the lands south of the Continental Divide fall within the Northwestern Interior Forest LCC.

The Porcupine Caribou Herd is clearly already an indicator species, and the mandates of the U.S. Fish and Wildlife to implement its obligations under the International Porcupine Caribou Agreement and through its Technical Board to protect the herd's sensitive habitats should be included here.

Consultation with those with local and traditional knowledge should also be an important part of the peer-review process.

**[136801.072 Air Quality -- Baseline Conditions]** Sec. 2.4.10.2 Air Quality

p. 2-47. Class I air quality classification should be sought at least for the designated Wilderness of the Arctic Refuge. What consultations with the Service's Air Quality Branch have been made in the past 22 years since the last CCP in 1988?

**[136801.073 Visual Resources -- General]** Sec. 2.4.10.4. Visual Resource Management.

p. 2-49. This section should be re-worded as the term "minimize the visual impacts of Refuge development" is overbroad and implies inappropriate commercial activities may take place and which that are incompatible with Refuge purposes. We have recommended elsewhere in these comments that there should be no new construction for Administration sites and visitor facilities. What other sites are to be addressed here? The refuge should also seek to avoid, as well as minimize, deterioration of visual resources from activities occurring off Refuge lands and also for lands within Refuge boundaries subject to ANCSA 22(g).

Sec. 2.4.11.1 Habitat Management

p. 2-50. This section has a well-written description of the management approach to meet the refuge goals, including the "the intent of management will be to leave habitats unaltered and unmanipulated. Natural habitat will not modified or improved to favor one species over another."

#### Sec. 2.4.12 Fish and Wildlife Population Management

p. 2-52. This section contains well-written descriptions of the management approach to meet the refuge goals, including that the “Refuge focuses on enabling the natural behavior, interactions, and cycles of all native species to continue, with little or no human intervention and manipulation.”

#### **[136801.074 Fire and Fire Management -- General] Sec. 2.4.11.2 Fire Management**

p. 2-50. Fire Management Plans should also include considerations of climate change as a factor in fire behavior, air quality, habitat qualities and diversity, and effects on local communities and landowners.

#### **[136801.075 Refuge Management Policies/Guidelines -- Fish and Wildlife Population Management] Sec. 2.4.12.2 Scientific Peer Review**

p. 2-53. This section should also address the process by which the Service will seek local and traditional knowledge, including traditional ecological and cultural knowledge, as part of the process of scientific investigations on the refuge and its resources. This expertise is significant and essential for policy and management actions, and the research and monitoring upon which they are based.

#### **[136801.076 Refuge Management Policies/Guidelines -- Public Access and Transportation Management] Sec. 2.4.14.2 Off-road Vehicles.**

p. 2-59. The reference to Intensive and Moderate Management should be deleted in this section.

#### **[136801.077 Refuge Management Policies/Guidelines -- Public Access and Transportation Management] Sec. 2.4.14.3 Helicopters.**

p. 2-59. This section, and the management guidelines including Table 2-1, prohibiting helicopter landing for recreation is excellent, and not only correctly interprets the aircraft access provisions in ANILCA with respect to recreation but will help avoid future conflicts that could arise as cruise ships and other vessels ply the Beaufort Sea more frequently due to sea ice loss from climate change. However, specific criteria regarding agency use of helicopters, including limits, should be specified.

#### **[136801.078 Refuge Management Policies/Guidelines -- Public Access and Transportation Management] Sec. 2.4.14.4 Access to Inholdings**

p. 2-60. The ANILCA Citizen’s Guide notes further Congressional intent for protection of Refuge lands during this process: “Although Congress intended to ensure access to inholdings, it also intended that such access would not damage conservation lands and the resources for which those lands were protection. As the Senate report accompanying an early version of ANILCA states, ‘In this regard, the Committee expects the Secretary to regulate such access in order to protect the natural and other values for which the units were established,’ (S. Rep. 96-413, p. 249).42

#### **[136801.079 Refuge Management Policies/Guidelines -- Public Access and Transportation Management] Sec. 2.4.14.7. Transportation and Utility Systems**

p. 2-61. Para 2. Sentence 1. A TUS, as defined in ANILCA... only refers to related structures and facilities “minimally necessary” and so the term “reasonably and” should be deleted.

**[136801.080 Refuge Management Policies/Guidelines -- Public Access and Transportation Management]** p. 2-61. Para 3, Sentence 1. Correct the first sentence so that it accurately reflects the requirements of ANILCA and instead reads, “The Service will make a decision whether to approve or disapprove a right-of-way...”

**[136801.081 Refuge Management Policies/Guidelines -- Public Access and Transportation Management]** p. 2-61. Para 4. This section fails to acknowledge that ANILCA Title XI constrains rights-of-ways across conservation system units, requiring that transportation and utility systems be compatible with the purposes for which the units were established.<sup>43</sup>

p. 2-61. **[136801.082 Refuge Management Policies/Guidelines -- Public Access and Transportation Management]** Para 4, Sentence 1. This sentence and entire section gives an incomplete portrayal of requirements for approval or disapproval of a transportation or utility system as contained in ANILCA Title XI, and fails to adequately reflect the need for consideration of whether it would be compatible with the purposes of the Refuge and alternatives routes and modes of access. At a minimum it should include all of the other criteria contained in ANILCA Sec. 1104(g)(2) and Sec. 1105.

It is important to note that in addition to analysis required by the National Environmental Policy Act, the agencies must make detailed findings, supported by substantial evidence, in its consideration whether to approve or disapprove any of its authorizations according to ANILCA Sec. 1104(g)(2), among them, “the need for, and economic feasibility of the transportation or utility system; alternative routes and modes of access (emphasis added), including a determination with respect to whether there is any economically feasible and prudent alternative to the routing of the system through or within a conservation system unit....; short-and long-term social, economic, and environmental impacts of national, State, or local significance, including impacts on fish and wildlife and their habitat, and on rural, traditional lifestyles....; any impacts that would affect the purposes for which the Federal unit or area concerned was established....”

#### Sec. 2.4.14.9. State RS2477 Rights-of-Way Claims

We agree with the Service that the identification of RS 2477 rights-of-way by the State of Alaska does not automatically establish their validity; rather, such claimed rights-of-way are not valid until they have been determined to be so through a legitimate process applying the proper standards – either through demonstration that these rights were perfected prior to the enactment of the Federal Land Policy and Management Act of 1976, or more likely through an appropriate judicial process. Under no circumstances do we think that section line easements may be legitimate RS 2477 rights-of-way. We appreciate the Service’s disclosure of the States assertions regarding RS2477.

#### **[136801.083 Refuge Management Policies/Guidelines -- Recreation and Other Public Use]**

##### Sec. 2.4.15 Recreation and Other Public Use

pp. 2-63 to 2-64. The Service provided strong rationale in Sec. 1.4.1.3 Recreation Purpose, see DEIS at 1-17, that the Arctic Refuge’s wilderness purpose “was intended to offer a special kind of recreation, an authentic wildlands experience of a type increasingly hard to find elsewhere.” We support the policy to encourage self-reliance, and preservation of opportunities for adventure, discovery, and the experience of solitude and isolation. The Final CCP should strengthen this part of the Management Guidelines by referencing the Special Values of the Arctic Refuge as a justification for this important approach to recreation and public uses in the Refuge.

#### **[136801.084 Refuge Management Policies/Guidelines -- Public Access and Transportation Management]** Sec. 2.4.16 Public Use Facilities

p. 2-64 This section and the management guidelines for Administration Sites and Visitor Facilities should be modified to prohibit construction of any new buildings for administration, recreational, or commercial use facilities in the Refuge because they are incompatible with the wilderness

purpose of the refuge as well as its recreational purpose to support unique type of recreational experience.

**[136801.085 Refuge Management Policies/Guidelines -- Public Access and Transportation Management]** Sec. 2.4.16.2 Temporary Facilities for the Taking of Fish and Wildlife p. 2-65. How does this apply to commercial hunting and fishing guides?

**[136801.086 Refuge Management Policies/Guidelines -- Public Access and Transportation Management]** p. 2-65. This section does not make clear if this is intended to also apply to subsistence activities. It should not. The apparent new requirement for subsistence users to be required to obtain a special use permit and potentially have to pay a fee for temporary facilities that are in place from one year to the next, including tent frames, caches, smokehouses, and other temporary facilities in designated Wilderness is unnecessary, burdensome, and should be dropped from the final CCP. The CCP fails to provide justification for this new requirement, to provide any social, cultural or environmental analysis of the proposal, and poorly communicated this confusing change in the written document as well as in public meetings in the communities.

Sec. 2.4.18.2 Mineral Exploration and Development

p. 2-66 to 2-67. The oil and gas leasing, exploration, development, and production prohibitions for the Refuge are described in this section and in Appendix D, Issues Considered but Eliminated from Further Study.

**[136801.087 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** FWS appropriately states that no exploration activities (including seismic surveys, surface geology studies, subsurface core sampling, and other geophysical surveys), are allowed on the “1002” Coastal Plain area of the Arctic Refuge, DEIS at 2-66 to 2-67; that no Arctic Refuge oil or gas leasing is permitted by law, DEIS at 2-67; and that no oil and gas support facilities are allowed on the Coastal Plain of the Arctic Refuge. Id. Additionally, the text should also clearly state that oil and gas leasing, exploration, and development are prohibited throughout the refuge. Additionally, it is incompatible with the purposes of the Refuge. For additional clarity, the prohibition of oil and gas support facilities on the Coastal Plain, including from offshore development, could be added to Table 2-1 (Pp. 2-89, 90). Further, **[136801.088 Alternatives - Issues Considered but Eliminated -- Other Issues]** the last clause in footnote 2 to Table D-1 (DEIS at D-19) should be changed to state “issue is one of policy or law” as the current language suggests that there may be more discretion than actually exists on these issues.

**[136801.089 Alternatives - Issues Considered but Eliminated -- Oil and Gas Development]** The final CCP should acknowledge and support the continuation of the existing prohibitions on oil and gas, leasing, development, and production of KIC and ASRC lands. Because all of these points are based in law, see e.g., ANILCA Section 1003, these prohibitions cannot be changed. Further, Section D.6.3 should characterize the types of private lands that exist inside the Arctic Refuge boundary, and explicitly note the ANCSA Section 22g authority that the FWS has to influence activities on those lands.

**[136801.090 Refuge Management Policies/Guidelines -- Minerals Management]** p. 2-67. The extraction of sand and gravel for commercial purposes is precluded in the Arctic Refuge. See e.g., Arctic Refuge CCP (1988) at Table 10, p. 183 (prohibition on removal of sand and gravel for commercial purposes). This should be made clear in the final CCP, and the language in the current Draft CCP suggesting otherwise is unnecessary and thus should be removed or qualified, as it is irrelevant to the Arctic Refuge where Intensive and Moderate Management Categories do not

exist. Compare DEIS at 2-67 (3rd full paragraph) with Table 2-1 (clearly showing that Moderate and Intensive Management Categories do not apply to the Arctic Refuge).

**[136801.091 Refuge Management Policies/Guidelines -- Minerals Management]** p. 2-67. The section Other Mineral Leasing needs to clearly state that the Arctic Refuge is withdrawn from the mineral leasing laws and that hardrock leasing and mining is prohibited (DEIS at 2-67).

**[Preamble 136801.092, 093]** Sec. 2.4.18.3 Commercial Fishing and Related Facilities

**[136801.092 Refuge Management Policies/Guidelines -- Commercial Uses (non-recreation)]** p. 2-67. This section should the North Pacific Fisheries Management Council's 2009 establishment of a moratoria on commercial fishing from the Bering Strait north encompassing the Chukchi Sea and the Beaufort Sea to the Maritime Boundary with Canada as a precautionary measure in light of climate change. **[136801.093 Refuge Management Policies/Guidelines -- Commercial Uses (non-recreation)]** The discussion of support facilities for aquaculture and mariculture should be deleted because Intensive Management is not a compatible category for the Arctic Refuge, as discussed above. Furthermore, these activities are not present anywhere on the Beaufort Sea coast.

Sec. 2.4.18.7 Other Commercial Uses

**[136801.094 Refuge Management Policies/Guidelines -- Commercial Uses (non-recreation)]** p. 2-69. This section should be corrected because these activities are incompatible with the refuge purposes; instead of saying that these are "generally... not allowed," should instead state that grazing, agriculture, and hydroelectric power development will be prohibited. Because Moderate and Intensive Management categories are not present or appropriate on the Arctic Refuge there should be no exceptions; the CCP should be corrected by deletion of the second and third sentences in this section.

**[136801.095 Refuge Management Policies/Guidelines -- Environmental Contaminants ID and Cleanup]** Sec. 2.4.19 Environmental Contaminants Identification and Cleanup p. 2-69.

This section should describe existing, known contaminated sites including those on the Alaska Department of Environmental Conservation database and Formerly Used Defense Sites, for lands within the refuge boundary as well as on adjacent lands and waters. Information about spills and all contaminated sites, including those where cleanups were done should be provided.

**[136801.096 Refuge Infrastructure and Administration -- Administrative Sites]** Sec. 2.4.21.1 Administration Sites and Visitor Facilities

p. 2-71. This section should be modified to prohibit construction of any new buildings for administration, recreational, or commercial use facilities in the Refuge because they are incompatible with the wilderness purpose of the refuge as well as its recreational purpose to support unique type of recreational experience. New permanent Administrative Facilities should not be built on Refuge lands as they are unnecessary and incompatible with the Refuge purposes. Furthermore, per ANILCA Section 1306(a)(2), there is ample opportunity to provide any necessary administrative sites or visitor facilities on adjacent Native lands, preferably within communities if they desire to host the facilities.

**[136801.097 Refuge Management Policies/Guidelines -- Minerals Management]**  
Sec. 2.4.22 Alaska Mineral Resource Assessment Program

p. 2-72. Sentence 2. This sentence fails to fully reflect ANILCA's requirements described by Sec. 1010(b) (2) that the Service must ensure that activities must be compatible with the purposes for which the unit was established.

[Preamble 136801.098, 099, 100, 101] Sec. 2.5 Management Categories Table and the State USFWS template p. 2-73 to 2-92. We are encouraged that for the most part activities are managed consistently in both the Wilderness and Minimal Management categories. We also provided additional comment on this topic for pp. 2-36, Sec. 2.3 Management Categories.

We have three concerns, however, with the overall approach of this template. **[136801.098 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** First, it includes categories that are not appropriate for the Arctic Refuge (Moderate and Intensive). Second, **[136801.099 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** this CCP should not weaken or make less restrictive the CCP guidelines or policies compared to the existing conditions (see Table 3-2), especially without full analysis of the nature of the need for change and analysis of environmental impact of the activities. Third, **[136801.100 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** there needs to be far better analysis of whether it is appropriate for any “exceptions” listed that may be granted; in many cases the text fails to identify the criteria by which such decisions would be made, whether there is public review and comment prior to the decisions and what process exists to provide transparency in management; there needs to be full NEPA review and Refuge compatibility determinations made if “exceptions” are considered.

Regarding our concern (1), **[136801.101 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** this plan should not include categories that are not suitable management categories or list activities that are not appropriate Refuge uses in the Arctic Refuge (Table 2-1). Although lands in other Alaskan refuges fall into five categories, only those categories applicable to the Arctic Refuge should be included in this CCP: Minimal, Wilderness, and Wild River. Therefore, due to the purposes, vision, and goals of the Arctic Refuge, the columns on Table 2-1 for Intensive Management and Moderate Management and all activities covered by gray shading –which FWS acknowledges do not apply to the refuge? should be removed from Table 2-1 in the final CCP.

**[136801.102 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** We are particularly concerned about these areas where the new CCP provides less protective management direction than the existing situation (1988 CCP) and we recommend improvement so that the new CCP does not worsen management or create new loopholes: Research and Management Facilities: Fish Weirs – these should continue to not be allowed in Wild Rivers; many of the Habitat Management categories may have been weakened but due to the “exceptions” language it is hard to tell; Motorized Transportation: Snowmobiles – it appears that the requirement for adequate snow cover, subject to reasonable regulation, has been weakened (its confusing). While the section on helicopters clearly has improved with a clearly stated prohibition on recreational access, there needs to be a clear prohibition as well for access in support of commercial operations.

Regarding access concerns, we strongly support that recreational Off-Road-Vehicles (ORV's) and commercial helicopter air-taxi's are not allowed in Wilderness, Wild River or Minimal management categories.

**[136801.103 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** Congress, through section 602 of ANILCA, designated as Wild Rivers portions of the Ivishak, upper Sheenjek, and Wind rivers within the boundaries of the Arctic Refuge. To further its responsibilities under the Refuge Administration Act and the Wild and Scenic River Act, the FWS should more fully describe its management approach to these Wild Rivers. In the CCP, management of the Refuge's Wild Rivers is included in the Management

Categories Table, DEIS at 2-73-2-92, and discussed briefly, DEIS at 2-35. While we note that FWS indicates that it will formulate a Comprehensive River Management Plan for the Refuge's designated Wild Rivers as a future step-down plan, DEIS at 6-3, we strongly encourage FWS to more fully discuss the current management regimes for these rivers in the final CCP, as well as describe any detailed measure available to FWS to ensure their continued integrity as Wild Rivers into the future. In this manner, the FWS can assure the preservation of the outstanding values associated with the Refuge's three Wild Rivers.

## Chapter 3: Issues and Alternatives

### Sec. 3.1.1.1 Wilderness

**[136801.104 NEPA Process -- Scoping]** p. 3-1. The plan should report that a strong majority of the public comments submitted during the scoping process supported more Wilderness to be designated in the Refuge, and supported recommended Wilderness for the Coastal Plain. The Summary of Comments here and in the Scoping Report in Appendix J presented the comments as if there was not overwhelming public support for more Wilderness in the Refuge, and that it was particularly needed for the Coastal Plain.

**[136801.105 NEPA Process -- Scoping]** The "Representative Comments" did not represent all the concerns and justification that the public provided for why more Wilderness is needed in the Arctic Refuge nor the full range of wilderness values; see the Northern Alaska Environmental Center and Alaska Wilderness League et al. scoping letters dated June 7, 2011.

We are concerned that the "he said, she said" type portrayal does not reflect that actual nature of most public comment. Representative" The final EIS should correct this misrepresentation and provide additional eloquent statements from the public in support of Wilderness and describing the unique range of wilderness values the Arctic Refuge provides.

**[136801.106 NEPA Process -- DEIS Comment Period]** We provide information about the deficiencies in the analysis of scoping public comments in the section on Appendix D. **[136801.107 NEPA Process -- DEIS Comment Period]** We urge that the Draft CCP DEIS the entire public hearing record and all substantive and unique public comments be provided to the public as a published Appendix. This will be not only a valuable informative document but also provides information that may be compared and contrasted 15 years from now. It was very valuable to our organization to be able to read past comments on the CCP, but only selected ones from 1988 had been published in the hearing record; we wished there were more of the statements which had been written by the public included. Furthermore, the Response to Comments in the Final EIS should include the original comment letter (shrunk 4 to a page is acceptable) with lines in the margins showing the number for the Service's Response as it links to the letter. This standard practice provides the author of comments to assess whether their concerns were adequately responded to as well as for others to understand the context of the comment as well as the response. This is a much better practice than extracting only disembodied comments.

**[136801.108 NEPA Process -- DEIS Comment Period]**

The author should be attributed to all comments quoted in the CCP. For example, the "Representative Comments" in the EIS are unattributed and should be identified as to their source with name and affiliation. For one thing, if the public quotes the quote in the future, they should be able to provide the source name.

### Sec. 3.1.2. Issues Considered but eliminated from Detailed Study.

#### FWS Properly Did Not Consider An “Oil and Gas Alternative”

p. 3-6. FWS correctly did not consider an oil and gas alternative, or scenarios which evaluate impacts of oil and gas exploration, development or production from the refuge.<sup>44</sup> (see more detail on this issue in General Comments section).

#### Other Issues Eliminated From Detailed Study

The following issues were correctly eliminated from detailed study in the CCP DEIS. See e.g., Chapter 3 on issues and alternatives (Sec. 3.1.2, DEIS at 3-6) and Appendix D-1:

- \* Oil and gas development; elopment;
- \* Updating seismic data on the Coastal Plain
- \* The ANILCA No More Clause

Because so much misinformation was conveyed during the public hearings regarding the “No more clause,” we provide this information to set the record straight: As FWS correctly states in its Summary of Draft CCP, June 2011, “These wilderness and wild and scenic river reviews are required of the Refuge and do not violate the “no more” clauses of ANILCA because they are not a withdrawal and are not being conducted for the sole purpose of establishing a conservation system unit.”

#### Chapter 4: Existing Environment

We regret that we have had insufficient time to provide review of this chapter but we can provide additional information upon request.

**[136801.109 International Treaty Obligations -- ]** The caribou information needs to address not only the sensitive calving, but also the sensitive post-calving (nursery) habitats particularly within the Coastal Plain, per the findings of the International Porcupine Caribou Technical Committee report from 1993.

**[136801.110 Oil and Gas -- Occurrences and Potential]** p. 4-35. Oil and Gas Occurances and Potential.

This section overstates the potential and fails to provide the context that the Arctic Refuge is the only lands on the North Slope off limits to law to oil and gas exploration, development and production and there are other existing resources, particularly on state lands. And from a national perspective, it’s a drop in the bucket compared with energy conservation, efficiency and renewable energy sources.

One lesson of the refuge and its remarkable establishment 50-years ago is that daunting ideas can be accomplished and with lasting results that inspire future generations.

Oil and gas exploration, leasing, development and production is prohibited in the Arctic Refuge by law today; such activities and infrastructure are incompatible with all of the purposes of the refuge due to their harmful impacts; and even if economically producible oil were found, it would not provide a significant amount of energy to meet the national need compared to other alternatives. There is simply no national energy need to exploit this priceless national treasure. In this era when solutions to rapid climate change require reducing consumption of oil and other fossil fuels, protecting the Arctic Refuge wilderness is symbolic of national commitment to a bold, clean energy future.

A number of studies show that potential oil and gas in the Arctic Refuge —if discovered and is found to be economic to produce— is far less than energy conservation and other alternatives.

Energy Information Administration (EIA) data show that over the next two decades, the conservation gains of the last two years alone from market-based conservation, compared to Arctic Refuge drilling, will be 5 times more effective in reducing the nation's petroleum import requirement.<sup>45</sup>

Analysis of the EIA information shows that during the last two years, this nation has quietly booked an 11.3 billion barrel reduction in estimated U.S. oil imports between 2011 and 2030 due to lower oil consumption, a figure developed by comparing the EIA March 2008 Annual Energy Outlook reference case projections to the agency's current outlook. The analysis shows that energy conservation in the past two years is five times greater than the 2.1 billion barrels of oil that EIA estimates might be discovered and produced from the Arctic Refuge Coastal Plain region between 2011 and 2030. <sup>46</sup>

Amory Lovins and colleagues at the Rocky Mountain Institute have provided a solid basis showing that energy conservation and renewables could provide far more energy for the nation than sacrificing the Arctic Refuge ever would, beginning with Lovins' groundbreaking Foreign Affairs article in 1976<sup>47</sup> to the present.

In this same journal in 2002, his research reported along with L. Hunter Lovins found that a combination of the main efficiency options could save the equivalent of 54 "refuges" but at a sixth of the cost.<sup>48</sup> Specific comparisons were made with the potential oil from the refuge:

"That much gasoline could be saved if light vehicles became 0.4 mpg more efficient. Compare that feat to the one achieved in 1979–85, when new light vehicles on average gained 0.4 mpg every 5 months. Equipping cars with replacement tires as efficient as the original ones would save consumers several "refuges" full of crude oil. Installing superinsulating windows could save even more oil and natural gas while making buildings more comfortable and cheaper to construct...

If three or four percent of all U.S. cars were as efficient as today's popular hybrid models, they would save the equivalent of all the refuge's oil. In all, many tens of times more oil is available—sooner, more surely, and more cheaply—from proven energy efficiency. The cheaper, faster energy alternatives now succeeding in the marketplace are safe, clean, climate-friendly, and overwhelmingly supported by the public. Equally important, they remain profitable at any oil price".

Most recently, his energy blueprint *Winning the Oil Endgame* provided a plan for moving the United States away from needing oil by 2050, and in the fact of the Gulf of Mexico blowout catastrophe, he is focused on the ultimate cause of that disaster – our dependency on oil.<sup>49</sup>

A recent study by National Resources Defense Council energy analysts found that an achievable clean energy strategy can cut oil consumption by 9.7 million barrels per day by 2030, roughly 11 times what might be produced from drilling in both the Arctic Refuge and the Outer Continental Shelf areas that had been protected by national moratoria.<sup>50</sup> Furthermore, clean energy is quicker, cheaper, and cleaner than oil, and can save drivers money at the same time as it reduces oil dependency.<sup>51</sup>

Oil development proponents have greatly exaggerated the amount of likely oil and gas potential and underestimated the cumulative effects of potential infrastructure. Numerous scientific and economic studies have documented that Arctic Refuge oil potential is not "another Prudhoe Bay." In fact, there are far more known reserves of oil and gas and more potential oil and gas resources

elsewhere on Alaska's North Slope than the U.S. Geological Survey and the Energy Information Administration estimate for the Refuge Coastal Plain – if economically recoverable oil is even discovered. A significant contribution to this known potential outside the Arctic Refuge underlays the existing Prudhoe Bay oil field infrastructure in the West Sak and Ugnu heavy oil reserves.<sup>52</sup>

As there has been for decades, there is much talk about the dangers of the Trans-Alaska Pipeline being shutdown. However, a recent economic analysis from September 2011 shows that exploitation of the Arctic Refuge and other sensitive federal lands is not needed: In contrast to the “sky is falling claims” by certain groups and individuals, the TAPS is not in danger of being shut down in the immediate future without opening up new areas to drilling or a reduction to Alaska's production tax as long as modest investments are made to reduce the minimum throughput on the pipeline. Minimum throughput can be reduced by making a moderate investment in the pipeline which would pay substantial dividends to the pipeline owners as well as the State of Alaska. Indeed, our analysis shows that the TAPS owners would lose money by not making such investments. This is because, without reducing the TAPS minimum throughput, billions of barrels of oil would be stranded on the North Slope.

An investment of only \$500 million or so will allow an additional 20 years of production from existing reserves totaling over 2 billion barrels on the North Slope without requiring opening of new areas for exploration and production and would contribute upwards of \$12 billion in additional tax and royalty revenue as well. Therefore, opening up new areas of production is unnecessary in order to prevent a shutdown of TAPS in the near term<sup>53</sup>.

In May 2008, the Energy Information Administration assessed the potential crude oil production in the Arctic Refuge.<sup>54</sup> Based on the U.S. Geological Survey Resources estimate, EIA reported that leasing and development on the Arctic Refuge Coastal Plain could result in approximately 2.6 billion barrels of economically producible oil between 2018 and 2030. To put this in perspective, the Prudhoe Bay oil field has already produced 12.56 billion barrels of oil -- out of the total North Slope production of 15.61 billion barrels of oil to date (ADNR 2010).<sup>55</sup> A new economic analysis based on the EIA's 2008 analysis shows that the Arctic Refuge mean resource case would yield only production of approximately 2.1 billion barrels of oil between now and 2030.<sup>56</sup>

A comprehensive program of energy conservation and renewables would create far more energy than could be produced by drilling in the Arctic Refuge and would help us turn the corner towards the future instead of beating the same old dead horse.

## Chapter 5: Environmental Consequences

**[136801.111 Environmental Consequences -- Effects Common to Alternatives]** As a general comment regarding your analysis, environmental impacts need to be evaluated at the National level, not just as broadly as regionally, due to the Refuge itself providing a unique place in the National Wildlife Refuge System, the lands are owned by all Americans and they have a stake in their protection, and this is our largest and northernmost Arctic unit of the NWR System.

**T[136801.112 Environmental Consequences -- Effects Common to Alternatives]** The Refuge also provides important international benefits, as it is unique in the circumpolar Arctic for its wilderness value and great diversity of intact Arctic ecosystems. The circumpolar vegetation map (CAVM Team 2003) shows that 30% of all wetlands in this region are in Alaska and a significant portion of those are in the arctic coastal plain ecoregion,<sup>57</sup> with those in the Arctic Refuge being the only wetlands on the entire North Slope of the US protected by law from oil and gas development. Other migratory animals use the refuge habitats for key times in their lives, and

maintenance of these activities also provides international benefits. Therefore, there could be benefits from Arctic Refuge protection at an international level.

**[136801.113 Environmental Consequences -- Impact Topics]** There is a strong benefit to Wilderness designation of the Arctic Refuge Coastal Plain which was not reflected in the analysis for alternatives C or E, due to its special values, uniqueness, protection as a national wildlife refuge, protection from oil and gas development, and from upholding all of its purposes. The Arctic Refuge is unique on the North Slope as the only coastal area closed by law to leasing, exploration, development and production. It is the only place in the nation where both the arctic coastal plain and Arctic foothills ecoregions receive protection in a conservation unit. Therefore, continued protection of its lands by law from oil and gas development, the management actions which further the goals of the national wildlife refuge system, and the national commitment as a Wilderness Study Area and ultimately designated Wilderness protection provides a positive benefit that these lands can continue to provide their benefits to fish, wildlife, people, and their existence value locally, regionally, nationally, and internationally – to the world! While incalculable, these benefits of Wilderness and Wild and Scenic Rivers need to be described in order to provide an accurate assessment of the impacts, including to local economies and communities. Subsistence way of life is an economy and impacts to the traditional subsistence way of life and its culture also need to be considered as a benefit for protecting the lands from oil and gas development if the supposed irretrievable consequences to the economy, etc. are described from the fact that Wilderness designation's restraint keeps the fossil fuel in the ground. There is also a benefit with respect to climate change from this restraint in making a national commitment through Wilderness designation to keep oil and gas in the ground.

The analysis of impacts of Wilderness designation errs in its assessments to science and scientific activities because science certainly can continue, albeit in a way that has the least impact to this valuable wilderness “control” area, because science is one of the purposes per the Wilderness Act: “Except as otherwise provided for in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, education, conservation, and historical use.” (The Wilderness Act, Sec. 4.(b). ) We note, however, that ANILCA provided modifications that provide for subsistence in Wilderness.

**[136801.114 Environmental Consequences -- Cumulative Effects: General]** This background is provided for a basic overview to consider in the cumulative impacts analysis which addresses reasonably foreseeable projects taking place beyond the Refuge boundaries.

This area may face cumulative impacts from the oil and gas activities that take place on lands and waters beyond the borders of the refuge. The Northern Alaska Environmental Center scoping letter (June 7, 2010) provided information on why oil and gas infrastructure and activities besides being prohibited by law are also incompatible with its purpose. Please include that letter by reference as comment. It also provides additional background on negative oil and gas impacts across the North Slope, including documentation from scientific studies by the National Research Council (2003) and others, long-term impacts to tundra vegetation and disturbance to bears caused by seismic exploration, pervasive spills, and other harm to wildlife and wilderness. Please also see Broken Promises by The Wilderness Society<sup>58</sup> for further information about the limitations and false promises of directional drilling and the wide range of oil and gas impacts to fish, wildlife, subsistence and wilderness that have taken place on the North Slope, as well as additional sources.<sup>59</sup>

Contrary to claims made by proponents of opening the refuge to drilling repeatedly in the hearings that “In 1987, the Department of the Interior concluded that oil development would have

minimal impact on wildlife,”<sup>60</sup> we feel compelled to set the record straight and provide factual information to the contrary. In fact, the Department of the Interior’s study in 1987 concluded there would be major impacts to wildlife, wilderness, and subsistence ,<sup>61</sup> including the following:

\* Major negative impacts to Porcupine caribou herd, muskox, subsistence, water, noise, recreation and wilderness, and significant impacts to snow geese, wolves, wolverines, brown bear, polar bears, gravel, vegetation, and permafrost terrain. (p.166)

\* “The wilderness character of the coastal plain would be irretrievably lost.” (p.164)

\* “The 1002 area is the most biologically productive part of the Arctic Refuge for wildlife and is the center of wildlife activity. It serves as an important calving ground for the Porcupine caribou herd... Migrating caribou and the post-calving caribou aggregation offer an extraordinary spectacle...” (p.46)

\* “Oil and gas development would result in long-term changes in the wilderness environment, wildlife habitats, and Native community activities currently existing, resulting instead in an area governed by industrial activities.” (p. 165)

The following comments are intended to strengthen the final EIS.

#### **[136801.115 Environmental Consequences -- Cumulative Effects: General] 1. The CCP EIS Fails to Adequately Consider Cumulative Impacts**

The cumulative impacts analysis in the CCP DEIS needs to be improved in order to satisfy NEPA’s requirements to consider and analyze the cumulative impacts of a project. The DEIS purports to consider the cumulative effects, stating “At the end of each alternative, we disclose the anticipated cumulative effects of the alternative on the biophysical and human environments and to reasonably foreseeable future actions. . . . The anticipated positive or negative effects of the reasonably foreseeable activities are discussed first, followed by a discussion of anticipated cumulative effects of each alternative.” DEIS at 5-2.62 However, the discussion of cumulative impacts associated with each alternative with respect to the effects of the alternative and the effects of reasonably foreseeable future actions is lacking. At the end of the discussion of the environmental consequences of each alternative, the DEIS contains a few sentences discussing the impacts of the alternative on the Arctic Refuge and its management, followed by the very cursory statement that “These effects would be cumulative to the effects of climate change, development activities, and management decisions made by other throughout the region.” DEIS at 5-20, 5-32, 5-43, 5-55, 5-67, and 5-75. There is no actual discussion or analysis of the impacts of climate change, development activities or management decision in the region on the Arctic Refuge. As the Ninth Circuit explained,

[i]n accord with NEPA, the Forest Service must ‘consider’ cumulative impacts. [] To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the Forest Service’s decisions, can be assured that the Forest Service provided the hard look that it is required to provide.

Neighbors of Cuddy Mountain v. U.S. Forest Serv., 137 F.3d 1372, 1379 (9th Cir. 1998) (internal citation omitted)

To the extent that FWS is relying on Appendix C to the DEIS to provide that analysis, FWS must clearly say so. Additionally, review of Appendix C reveals that the analysis of the planning efforts is incomplete and inadequate. First, as explained below, the planning efforts included in Appendix C fail to include multiple current and reasonably foreseeable future actions. Second, the impacts discussed for each planning effort are cursory, generally consisting of statements that the action is

not thought to adversely affect Refuge management. See e.g., DEIS at Appendix C: Other Planning Efforts at C-6. As explained above, this cursory discussion does not satisfy NEPA. See *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d at 1379.

To satisfy NEPA, FWS needs to take a hard look at the cumulative impacts of past, present and reasonably foreseeable future actions on Refuge management, objectives and goals. This requires an analysis and discussion of such impacts in the EIS. See *Lands Council*, 379 F.3d at 745. Without such, the DEIS for the Arctic Refuge CCP is inadequate.

**[136801.116 International Treaty Obligations -- ]** We also note that a cumulative impact analysis for the Porcupine Caribou Herd is an international obligation. The International Porcupine Caribou Herd Agreement states that “When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyse potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou.”

## 2. The FWS Failed to Consider and Analyze the Cumulative Impacts to the Refuge and Refuge Management from Multiple Reasonably Foreseeable Future Actions

NEPA requires that agencies disclose the environmental impacts of an action within the Environmental Impact Statement (EIS). 42 U.S.C. § 4332(2)(C)(i), (ii). See also 40 C.F.R. § 1508.25(c). The environmental impacts of an action include the direct, indirect and cumulative impacts. 40 C.F.R. § 1502.16. Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. To comply with NEPA, the EIS must contain quantified data and discussion of how the proposed project and reasonably foreseeable future projects will affect the environment. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

As explained by the Ninth Circuit, NEPA “is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” *Kern v. Bureau of Land Management*, 284 F.3d 1062, 1072 (9th Cir. 2002). If “it is reasonably possible to analyze the environmental consequences in an EIS . . . the agency is required to perform that analysis.” *Id.*; see also 40 C.F.R. § 1502.16 (must assess the environmental impacts of all “proposed actions”); 40 C.F.R. 1501.12 (agency must identify effects “in adequate detail”).

In other words, an agency may not “avoid an obligation to analyze in an EIS environmental consequences that foreseeably arise from [a proposed action] . . . merely by saying that the consequences are unclear or will be analyzed later.” *Id.* The agency must also consider the impacts of reasonably foreseeable future actions on the proposed action. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

Reasonably foreseeable future actions under NEPA include proposed projects. *N. Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 980 (9th Cir. 2006), citing *Lands Council v. Powell*, 379 F.3d 738, 746 (9th Cir. 2004), *rev'd on other grounds*, 395 F.3d 1019 (9th Cir. 2005). NEPA defines a proposed project as one that is “at that stage in the development . . . when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.” 40 C.F.R. § 1508.23. Additionally, projects where an agency has formally announced the project and

has issued a summary of the project are reasonably foreseeable. See *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 812 (9th Cir. 1999).

**[Preamble 136801.117, 118, 119]** The Arctic Refuge Draft EIS CCP fails to account for, and consider the impacts of, multiple reasonably foreseeable future actions, the effects of which will likely impact the FWS's management of the Arctic Refuge. Among the reasonably foreseeable actions not analyzed in the DEIS are:

**[136801.117 Environmental Consequences -- Cumulative Effects: General]** \* Federal Bureau of Ocean Energy Management 2012-2017 OCS Oil and Gas Leasing Program-The Bureau of Ocean Energy Management is currently in the process of developing a new five year leasing program for outer-continental shelf waters. See <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/Current-Five-Year-Leasing-Plan.aspx> (last visited October 25, 2011). The Proposed Program includes a lease sale in the Beaufort Sea. See Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program 2012-2017 (Oct 2011). Offering additional federal oil and gas leases in the Beaufort Sea could result in additional exploration and development activities in the area, increasing air and water pollution, industrial facilities, and demand for construction resources (i.e., gravel), among other things. The impacts of the leasing and the associated activities will impact the management, objectives and goals of the Arctic Refuge.

**[136801.118 Environmental Consequences -- Cumulative Effects: General]** \* State of Alaska Areawide Oil and Gas Lease Sales-The State of Alaska, Department of Natural Resources recently issued a Notice of Sale for a considerable lease sale for the vast majority of state lands in the Beaufort Sea Areawide, the North Slope Areawide and the North Slope Foothill Areawide areas on December 7, 2011. See <http://dog.dnr.alaska.gov/Leasing/LeaseSales.htm>. The lease sales could result in exploration and development activities in areas adjacent to the Arctic Refuge, increasing air and water pollution, industrial facilities, demand for construction resources (i.e., gravel) and water, among other things. The impacts of the lease sales and the associated activities will impact the management, objectives and goals of the Arctic Refuge.

**[136801.119 Environmental Consequences -- Cumulative Effects: General]** \* State of Alaska Board of Game Proposal 130 —This proposal authorizes a brown bear predator control program in Game Management Unit (“GMU”) 26B, which encompasses the State land on the North Slope as well as a portion of the Arctic Refuge. See Game Management Units/Special Management Units, Unit 26 Arctic Slope, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. The stated purpose of the program is to reduce brown bear predation on muskoxen. See Alaska Board of Game, 2011/2012 Proposal Book Arctic, Western, and Interior Regions, and Statewide Regulations, Cycle B Schedule at 174-76, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. As noted above, intensive management is inconsistent with Arctic Refuge purposes and values, and the FWS cannot allow Alaska to conduct such activities on the Refuge. That said, a brown bear predator control program on non-Refuge lands within GUM 26B will impact the population of brown bears within the Refuge and affect FWS's management of the Refuge to protect the wildlife.

To comply with NEPA, FWS must consider and analyze the impacts from these reasonably foreseeable future projects (as well as any others that the agency is or becomes aware of) on the management, objectives and goals of the Arctic Refuge.

### 3. The FWS Failed to Consider the Cumulative Impacts of the Action in the ANILCA Section 810 Evaluation

Title VIII of ANILCA recognizes that subsistence uses are a public interest and provides a framework to consider and protect subsistence uses in agency decision making processes. 16 U.S.C. §§ 3111–3126.

**[136801.120 ANILCA -- ANILCA Section 810 Evaluation]** In the CCP DEIS Section 810 Evaluation, FWS states that “[n]one of the management alternatives evaluated in this Plan propose actions that would reduce subsistence uses because of direct effects on wildlife or habitat resources or that would increase competition for subsistence resources.” DEIS at 5-87. While this may be true, the Section 810 Evaluation fails to consider whether the cumulative impacts of the proposed action may have significant restrictions on subsistence uses. To comply with ANILCA, the FWS must consider not only the direct effects, but also the cumulative impacts of the proposed action in making its determination that the proposed action would not have a significant restriction on subsistence uses. See *Sierra Club v. Penfold*, 664 F. Supp at 1310.

#### Vol. 2. Appendices

##### Appendix D. Summary of Public Comment

**[136801.121 NEPA Process -- Scoping]** The analysis of public scoping comments failed to adequately analyze key refuge Resources that are a fundamental message of the majority of letters and hearing testimonies. Resource Codes should have also included Rivers, Water Quality, Subsistence, International Treaty and Agreements, Critical Habitats / Endangered Species Act, Wilderness and wilderness values including Solitude, Natural Quiet, Intact Landscapes, Natural Ecological System. For Action codes, there should not have been a category, Multiple Use Emphasis, as it is not appropriate for National Wildlife Refuge System or Arctic Refuge management. Subsistence should also have been included as a Tribal Activity, and Environmental Justice added to the Action Codes.

We strongly urge that all scoping comments as well as full hearing transcripts be made readily available to the public. Many of them are quite eloquent in their descriptions of the refuge and its value not only to them but to their children and future generations. It is improper to disassemble the public hearing record and only circulate or analyze snippets of what someone has said at a hearing where the context of the person’s whole statement is critical both within their own testimony and within the whole meeting.

We urge that the Draft CCP DEIS the entire public hearing record and all substantive and unique public comments be provided to the public as a published Appendix. This will be not only a valuable informative document but also provides information that may be compared and contrasted 15 years from now. It was very valuable to our organization to be able to read past comments on the CCP, but only selected ones from 1988 had been published in the hearing record; we wished there were more of the statements which had been written by the public included.

##### Appendix G. Draft Compatibility Determinations

**[136801.122 Refuge Management Policies/Guidelines -- Compatibility Determinations (includes Appendix G)]** Because these draft compatibility determinations could apply to myriad activities conducted across the refuge over the next 15 years, for which numbers, locations, timing, and other factors are not fully provided, it is extremely important that a hard look be given to the appropriateness of each one and their compatibility when the cumulative nature of the activities for each type as well as when their combined impacts across all types are considered. Some of

these draft compatibility determinations, such as the Commercial Shore-Fast Sea Ice Access, need substantial changes including the description of the activity so that it does not apply to oil and gas activities that are prohibited in the refuge, and further environmental analysis in order to be found compatible with the purposes of the refuge. Please consider our detailed comments above, especially on Sec. 2.4.5 Appropriate Refuge Uses.

#### IV. Conclusion

Thank you for providing the opportunity to comment on the Arctic Refuge draft CCP and EIS. We look forward to working with you to finalize this critical planning effort.

1 Gwich'in Steering Committee. Protect the Sacred Place where life begins.

2 U.S. Senate hearing in Fairbanks on October 31, 1959.

3 <http://wilderness.org/content/quotes-wilderness>

4 Debbie S. Miller. 2000. Midnight Wilderness: Journeys in Alaska's Arctic National Wildlife Refuge, Alaska Northwest Books. P. ix-x.

5 Terrance Cole. January 9, 2011. CW Snedden and the crusade for Alaska statehood. Fairbanks Daily News-Miner.

6 Terry Tempest Williams. 2004. The Open Space of Democracy. The Orion Society. P.49.

7 Roger Kaye. Last Great Wilderness. 2006. P. 221.

8 Williams. P.6.

9 Of course, a decision not to make a Wilderness recommendation for some or all lands covered in any given planning process does not mean that the lands are not suitable for future wilderness protection. We urge finalization of the full Wilderness Review for all three Wilderness Study Areas.

10 Mollie Beattie Wilderness Area

11 USFWS, 1993, p. 16.

12 See DEIS at 3-6 (stating that "An oil and gas alternative would not satisfy NEPA's requirement that alternatives meet the purpose and need for the Revised Plan, and the Service has no administrative authority over oil and gas development").

13 NEPA § 102, 42 U.S.C. § 4332(2)(C)(iii).

14 40 C.F.R. § 1502.13.

15 See 'Ilio'ulaokalani Coal. v. Rumsfeld, 464 F.3d 1083, 1097 (9th Cir. 2006) (stating that "The scope of reasonable alternatives that an agency must consider is shaped by the purpose and need statement articulated by that agency. The [agency] must consider all reasonable alternatives within the purpose and need it has defined"). See also City of Carmel-by-the-Sea v. U.S. Dep't of Transportation, 123 F.3d 1142, 1155 (9th Cir. 1997).

16 DEIS at 1-1.

17 DEIS at 1-1-1-2. See also DEIS Appendix D at D-1 (stating that "[t]he purpose and need for the Revised Plan is to ensure activities, action, and management fulfill the legal purposes for which the Refuge was established, fulfill the statutory mission of the National Wildlife Refuge

System [] and provide direction on how the U.S. Fish and Wildlife Service [] will meet these purposes”).

18 16 U.S.C. § 3143.

19 See P.L. 96-487, § 303(2). The original 'Arctic National Wildlife Range' was created in 1960 by Public Land Order 2214 "For the purpose of preserving unique wildlife, wilderness and recreational values." Public Land Order 2214 (Dec. 6, 1960). The purposes added in ANILCA are: (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char [note that those residing in Alaska's North Slope rivers and lagoons are now classified as Dolly Varden] and grayling; (ii) to fulfill the international fish and wildlife treaty obligations of the United States; (iii) to provide the opportunity for continued subsistence uses by local residents; and (iv) to ensure water quality and necessary water quantity within the refuge. P.L. 96-487, 94 STAT. 2451 (Dec. 2, 1980).

20 16 U.S.C. §§ 668dd(a)(3), 668dd(a)(4)(D).

21 See 'Ilio'ulaokalani Coal. v. Rumsfeld, 464 F.3d at 1097.

22 DEIS at 1-18. See also U.S. FWS Refuge Purposes Arctic National Wildlife Refuge Map, available at: <http://arctic.fws.gov/pdf/ccppurposesp2011.pdf>.

23 See FWS Refuge Management Part 601 National Wildlife Refuge System, 601 FW 1 at 1.16 (July 26, 2006).

24 Public Land Order 2214 (Dec. 6, 1960).

25 94 Stat. 2390, P.L. 96-487 at §303(2) (Dec. 2, 1980).

26 P.L. 96-487 (Dec. 2, 1980) (emphasis added).

27 House Report No. 96-97(I) at 174 (April 18, 1979) (emphasis added).

28 The fact that the two sets of purposes are complimentary and not inconsistent is evidenced by FWS's determination that the pre-ANILCA and ANILCA purposes apply concurrently to those lands within the original Arctic Range.

29 601 FW 1 at 1.16.

30 In its general guidance regarding allowable uses of refuges, FWS appears to have contrary guidance regarding the purposes of refuges established by ANILCA. See FWS Refuge Management Part 603 National Wildlife Refuge System, 603 FW 2 at 2.8(B) (Nov. 17, 2000) (stating that “Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA”) ((emphasis added). Because this guidance is found in the FWS manual addressing compatibility of uses of refuges and 601 FW 1 directly addresses identifying or determining the purposes of refuges, 601 FW 1 is the controlling guidance on this issue.

31 ANILCA Sec. 303 (2)(B)(i) (emphasis added).

- 32 CCP DEIS at 2-4.
- 33 <http://co.fairbanks.ak.us/communityplanning/CRC/SUMMER%202011%20CRQ.pdf>, p. 15.
- 34 CCP DEIS at 1-2.
- 35 CCP DEIS at 2-47.
- 36 CCP DEIS at 2-47 and 4-56.
- 37 General Accounting Office. October 6, 1989. Federal Land Management: Chandler Lake Land Exchange not in the Government's best interest. RCED-90-5.
- 38 ASRC, 1985, Annual Report.
- 39 Alaska Statute § 16.05.255.
- 40 ANILCA Sec. 303 (2)(B)(i) (emphasis added).
- 41 ANILCA Sec. 303 (2)(B)(i) (emphasis added).
- 42 A. E. Smith, M. Anderson, H. Kendall-Miller, P. Van Tuyn, and A. Rothe. 2001. Alaska National Interest Lands Conservation Act Citizen's Guide. Published by The Wilderness Society. P. 47.
- 43 See Smith et al. 2001. P. 42-43.
- 44 See DEIS at 3-6 (stating that "An oil and gas alternative would not satisfy NEPA's requirement that alternatives meet the purpose and need for the Revised Plan, and the Service has no administrative authority over oil and gas development").
- 45 Fineberg, R.A. May 15, 2010. Reduced oil imports from conservation vs potential Arctic Refuge oil production, 2011-2030. Report to Northern Alaska Environmental Center and the Alaska Wilderness League. Research Associates, Ester Alaska. 21 pp.
- 46 Fineberg, R.A. May 15, 2010. Reduced oil imports from conservation vs potential Arctic Refuge oil production, 2011-2030. Report to Northern Alaska Environmental Center and the Alaska Wilderness League. Research Associates, Ester Alaska. 21 pp.
- 47 Amory B. Lovins, October 1976. Energy Strategy: The Road Not Taken? Foreign Affairs. <http://www.foreignaffairs.com/articles/26604/amory-b-lovins/energy-strategy-the-road-not-taken>.
- 48 Amory B. Lovins and L. Hunter Lovins. July/ August 2001. Fool's Gold in Alaska. Foreign Affairs. <http://www.foreignaffairs.com/articles/57055/amory-b-lovins-and-l-hunter-lovins/fools-gold-in-alaska>.
- 49 Lovins, A.B., E. Kyle Datta, O-E Bustenes, J.G. Koomey and N.J. Glasgow. 2004. Winning the Oil Endgame: Innovation for profits, jobs, and security, Rocky Mountain Institute. <http://www.oilendgame.com/>. Dallas Morning News, June 2, 2010. Imagine a nation in need of no oil; Rocky Mountain Institute says it could happen by 2050. [http://www.dallasnews.com/sharedcontent/dws/bus/columnists/chall/stories/DN-Hall\\_02bus.ART.State.Edition1.1d24ff0.html](http://www.dallasnews.com/sharedcontent/dws/bus/columnists/chall/stories/DN-Hall_02bus.ART.State.Edition1.1d24ff0.html) (accessed June 2, 2010)
- 50 National Resources Defense Council. 2008. Clean Energy: The solution to volatile gas prices. <http://www.nrdc.org/energy/gaspricesolutions.pdf>.
- 51 National Resources Defense Council. 2008. Clean Energy Saves Americans Money. <http://www.nrdc.org/energy/money.pdf>.

52 Fineberg, R.A. May 1, 2006. North Slope Production Potential Update: ConocoPhillips Heavy oil estimate increased North Slope oil potential outside the Arctic Refuge to approximately 25 billion barrels.

53 Innovation & Information Consultants, Inc. September 2011. Is the Trans Alaska Pipeline System in Danger of Being Shut Down? Prepared for Natural Resources Defense Council.

[http://docs.nrdc.org/energy/files/ene\\_11092001a.pdf](http://docs.nrdc.org/energy/files/ene_11092001a.pdf)

54 Energy Information Administration. May 2008, Analysis of crude oil production in the Arctic National Wildlife Refuge, Report No. SR/OIAF/2008-03.

[http://www.eia.doe.gov/oiaf/servicerpt/anwr/pdf/sroiaf\(2008\)03.pdf](http://www.eia.doe.gov/oiaf/servicerpt/anwr/pdf/sroiaf(2008)03.pdf).

55 Alaska Department of Natural Resources. May 2010. Division of Oil and Gas Annual Report, November 2009. Table I-3, Chapter 1, p.14:

[http://www.dog.dnr.state.ak.us/oil/products/publications/annual/2009\\_annual\\_report/updated\\_2009\\_annual\\_report/Annual%20Report%202009%20Updated%205-18-10.pdf](http://www.dog.dnr.state.ak.us/oil/products/publications/annual/2009_annual_report/updated_2009_annual_report/Annual%20Report%202009%20Updated%205-18-10.pdf)

56 Fineberg, R.A. May 15, 2010. Reduced oil imports from conservation vs potential Arctic Refuge oil production, 2011-2030. Report to Northern Alaska Environmental Center and the Alaska Wilderness League. Research Associates, Ester Alaska. 21 pp.

57 CAVM Team. 2003. Circumpolar Arctic Vegetation Map. Scale 1:7500000. Conservation of Arctic Flora and Fauna (CAFF) Map No. 1. U.S. Fish and Wildlife Service, Anchorage, Alaska.

<http://www.geobotany.uaf.edu/cavm/download.shtml>.

58 Broken Promises: The reality of oil development in America's Arctic. 2nd Edition.

2009.<http://wilderness.org/content/broken-promises-reality-big-oil-americas-arctic>

Broken Promises: The Reality of Big Oil in America's Arctic. 2003. <http://northern.org/media-library/document-archive/arctic/drilling-impacts/broken-promises-the-reality-of-big-oil-in-americas-arctic-2003>.

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<http://northern.org/media-library/document-archive/arctic/drilling-impacts/sen.-murkowskis-dangerous-directional-drilling-bill>. Northern Alaska Environmental Center. 2008. The 2,000-acre Hoax. <http://northern.org/media-library/document-archive/arctic/drilling-impacts/the-2-000-acre-hoax>.

60 Claims shown in italics are from: Resource Development Council for Alaska, Inc.,

<http://www.akrdc.org/alerts/2011/anwrcpalert.html> 61 U.S. Department of the Interior. April 1987. Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment. Report and Recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement.

62 As an initial matter, this formulation of cumulative effects misstates the role of considering reasonable foreseeable future actions. As described by the FWS in the DEIS, FWS perceives its duty to require it to look at the impacts from the CCP alternatives on reasonably foreseeable future actions but not to require the FWS to look at the impacts of reasonably foreseeable future actions on the CCP alternatives. FWS must also consider the impacts of reasonably foreseeable future actions on the CCP alternatives to satisfy NEPA. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

Comments on Arctic Refuge Comprehensive Conservation Plan DEIS November 15, 2011  
Conservation's Northern Voice

A 501 (C) (3) NOT-FOR-PROFIT ORGANIZATION  
830 COLLEGE ROAD, FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-5021 \* FAX: (907) 452-3100 \* WEB: <http://www.northern.org>

**COMMUNICATION NUMBER 136795**

**David E. Jenkins, Vice President for Government & Political Affairs  
Republicans for Environmental Protection**

From: "David Jenkins"  
To:  
Subject: Arctic Refuge CCP/DEIS Comments

Ms. Seim:

Please find Republicans for Environmental Protection's Arctic Refuge CCP/DEIS comments attached as an MS Word document and pasted below into this email message. In the comments we urge adoption of Alternative E. Please do not hesitate to contact me if you have any questions.

Thank you.

Dave

David Jenkins  
Vice President for Government and Political Affairs  
Republicans for Environmental Protection  
www.rep.org  
Ph: (703) 785-9570  
Email: [djenkins@rep.org](mailto:djenkins@rep.org)

November 14, 2011

Mr. Richard Voss, Refuge Manager  
US Fish and Wildlife Service  
Arctic NWR – Sharon Seim  
101 12th Ave., Rm 236  
Fairbanks, AK 99701-6237

Comments on the Arctic National Wildlife Refuge Draft Comprehensive Conservation Plan and Environmental Impact Statement

Thank you for the opportunity to provide comments on the revised Arctic National Wildlife Refuge Comprehensive Conservation Plan (CCP) and Draft Environmental Impact Statement (DEIS).

As we celebrate the 50th anniversary of President Eisenhower's decision to set aside the Arctic National Wildlife Range, this planning process affords us an opportunity to continue and enhance that legacy by safeguarding the Refuge's defining attribute—its wilderness character.

Republicans for Environmental Protection (REP), a national grassroots organization of Republicans that has been working for years to safeguard the Arctic Refuge, strongly supports Alternative E as its preferred Alternative. REP believes that it is important that all of the wilderness quality lands in the Refuge be protected in accordance with the Refuge's established purpose of preserving its wildlife, wilderness and recreation values.

In reading the DEIS, it is clear that all three Wilderness Study Areas (WSAs) meet the Wilderness Act criteria for designation and that Alternative E would best meet refuge purposes and the mission of the overall Refuge System.

We agree with the DEIS that wilderness designation for the three WSAs, which are critical to the integrity of the Refuge, would:

“...provide the greatest assurance that...[the Coastal Plain, Brooks Range and Porcupine Plateau areas]...would remain unaltered and essentially free of the intent to control or manipulate the land, its creatures, and natural processes, thereby ensuring the area retains its ecological integrity now and for future generations.”

This is particularly true given that some in Congress have begun interpreting agency decisions to not recommend WSAs to the President (and subsequently Congress) for designation as equivalent to a determination that the lands are not suitable for future wilderness protection.

Given this new lens of interpretation by lawmakers and wilderness opponents, the selection of an Alternative that fails to recommend these areas for Wilderness designation would likely jeopardize the agency’s ability to safeguard the wilderness character of these lands in the future. Alternative E is the only Alternative that would clearly acknowledge the wilderness values of these WSAs and avoid facilitating the false perception that they do not merit designation.

REP believes that the only action consistent with the findings of the agency’s wilderness review process—that all three WSAs meet the Wilderness Act criteria for designation—is a recommendation for designation. Any other decision would also seem to be inconsistent with the Refuge’s established purpose and the agency’s established planning goal that “the Refuge retains its exceptional wilderness values without loss of natural condition and wild character.”

We believe that Alternative E is the only Alternative that is adequately protective of wilderness, meets the Refuge’s purpose, and is consistent with the original vision for the Refuge by Olaus and Mardy Murie.

We offer the following thoughts on various aspects of the plan and future management of the Refuge:

#### Special Values of Arctic Refuge

REP supports the Special Values of the Arctic Refuge as they appear in the Draft CCP (Pages 1-20 to 1-22). The Final CCP should retain this section as it exists and require that the Special Values of the Refuge are used to guide all management decisions for the Refuge.

#### Wilderness Recommendations

We fully support recommending the Brooks Range, Porcupine Plateau, and Coastal Plain Wilderness Study Areas for designation as Wilderness under the Wilderness Act and forwarding those recommendations to the President for submission to Congress.

#### Wild & Scenic Rivers

We fully support recommending the Atigun, Hulahula, Kongakut, and Marsh Fork Canning rivers for designation as Wild Rivers under the Wild and Scenic Rivers Act.

**[136795.001 ANILCA -- Wild and Scenic Rivers and ANILCA]** We also encourage the agency to review its management of the Ivishak, upper Sheenjek and Wind rivers within the boundaries of the Arctic Refuge that were designated as wild rivers in Section 602 of ANILCA, and address current and future agency efforts to maintain the outstanding values associated with these three Wild Rivers.

#### Visitor Use

### **[136795.002 Step-Down Plans -- General]**

We support the commitment in Alternative E for the agency to address visitor use and wilderness stewardship issues. The final CCP should include a strong commitment to restore wilderness character in areas throughout the Refuge that have had those values reduced by visitor use impacts.

We are concerned that the schedule provided on pages 6-3 to 6-6 indicates that the wilderness stewardship and visitor use management plans would not be completed until 8 or 10 years from now. Given the presence of a number of known and long standing problems with wilderness degradation associated with public use, it would seem prudent to address these issues as soon as possible.

We fully support the prohibition of off-road vehicle use and helicopter use within the Refuge.

### **Wildlife Management**

We fully support Management Guideline 2.4.11 and its commitment to “leave habitats unaltered and unmanipulated” so that the natural processes are allowed to continue and to not modify or improve habitats to favor one species over another. This guideline should be retained in the final CCP.

We also fully agree with the language in Guideline 2.4.12 that states Refuge management’s focus should be “on enabling the natural behavior, interactions, and cycles of all native species to continue, with little or no human intervention and manipulation.” This is essential for wildlife management to be consistent with Refuge mission and purpose.

### **[136795.003 Wildlife -- Predator Control]**

The Draft CCP, in recognizing the need to coordinate with the Alaska Department of Fish and Game, fails to acknowledge that some state goals for managing wildlife—such as predator control and “intensive management”—clearly conflict with the Arctic Refuge’s purpose and FWS management goals. Management Goal 1 of the CCP reads:

Ecological processes shape the Refuge, and its management remains essentially free of the intent to alter the natural order, including natural population densities and dynamics, and levels of variation of native fish, wildlife, and plants.

The Final CCP must clearly indicate that when in conflict with state goals, wilderness values, Refuge purposes, and federal management goals must prevail. In such cases, the FWS must exercise its responsibility to preempt the state fish and game department and its Boards of Game and Fish.

The Final CCP must ensure that Refuge purposes will never be compromised by State decisions to authorize predator control or habitat manipulation to increase game species for hunting. We recommend that language in the Final CCP be clear that refuge purposes have supremacy over the state of Alaska’s wildlife management objectives.

**[136795.004 Wildlife -- Hunting]** REP also believes that big game/trophy hunting for sport (as opposed to subsistence), which typically involves commercial services, is inconsistent with the Refuge purpose and the management goals stated in the CCP. Any hunting allowed in the Refuge should be carefully monitored and undertaken to the highest standard of sportsmanship. Fair-chase principles must be required and the spotting of game from airplanes should be prohibited,

## Climate Change

REP supports the agency's commitment to addressing climate change as part of this planning process and in future management of the refuge.

## Oil and Gas Development

Oil and gas exploration and drilling are not compatible with the purpose and vision of the Refuge and FWS was correct in its decision to not consider an oil and gas alternative.

The vast web of pipelines and other infrastructure needed to extract oil and gas from the Refuge would industrialize and forever alter the landscape. Beyond that, persistent problems with pipeline corrosion would subject the refuge to a risk of oil spills in very remote locations.

Oil and gas activities and infrastructure adjacent to the Refuge, both onshore and offshore, pose significant threats to the integrity of Arctic fish and wildlife populations and habitats, subsistence resources and recreational opportunities. These activities and their impacts underscore the importance of the Arctic Refuge serving as just that—a refuge that provides the necessary balance envisioned by the Eisenhower Administration when it established the Arctic National Wildlife Range.

**[136795.005 Alternatives - Issues Considered but Eliminated -- Oil and Gas Development]** We urge the FWS to monitor the impacts that oil and gas activities outside the Refuge boundaries have on the Refuge, its wildlife populations, and the importance of its habitat to arctic wildlife populations.

## **[136795.006 Refuge Purposes -- General]** Refuge Purposes

REP is concerned about a statement in the CCP implying that the purposes for which the original Arctic National Wildlife Range was established only apply to those lands in the original Arctic Range: “Under Section 305 of ANILCA, the Range’s original wildlife, wilderness, and recreation purposes still apply to those lands in the former Range” (DEIS at 1-18). Under FWS’s own longstanding policy and guidance regarding determining the purpose of each refuge in the National Wildlife Refuge System, see FWS Refuge Management Part 601 National Wildlife Refuge System, 601 FW 1 at 1.16 (July 26, 2006), the purposes of the original Arctic Range—namely “to preserve unique wildlife, wilderness, and recreational values” apply to all Arctic Refuge lands.

## Conclusion

REP commends the USFWS for its scoping process and for including a proper range of alternatives.

There is no place comparable to the Arctic National Wildlife Refuge anywhere in America. It is a unique confluence of wildlife, wilderness and scenic values that warrants the highest levels of protection as the “crown jewel” of America’s National Wildlife Refuge System. We strongly urge the Fish & Wildlife Service to adopt Alternative E and provide the necessary protections for this one-of-a-kind natural treasure.

Thank you again for providing the opportunity to comment on the Arctic Refuge Plan. We look forward to the release of the Final CCP/EIS and trust that it will provide the leadership and management direction required to safeguard this special landscape and its wildlife for the benefit of present and future generations.

Sincerely,

David E. Jenkins  
Vice President for Government & Political Affairs  
Republicans for Environmental Protection  
(703) 785-9570

2011 CCP Comments\_FINAL.docx

**COMMUNICATION NUMBER 75**  
**Carl Portman, Deputy Director**  
**Resource Development Council**

Anchorage Hearing 9/21/2011  
Carl Portman, Resource Development Council

MR. PORTMAN: Good afternoon. My name is Carl Portman. I'm deputy director of the Resource Development Council. I'm here today to speak in opposition to designating the ANWR coastal plain wilderness and to encourage the Fish and Wildlife Service to manage the 1002 area in a manner that preserves the option of responsible oil and gas exploration and development in the future.

**[75.001 ANILCA -- Designated Wilderness and ANILCA] 42 RDC is strongly opposed to new Federal wilderness and Wild and Scenic River designations in ANWR and the mere implications of such consideration is inconsistent with the promises that were made in ANILCA. In our view, any such designations are in violation of the intent of the 1002 area and Alaska statehood. Our written comments will go into more detail on why we view this wilderness proposal as a violation.**

Alaska became a state based on the congressional assumption that through development of its natural resources it would be able to sustain its economy and pay its own way. Early statehood bills failed in Washington and alternately it was the discovery of oil that convinced Congress that Alaska could sustain itself as a state.

Maintaining the option of future oil and gas development in the 1002 area is of vital importance to Alaska. A Federal wilderness designation over the 1002 area would preclude development on North America's most prolific onshore oil and gas prospect. This is unacceptable and is in conflict with congressional intent and ANILCA's no more clause.

Alaska already contains more than half of all congressionally designated wilderness in America and not a single acre of this wilderness would be disturbed by oil and gas activity in the 1002 area.

This is an interesting time for this debate to be occurring given chronically high

unemployment and critical structural problems with the US economy, including staggering government debt and an alarming trade deficit, which is largely the result of imported oil. What we do need is more economic opportunities and increased domestic oil and gas production.

Opening the 1002 area to responsible oil and gas development would be a big step in the right direction, providing a huge Alaskan stimulus to the economy and billions of dollars in revenue to the Federal government, all with virtually no expense to government. Oil development in the 1002 area would provide a safe and secure source of oil for the nation for decades. It would also create tens of thousands of new jobs throughout the country and refill TAPS, which is currently operating at one-third capacity.

The biggest threat to Alaska's economy is the sharp ongoing decline in TAPS. Both President Obama and Governor Parnell have stated that increasing TAPS throughput is a national priority and in the nation's best interest.

In conclusion, the 1002 area of ANWR should not only continue to be excluded from wilderness designation, it should be open to responsible oil and gas development. RDC strongly opposes any alternative that encumbers the potential for oil development on the coastal plain.

Section 1002 of ANILCA was created in the spirit of compromise by members of Congress as was the no more clause, which implied enough is enough with regard to Alaska's vast conservation system units and Federal wilderness designations.

Thank you.

**COMMUNICATION NUMBER 136806**  
**Carl Portman, Deputy Director**  
**Resource Development Council for Alaska Inc.**

From: Carl Portman  
To: ArcticRefugeCCP@fws.gov  
Subject: RDC Comments on ANWR CCP

Ms. Seim:

Attached are the Resource Development Council's comments on the ANWR Comprehensive Conservation Plan. Please verify that you received this email.

Thank you,

Carl Portman  
Deputy Director

- RDC ANWR CCP Comments.pdf

Attachment:

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November 9, 2011

Ms. Sharon Seim  
Arctic National Wildlife Refuge  
101 12th Avenue, Room 236  
Fairbanks, AK 99701-6237

Dear Ms. Seim:

The Resource Development Council (RDC) is writing to express its opposition to Alternatives C and E in the Draft Revised Comprehensive Conservation Plan (CCP) for the Arctic National Wildlife Refuge (ANWR). The 1002 area of ANWR should not only continue to be excluded from Wilderness designation, it should be opened to responsible oil and gas exploration and development. RDC strongly opposes any alternative that encumbers future oil and gas development on the coastal plain. The Service should develop a new alternative that recommends opening the 1002 area to oil and gas exploration and development.

RDC is an Alaskan business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, tourism, and fisheries industries. Our membership includes all of the Alaska Native Regional Corporations, local communities, organized labor, and industry support firms. RDC's purpose is to expand the state's economic base through the responsible development of our natural resources.

R[136806.001 ANILCA -- Designated Wilderness and ANILCA] DC is advocating for Alaska's and, indeed, our nation's interests in urging the Service to recommend to Congress that the 1002 area be opened to responsible oil and gas exploration and development, as was recommended by the Department of Interior over 20 years ago. RDC is strongly opposed to new federal Wilderness and wild and scenic river designations in ANWR and the mere implication of such consideration is inconsistent with promises that were made in ANILCA. In our view, any such designations are in violation of the "no more" clauses in ANILCA and the intent of the 1002 area and Alaska statehood.

The 1002 area was excluded from the existing Wilderness designation in a compromise struck under the 1980 Alaska Lands Act. In exchange, Congress doubled the size of the refuge and designated eight million acres outside the 1002 area as Wilderness. In recognizing the 1002 area's enormous oil and gas potential, Congress mandated a study of its petroleum resources, as well as its wildlife and environmental values. In 1987, the Department of the Interior concluded oil development would have minimal impact on wildlife and recommended the 1002 area be opened. In 1995, Congress voted to open the area to exploration, but President Clinton vetoed the measure.

Under ANILCA, the Service has a mandate to periodically revisit the issue of oil and gas development within the 1002 area. In our view, the mandate is clearer than the authority the Service claims to have on revisiting the wilderness suitability and wild and scenic river eligibility issues. In addition, there has been considerable improvements in oil and gas exploration and development technology that has greatly reduced industry's footprint in the many years since the original study was completed. These improvements would make it possible to develop the 1002 area's energy reserves while directly utilizing only a fraction of the area.

We now have a Draft CCP that proposes several alternatives that include new Wilderness designations for ANWR while refusing to even consider oil and gas development in the 1002 area. The mere fact that an alternative requires legislative implementation, such as oil and gas activity in the 1002 area, does not automatically establish it as beyond the domain of what is required for discussion and consideration in the CCP.

Moreover, ANILCA provides that the purpose of Section 1002 "is to provide for a comprehensive and continuing inventory of the assessment of fish and wildlife resources....an analysis of the impacts of oil and gas exploration development and production, and to authorize exploratory activity within the coastal plain." The statute goes on to provide that the Secretary of the Interior must provide Congress with recommendations "with respect to whether further exploration for, and the development and production of, oil and gas within the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitats, and other resources are avoided or minimized." Therefore, in our view, the Service is required by statute to evaluate the impacts of oil and gas exploration. In addition, it is a violation of NEPA not to do so, given the law provides that federal agencies must "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." There is certainly a conflict over competing uses of the 1002 area. As a result, the Service must consider oil and gas development as an alternative.

As noted earlier, any action that would preclude oil and gas development in the 1002 area would be in conflict with congressional intent surrounding Alaska statehood. Alaska became a state based on the congressional intent that through development of its natural resources it would be able to sustain its economy and pay its own way. Early statehood bills failed in Washington, and ultimately it was the discovery of oil that convinced Congress Alaska could sustain itself as a state.

Maintaining the option for future oil and gas development in the 1002 area is of vital importance to Alaska and anyone who is truly supportive of increasing domestic energy production and reducing foreign imports. A federal Wilderness designation over the 1002 area would preclude development of North America's most prolific onshore oil and gas prospect and compromise Alaska's economy for generations to come. Expanded federal Wilderness in ANWR would also violate the "no more clause" of ANILCA. Alaska contains 58 million acres of federal Wilderness, which is more than

half of all congressionally-designated Wilderness in America. Not a single acre of this Wilderness would be disturbed by oil and gas activity in the 1002 area.

This is an interesting time for this debate to be occurring, given chronically high unemployment and critical structural problems with the US economy, including staggering government debt and an alarming trade deficit, largely a result of imported oil. What we do need is more economic opportunities and increased domestic oil and gas production. Opening the 1002 area to responsible oil and gas development would be a big step in the right direction, providing a huge and lasting stimulus to the economy and billions of dollars in new revenues to the federal government – all with virtually no expense to government!

Oil development in the 1002 area would provide a safe and secure source of oil for the nation for decades. It would create tens of thousands of jobs throughout the country and refill the Trans-Alaska Pipeline System (TAPS), existing infrastructure that is currently operating at only one-third of its original capacity.

The biggest threat to Alaska's economy is the sharp ongoing decline in TAPS throughput, which has fallen from 2.1 million barrels per day (bpd) in 1988 to an average of 568,000 bpd from January through August of this year. Four years ago, more than 734,000 bpd were flowing through the pipeline. Both President Obama and Governor Sean Parnell have stated that increasing TAPS throughput is a national priority and in the nation's best interest.

With advances in technology, it is possible to develop the 1002 area's energy reserves without significant disturbance to wildlife. In fact, wildlife populations have grown or remained stable in other areas of the North Slope where oil development is already occurring. One example at Prudhoe Bay shows the central arctic caribou population has grown from 5,000 animals in 1970 to more than 66,000 animals today.

Oil and gas development can and does coexist with wildlife in America's national wildlife refuges. In fact, there are numerous examples, including the Kenai National Wildlife Refuge in Southcentral Alaska. This refuge is heavily visited by Alaskans and by tourists from across the world, yet it is the site of the first major discovery of oil and gas in Alaska. Oil and gas production have been occurring within the refuge for more than 50 years, and wildlife populations have remained healthy.

Alaskans statewide strongly support exploration and development in the 1002 area of ANWR. In fact, polling has consistently shown that more than 70 percent of Alaskans support development of energy resources beneath the 1002 area. In addition, the Alaska Federation of Natives, the North Slope Borough, and the Arctic Slope Regional Corporation support development. Local residents and the Inupiat people who actually live adjacent to the 1002 area also support development. This support should be given considerable weight and should convince the Service to keep the 1002 area free of any federal Wilderness designation.

**[136806.002 Wild and Scenic Rivers -- Eligibility (includes Appendix I)]** With regard to wild and scenic river designations, RDC remains opposed to additional designations in ANWR, which already includes three designated rivers. As with the wilderness proposals, we consider additional designations excessive and unnecessary as current management practices already provide sufficient protection of river corridors.

In conclusion, the 1002 area of ANWR should be opened to responsible oil and gas exploration and development. RDC strongly opposes any alternative that encumbers the potential for oil and gas development on the coastal plain. The Service should develop a new alternative that recommends opening the 1002 area to oil and gas exploration and development. Such action would create

thousands of jobs, stimulate the economy, reduce America's dependence on foreign oil, and generate much-needed ongoing revenues to the federal government.

Section 1002 of ANILCA was created in the spirit of compromise by members of Congress, as was the "no more clause," which implied "enough is enough" with regard to Alaska's vast conservation system units and federal Wilderness designations. A Wilderness designation across the 1002 area would not only violate this compromise, it is unnecessary and is not in the best interests of America.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.

Carl Portman  
Deputy Director

**COMMUNICATION NUMBER 137014**  
**Dan Ritzman, Alaska Program Director**  
**Sierra Club**

From: Dan Ritzman  
To: ArcticRefugeCCP  
Subject: Sierra Club and Alaska Chapter DRAFT CCP comments

Sharon,

Please accept the attached comments from the Sierra Club and the Sierra Club Alaska Chapter  
Thanks

Dan

--

\*\*\*\*\*

Dan Ritzman  
Senior Campaign Manager  
(206) 499-5764 - c

[www.sierraclub.org/habitat](http://www.sierraclub.org/habitat)

- 2011 11 14 CCP DEIS Technical Comments - Sierra Club.docx - Final comments Arctic NWR  
Draft Revised CCP November 2011 SC Chapter.doc

[Attachment 1]

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Sierra Club

COMMENTS ON  
ARCTIC NATIONAL WILDLIFE REFUGE  
COMPREHENSIVE CONSERVATION PLAN  
AND DRAFT ENVIRONMENTAL IMPACT STATEMENT

November 14, 2011

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### IV. CONCLUSION

#### I. Introduction

The Arctic National Wildlife Refuge ("Arctic Refuge" or "the Refuge") is the crown jewel of the National Wildlife Refuge System in the United States. It is a place where all the values that the Refuge System is intended to preserve and celebrate are present in a larger-than-life landscape that was uniquely established to protect its wilderness values. The FWS aptly expresses the vision for the Arctic Refuge in this manner:

This untamed arctic landscape continues to sustain the ecological diversity and special values that inspired the Refuge's establishment. Natural processes continue and traditional cultures thrive with the seasons and changing times; physical and mental challenge test our bodies, minds and spirit; and we honor the land, the wildlife and the native people with respect and restraint. Through responsible stewardship this vast wilderness is passed on, undiminished, to future generations.

U.S. Fish and Wildlife Service, Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan, Draft Environmental Impact Statement, Wilderness Review and Wild and Scenic River Review (June 2011) (“DEIS” or “CCP DEIS”).

The Comprehensive Conservation Plan (“CCP”) for the Arctic Refuge is the critical document that ensures that the integrity of the Refuge is protected now and for future generations so that this vision can continue to be realized. In addition to the legal requirement to revise the CCP, it is an appropriate time to do so because an updated CCP can respond to what we now know about changing human impacts on the Refuge, from global warming to specific Refuge uses. Our greater understanding of the forces that can impact and influence the Arctic Refuge will allow for the adoption of a plan that can meet the challenges ahead, and ensure that the Arctic Refuge retains its fundamental wild character.

The Arctic Refuge is indeed the most wild place in the National Wildlife Refuge system, and therefore we concur with the CCP’s planning context. See CCP at 1-5.

These comments address important overarching issues related to the management of the Arctic Refuge. The comments then move through the CCP as organized by FWS to provide comments, critiques and suggestions to improve the CCP with the goal of ensuring the FWS adopts a plan that recognizes the uniqueness of the Arctic Refuge, appropriately deals with the management issues confronting the FWS, and ensures that the values for which the Refuge was set aside continue to be preserved for all.

## II. GLOBAL ISSUES

### A. THE FWS PROPERLY CONDUCTED A WILDERNESS REVIEW OF ALL NON-WILDERNESS LANDS WITHIN THE ARCTIC REFUGE

We are very pleased to see that FWS conducted a wilderness review for all non-Wilderness lands in the Arctic Refuge — including the Coastal Plain — as part of the CCP revision process. Wilderness reviews are required by Refuge System policy, and in fact they are required by law, as part of a CCP. Several laws guide the revision of the Arctic Refuge CCP and its wilderness review requirements. These include the Wilderness Act, Alaska National Interests Lands Conservation Act (ANILCA), and the National Environmental Policy Act (NEPA). In 1964, Congress enacted the Wilderness Act to:

assure that an increasing population, accompanied by expanding settlement and growing mechanization, [did] not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition.

16 U.S.C. § 1131(a). To that end, Congress directed the Secretary of the Interior to evaluate every roadless area within all national wildlife refuges for suitability for wilderness designation, and to report Wilderness recommendations to the President. 16 U.S.C. § 1132(e). [1] Since the initial mandate in 1964, that directive has been carried over and implemented during the refuge management CCP planning process and subsequent revisions.

ANILCA further customizes this national mandate to Alaska by directing the Secretary to “prepare and from time to time, revise, a comprehensive conservation plan for each refuge” in Alaska. 16 U.S.C. 304(g)(1). Section 304(g) states:

- (1) The Secretary shall prepare, and from time to time, revise, a comprehensive conservation plan (hereinafter in this subsection referred to as the ‘plan’) for each refuge.
- (2) Before developing a plan for each refuge, the Secretary shall identify and describe – (A) the populations and habitats of the fish and wildlife resources of the refuge; (B) the special values of

the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge”

Based on the identification of these specific values, each CCP must “designate areas within the refuge according to their respective resources and values.” *Id.* at 304(g)(3)(A)(i).

When Congress enacted ANILCA, it specifically incorporated portions of the Wilderness Act into the statute and carried over the Wilderness Act’s wilderness review mandate for Alaska refuges. ANILCA includes two provisions that direct the Secretary of the Interior to perform wilderness reviews of Alaska lands. ANILCA sec. 1317, 16 U.S.C. § 3205; ANILCA sec. 1004, 16 U.S.C. § 3144. Section 1317(a) directs the Service to study all non-wilderness lands in Alaska refuges and recommend areas suitable for inclusion in the National Wilderness Preservation System:

Within five years from the date of enactment of this Act, the Secretary shall, in accordance with the provisions of section 3(d) of the Wilderness Act relating to public notice, public hearings and review by State and other agencies, review, as to their suitability or unsuitability for preservation as wilderness, all lands within units of the National Park System and units of the National Wildlife Refuge System in Alaska not designated as wilderness by this Act and report his findings to the President.

16 U.S.C. § 3205. By definition section 1317 governs wilderness reviews for all land within the Arctic Refuge that has not been designated wilderness. 16 U.S.C. § 3205(a). This includes wilderness reviews of the Arctic Refuge coastal plain. Compare 16 U.S.C. § 3205 with 16 U.S.C. § 3142 (neither provision exempts the coastal plain (“1002 area”) from the wilderness review requirement). Thus, FWS was obligated to conduct a wilderness review for the Refuge as part of this process and we are very pleased to see that FWS has in fact done so.

#### B. We Urge FWS to Recommend Wilderness for the Arctic Refuge Coastal Plain

Nearly all of the Arctic Refuge’s non-Wilderness lands possess exception values that qualify them for designation as Wilderness under the Wilderness Act, and we urge that these lands be managed to protect and preserve their extraordinary wilderness values. Further, the Coastal Plain of the Arctic Refuge warrants Wilderness designation. The Coastal Plain wilderness study area is an integral part of the adjacent designated Wilderness lands and their intact ecosystems which make the whole Arctic Refuge truly unique among our Nation's natural treasures.

The Coastal Plain was a vital part of the original Arctic National Wildlife Range established in 1960 for the purpose of preserving its “unique ... wilderness values.” The Coastal Plain contains beautiful rivers rushing from the highest peaks in the Brooks Range and Sadlerochit Mountains then coursing north through foothills and hilly coastal plain, braiding across wetland tundra with lakes and ponds to broad river deltas, inter-tidal flats, lagoon and barrier island systems, and bays, spits, and other pristine shorelines along the Beaufort Sea.

The Coastal Plain hides vital winter maternity dens for polar bears, increasing in importance as arctic sea ice vanishes. Its coastal lagoons provide ringed seal pupping lairs. Dolly Varden (formerly known as Arctic char) overwinter and spawn in streams and river channels, primarily where springs flow year round, and then migrate to nearshore coastal waters for summer feeding. The Coastal Plain bursts with life in the summer as migratory wildlife converges on this biological heart of the Refuge — the Porcupine caribou herd along with golden eagles, wolves, and brown bears, and millions of migratory birds for nesting, feeding, molting, and staging.

The Coastal Plain is connected to existing designated Wilderness lands to its east and south through its scenic landscapes, watersheds, rivers, migration of the Porcupine caribou herd to its

birthplace and nursery area, and to the lives of the Gwich'in people who depend on the caribou. It is also connected through its wildlife and sweeping landscapes to the broader ecosystem including Canada's Ivvavik and Vuntut National Parks and other conservation areas in this rich trans-boundary region.

Section 2 c of the Wilderness Act defines wilderness to be "undeveloped Federal land retaining its primeval character and influence ... and which generally appears to have been affected primarily by the forces of nature, with the imprint of man's works substantially unnoticeable." Clearly, the characteristics and condition of the Coastal Plain wilderness study area meet these requirements. The Coastal Plain therefore has all the essential qualities which make it eminently qualified for designation as Wilderness and we urge FWS to adopt Alternative C and recommend Wilderness for the Coastal Plain.

### III. Specific Comments

#### A. Chapter 1. Arctic Refuge Purposes Special Values, Vision, and Goals

##### 1. THE ORIGINAL ARCTIC NATIONAL WILDLIFE RANGE'S PURPOSES APPLY TO THE ENTIRE ARCTIC REFUGE

**[137014.001 ANILCA -- Refuge Purposes and ANILCA]** In the CCP, the FWS states that the purposes for which the original Arctic National Wildlife Range ("Arctic Range") was established only apply to those lands in the original Arctic Range: "Under Section 305 of the Alaska National Interest Lands Conservation Act ("ANILCA"), the Range's original wildlife, wilderness, and recreation purposes still apply to those lands in the former Range." [2] However, under FWS's own longstanding policy and guidance regarding determining the purpose of each refuge in the National Wildlife Refuge System, [3] the purposes of the original Arctic Range apply to all Arctic Refuge lands. The misinterpretation and misapplication of Refuge purposes pervades the CCP and the management decisions that FWS is considering and proposing. Thus, it is vital that FWS clearly state that the original Arctic Range purposes apply to the entire Arctic Refuge and that the CCP reflect this understanding.

The original Arctic Range was established in 1960 "to preserve unique wildlife, wilderness, and recreational values." [4] ANILCA expanded the original Arctic Range by adding 9.2 million acres, included additional refuge purposes and re-designated the unit as the Arctic National Wildlife Refuge. These new, additional purposes include:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and graying; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and quantity within the refuge.[5]

ANILCA Section 305 states that:

All proclamations, Executive orders, public land orders and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National

Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act.[6]

This is a clear statement from Congress that Public Land Order 2214 — which set forth the Arctic Range purposes — was to remain in effect post-ANILCA unless it is inconsistent with ANILCA. The legislative history of ANILCA indicates that Congress did not intend the purposes included in ANILCA for the expanded Arctic Refuge to be the exclusive refuge purposes: “Sections 301, 302 and 303 set forth the purposes for each designated or redesignated unit and additions to existing units. Enumeration of purposes is not exclusive, but is set forth as a guide for management.” [7]

The purposes set out in Public Land Order 2214 for the Arctic Range are not inconsistent with the purposes set out in ANILCA for the Arctic Refuge; the two authorities set forth overlapping and complimentary purposes recognizing the exceptional wilderness, wildlife, recreation, subsistence resources, international importance, and water quality of the Refuge.[8] All of the values recognized in both sets of purposes support the other recognized values; for example, recognizing and managing to protect the wilderness values of the Arctic Refuge allows for the achievement and furtherance of protecting the wildlife values.

Thus, ANILCA itself and its legislative history indicate that Congress intended that Public Land Order remain in effect for the newly expanded and redesignated Arctic Refuge and that the purposes included in ANILCA were to be inclusive, rather than exclusive, of existing Arctic Refuge purposes.

As FWS’s longstanding policy and guidance regarding determining expanded refuge purposes clearly states:

When we acquire an addition to a refuge under an authority different from the authority used to establish the original refuge, the addition also takes on the purpose(s) of the original refuge unless Congress determines otherwise, but the original refuge does not take on the purpose(s) of the addition unless Congress determines otherwise.[9]

In the present case, the Arctic Refuge additions were established under a different authority (ANILCA) than the authority used to establish the original Arctic Range (Public Land Order 2214).

Thus, applying FWS’s policy for determining the purposes of a refuge, for FWS’s current determination that the Arctic Range purposes only apply to those lands within the original Arctic Range to hold true, there would need to be some indication from Congressional that the original Arctic Range purposes should not apply to the entire Arctic Range. [10]

Accordingly the purposes of the original Arctic Range apply to the entire Arctic Refuge. The FWS thus should correct this mistake in the CCP.

## 2. THE FWS HAS PROVIDED STRONG ARCTIC REFUGE SPECIAL VALUES, VISION AND GOALS THAT SHOULD BE RETAINED IN THE FINAL CCP

**[137014.002 Refuge Values -- Special Values of Refuge]** The Service has provided a strong listing of the special values of the Arctic Refuge, see DEIS Sec. 1.5, pp. 1-20 to 1-22, and we support all of them being retained in the final CCP. These Special Values should be used to guide all management decisions in the Refuge.

We also strongly support the vision statement for the Arctic Refuge set forth in the CCP: This untamed arctic landscape continues to sustain the ecological diversity and special values that

inspired the Refuge's establishment. Natural processes continue and traditional cultures thrive with the seasons and changing times; physical and mental challenges test our bodies, minds and spirit; and we honor the land, the wildlife and the native people with respect and restraint. Through responsible stewardship this vast wilderness is passed on, undiminished, to future generations.

See DEIS at Sec. 1.6.1, p. 1-23. We believe that inclusion of the last sentence pertaining to its wilderness values, "through responsible stewardship this value wilderness is passed on, undiminished, to future generations," is essential. We appreciate the acknowledgement of the traditional cultural values and continuing ties of the Native peoples to this land within the vision.

Additionally, we support the excellent Refuge Goals which aptly undergird management of the Arctic Refuge, particularly Goals 1 and 2 for management for natural ecological processes and exceptional wilderness values. See DEIS at Sec. 1.6.2, p. 1-23. Regarding Goal 2, we encourage the FWS to clarify that the goal that the Arctic Refuge "retains exceptional wilderness values without loss of natural condition and wild character" apply to the entire Refuge.

Finally, we concur with the FWS's consideration of Significant Planning Issues, see DEIS at Sec. 1.10, p. 1-31, and note that the Service correctly did not analyze oil and gas leasing or development scenarios in the range of alternatives, as we describe in more detail below.

## B. Chapter 2: Goals, Objectives, Management Policies, and Guidelines

### 1. WE SUPPORT THE GOALS IDENTIFIED BY FWS IN GENERAL AND BELIEVE THAT THE GOALS IDENTIFIED WILL HELP FWS EFFECTIVELY MANAGE THE ARCTIC REFUGE TO PRESERVE ITS EXCEPTIONAL VALUES

**[137014.003 Refuge Vision and Goals -- Goal 1 (including objectives)]** We support Goal 1 (Ecosystem Management) with one small but important change. We recommend that the word "essentially" be deleted. See DEIS at 2-1. The goal should be to maintain the Refuge free from the intent to alter the natural processes, with the understating that goals may be difficult to attain.

**[137014.004 Refuge Vision and Goals -- Goal 2 (including objectives)]** Overall, Goal 2 is excellent. However, it needs to clearly address objectives so that the part of the goal aiming to "retain[] its exceptional wilderness values without loss of natural condition and wild character" is met for the entire Arctic Refuge, including non-designated wilderness lands.

Goal 3 is well stated and supports the Wild River refuge purposes.

We support **[Preamble 137014.005]** Goal 4 (Continued Subsistence Opportunities) and urge greater coordination and partnership with local communities and tribal governments as part of the strategies for all objectives. **[137014.005 Refuge Vision and Goals -- Goal 4 (including objectives)]** The goal should also address the Refuge's role in implementation of the International Porcupine Caribou Agreements and should recognize that the rural residents in Alaska who have harvested animals from the Porcupine Caribou Herd for customary and traditional uses "should participate in the conservation of the Porcupine Caribou Herd and its habitat."

We strongly support Goal 5 (Wildlife-dependent and wilderness-associated recreational activities) and its objectives because it embraces the wildlife and wilderness purposes of the Refuge.

**[137014.006 Refuge Vision and Goals -- Goal 6 (including objectives)]** While we generally support Goal 6 (Evaluation of the Effects of Climate Change), it should be expanded to include the non-intervention policy described in the climate change Management Guidelines to ensure consistency in the CCP's approach. **[137014.007 Refuge Vision and Goals -- Goal 6 (including**

**objectives)]** Objective 6.1 should also specifically address effects of climate change on polar bears and other marine mammals that depend on refuge habitats. DEIS at 2-20.

We support Goal 7 (Conduct Research and Monitoring in support of Refuge's role as an internationally recognized benchmark for naturally functioning arctic and subarctic ecosystems)(Sec. 2.1.7, p. 2-22), which correctly emphasizes the significant scientific benchmark the Refuge provides for intact, unbroken ecosystems and that all research and scientific techniques must be carefully evaluated so that this scientific research does not affect the Refuge's ability to continue to serve as a wilderness control. **[137014.008 Refuge Vision and Goals -- Goal 7 (including objectives)]** In general, the objectives identified to achieve Goal 7 need to better provide the coordination mechanism between projects described here as well as listed as inventory and monitoring and research under other objectives, including those done by the Refuge staff itself, other arms of the Service, other federal agencies, cooperators, collaborators, tribes, local communities, and others.

Goal 8 (Cultural Resources) is an important goal for the Refuge, and we urge consultation with tribes and local communities and incorporation of traditional knowledge in all objectives.

Goal 9 (Providing Refuge information to diverse audiences near and far) is an important goal, including to further the understanding of the national interest of upholding the Refuge's wilderness and wildlife purposes for these conservation lands.

## 2. WILDLIFE MANAGEMENT MUST BE CONSISTENT WITH ARCTIC REFUGE PURPOSES AND FWS SHOULD PRECLUDE CONSIDERATION OF ANY INCONSISTENT WILDLIFE MANAGEMENT PROPOSALS

The health of the entire ecosystem must be considered in Arctic Refuge wildlife management and we advocate for an ecosystem approach. Preservation of the entire ecosystem was a fundamental purpose for the Refuge's establishment as embodied in its wilderness preservation purpose, and as further described by ANILCA's purpose for the Refuge: "to conserve fish and wildlife populations and habitats in their natural diversity." [11] **[137014.009 Consultation and Coordination -- State Coordination]** While we recognize the importance of FWS maintaining involvement in the State of Alaska's fisheries, game, and federal subsistence boards' processes, [12] we are concerned with the Alaska Board of Game's ("BOG") tendency to institute regulatory changes that are in direct conflict with Refuge System mandates and federal law. The FWS must state in the Final CCP that Refuge purposes and wilderness values are dominant over conflicting goals of the State of Alaska, and that these purposes and values thus preempt Alaska Fish and Game and Board of Game rules when necessary.

**[137014.010 Refuge Management Policies/Guidelines -- Compatibility Determinations (includes Appendix G)]** The State of Alaska manages game populations according to the Intensive Management ("IM") statute, which manages game for high levels of human harvest. [13] The IM statute allows for predator control activities, which are patently inconsistent with the Service's mission and federal law, as well as the purposes of the Arctic Refuge — which includes the conservation of "fish and wildlife populations and habitats in their natural diversity." [14] Thus, intensive management and predator control actions are inappropriate in the Arctic Refuge. To ensure clarity to and to dissuade any attempts by the State of Alaska to pursue IM programs on Refuge lands, the CCP should explicitly preclude artificial manipulation or intensive management of wildlife populations to enhance game populations for human harvest and the use of predator control for this purpose should be prohibited in any form.

the Draft CCP, however, suggests that FWS should consider clearly incompatible Alaska actions on a case-by-case basis: “[s]eparate refuge compatibility determinations addressing specific proposals will be required for State management activities that propose predator management, fish and wildlife control...or any other unpermitted activity that could alter ecosystems” of refuges in Alaska. [15] FWS need not and should not initiate a compatibility determination or NEPA process to evaluate State-sponsored predator control in Arctic Refuge. Instead, the FWS should incorporate language into the CCP and the draft Compatibility Determinations clearly stating that any regulation or plan — including the use of predator control— which conflicts with federal law or policy and the purposes of the Arctic Refuge will be preempted in the Refuge.

We have some concerns about the draft compatibility determination contained in Appendix G pertaining to State of Alaska Management Activities (DEIS at G-5). We support the Service’s statement that these management activities not be included in this blanket compatibility determination.

“This compatibility determination does not address predator management, fish and wildlife control (with the exception of animals taken in defense of life or property), reintroduction of species, native fish introductions, non-native species introductions, non-native species management, pest management, disease prevention and control, fishery restoration, fishery enhancement, construction of facilities, or any other unpermitted activity that could alter ecosystems in the Refuge. Separate compatibility determinations addressing specific proposals will be required for those activities.”

**[137014.011 Refuge Management Policies/Guidelines -- Compatibility Determinations (includes Appendix G)]** The Service needs to provide full information about the state’s activities for management and research in the CCP in order to provide a comprehensive assessment of all the activities that are done within the refuge, including within its designated wilderness. We are concerned about the lack of specificity and lack of analysis for a whole range of activities not being subject to a compatibility determination, as mentioned here:

“All management and research activities conducted by ADFG under a specific cooperative agreement with the Service to fulfill one or more purposes of the Refuge or the Refuge System mission are not subject to a compatibility determination.”

It appears that an inappropriate grandfathering of the State of Alaska’s management and research activities within the refuge is being done based on reliance of the 1982 MOU between the Service and ADF&G (DEIS at G-6):

“A compatibility determination is not required for State activities on lands in the Refuge where a pre-established agreement or memorandum of understanding is in place. Refuge staff will monitor State activities in the Refuge. Findings from these monitoring efforts will be used to determine what additional management actions, if any, would be needed to ensure State activities remain compatible with Refuge purposes and in compliance with established agreements.”

Therefore, we recommend that all State of Alaska management and research activities be addressed specifically in the DEIS, including their geographic extent, frequency, and how they intersect with the Service’s own management and research programs. Furthermore, they should be considered along with other permitted inventory, monitoring, and research programs by other agencies or Universities so that a comprehensive assessment of these activities as they support wildlife management decisions can be made.

### 3. CONSIDERATION OF CLIMATE CHANGE IN THE PLANNING PROCESS

We are pleased to see that the Service recognizes climate change as a fundamental challenge for the Arctic Refuge and is using the revision of the CCP as an opportunity to incorporate new scientific information pertaining to climate change into future management decisions. [16] The Service has rightly acknowledged that it is required to do so by Secretarial Orders 3226 and 3289. [17]

The Draft CCP states that “[i]n the foreseeable future, the Refuge will favor a policy of non-intervention, whereby natural systems are allowed to adapt and evolve, accepting that some species may be replaced by others more suited to the changing climate.” [18] With its huge size, diverse array of habitats and elevations, and intact, unfragmented habitats, the Arctic Refuge is in a superior position as compared to other conservation units to be managed for “natural adaptation,” or allowing nature to take its course, even in the face of the accelerated changes experienced at high latitudes. We, therefore, support climate change-related actions focused on scientific research and monitoring, sharing of traditional knowledge, and public awareness.

**[137014.012 Climate and Climate Change -- Cumulative Effect]** Given the wilderness character of the Refuge, the Service should also guard against increasing other stressors, and proposals for new uses or management activities on the Refuge should be evaluated carefully with respect to potential cumulative impacts on resources potentially threatened by climate change.

**[137014.013 Climate and Climate Change -- Cumulative Effect]** Additionally, to strengthen the CCP, we recommend that the FWS include additional analysis of the impacts of climate change on wildlife and habitats to ensure robust consideration of climate change impacts on the Arctic Refuge.

### 4. RECREATION ISSUES

The Service has provided strong rationale in Sec. 1.4.1.3 Recreation Purpose, see DEIS at 1-17, that the Arctic Refuge’s wilderness purpose “was intended to offer a special kind of recreation, an authentic wildlands experience of a type increasingly hard to find elsewhere.” We support continued promotion of a remote recreation experience.

### 5. WILD AND SCENIC RIVERS

**[137014.014 Wild and Scenic Rivers -- General]** Congress, through section 602 of ANILCA, designated as Wild Rivers portions of the Ivishak, upper Sheenjek, and Wind Rivers within the boundaries of the Arctic Refuge. To further its responsibilities under the Refuge Administration Act and the Wild and Scenic River Act, the FWS should more fully describe its management approach to these Wild Rivers. In the CCP, management of the Refuge’s Wild Rivers is included in the Management Categories Table, DEIS at 2-73-2-92, and discussed briefly, DEIS at 2-35. While we note that FWS indicates that it will formulate a Comprehensive River Management Plan for the Refuge’s designated Wild Rivers as a future step-down plan, DEIS at 6-3, we strongly encourage FWS to more fully discuss the current management regimes for these rivers in the final CCP, as well as describe any detailed measure available to FWS to ensure their continued integrity as Wild Rivers into the future. In this manner, the FWS can assure the preservation of the outstanding values associated with the Refuge’s three Wild Rivers.

### 6. MANAGEMENT POLICIES AND GUIDELINES

We agree that the Arctic Refuge is unique and with the appropriateness of this description regarding management policies: “direction for Arctic Refuge varies more than other comprehensive conservation plans. Because the Service intends to manage Arctic Refuge at the

far end of the unaltered spectrum, the Refuge plan calls for a more hands-off approach to management and allows less manipulations of the environment than other refuge plans.” (DEIS at 2-31).

**[137014.015 Management Categories -- General]** This plan should not include categories from its “statewide management template” that are not suitable management categories and list activities that are not appropriate Refuge uses in the Arctic Refuge (DEIS at 2-31 to 2-32 and Table 2-1). Although lands in other Alaskan refuges fall into five categories, only those categories applicable to the Arctic Refuge should be included in this CCP: Minimal, Wilderness, and Wild River. Due to the Arctic Refuge’s Special Values, purposes, particularly its unique wilderness purpose, and goals, it is inappropriate for this plan to include the Intensive and Moderate Management categories at all. They should not “be available should the plan be amended in the future to include either of these management categories” (DEIS at 2-31) because the categories contain activities that are incompatible with the fundamental purposes of the Arctic Refuge. This contingency for possible plan amendments does not establish clear and predictable policies in this CCP which have been subject to full review, and inclusion of the Moderate and Intensive Categories sets an expectation that incompatible activities may be allowed in the future. These incompatible, harmful activities as listed in Table 2-1 should include public access via highway vehicles, off-road (all-terrain vehicles like air boars and air-cushion vehicles), helicopters, all weather roads, unimproved roads, designated Off-Road Vehicle Routes and Areas for public use and recreation, roadside exhibits and waysides, constructed and maintained airstrips, docks, visitor contact facilities on refuge lands, developed campgrounds, construction of bunkhouses, construction of aircraft hangers, sale of sand and gravel. Therefore, the Intensive and Moderate Management categories should be removed from this CCP, including from Table 2-1.

We have concerns about some of the existing and proposed activities that the CCP lists as Appropriate Uses (Sec. 2.4.5 , DEIS at 2-40) and for which compatibility determinations were drafted for public review in Appendix G. Our concerns with the compatibility determination for the State of Alaska Management Activities were addressed in the section, above, on wildlife management.

**[137014.016 Refuge Management Policies/Guidelines -- Compatability Determinations (includes Appendix G)]** We find that further review is needed for the Commercial Shore-fast Sea Ice Access activity (pp. G-57 to G-63) and that a far narrower description of the activity allowed is needed for it to be considered an appropriate use. There is insufficient information and analysis in the DEIS about this existing activity upon which to base this draft Compatibility Determination, including types of vehicles deployed, frequency, exact geographic scope, number and timing of trips, past history of activities including any spills, and other factors.

The DEIS fails to include any description or environmental analysis of this Commercial Use activity except in this draft Compatibility Determination. It does not include any description of this type of transportation activity in the Affected Environment section on transportation (Sec. 4.4.2), or Kaktovik (p. 4-136), nor was any analysis provided in the Environmental Consequences section.

While this access may be necessary to support delivery of goods to the local community, in addition to aircraft and barge deliveries, the draft compatibility determination as written does not confine it to those activities. The draft Compatibility Determination needs to narrow its provisions to ensure that is not used for activities that are prohibited in the refuge, including any industrial activities such as support for offshore oil and gas exploration or development.

This activity would be occurring on sea ice in designated Critical Habitat for polar bears at a time when bears are denning, and therefore environmental impact analysis of this activity in the DEIS is necessary because it could result in pollution and disturbance of this habitat within the refuge. Although the draft Compatibility Determination states that Endangered Species Act Section 7 and Marine Mammal Protection Act consultations will be required, they are not contained within this DEIS, and therefore, the draft Compatibility Determination should not be approved without incorporation of such analysis within the EIS.

Does this commercial access include travel sea ice within designated Wilderness in the eastern coast of the Refuge adjacent to Canada? How is climate change affecting the reliability of sea ice travel? How often do these haulers end up travelling on land? How often has this been due to emergency conditions when there is open water? How often are these vehicles hauling fuel?

Finally, we recommend that if this activity is found to be appropriate, that any permits should clearly prohibit travel on land, including barrier islands, and require live GPS data of the routes from the vehicles so that their routes during the trip may be accurately tracked to minimize impacts and to ensure compliance on a real-time basis.

**[137014.017 Management Categories -- Special Management Areas]** The section on Alaska Native Claims Settlement Act Section 22(g) (Sec. 2.3.6.2 DEIS at 2-36), is incomplete regarding the nature of commercial activities that can occur on Arctic Slope Regional Corporation and Kaktovik Inupiat Corporation lands. The facts regarding the prohibition on oil and gas development that applies to these lands should be included.

ASRC's lands are subject to specific legal restrictions, namely the laws governing the Arctic Refuge and its purposes and the prohibition on oil and gas development. The "Chandler Lake Exchange" (August 9, 1983 Agreement between ASRC and Interior Secretary James Watt) gave subsurface lands for 92,000 acres within the Arctic National Wildlife Refuge to the Arctic Slope Regional Corporation despite the fact that ANCSA prohibited Regional Corporations from making selections in National Wildlife Refuges. However, the exchange agreement states that oil and gas leasing, development and production on these lands is prohibited unless Congress opens them. Additionally, ASRC currently does not have, and never had, a reasonable expectation that it could produce oil and gas from its speculative (restricted title) subsurface interests.

**[137014.018 Refuge management policies/guidelines -- Land Exchanges]** We recommend that the description of Land Exchanges and Acquisitions (sec. 2.4.3, DEIS at 2-37) include descriptions of major land exchanges due to their great controversy. See Alaska Wilderness League et al. scoping comments dated June 7, 2010 for additional information on past exchanges that we recommend be included in the CCP to enable greater public understanding of the status of the ASRC lands within the refuge. The General Accounting Office concluded the Chandler Lake Exchange was not in the public's best interest. ASRC has already obtained over \$39 million from its speculative oil lease options held by Chevron and BP – more than seven times the value of the Chandler Lake lands ASRC traded (\$5.1 million). [19] GAO said, "Interior used its broad authority to avoid procedural requirements otherwise applicable to land exchanges, such as full public review, preparation of environmental impact statements, and disclosure of the fair market value of the land and interest exchanged." [20] Congress held major oversight hearings concerning the Chandler Lake Exchange and another failed proposal, the "Megatrade," and then, in 1988, Congress halted further land exchanges, without Congressional approval, involving the coastal plain of the Arctic National Wildlife Refuge with an ANILCA amendment (Section 201 of PL 100-395; ANILCA Section 1302(h)(2)).

**[137014.019 Refuge Management Policies/Guidelines -- Coastal Zone Consistency]** The CCP needs to address the fact that the Alaska Coastal Management Program ended in 2011 in the discussion on Coastal Zone Consistency (Sec. 2.4.8, DEIS at 2-42). This is of particular concern because there is no longer the ACMP mechanism for community standards and review of activities resulting from the state's Beaufort Sea Areawide Leasing Program in the 3-mile zone immediately offshore the refuge. There will be less scrutiny and lack of comprehensive mechanism for public review and comment due to the absence of this program regarding impacts from oil and gas activities on refuge fish and wildlife resources that rely on those nearshore waters, and noise, spills, and other impacts that can degrade and harm refuge habitats, wildlife, subsistence resources and uses, wild lands recreation, and wilderness values.

The sections on Habitat Management (Sec. 2.4.11.1, DEIS at 2-5) and Fish and Wildlife Population Management (Sec. 2.4.12, DEIS at 2-52) contain well-written descriptions of the management approach to meet the refuge goals, including that "the intent of management will be to leave habitats unaltered and unmanipulated" and that the "Refuge focuses on enabling the natural behavior, interactions, and cycles of all native species to continue, with little or no human intervention and manipulation."

The oil and gas leasing, exploration, development, and production prohibitions are described in the section on Mineral Exploration and Development (Sec. 2.4.18.2, DEIS at 2-66), and in Appendix D, Issues Considered but Eliminated from Further Study.

**[137014.020 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** FWS appropriately states that no exploration activities are allowed on the "1002" Coastal Plain area of the Arctic Refuge, DEIS at 2-66-67, that no Arctic Refuge oil or gas leasing is permitted by law, DEIS at 2-67, and that no oil and gas support facilities are allowed on the Coastal Plain of the Arctic Refuge. Id. For additional clarity, the prohibition of support facilities on the Coastal Plain could be added to Table 2-1 (likely at pages 2-89, 90). Further, **[137014.021 Alternatives - Issues Considered but Eliminated -- Other Issues]** the last clause in footnote 2 to Table D-1 (DEIS at D-19) should be changed to state "issue is one of policy or law" as the current language suggests that there may be more discretion than actually exists on these issues.

**[137014.022 Alternatives - Issues Considered but Eliminated -- Oil and Gas Development]** The final CCP should acknowledge and support the continuation of the existing prohibitions on oil and gas, leasing, development, and production of KIC and ASRC lands. Because all of these points are based in law, see e.g., ANILCA Section 1003, these prohibitions cannot be changed. Further, **[137014.023 Alternatives - Issues Considered but Eliminated -- Other Issues]** Section D.6.3 should characterize the types of private lands that exist inside the Arctic Refuge boundary, and explicitly note the ANCSA Section 22g authority that the FWS has to influence activities on those lands.

**[137014.024 Refuge Management Policies/Guidelines -- Minerals Management]** The extraction of sand and gravel for commercial purposes is precluded in the Arctic Refuge. See e.g., Arctic Refuge CCP (1988) at Table 10, p. 183 (prohibition on removal of sand and gravel for commercial purposes). This should be made clear in the final CCP, and the language in the current Draft CCP suggesting otherwise is unnecessary and thus should be removed or qualified, as it is irrelevant to the Arctic Refuge where Intensive and Moderate Management Categories do not exist. Compare DEIS at 2-67 (3rd full paragraph) with Table 2-1 (clearly showing that Moderate and Intensive Management Categories do not apply to the Arctic Refuge).

### C. Chapter 3: Issues and Alternatives

#### 1. FWS PROPERLY DID NOT CONSIDER AN “OIL AND GAS ALTERNATIVE”

FWS correctly did not consider an oil and gas alternative, or scenarios which evaluate impacts of oil and gas exploration, development or production from the refuge. [21] NEPA “places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action... [I]t also ensures that the agency will inform the public that it has indeed considered environmental concerns in the decision-making process.” *Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, 524 F.3d 938, 947 (9th Cir. 2008) (citing *Baltimore Gas & Elec. Co. v. Nat’l Res. Def. Coun., Inc.*, 462 U.S. 87 (1983)). NEPA requires that an EIS include “alternatives to the proposed action. [22] To help define the alternatives, CEQ regulations require that the agency “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” [23] Thus, under NEPA, an agency only needs to consider alternatives that meet the purpose and need for the proposed action. [24]

The purpose of FWS’s proposed action “is to develop a Revised Plan for Arctic Refuge to provide management direction for the next 15 years.” [25] The action is needed to:

Update management direction related to national and regional policies and guidelines used to implement Federal laws governing Refuge management[;]

Describe and protect the resources and special values of Arctic Refuge[;] Incorporate new scientific information on resources of the Refuge and surrounding areas[;]

Evaluate current Refuge management direction based on changing public use of the Refuge and its resources[;]

Ensure the purposes of the Refuge and the mission of the Refuge System are being fulfilled[;]

Ensure that opportunities are available for interested parties to participate in the development of management direction[;]

Provide a systematic process for making and documenting resource management decisions[;]

Establish broad management direction for Refuge programs and activities[;] Provide continuity in Refuge management[;]

Establish a long-term vision for the Refuge[;]

Establish management goals and objectives[;]

Define compatible uses[;] Provide additional guidance for budget requests[; and]

Provide additional guidance for planning work and evaluating accomplishments.[.][26]

Considering an oil and gas leasing, exploration, development, or production alternative would not achieve any of the management goals or objectives identified by FWS as the need for the agency action. Oil and gas activities are not currently allowed in the Arctic Refuge; ANILCA section 1003 states that the "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 [Refuge] shall be undertaken until authorized by an act of Congress." [27] Further, oil and gas activities are contrary to the purposes of the Refuge, and are inconsistent with the Refuge’s purposes — neither the original purposes establishing the Arctic National Wildlife Range, nor the expanded purposes described in ANILCA. [28] Additionally, the National Wildlife Refuge System Administration Act of 1966, as amended, states that each refuge shall be managed to fulfill both

the purposes for which the original refuge was established and the mission of the Refuge System. [29] The revision of the Arctic Refuge CCP must follow these legal guidelines and set forth management regimes that are consistent with the layered Refuge purposes.

Thus, considering an alternative allowing for oil and gas development in the Arctic Refuge would not achieve the purpose and need for the FWS's revision of the CCP and FWS properly did not consider such an alternative. [30]

## 2. OTHER ISSUES ELIMINATED FROM DETAILED STUDY

As discussed in our scoping comments and by FWS, the following issues were correctly eliminated from detailed study in the CCP DEIS. See e.g., Chapter 3 on issues and alternatives (Sec. 3.1.2, DEIS at 3-6) and Appendix D-1:

Oil and gas development

Updating seismic data on the Coastal Plain

The ANILCA No More Clause

D. Chapter 5: Environmental Consequences

### 1. THE CCP EIS FAILS TO ADEQUATELY CONSIDER CUMULATIVE IMPACTS

NEPA requires that agencies disclose the environmental impacts of an action within the Environmental Impact Statement (EIS). 42 U.S.C. § 4332(2)(C)(i), (ii). See also 40 C.F.R. § 1508.25(c). The environmental impacts of an action include the direct, indirect and cumulative impacts. 40 C.F.R. § 1502.16. Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. To satisfy NEPA’s requirements, the cumulative impacts analysis must be reasonably detailed; as the Ninth Circuit has explained, “[g]eneral statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Neighbors of Cuddy Mountain v. U.S Forest Serv.*, 137 F.3d 1372, 1379-80 (9th Cir. 1998). As the Ninth Circuit stated in *Lands Council v. Powell*, “the general rule under NEPA is that, in assessing cumulative effects, the Environmental Impact Statement must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and the differences between the projects, are thought to have impacted the environment.” 379 F.3d 738, 745 (9th Cir. 2004), rev’d on other grounds, *Lands Council v. Powell*, 395 F.3d 1019 (9th Cir. 2005).

**[137014.025 Environmental Consequences -- Cumulative Effects: General]** The cumulative impacts analysis in the CCP DEIS is insufficient to satisfy NEPA’s requirements to consider and analyze the cumulative impacts of a project. The DEIS purports to consider the cumulative effects, stating “At the end of each alternative, we disclose the anticipated cumulative effects of the alternative on the biophysical and human environments and to reasonably foreseeable future actions.... The anticipated positive or negative effects of the reasonably foreseeable activities are discussed first, followed by a discussion of anticipated cumulative effects of each alternative.” DEIS at 5-2.[31] However, the discussion of cumulative impacts associated with each alternative with respect to the effects of the alternative and the effects of reasonably foreseeable future actions is lacking. At the end of the discussion of the environmental consequences of each alternative, the DEIS contains a few sentences discussing the impacts of the alternative on the Arctic Refuge and its management, followed by the very cursory statement that “These effects would be cumulative to the effects of climate change, development activities, and management

decisions made by other throughout the region.” DEIS at 5-20, 5-32, 5-43, 5-55, 5-67, and 5-75. There is no actual discussion or analysis of the impacts of climate change, development activities or management decision in the region on the Arctic Refuge. As the Ninth Circuit explained,

[i]n accord with NEPA, the Forest Service must ‘consider’ cumulative impacts. [] To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the Forest Service's decisions, can be assured that the Forest Service provided the hard look that it is required to provide.

Neighbors of Cuddy Mountain v. U.S. Forest Serv., 137 F.3d 1372, 1379 (9th Cir. 1998) (internal citation omitted)

To the extent that FWS is relying on Appendix C to the DEIS to provide that analysis, FWS must clearly say so. Additionally, review of Appendix C reveals that the analysis of the planning efforts is incomplete and inadequate. First, as explained below, the planning efforts included in Appendix C fail to include multiple current and reasonably foreseeable future actions. Second, the impacts discussed for each planning effort are cursory, generally consisting of statements that the action is not thought to adversely affect Refuge management. See e.g., DEIS at Appendix C: Other Planning Efforts at C-6. As explained above, this cursory discussion does not satisfy NEPA. See Neighbors of Cuddy Mountain v. U.S. Forest Serv., 137 F.3d at 1379.

To satisfy NEPA, FWS needs to take a hard look at the cumulative impacts of past, present and reasonably foreseeable future actions on Refuge management, objectives and goals. This requires an analysis and discussion of such impacts in the EIS. See Lands Council, 379 F.3d at 745. Without such, the DEIS for the Arctic Refuge CCP is inadequate.

**[137014.026 International Treaty Obligations -- ]** We also note that a cumulative impact analysis for the Porcupine Caribou Herd is an international obligation. The International Porcupine Caribou Herd Agreement states that “When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyse potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou.”

## 2. The FWS Failed to Consider and Analyze the Cumulative Impacts to the Refuge and Refuge Management from Multiple Reasonably Foreseeable Future Actions

NEPA requires that agencies disclose the environmental impacts of an action within the Environmental Impact Statement (EIS). 42 U.S.C. § 4332(2)(C)(i), (ii). See also 40 C.F.R. § 1508.25(c). The environmental impacts of an action include the direct, indirect and cumulative impacts. 40 C.F.R. § 1502.16. Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. To comply with NEPA, the EIS must contain quantified data and discussion of how the proposed project and reasonably foreseeable future projects will affect the environment. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

As explained by the Ninth Circuit, NEPA “is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” *Kern v. Bureau of Land Management*, 284 F.3d 1062, 1072 (9th Cir. 2002). If “it is reasonably possible to analyze the environmental consequences in an EIS . . . the agency is required to perform that analysis.” *Id.*; see also 40 C.F.R. § 1502.16

(must assess the environmental impacts of all “proposed actions”); 40 C.F.R. 1501.12 (agency must identify effects “in adequate detail”).

In other words, an agency may not “avoid an obligation to analyze in an EIS environmental consequences that foreseeably arise from [a proposed action] . . . merely by saying that the consequences are unclear or will be analyzed later.” *Id.* The agency must also consider the impacts of reasonably foreseeable future actions on the proposed action. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

Reasonably foreseeable future actions under NEPA include proposed projects. *N. Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 980 (9th 2006), citing *Lands Council v. Powell*, 379 F.3d 738, 746 (9th 2004), *rev'd on other grounds*, 395 F.3d 1019 (9th Cir. 2005). NEPA defines a proposed project as one that is “at that stage in the development . . . when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.” 40 C.F.R. § 1508.23. Additionally, projects where an agency has formally announced the project and has issued a summary of the project are reasonably foreseeable. See *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 812 (9th Cir. 1999).

**[Preamble 137014.027, 028, 029]** The Arctic Refuge Draft Environmental Impact Statement for the Draft Revised Comprehensive Conservation Plan fails to account for, and consider the impacts of, multiple reasonably foreseeable future actions, the effects of which will likely impact the FWS’s management of the Arctic Refuge. The reasonably foreseeable actions not analyzed in the DEIS are:

**[137014.027 Environmental Consequences -- Cumulative Effects: General]** Federal Bureau of Ocean Energy Management 2012-2017 OCS Oil and Gas Leasing Program-The Bureau of Ocean Energy Management is currently in the process of developing a new five year leasing program for outer-continental shelf waters. See <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/Current-Five-Year-Leasing-Plan.aspx> (last visited October 25, 2011). The Proposed Program includes a lease sale in the Beaufort Sea. See Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program 2012-2017 (Oct 2011). Offering additional federal oil and gas leases in the Beaufort Sea could result in additional exploration and development activities in the area, increasing air and water pollution, industrial facilities, and demand for construction resources (i.e., gravel), among other things. The impacts of the leasing and the associated activities will impact the management, objectives and goals of the Arctic Refuge.

**[137014.028 Environmental Consequences -- Cumulative Effects: General]** State of Alaska Areawide Oil and Gas Lease Sales-The State of Alaska, Department of Natural Resources recently issued a Notice of Sale for a considerable lease sale for the vast majority of state lands in the Beaufort Sea Areawide, the North Slope Areawide and the North Slope Foothill Areawide areas on December 7, 2011. See <http://dog.dnr.alaska.gov/Leasing/LeaseSales.htm>. The lease sales could result in exploration and development activities in areas adjacent to the Arctic Refuge, increasing air and water pollution, industrial facilities, demand for construction resources (i.e., gravel) and water, among other things. The impacts of the lease sales and the associated activities will impact the management, objectives and goals of the Arctic Refuge.

**[137014.029 Environmental Consequences -- Cumulative Effects: General]** State of Alaska Board of Game Proposal 130 —This proposal authorizes a brown bear predator control program in Game Management Unit (“GMU”) 26B, which encompasses the State land on the North Slope

as well as a portion of the Arctic Refuge. See Game Management Units/Special Management Units, Unit 26 Arctic Slope, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. The stated purpose of the program is to reduce brown bear predation on muskoxen. See Alaska Board of Game, 2011/2012 Proposal Book Arctic, Western, and Interior Regions, and Statewide Regulations, Cycle B Schedule at 174-76, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. As noted above, intensive management is inconsistent with Arctic Refuge purposes and values, and the FWS cannot allow Alaska to conduct such activities on the Refuge. That said, a brown bear predator control program on non-Refuge lands within GUM 26B will impact the population of brown bears within the Refuge and affect FWS's management of the Refuge to protect the wildlife.

To comply with NEPA, FWS must consider and analyze the impacts from these reasonably foreseeable future projects (as well as any others that the agency is or becomes aware of) on the management, objectives and goals of the Arctic Refuge.

### 3. The FWS Failed to Consider the Cumulative Impacts of the Action in the ANILCA Section 810 Evaluation

Title VIII of ANILCA recognizes that subsistence uses are a public interest and provides a framework to consider and protect subsistence uses in agency decision making processes. 16 U.S.C. §§ 3111–3126. As the Supreme Court explained:

[t]he purpose of ANILCA § 810 is to protect Alaskan subsistence resources from unnecessary destruction. Section 810 does not prohibit all federal land use actions which would adversely affect subsistence resources but sets forth a procedure through which such effects must be considered and provides that actions which would significantly restrict subsistence uses can only be undertaken if they are necessary and if the adverse effects are minimized.

*Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 544 (1987).

Thus, ANILCA § 810 imposes a two-tiered process to evaluate a project's impacts on subsistence uses. First, the federal agency:

[i]n determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands...shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

ANILCA § 810(a), 16 U.S.C. § 3120(a). This initial finding is referred to as the “tier-1” determination, *Hanlon v. Barton*, 470 F. Supp. 1446, 1448 (D. Alaska 1988), and requires the agency to consider the cumulative impacts in making the determination. *Sierra Club v. Penfold*, 664 F. Supp 1299, 1310 (D. Alaska 1897), *aff'd by Sierra Club v. Penfold*, 857 F.2d 1307 (9th Cir. 1988).

If the agency, after conducting the tier-1 analysis, determines that the activity will not “significantly restrict subsistence uses,” 16 U.S.C. § 3120(a), then the agency issues a Finding of No Significant Restriction (FONSR) and the requirements of ANILCA § 810 are satisfied. However, if the agency makes the initial determination that the action would “significantly restrict subsistence uses,” the agency must then make conduct a “teir-2” analysis, *Kunaknana v. Clark*, 742 F.2d 1145, 1151 (9th Cit. 1984); *Hanlon*, 470 F. Supp. at 1448. Under teir-2, the agency must

determine whether any restriction on subsistence is necessary, involves the minimal amount of public lands necessary to accomplish the purpose of the use, occupancy or disposition of public lands, and takes steps to minimize the adverse impacts to subsistence uses and resources. 16 U.S.C. § 3120(a)(1)–(3). Thus, as the Ninth Circuit explained, ANILCA § 810 imposes procedural requirements as well as substantive restrictions on the agency’s decisions. *Sierra Club v. Marsh*, 872 F.2d 497, 502–03 (9th Cir. 1989).

**[137014.030 ANILCA -- ANILCA Section 810 Evaluation]** In the CCP DEIS Section 810 Evaluation, FWS states that “[n]one of the management alternatives evaluated in this Plan propose actions that would reduce subsistence uses because of direct effects on wildlife or habitat resources or that would increase competition for subsistence resources.” DEIS at 5-87. While this may be true, the Section 810 Evaluation fails to consider whether the cumulative impacts of the proposed action may have significant restrictions on subsistence uses. To comply with ANILCA, the FWS must consider not only the direct effects, but also the cumulative impacts of the proposed action in making its determination that the proposed action would not have a significant restriction on subsistence uses. See *Sierra Club v. Penfold*, 664 F. Supp at 1310.

#### IV. CONCLUSION

Thank you for providing the opportunity to comment on the Arctic Refuge draft CCP and EIS. We look forward to working with you to finalize this critical planning effort.

Sincerely,

Dan Ritzman  
Alaska Program Director Sierra Club

[1] Of course, a decision not to make a Wilderness recommendation for some or all lands covered in any given planning process does not mean that the lands are not suitable for future wilderness protection.

[2] DEIS at 1-18. See also U.S.FWS Refuge Purposes Arctic national Wildlife Refuge Map, available at: <http://arctic.fws.gov/pdf/ccppurposesp2011.pdf>.

[3] See FWS Refuge Management Part 601 National Wildlife Refuge System, 601 FW 1 at 1.16 (July 26, 2006).

[4] Public Land Order 2214 (Dec. 6, 1960).

[5] 94 Stat. 2390, P.L. 96-487 at 303(2) (Dec. 2, 1980).

[6] P.L. 96-487 (Dec. 2, 1980) (emphasis added).

[7] House Report No. 96-97(I) at 174 (April 18, 1979) (emphasis added)

[8] The fact that the two sets of purposes are complimentary and not inconsistent is evidenced by FWS's determination that the pre-ANILCA and ANILCA purposes apply concurrently to those lands within the original Arctic Range.

[9] 601 FW 1 at 1.16.

[10] In its general guidance regarding allowable uses of refuges, FWS appears to have contrary guidance regarding the purposes of refuges established by ANILCA. See FWS Refuge Management Part 603 National Wildlife Refuge System, 603 FW 2 at 2.8 (B) (Nov. 17, 2000) (stating that "Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with

ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA") ((emphasis added). Because this guidance is found in the FWS manual addressing compatibility of uses of refuges and 601 FW 1 directly addresses identifying or determining the purposes of refuges, 601 FW 1 is the controlling guidance on this issue.

[11] ANILCA Sec. 303 (2)(B)(i) (emphasis added).

[12] CCP DEIS at 2-4.

[13] Alaska Statute 16.05.255.

[14] ANILCA Sec. 303 (2)(b)(i) (emphasis added).

[15] CCP DEIS at 2-44 (2.4.9.1 Federal, State, and Local Governments). See also CCP DEIS at 2-55 (stating that "[i]f determined necessary under subsection 2.4.2 (Human Safety and Management Emergencies), Service or State actions involving the killing, relocation, removal, or sterilization of wildlife for the benefit of another species would require appropriate NEPA compliance and an ANILCA Section 810 determination.).

[16] CCP DEIS at 1-2.

[17] CCP DEIS at 2-47.

[18] CCP DEIS at 2-47 and 4-56.

[19] ASRC, 1985, Annual Report.

[20] General Accounting Office. October 6, 1989. Federal Land Management: Chandler Lake Land Exchange not in the Government's best interest. RCED-90-5.

[21] See DEIS at 3-6 (stating that "An oil and gas alternative would not satisfy NEPA's requirement that alternatives meet the purpose and need for the Revised Plan, and the Service has no administrative authority over oil and gas development").

[22] NEPA 102,42 U.S.C.4332(s)(C)(iii).

[23] 40 C.F.R. 1502.13.

[24] See *Ilio'uloakalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1097 (9th Cir. 2006) (stating that "The scope of reasonable alternatives that an agency must consider is shaped by the purpose and need statement articulated by that agency. The [agency] must consider all reasonable alternatives within the purpose and need it has defined"). See also *City of Carmel-by-the-Sea v. U.S. Dep't of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997).

[25] DEIS at 1-1.

[26] DEIS at 1-1--1-2. See also DEIS Appendix D at D-1 (stating that "[t]he purpose and need for the Revised Plan is to ensure activities, action, and management fulfill the legal purposes for which the Refuge was established, fulfill the statutory mission of the National Wildlife refuge System [] and provide direction on how the U.S. Fish and Wildlife Service [] will meet these purposes").

[27] 16 U.S.C.3143.

[28] See P.L. 96-487, 303 (2). The original 'Arctic national Wildlife Range' was created in 1960 by Public Land order 2214 "For the purpose of preserving unique wildlife, wilderness and recreational values." Public Land order 2214 (Dec. 6, 1960). The purposes added in ANILCA are:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char (note that those residing in Alaska's North Slope rivers and lagoons are now classified as Dolly Varden) and grayling; (ii) to fulfill the international fish and wildlife treaty obligations of the United States; (iii) to provide the opportunity for continued subsistence uses by local residents; and (iv) to ensure water quality and necessary water quantity within the refuge. P.L. 96-487, 94 STAT. 2451 (Dec. 2, 1980).

[29] 16 U.S.C. 668dd(a)(3), 668dd(a)(4)(D).

[30] See *Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d at 1097.

[31] As an initial matter, this formulation of cumulative effects misstates the role of considering reasonable foreseeable future actions. As described by the FWS in the DEIS, FWS perceives its duty to require it to look at the impacts from the CCP alternatives. FWS must also consider the impacts of reasonably foreseeable future actions on the CCP alternatives to satisfy NEPA. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

**COMMUNICATION NUMBER 32625**  
**Nicole Whittington-Evans, Alaska Regional Director**  
**The Wilderness Society**

From: Nicole Whittington-Evans  
To: "Sharon\_Seim@fws.gov"  
Subject:

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[IMAGE] We protect wilderness and inspire Americans to care for our wild places  
- image001.jpg - 1111 TWS Arctic Refuge CCP DEIS Comments.docx  
Attachment:

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The Wilderness Society

Mr. Richard Voss, Refuge Manager  
US Fish and Wildlife Service  
Arctic NWR – Sharon Seim  
101 12th Ave., Rm 236  
Fairbanks, AK 99701-6237

November 15th, 2011

Re: Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan Draft  
Environmental Impact Statement

Dear Mr. Voss:

Thank you for the opportunity to comment on the Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan Draft Environmental Impact Statement (DEIS). Please accept the following comments submitted by The Wilderness Society (TWS) regarding the Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan DEIS.

TWS supports Alternative E. We submitted more detailed comments on behalf of six other conservation organizations, and those are hereby incorporated by way of reference into these comments. Please accept these additional comments regarding the Draft Revised Arctic Refuge Plan which are intended to be complimentary and additive to the comments submitted by TWS and six other organizations.

Founded in 1935, TWS's mission is to protect wilderness and to inspire Americans to care for our wild places. Our organization represents approximately 150,000 members nationwide, with close to 500 members in Alaska, all of whom share an interest in how the Arctic National Wildlife Refuge and its wilderness lands are managed.

TWS supports Alternative E because it is the Alternative that would best protect the integrity of the entire Refuge ecosystem, including the very important coastal plain, as well as best achieve the purposes of the Refuge. Alternative E would also best fulfill the vision of those who advocated for establishment of the refuge because it is the best alternative for ensuring that wildness and natural processes will remain as the permanent defining qualities of the entire refuge.

Furthermore, Alternative E is the only Alternative which would consolidate administration of nearly the entire Refuge under the provisions of the Wilderness Act, assuring the most appropriate stewardship and strongest protection for this incomparable place. Additionally, Alternative E best supports the overall goals the U.S. Fish and Wildlife Service (USFWS) has identified for the refuge in the DEIS, which we support and generally find to be excellent.

Drawing on the idea of wilderness preservation pioneered by Robert Marshall and Aldo Leopold, the Refuge founders, Olaus and Mardy Murie and others established a bold wilderness vision for the Arctic Refuge. Originally established as the Arctic National Wildlife Range in 1960 by the Eisenhower administration, the Arctic Refuge is the only national wildlife refuge established specifically to preserve wilderness values. Similarly, those who advocated for, authored and passed the Alaska National Interest Lands Conservation Act in 1980 and expanded the Arctic Refuge had a bold vision for Alaska's vast arctic and sub-arctic lands, and this vision involved ecosystem protection, wilderness protection, the protection of subsistence resources, access to those resources and a continued subsistence way of life. The Arctic Refuge was part of this vision, and Alternative E best supports it.

Similarly, those who authored and passed ANILCA in 1980 and expanded the Arctic Refuge had a bold vision for Alaska's vast arctic and sub-arctic lands, including the refuge, and this vision involved ecosystem protection, wilderness protection, the protection of subsistence resources, access to those resources and a continued subsistence way of life

We Commend the USFWS for moving forward and embracing the possibility of bold conservation in this draft plan including wilderness – Our founders would be proud of your work. The agency has developed an excellent draft plan.

There are many aspects of the draft plan that TWS supports. For example, TWS supports:

1. The Wilderness Review underway – great job overall – this is the first wilderness review of any Alaskan refuge that has had its CCP revised, and we congratulate the USFWS for following through with this aspect of refuge planning, which is legally required
2. finalizing the review for all non-wilderness designated areas of the refuge by determining suitable lands for wilderness and recommending wilderness for those suitable lands throughout the refuge
3. recommending wilderness as part of this process in the FEIS and ROD and taking bold steps to ensure wilderness protection for the refuge
4. the USFWS identifying the need for wilderness training and education for its staff and the public
5. TWS supports the Scope of Alternatives
6. The proposed goals, particularly 1 and 2, directing protection of ecological processes and wilderness character;
7. the strong proposed Management Guidelines overall
8. addressing climate change as part of this process and in future management of the refuge

9. the very strong Special Values of the Arctic Refuge section

10. the USFWS recognizing the agency's legal requirement to look beyond the boundaries of the refuge and that the USFWS has shown foresight as the agency considers the conservation role of the refuge locally, regionally, at the State level and as part of the circumpolar Arctic. The agency is rightfully considering other management plans, cooperating with other agencies on planning processes elsewhere that are moving forward, following through with the Landscape Conservation Cooperative as well as considering management of neighboring lands in order to determine the refuge's conservation role.

It is impossible during this moment in time not to consider other activities already underway or proposed in Americas Arctic, and the vital conservation role the Arctic Refuge has and can continue to play into the future, as we contemplate off-shore oil and gas development scenarios, the industrial corridor in the central Arctic and other potential developments on BLM lands in the Western Arctic's National Petroleum Reserve. Indeed the lands comprising the Arctic Refuge have played a vital conservation role during the past 50 years as well as throughout history, prior to the refuge's establishment, and should continue to play this vital conservation role for generations to come. As we sit poised for new industrial development in the Arctic, TWS strongly supports the protection of ecologically valuable lands in America's Arctic in order to ensure the long-term viability of wildlife populations and habitat, people and communities of the Arctic overall as well as for climate change moderation in the Arctic and beyond. The Coastal Plain of the refuge, and the Arctic Refuge overall, is a treasured, vitally important and irreplaceable Arctic landscape – and one that should be protected to ensure future population viability in America's Arctic and the nation.

The Arctic Refuge's Coastal Plain functions as critical birthing grounds for polar bears, many bird species and the internationally important Porcupine Caribou herd. For this reason the people of the Gwich'in Nation call this area "the sacred place where life begins." For the Gwich'in, protecting the Coastal Plain, a vital piece of their traditional way of life and culture which has been based on the Porcupine Caribou herd for thousands of years, is a human rights issue.

We urge the USFWS to take this historic opportunity and recommend wilderness for the Coastal Plain of the Arctic refuge as well as other suitable lands in the refuge. Some would like to develop the Coastal Plain for oil and gas resources, but industrial development is not compatible with the goals 1 and 2 of the draft plan - protecting ecological processes and wilderness character, and we support these goals. Due to the ongoing threat of oil and gas development, the Coastal Plain is TWS's top priority for protection in the refuge, and now more than ever we need bold leadership for conservation in the Arctic.

Among the other goals outlined in the DEIS, TWS strongly supports maintaining the ongoing opportunities for subsistence and viability for local communities in and near the refuge. Goal 8 is particularly important along these lines, and we want to take this opportunity to comment in greater detail regarding this goal. Objective 8.4 of Goal 8 reads as follows:

Objective 8.4: Traditional Knowledge—The Refuge will continue to work with Arctic Borderlands Ecological Knowledge Cooperative and local villages to collect traditional ecological knowledge of the areas ecosystems and wildlife occurrences to gain an understanding of past conditions and current observations.

TWS believes this is a very important goal and objective for the USFWS in managing and administering the refuge, and we urge you to achieve what the agency has outlined here regarding

working with traditional ecological knowledge and local people to gain better understanding of the issues surrounding the refuge.

TWS believes that the USFWS should do all that it can to work with locals to resolve conflicts of all types, including perceived or real conflicts between subsistence and general hunters.

**[32625.001 Refuge Vision and Goals -- General]** TWS supports agency staff incorporating the following actions considered in the DEIS into the alternatives and addressing them through the Refuge's management goals and objectives. These actions include: enhance education about such topics as hunting regulations, traditional ways, caribou biology, etc.; publish detailed land status maps that could be used for navigation while on the Refuge; hire village employees to work at Refuge visitor centers to improve communication and user education; improve messaging and information presented at kiosks; increase enforcement and patrols; restrict commercial uses in areas with high subsistence use; streamline permitting processes; and conduct research on hunting effects on wildlife. The issue was not considered in further detail, however, because the majority of these actions can be implemented without a Revised Plan. They can also be addressed through the Refuge's management goals and objectives, especially those pertaining to subsistence, recreation, and education (see Objectives 4.1, 4.2, 4.3, 5.5, 5.6, 8.4., 9.3, and 9.5). TWS supports these efforts and thinks they are extremely important for future relations and cooperative efforts with local communities.

**[32625.002 Subsistence -- Access]** TWS attended the Kaktovik Arctic Refuge Draft Revised CCP DEIS hearing and learned about the possible permit fee associated with temporary use facilities related to subsistence hunters and users. Upon hearing the response to this proposal by local residents, we urge the USFWS to abandon any fees associated with obtaining a permit associated with subsistence use temporary structures, and feel that this issue could damage relations between the agency and local residents. We strongly recommend the USFWS drop the fee portion of this requirement and look to other ways to track temporary use facilities that may remain in place beyond one season.

**[32625.003 Recreation and Visitor Use -- Special Use Permitting]** We also strongly urge the USFWS to work with locals interested in guiding hunts on the refuge and working out a reasonable process whereby locals can compete for big game guiding permits within the refuge.

**[32625.004 Alternatives - Issues Considered but Eliminated -- Visitor Use Issues]** Polar Bear Viewing in Kaktovik -

D-14; Polar Bear Viewing in Kaktovik – TWS supports the approach USFWS has outlined in the DEIS, D5-12, and believe it is critical that a reputable polar bear viewing program be developed in partnership with local guides and the community of Kaktovik. This type of program is in keeping with the National Wildlife Refuge System Improvement Act of 1997 which identified six priority wildlife-dependent recreation uses, including: hunting, fishing, wildlife observation and photography, environmental education, and interpretation. Additionally, this is a wilderness-dependent recreation activity that also provides a local economic opportunity that is in keeping with ANILCA. The USFWS should make every effort to support, help steer and continue to work with at the local community level to ensure that the developing polar bear viewing program is successful and infused with the spirit of stewardship.

We support the agency's efforts thus far which include Refuge staff working in concert with polar bear biologists in the Service's Marine Mammals Management office, endangered species specialists in the Service's Fairbanks Fish and Wildlife Field Office, and a wide array of Kaktovik community partners to address immediate concerns regarding commercial and private activities

to promote effective cooperative management of polar bears on and off Refuge lands. Ongoing efforts include: :

- promoting public safety
- improving awareness of minimizing attractants in the village
- understanding local conditions that might contribute to polar bear concentrations and other polar bear distribution considerations
- avoiding harassment of polar bears
- serving as technical advisors for the local community's effort to develop a polar bear management plan infused with a spirit of stewardship

Conclusion:

The USFWS has an historic opportunity when it finalizes this plan, to recommend wilderness for the Coastal Plain of the refuge. We strongly recommend that the agency follow through with this so as to define for the American people strong leadership and management direction for one of America's remaining truly vital conservation resources which will benefit all Alaskans as well as generations of Americans to come.

Sincerely,

Nicole Whittington-Evans  
Alaska Regional Director  
The Wilderness Society

**COMMUNICATION NUMBER 136810**

**Paul Krausman, President**

**The Wildlife Society**

From: "Terra Rentz"

To:

Subject: Official Comments regarding the Arctic Refuge CCP

Ms. Seim-

Thank you for the opportunity to submit formal comments on the Arctic NWR CCP. The Wildlife Society is extremely interested in the long-term conservation planning effort relating to the Arctic Refuge.

If you have any questions regarding the attached comments or require additional information or assistance, please don't hesitate to contact me!

All the best-  
Terra Rentz

~~~~~

Terra Rentz, Associate Wildlife Biologist ®  
Assistant Director, Government Affairs & Partnerships  
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Bethesda, MD 20814-2144  
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E-mail: [terra@wildlife.org](mailto:terra@wildlife.org)  
Visit us on-line: [www.wildlife.org](http://www.wildlife.org)

- ANWR CCP Comments.docx

Attachment:

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Sharon Seim  
Planning Team Leader  
Arctic National Wildlife  
Refuge, 101 12th Ave., Rm. 236,  
Fairbanks, AK 99701.  
Email: [ArcticRefugeCCP@fws.gov](mailto:ArcticRefugeCCP@fws.gov)

Dear Ms. Seim:

The Wildlife Society (TWS) would like to thank you for the opportunity to submit comments on the draft Comprehensive Conservation Plan (CCP) for the Arctic National Wildlife Refuge (NWR). TWS supports Alternative E as the best management plan for the Arctic NWR, and Alternative C as a sound compromise. We believe these alternatives are consistent with our position that the coastal plain of the Arctic NWR should remain in an undeveloped state due to the unique wildlife resources it supports, and as an area where long-term studies of climate change and ecosystem processes can be studied without confounding effects of resource development. Our

position statement regarding resource development on the coastal plain of the Arctic NWR is available at [wildlife.org/documents/positionstatements/32-ANWR.pdf](http://wildlife.org/documents/positionstatements/32-ANWR.pdf).

We believe Alternative E is the preferred alternative because it will result in a large scientific control area across several biomes from the Arctic Coastal Plain to the south side of the Brooks Range where management treatments or development would be highly restricted. This will be of increasing value to as other areas of northern Alaska are developed for minerals or energy. We are writing to you to provide further suggestions for the CCP.

The Wildlife Society was founded in 1937 and is a non-profit scientific and educational association of over 10,000 professional wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to represent and serve the professional community of scientists, managers, educators, technicians, planners, and others who work actively to study, manage, and conserve wildlife and its habitats worldwide.

The CCP should further the purposes of the Arctic NWR as established by the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). The Arctic NWR fulfills a unique role in providing habitat for North America's arctic and subarctic wildlife, and as an important summering ground for important and threatened migratory birds. ANWR also provides recreation and subsistence to many users and must be managed to facilitate these uses. In order to satisfy the purposes of the Refuge and reach the goals stated in the CCP, certain management objectives will have to be prioritized. There are new threats to the Refuge that must be addressed such as climate change, wildlife disease, and invasive species. ANWR must be managed to provide adequate wildlife habitat and support vital ecosystem services.

TWS fully supports actions and step-down plans described in Section 2.1. We especially feel the Ecological Inventory and Monitoring Plan (1.2), Research Plan (1.3), ecological review of the Refuge's biological program and draft I&M and research plans (1.4), assessment of climate change and other stressors (1.5), and review of rare species (1.11) described under Goal 1 of Section 2.1 are important to the planning process. As the Refuge initiates these activities, we hope you will call on The Wildlife Society to provide input through the expertise of its members.

**[136810.001 Refuge Vision and Goals -- Goal 1 (including objectives)]** An extremely important function of the Arctic NWR is as an undisturbed area where natural processes can be studied. This is appropriately recognized in Section 2.1.7. We believe it is particularly important that the Refuge work collaboratively with scientists in other agencies such as the Alaska Department of Fish and Game, University of Alaska, U.S. Geological Survey, etc. during revision of the I&M Plan and development of the Research Plan. We suggest that in Section 2.1.1., Objectives 1.2 and 1.3 provide for interagency consultation early in the development and revision of those plans to ensure views of non-refuge scientists are included in draft documents. As currently written, outside review of the documents seems mainly to occur after the draft plans have been developed.

**[Preamble 136810.002, 003, 004, 005, 006]** TWS proposes the following recommendations and additions to the CCP:

\* **[136810.002 Refuge Management Policies/Guidelines -- Ecosystem and Landscape Management]** Monitoring, mitigation, and adaptive management to combat the threats of climate change should be included.

The primary threat to ANWR is climate change, which brings with it the increased danger of disease and invasive species. Climate change affects wildlife, biodiversity, ecosystem services, and use of resources by recreational and subsistence users. Section 2.4.10.1 should provide a cross

reference to earlier sections that deal with climate change (Objectives 1.5, 6.1, and 6.4) to more clearly articulate how this pressing management need will be met.

**\* [136810.003 Refuge Management Policies/Guidelines -- Fish and Wildlife Population Management]** The management plan for wildlife disease (section 2.4.12.9) should be strengthened.

Several diseases have displayed northern movements, attributed to climate change. Of specific interest is the lung parasite of caribou, *Parelaphostrongylus odocoilei* which now includes Alaska in its range and *Parelaphostrongylus tenuis*, a nematode that affects moose. In addition to increases in the ranges of wildlife diseases, affected species may become more susceptible due to heat stress. TWS recommends the addition of a step down plan for wildlife disease and incorporating monitoring and mitigation components and action strategies should an outbreak occur.

**\* [136810.004 Refuge Management Policies/Guidelines -- Fish and Wildlife Population Management]** Include a detailed step down plan for the management of invasive species (section 2.4.12.8).

Invasive species are of particular danger to ANWR due to its open spaces, disturbed soil, and high connectivity of water systems favored by invasive species. ANWR is at an increased risk of invasive species activity because the species spread with the changing climate. TWS recommends that the step down plan incorporates monitoring, mitigation, and adaptive management strategies that can be used if an invasive species is found.

**\* [136810.005 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** Table 2.1, page 2-82, Public Access by Domestic Animals.

We concur on the requirement for weed-free feed for pack animals and recommend you expressly prohibit domestic goats as pack stock because of high potential for disease transfer to Dall sheep, particularly from the Dalton Highway corridor. The Alaska Chapter of The Wildlife Society has evaluated the risk of disease transfer by domestic goats and will soon produce a position statement on this issue.

**[136810.006 Refuge CCP -- Evaluation and Revision]** TWS supports the CCP and the inclusion of alternatives E or C, and recommends strengthening the plan with further consultation and collaboration with certified wildlife professionals. The best sound science must be used in creating management plans especially those concerning the management of wildlife and relating to unnatural alterations to wildlife habitat in ANWR.

Thank you for considering the views of wildlife professionals.

Sincerely,

Paul R Krausman, CWB®  
President, The Wildlife Society

Excellence in Wildlife Stewardship Through Science and Education

**COMMUNICATION NUMBER 32627**

**Nicole Whittington-Evans, Alaska Regional Director, TWS  
Various Environmental Organizations**

Friends of Alaska National Wildlife Refuges  
Center for Biological Diversity  
National Wildlife Refuge Association  
Natural Resources Defense Council  
The Wilderness Society  
Wilderness Watch  
World Wildlife Fund

Mr. Richard Voss, Refuge Manager  
US Fish and Wildlife Service  
Arctic NWR – Sharon Seim  
101 12th Ave., Rm 236  
Fairbanks, AK 99701-6237

November 15th, 2011

Re: Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan Draft  
Environmental Impact Statement

Dear Mr. Voss:

Thank you for the opportunity to comment on the Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan Draft Environmental Impact Statement (DEIS). Please accept the following comments submitted on behalf of the Friends of Alaska National Wildlife Refuges, Center for Biological Diversity, National Wildlife Refuge Association, Natural Resources Defense Council, The Wilderness Society, Wilderness Watch and World Wildlife Fund regarding the Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan DEIS.

The groups represented on this letter support Alternative E. Please find below our more detailed comments regarding our position and the DEIS:

I. Support for Alternative E - The USFWS Should Recommend Wilderness for the Coastal Plain and Other Suitable Lands in the Refuge:

The groups represented on this letter support Alternative E because it is the Alternative that would best protect the integrity of the entire Refuge ecosystem, including the very important coastal plain, as well as best achieve the purposes of the Refuge. Alternative E would also best fulfill the vision of those who advocated for establishment of the refuge because it is the best alternative for ensuring that wildness and natural processes will remain as the permanent defining qualities of the entire refuge. Furthermore, Alternative E is the only Alternative which would consolidate administration of nearly the entire Refuge under the provisions of the Wilderness Act, assuring the most appropriate stewardship and strongest protection for this incomparable place. Additionally, Alternative E best supports the overall goals the U.S. Fish and Wildlife Service (USFWS) has identified for the refuge in the DEIS, which we support and generally find to be excellent.

Drawing on the idea of wilderness preservation pioneered by Robert Marshall and Aldo Leopold, the Refuge founders, Olaus and Mardy Murie and others established a bold wilderness vision for the Arctic Refuge. Originally established as the Arctic National Wildlife Range in 1960 by the Eisenhower administration, the Arctic Refuge is the only national wildlife refuge established specifically to preserve wilderness values. Similarly, those who advocated for, authored and passed the Alaska National Interest Lands Conservation Act in 1980 and expanded the Arctic Refuge had a bold vision for Alaska's vast arctic and sub-arctic lands, and this vision involved ecosystem protection, wilderness protection, the protection of subsistence resources, access to those resources and a continued subsistence way of life. The Arctic Refuge was part of this vision, and Alternative E best supports it.

The purposes of the refuge identified in ANILCA include:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and graying; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and quantity within the refuge.

The Revised CCP DEIS demonstrates and articulates the rationale for why wilderness protection for all three wilderness study areas within the draft plan – the Coastal Plain, Brooks Range and the Porcupine Plateau - would not only best achieve the purposes of the refuge, but also best achieve the mission of the Refuge System 1. In the Wilderness reviews for all three Wilderness Study Areas in the refuge and for all refuge purposes, the DEIS indicates that wilderness would best achieve the purposes of the refuge. For example, the DEIS indicates regarding the suitability of the Coastal Plain Wilderness Study Area and achieving refuge purposes:

By definition, wilderness designation preserves wilderness values, including the area's natural scenic conditions, intact ecological processes, and the inherent wild character of its various life forms. Designation would require Refuge management to be more attentive to these qualities and would likely increase public scrutiny of any proposed actions that might diminish them.

Wilderness designation could better protect the area's undeveloped character by potentially precluding structures and installations, such as radio repeater stations, where they are unnecessary for meeting Refuge purposes, including the purposes of the Wilderness Act.<sup>2</sup>

Virtually identical statements are made in the DEIS in the suitability analyses for both the Brooks Range and Porcupine Plateau Wilderness Study Areas as well. By preserving wilderness values, the USFWS would best achieve refuge purposes, including "conserving fish and wildlife populations and their habitats in their natural diversity; fulfilling international treaty obligations of the United States with respect to fish and wildlife and their habitats; providing . . . the opportunity for continued subsistence uses by local residents; and ensuring . . . water quality and quantity.

Further, regarding the Refuge System Mission, the DEIS states that wilderness:

"would provide the greatest assurance that . . . [the Brooks Range, Porcupine Plateau and Coastal Plain areas] . . . would remain unaltered and essentially free of the intent to control or

manipulate the land, its creatures, and natural processes, thereby ensuring the area retains its ecological integrity now and for future generations.”<sup>3</sup>

Thus the DEIS strongly demonstrates that Alternative E, which includes wilderness recommendations for all three Wilderness Study Areas, would best meet refuge purposes and the mission of the overall Refuge System.

Additionally, the entire Refuge is eminently qualified for Wilderness designation. This is well documented in the three reviews presented in this Draft CCP. Any wilderness recommendation that is less than what Alternative E proposes could be interpreted by some in Congress to indicate that not all of the Refuge is suitable for Wilderness protection. This is a critical point in the history of the Refuge. Now is the time to speak for the whole Refuge in a manner that will assure that this entire magnificent place will remain wild and free. For all of the above reasons and more, the groups represented on this letter strongly support Alternative E and the agency’s preliminary wilderness recommendations for all three of the Wilderness Study Areas.

We commend the USFWS for moving forward and embracing the possibility of bold conservation in this draft plan including recommending wilderness. We strongly urge the USFWS to take this historic opportunity and recommend wilderness for the Coastal Plain of the Arctic refuge as well as other suitable lands in the refuge. Some would like to develop the Coastal Plain for oil and gas resources, but industrial development is not compatible with goals 1 and 2 of the draft plan - protecting ecological processes and wilderness character, and we support these goals. Due to the ongoing threat of oil and gas development, the Coastal Plain is our top priority for protection in the refuge, and now more than ever we need bold leadership for conservation in the Arctic.

An important component of Alternative E is that it would bestow Wilderness protection for the Coastal Plain of the Refuge as well as nearly all of the other lands within the Refuge that are currently not designated as Wilderness. The Arctic Refuge’s coastal plain functions as a critical birthing ground for polar bears, many bird species and the internationally significant Porcupine Caribou herd. The coastal plain also has been a vital resource for communities in the Arctic, including both Inupiat and Athabaskan cultures. The people of the Gwich’in Nation, for example, call this area “the sacred place where life begins.” For the Gwich’in, protecting the coastal plain of the refuge - a vital piece of their traditional way of life and culture for thousands of years that is centered around the Porcupine Caribou herd - is a human rights issue.

We believe the USFWS has carefully considered the needs of local villages in this Alternative and determined that intensively used lands directly adjacent to villages, totaling over 190,000 acres, are not suitable for wilderness recommendation. This will ensure the continuation of such local community activities and prevent potential management conflicts. We support this effort on the part of the agency, as we strongly support the continued viability of local communities and their subsistence way of life. Overall we believe that wilderness designation provides a positive influence through the protection it provides for the fish, wildlife, plants and water resources that are vital for the subsistence of local people. In addition, we also believe that ANILCA provided necessary and sufficient exceptions regarding wilderness uses for subsistence and other local community needs in order to ensure the long-term viability of local communities, subsistence resources and access to those resources.

## II. The USFWS Fulfilled Its Legal Mandate With The Inclusion of a Wilderness Review in This Planning Effort.

Both existing and potential future designated wilderness is a resource and a value of the Refuges which must be addressed. The Service’s laws and policies require that wilderness reviews be conducted as part of the CCP process. For example, Section 304(g)(1) and (2) of the Alaska Lands

Act directs the Service to develop and periodically revise CCP's which must identify and describe the special values of the refuge, including wilderness values. Specifically the Alaska National Interest Lands Conservation Act (ANILCA) Section 304(g) states:

(1) The Secretary shall prepare, and from time to time, revise, a comprehensive conservation plan (hereinafter in this subsection referred to as the 'plan') for each refuge.

(2) Before developing a plan for each refuge, the Secretary shall identify and describe – (A) the populations and habitats of the fish and wildlife resources of the refuge; (B) the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge;"

Additionally, Section 1317(a) of ANILCA directs the Service to study all of the non-wilderness lands in Alaska refuges and recommend areas suitable for inclusion in the National Wilderness Preservation System. Section 1317(a) of ANILCA states:

Within five years from the date of enactment of this Act, the Secretary shall, in accordance with the provisions of section 3(d) of the Wilderness Act relating to public notice, public hearings and review by State and other agencies, review, as to their suitability or non-suitability for preservation as wilderness, all lands within units of the National Park System and units of the National Wildlife Refuge System in Alaska not designated as wilderness by this Act and report his findings to the President.

**[32627.001 ANILCA -- Designated Wilderness and ANILCA]** While the Service completed a process to determine wilderness recommendations in the 1980's, for all Alaska refuges including the Arctic, the Secretary of the Interior never forwarded the recommendations to the President. Thus we believe the Service still has not met the requirements of Section 1317 of ANILCA overall for Alaska's refuges. Regardless, the intent of ANILCA with respect to wilderness reviews in refuges is clear that all Alaska refuges are deserving of wilderness reviews and recommendations. And while the Arctic Refuge was dealt with differently than other refuges in ANILCA in Section 1002 of the Act, we believe that at this time, the purposes of section 1002 have been fulfilled, and that it is the legal duty of the Service to complete a wilderness review and recommendation for the Arctic Refuge, like all other refuges in Alaska or elsewhere in the nation.

The purpose of section 1002 of ANILCA was 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.

The resulting baseline studies cost millions of dollars and have been completed. To no one's surprise, the studies provided volumes of evidence that the coastal plain is an extraordinary wilderness enclave and vital wildlife sanctuary. 4

Additionally, the National Environmental Policy Act requires that an agency analyze a reasonable range of alternatives in every agency action, such as a planning process like the CCP Revision. Because all values and uses of the refuges must be considered in a broad planning effort such as a CCP revision, analysis of wilderness recommendations is included within the reasonable range of alternatives.

The Service's Refuge Planning Policy (65 Federal Register 33892, May 25, 2000), which "applies to all units of the National Wildlife Refuge System" (i.e., it applies to refuges in Alaska) (602 FW

1.2), also requires that a new wilderness review be conducted as one of the required elements of all CCPs. Specifically, the Service's planning policy directs the following:

\* "Concurrent with the CCP process, we will conduct a wilderness review and incorporate a summary of the review into the CCP." (602 FW 3.4(C)(1)(e))

\* "Identify and describe the following conditions and their trends for the planning unit and, as appropriate, for the planning area: ... (xx) Existing special management areas, or the potential for such designations (e.g. wilderness, research natural areas, and wild and scenic rivers." (602 FW 3.4(C)(1)(e))

\* "Develop a range of alternatives, or different approaches to planning unit management, that we could reasonably undertake ... to help achieve the goals of the National Wilderness Preservation System." (602 FW 3.4(C)(4)(b))

\* The "Checklist of Required Comprehensive Conservation Plan Elements" found in Exhibit 3-3 of the planning policy includes "Wilderness review." "Wilderness review" is defined in the policy as "[t]he process we use to determine if we should recommend Refuge System lands and waters to Congress for wilderness designation. The wilderness review process consists of three phases: inventory, study, and recommendation. The inventory is a broad look at the refuge to identify lands and waters that meet the minimum criteria for wilderness. The study evaluates all values (ecological, recreational, cultural), resources (e.g. wildlife, water, vegetation, minerals, soils), and uses (management and public) within the Wilderness Study Area. The findings of the study determine whether we will recommend the area for designation as wilderness."

There is also a key directive from "Fulfilling the Promise: The National Wildlife Refuge System" – the Service's vision document, released in March 1999, that guides administration of the Refuge System. That document directed in part that:

"The Service should evaluate lands added to the System since the Service completed its wilderness reviews and recommend suitable areas for designation. In addition, the Service should take a fresh look at areas previously studied for suitability as wilderness that were not recommended. For example, while the Service determined, in 1985, that 52.7 million acres of refuge lands in Alaska qualified for designation as wilderness, only 3.4 million acres were recommended for such designation. On many refuges, circumstances and management may have changed since the recommendations were made." (pg. 23)

In addition, the Service's recently finalized Wilderness Policy allows wilderness reviews for Alaska refuges, and other legislation, regulations and guiding policies as outlined above directing the agency specify that wilderness reviews will be completed during CCP planning processes.

Thus, the legal requirements for including wilderness reviews and recommendations within CCP revision processes are clearly laid out, and we support the Service's review of all suitable wilderness lands in this planning process.

Without completing a wilderness review and/or making recommendations for wilderness, we believe the Service would be out of compliance with ANILCA, the National Environmental Policy Act (NEPA) and the agency's own policies and guidelines. The U.S. District Court ruled in 2001 (*Sierra Club v. Lyons*, No. J00-0009-CV (D. Alaska March 30, 2001)) in a similar situation that the Forest Service needed to complete a wilderness review and analyze wilderness recommendations for the Tongass Land Management Plan in order to satisfy requirements of NEPA. We strongly support the USFWS's decision to fulfill its legal obligations by completing a wilderness review as part of this planning process.

### III. Conservation Role of the Arctic Refuge in America's Arctic:

It is impossible during this moment in time not to consider other activities already underway or proposed in America's Arctic, and the vital conservation role the Arctic Refuge has and can and should continue to play into the future, as we contemplate off-shore oil and gas development scenarios, the industrial corridor in the central Arctic and other potential developments on BLM lands in the Western Arctic's National Petroleum Reserve - Alaska. Indeed the lands comprising the Arctic Refuge have played a vital conservation role during the past 50 years as well as throughout history, prior to the refuge's establishment, and should continue to play this critical conservation role for generations to come.

As we sit poised for new industrial development in the Arctic, the groups represented on this letter continue to strongly support the protection of ecologically valuable lands in America's Arctic in order to ensure the long-term viability of wildlife populations and habitat, people and communities of the Arctic overall as well as for climate change moderation in the Arctic and beyond. Indeed the Refuge founders called for it to be an area that is left alone to function as a scientific control in order to better understand and manage the effects of human activities elsewhere in the Arctic. Its value in this regard is more evident than ever as industrial development and other activities increase in the Arctic region. The Coastal Plain of the refuge, and the entire Arctic Refuge, is a treasured, vitally important and irreplaceable Arctic landscape – and one that should be protected to ensure future population viability in America's Arctic and the nation.

### IV. Overall Support for the Draft Plan:

In general, there are many aspects of the draft plan that groups represented on this letter support. We outline many of these here and then discuss some of them in greater detail below. The aspects of the plan that we support overall include:

- \* The excellent and nicely articulated vision.
- \* The Wilderness Review underway. This is the first wilderness review of any Alaskan refuge that has had its CCP revised, and we congratulate the USFWS for finally following through with this aspect of refuge planning, which is legally required.
- \* Analyzing all non-wilderness designated areas of the refuge in the Wilderness Review.
- \* Determining suitable lands for wilderness throughout the refuge.
- \* Identifying the need for wilderness training for its staff and education for the public about the Refuge wilderness.
- \* The scope of the Alternatives.
- \* The proposed goals, especially 1 and 2, directing protection of ecological processes and wilderness character.
- \* The strong proposed Management Guidelines overall.
- \* Addressing climate change as part of this process and in future management of the refuge.
- \* The very strong Special Values of the Arctic Refuge section.
- \* The USFWS recognizing the agency's legal requirement to look beyond the boundaries of the refuge and the foresight the agency has demonstrated as it considers the conservation role of the refuge locally, regionally, at the State level and as part of the circumpolar Arctic. The agency is rightfully considering other management plans, cooperating with other agencies on planning

processes elsewhere in the Arctic that are moving forward, and is following through with the Landscape Conservation Cooperative as well as considering management of neighboring lands in order to determine the refuge's conservation role.

While there is much that we support in this Draft Plan, we believe that the Final CCP must require that the Service address the long standing issues relating to visitor use and wilderness stewardship which have led to the impairment of wilderness character in several areas of the refuge. We offer recommendations regarding how this long neglected situation must be corrected in section: VII. Wilderness Stewardship and Visitor Use Issues, below.

#### V. Goals, Objectives and Management Guidelines in the Plan:

We support all of the proposed goals overall, especially 1 and 2, specifying protection of ecological processes and wilderness character.

A) Goal 1 - We support Refuge Goal 1 and appreciate that the CCP recognizes that the importance of managing without intent to alter natural order and evolution, regardless of the cause of change.

1) [32627.002, Preamble 003] Objective 1.1 - We suggest that under objective 1.1., the second paragraph under Rationale be identified as the Strategy for implementation of this objective (page 2-2). [32627.003 Refuge Vision and Goals -- Goal 1 (including objectives)] We also suggest that this strategy identify more explicitly that in some instances, Refuge ecosystems will be allowed to adapt/evolve to a state which is different than historical conditions.

2) Strategy - Refuge managers must weigh all the factors identified by establishing purposes, laws, policy, and science when considering whether proposed activities support or detract from the refuge's biological integrity, diversity, and environmental health. We favor the least intensive approaches wherever possible. We start by considering the historical structure and function of Refuge ecosystems that, based on sound professional judgment, were believed to exist prior to substantial human-related changes to the landscape. Refuge management actions will be focused on maintaining those conditions but will recognize that climate change or other factors external to the Refuge may ultimately make maintenance of historic conditions unattainable.

In some cases, adaptive management that restores or mimics natural ecosystem processes or functions to achieve Refuge purpose(s) will be considered, but active manipulation of habitats and populations will generally be avoided and that the Refuge will be allowed to adapt or evolve to a new natural state.

In general, the retention, protection and restoration of the wilderness character must be the highest goal. Wilderness management is entirely about protecting the area's wilderness character. To maintain or restore wilderness character some manipulation may be required in rare instances. For example, it may be necessary to take action to provide interim protection for an imperiled species to aid its recovery, as was done for the California golden trout in the Golden Trout Wilderness. On the other hand, as your document says, we do not favor manipulation generally. Climate change may create a situation where some management actions would be needed to maintain species deemed part of the wilderness character, but those actions would need to be considered in the context of how they affect other components of the area's wilderness character. Protection of wilderness character must be the guiding principle overall.

3) [32627.004 Refuge Vision and Goals -- Goal 1 (including objectives)] Objective 1.2 - We support the development of an I&M Plan. According to the draft CCP, this could take 5 years from the Final CCP approval to begin to be implemented. This seems like a long time, so we encourage the staff to consider how scientific review might be incorporated into the drafting

stages rather than waiting for a full draft to review. **[32627.005 Refuge Vision and Goals -- Goal 1 (including objectives)]** We suggest moving/editing the following text from Objective 1.13 (Strategy) to Objective 1.2 (Strategy): This plan will be developed in partnership with others, including the Refuge System I&M Program, Landscape Conservation Cooperatives, National Park Service Vital Signs Monitoring Program, USGS Alaska Climate Science Center, BLM Arctic Field Office/NPR-A and ADFG.

4) **[32627.006 Refuge Vision and Goals -- Goal 1 (including objectives)]** Objective 1.3 - It seems like the I&M plan might be a component of the Research Plan, encompassing the broader research objectives of the Refuge.

5) **[32627.007 Refuge Vision and Goals -- Goal 1 (including objectives)]** Objective 1.4 - We strongly support scientific peer review of the I&M and Research plans. We feel it is especially important that the Refuge seek input from other entities engaged in research in Alaska's Arctic in order coordinate research efforts. This would serve to increase the scale of research, facilitate better data sharing, as well as potentially reduce costs. This would be particularly important for I&M protocols. Priority entities include BLM, NPS, the Arctic LCC, the North Slope Borough, ADFG, industry, academia, science-based NGO's and other independent scientists. The North Slope Science Initiative (NSSI) Science Technical Advisory Panel (STAP) may be useful in the helping with the scientific peer-review process.

6) **[32627.008, Preamble 009]** Objective 1.5 - We believe that Climate Change and expanding industrial development adjacent to the Refuge will likely have significant impacts on ecological processes on the Refuge. We therefore recommend that important stressors, such as these, affecting Refuge species and/or ecosystems be identified as part of the I&M and Research planning efforts, and that detection of and identifying causes of change in Refuge ecological processes be fully integrated into these plans. This integration is clearer in objective 6.1 than presented here, and we suggest revision. Also, **[32627.009 Refuge Vision and Goals -- Goal 1 (including objectives)]** as written, this objective lacks a strategy. We suggest including a strategy that meets the goal while allowing time for specific strategies to address these stressors to come out of the I&M and Research plans.

7) **[32627.010 Refuge Vision and Goals -- Goal 1 (including objectives)]** Suggested Revision of Objective 1.5 - Climate Change and Other Stressors—concurrent with development of the I&M and Research Plans, the Refuge will identify the most important stressors affecting Refuge species and/or ecosystems. Research, inventorying and monitoring activities will be designed to identify changes associated with these stressors and guide management activities.

8) **[32627.011 Refuge Vision and Goals -- Goal 1 (including objectives)]** Suggested Strategy for Objective 1.5: Strategy: Understanding the potential impacts of climate change and other stressors on Refuge ecological processes should be guided by a scientific understanding of ecosystem structure and function now and into the future. This can be done by integrating conceptual models of contemporary ecosystems (see Objective 1.2) with models or projections of climate change and other stressors, such as land use change (see figure below). Integrating these models will allow us to develop hypothesis of how the Refuge's ecosystem might change and these hypotheses can be tested through research (including gathering local knowledge), inventorying and monitoring. As understanding of the ecosystem is improved over time, management actions will be evaluated based on how they help the ecosystem adapt to climate change and other stressors.

B) **[32627.012 Refuge Vision and Goals -- Goal 2 (including objectives)]** Goal 2 - We support this goal, however, it should be modified in the Final Plan to acknowledge that where wilderness

character has already been impaired, that actions will be taken to restore it and prevent impairment in the future (please see our further comments below under section: VII. Wilderness Stewardship and Visitor Use Issues).

1) **[32627.013 Refuge Vision and Goals -- Goal 2 (including objectives)] Objective 2.3 - Wilderness Stewardship Plan:** We believe that due to the long standing issues regarding unregulated visitor use and impairment of wilderness character in several areas of the Refuge, the Final CCP must commit the Service to initiate an appropriate wilderness stewardship and/or visitor use planning process as soon as the CCP is finalized. Furthermore, we are concerned that language such as “prolonged scoping and preplanning phases...” signals more delay on the part of the Service in addressing this urgent need. These concerns would normally seem unreasonable, however, due to the nearly 30 years of neglect of this issue on the part of the Service, there is reason for our concern. (see our further comments below under section: VII. Wilderness Stewardship and Visitor Use Issues).

2) **[32627.014 Refuge Vision and Goals -- Goal 2 (including objectives)] Objective 2.4: Comprehensive Wilderness Management:** We generally support this objective, however, we recommend that in the Final Plan it be modified to include restoration of wilderness characteristics where they have been degraded or impaired within designated Wilderness. The Draft CCP only addresses restoration on minimal management lands.

3) **[32627.015 Refuge Vision and Goals -- Goal 2 (including objectives)] Objective 2.5: Administrative Facilities:** The buildings at Peters Lake are out of conformance with the Wilderness. Their removal should be a required action in the Final CCP. Facilities located at Big Ram Lake, built before refuge designation, are also inconsistent with Refuge purposes. The Final CCP should require their removal as well.

4) **[32627.016 Refuge Vision and Goals -- Goal 2 (including objectives)] Objective 2.6: Wilderness Character Monitoring:** We generally support this in concept, however, we are concerned that wilderness qualities have already degraded in some areas of the designated Wilderness, and the Draft CCP does not commit to address this long standing issue in a timely enough manner (see our further comments under section: VII. Wilderness Stewardship and Visitor Use Issues).

C) **[Preamble 32627.017] Goal 5 –** We support this goal overall and have suggestions regarding the proposed priority and schedule for wilderness stewardship and visitor use plans.

We fully support the goal to provide a place for wildlife-dependent and wilderness-associated recreational activities that emphasize adventure, independence, self-reliance, exploration, and solitude while protecting the biological and physical environments. This is in keeping with the type of “recreation” that Refuge founders had in mind when they worked for establishment of the original Arctic National Wildlife Range. It is one of the characteristics for which the Arctic Refuge is renowned and is very important to nearly all visitors who come to the Refuge. **[32627.017 Step-Down Plans -- Wilderness Stewardship Plan]** We concur with most underlying objectives for this goal, however have significant concerns about the priority and schedule that is proposed (Pages 6-3 to 6-6) for wilderness stewardship and visitor use plans. Please see our comments under Wilderness Stewardship. This important goal for the Arctic Refuge will not be achieved if Objective 5.3 Visitor Use Management Plan is not given the highest priority, and accomplished in a shortened timeframe.

D) **[32627.018 Refuge Management Policies/Guidelines -- Fish and Wildlife Habitat Management]** Management Guideline 2.4.11 (Fish and Wildlife Habitat Management)

We fully support this guideline and urge that it be retained in the Final CCP. The approach to leave habitats unaltered and un-manipulated so that natural processes are allowed to continue, is entirely in keeping with the original purposes of the Arctic National Wildlife Range (1960), as well as the ANILCA purposes and Wilderness Act purposes as well. In addition, this guideline is essential in preserving the Special Values of the Arctic Refuge and in meeting CCP plan requirements in Section 304(g)(3)(A)(ii) of ANILCA. It is also important to acknowledge that it was the intent of Refuge founders that the Arctic Refuge be preserved in its natural condition, as scientific benchmark of great value.

#### VI. **[32627.019 Refuge Values -- Special Values of Refuge]** Special Values of Arctic Refuge

We support the Special Values of Arctic Refuge as they appear in the Draft CCP (Pages 1-20 to 1-22). The Final CCP should retain this section as it exists and require that the Special Values of the Refuge are used to guide all management decisions for the Refuge.

#### VII. Wilderness Stewardship and Visitor Use Issues:

For nearly thirty years it has been widely known that unregulated visitor use has resulted in degraded wilderness qualities in several areas of the Refuge. Concern over such conditions has been expressed in public comments, letters of complaint, news articles and in discussions with Refuge staff over many years. The problem was recognized in the 1988 CCP which committed to address the issue in subsequent “step down” plans, however, no such plans were ever completed. Instead there have only been a few relatively minor administrative measures taken by the Service, primarily for the Kongakut River area. This issue was once again brought forward by the public during scoping for the current CCP revision process. **[32627.020 Alternatives - Issues**

**Considered but Eliminated -- Visitor Use Issues]** While many problem issues are recognized in the Draft CCP (D.5 Visitor Use Issues), nearly all are relegated to “considered but eliminated from detailed study.” We are very concerned because the draft CCP primarily addresses only the Kongakut River in the Alternatives and does so with relatively minor measures which do not adequately address the issue. The final CCP must include the strongest possible commitment that the Service will act to restore wilderness character throughout the Refuge (not just the Kongakut River) to the level and quality that existed when Congress designated Wilderness in 1980.

**[32627.021 Step-Down Plans -- Wilderness Stewardship Plan]** An appropriate wilderness stewardship plan which comprehensively and specifically addresses visitor use issues throughout the Refuge must have top priority. It should be prepared and implemented with adequate monitoring of its effectiveness, as soon as possible.

**[32627.022 Step-Down Plans -- Wilderness Stewardship Plan]** We are concerned about the Service’s commitment to addressing wilderness stewardship issues appropriately and in a timely manner. The priority and schedule provided on pages 6-3 to 6-6 indicates that the wilderness stewardship and visitor use management plans are assigned to second priority status, and would not be completed until 8 or 10 years from now. Given the long standing problems and degradation of wilderness character associated with neglect and unregulated public use in the Refuge during the past 30 years, and the fact that impairment continues to increase, it is irresponsible to delay addressing these issues for nearly another decade. These plans must be set as priority 1 and the schedule for completion needs to be compressed to no more than 2 years in the Final Plan. The Service has not fulfilled the legal requirement to preserve wilderness character in designated Wilderness (Section 4(b) of the Wilderness Act). It must not delay for another decade its responsibility to do so.

**[Preamble 32627.023, 024]** In addition, we have the following specific comments regarding wilderness stewardship and visitor use:

\* **[32627.023 ANILCA -- Planning Requirements]** In several instances (Pages 4-215, 4-216 and others) the draft CCP acknowledges that wilderness qualities along the Kongakut River are degraded by high levels of visitor use. The Draft CCP fails to address the fact that the Kongakut is not the only area of the Refuge where values have been degraded. Public comments were submitted during scoping, which included, as an example, photographic documentation of an aircraft landing strip scar on the upper Sheenjek River (in designated Wilderness and within the Wild River corridor) which had occurred since 1980. There are many other such examples. Omissions of this type render the draft CCP inadequate for meeting the basic requirements to “identify and describe significant problems” (Section 304 (g)(2)(E) of ANILCA). The Final CCP must describe and address resource problems in a more thorough and comprehensive manner.

\* **[32627.024 Wild and Scenic Rivers -- Kongakut River]** Given the wide recognition of long standing wilderness quality degradation on the Kongakut River, and other areas in the Refuge, all alternatives should have included a commitment to address this problem in a subsequent step down plan.

\* **[32627.025 Wild and Scenic Rivers -- Kongakut River]** In discussion of effects of Alternative A, (Page 5-19) the text inappropriately claims that by allowing the quality of wilderness opportunities to degrade on the Kongakut (which is the current situation) that the “freedom and unconfined recreation... may balance the degradation.” The Draft CCP fails to indicate that the Service is legally bound to preserve wilderness character (Section 4(b) of the Wilderness Act) for such designated areas as the Kongakut.

\* **[32627.026 Wilderness -- Effects of Alternatives]** On Page 5-29 (near the bottom): The claim is made that in designated wilderness: “More invasive research methods would be limited or minimized.” The Final CCP should clearly affirm that invasive research methods are incompatible with Wilderness and will not be authorized.

\* **[32627.027 Recreation and Visitor Use -- Monitoring]** Page 5-30: Claims are made that visitor monitoring on the Kongakut, would support actions that could be taken to prevent thresholds from being exceeded. Given the fact that such measures have been employed for the past 12 years, and wilderness conditions continue to decline, it is clear that this approach is not working, because no effective actions have been taken. With no limits on the number of commercial guides and air taxis (Figure 4-12) and no over-all limits on the number of groups allowed on the River at the same time, the positive effects claimed on page 5-30 are not substantiated by the facts on the ground.

\* **[32627.028 Recreation and Visitor Use -- Air Transportation: Flying, Overflights, Landings]** The need for appropriate regulation of aircraft access in the Refuge is also a widely recognized issue due to a progression of long term impacts to soils, vegetation, visual esthetics and other wilderness characteristics. The final CCP must commit to addressing aircraft issues in a manner that incorporates appropriate (reasonable regulations) “to protect natural and other values” (Section 1110 ANILCA). Because aircraft access is intimately associated with visitor use and wilderness stewardship, these concerns must be integrated into a subsequent wilderness stewardship plan.

\* **[32627.029 Refuge Infrastructure and Administration -- Administrative Sites ]** Another issue of significant public concern, which has been expressed on numerous occasions over the past 30 years, is the facilities located at Peters Lake. The description found on Pages 4-236 and 4-237, fails to inform readers that these facilities occur within designated Wilderness. The buildings at Peters Lake are out of conformance with the Wilderness. Their removal should be a required action in

the Final CCP. Facilities located at Big Ram Lake, built before refuge designation, are also inconsistent with Refuge purposes. The Final CCP should require their removal as well.

\* **[32627.030 Refuge Operations -- Effects of Alternatives]** Page 5-31 (Refuge Operations): The text asserts that designation of Wilderness might limit the use of remote sensing to monitor visitor use due to restrictions on installations. The Final CCP should be modified to acknowledge that if visitor use is appropriately limited and regulated to fulfill the legal requirement to preserve wilderness character in designated Wilderness, intensive monitoring and other such management methods employed to facilitate excessive levels of visitor use would not be necessary. Page 5-32 (Cumulative Effects) also contains similar claims that designation of Wilderness might result in greater refuge operations due to increased visitor use, however, this would not be the case if appropriate regulations and limits were placed on visitor use for the purpose of preserving wilderness character.

\* **[32627.031 Step-Down Plans -- Wilderness Stewardship Plan]** Page 5-64 (Kongakut River): Text in this section claims that if a Refuge wide step down plan is implemented that it might have the effect of reducing attention to Kongakut specific issues. This can be prevented if the Service properly addresses its responsibility to preserve wilderness character. Section 4(b) of the Wilderness Act requires such preservation throughout the wilderness area, no exception is made for areas attracting more visitors. (See our comments above which call for both a comprehensive and specific Wilderness Stewardship Plan).

\* **[32627.032 Glossary (Appendix M) -- ]** Page M-22: The term untrammled is defined as referring to “the freedom of a landscape from the human intent to permanently intervene, alter, control or manipulate natural conditions or processes.” Use of the word “permanently” is not a requirement of the Wilderness Act and its use is not consistent with the intent of the Wilderness Act. To retain the untrammled condition of designated Wilderness requires foregoing any effort, temporary or permanent to intervene or manipulate the natural processes. The Final CCP should delete the word “permanently” from the description of untrammled because it incorrectly describes a key descriptor for Wilderness.

\* **[32627.033 Glossary (Appendix M) -- ]** Page M-25: The definition of wildness is limited and incomplete. Like untrammled, wildness refers to the state of an ecological system characterized by freedom from the human interest to alter, restrain or control ecological processes and thus not subject to management interventions or manipulations. Wildness can persist in environments that have been altered or continue to be influenced by external human factors as long as nature’s autonomy is respected and ecosystems are allowed to adapt to changes and evolve as they will. We recommend that the Final CCP include the above described definition as it better explains the term which is so crucial to the Arctic Refuge, and a large portion of the public’s interest in such a special place.

\* **[32627.034 Transportation and Access -- Mode of Transportation]** Pages 2-59 and 2-60 (Helicopters): We support the prohibition of helicopter landings for recreational purposes in the Refuge and urge that it be retained in the Final CCP. More restrictions need to be specified in the Final CCP (Management Guidelines) for the use of helicopters by agencies and cooperators.

\* **[32627.035 Refuge Infrastructure and Administration -- Administrative Sites ]** Page 2-71 (Administrative Sites and Visitor Facilities): The Final CCP should clearly indicate in the Management Guidelines that the construction or the placement of any new administrative buildings is prohibited in the Refuge.

\* **[32627.036 Refuge Management Policies/Guidelines -- Recreation and Other Public Use]** Pages 2-63 and 2-64 (Recreation and Other Public Uses): We support the policy to encourage self-reliance, and preservation of opportunities for adventure, discovery, and the experience of solitude and isolation. The Final CCP should strengthen this part of the Management Guidelines by referencing the Special Values of the Arctic Refuge as a justification for this important approach to recreation and public uses in the Refuge.

#### VIII. State “Game” Management and Refuge Management

**[32627.037 Wildlife -- Predator Control]** The Draft CCP appropriately recognizes the need to coordinate with the Alaska Department of Fish and Game, but it fails to acknowledge that some State goals for managing wildlife such as predator control and “intensive management” would conflict with the Arctic Refuge’s purposes for maintaining wildlife populations in their natural diversity. The Final CCP must clearly indicate that when in conflict with state goals, wilderness values and Refuge purposes must prevail. In such cases, the FWS must exercise its responsibility to preempt the state fish and game department and its Boards of Game and Fish. Also, the Final CCP must assure that the primary Refuge purpose to conserve natural diversity must not be compromised by decisions to authorize predator control or habitat manipulation to increase game species for hunting. To ensure clarity to and to dissuade any attempts by the State of Alaska to pursue IM programs on Refuge lands, the Final CCP should explicitly preclude artificial manipulation or intensive management of wildlife populations to enhance game populations for human harvest and the use of predator control for this purpose should be prohibited in any form.

**[32627.038 Refuge Management Policies/Guidelines -- Cooperation and Coordination with Others]** We are further concerned because the Draft CCP (Page 2-44 Federal, State and Local Governments) proposes that FWS should consider clearly incompatible Alaska actions on a case-by-case basis: “separate refuge compatibility determinations addressing specific proposals will be required for State management activities that propose predator management, fish and wildlife control...or any other unpermitted activity that could alter ecosystems” of refuges in Alaska. The Service does not need to initiate a compatibility determination or NEPA process to evaluate a State-sponsored proposal to conduct predator control in Arctic Refuge. Rather, the FWS should incorporate language into the CCP and the draft Compatibility Determinations clearly stating that any State regulation or plan involving the use of predator control that conflicts with federal law or policy and the purposes of the Arctic Refuge will be preempted in the Refuge.

**[32627.039 Consultation and Coordination -- State Coordination]** We recommend that in Appendix B 1.1, the statement, “the USFWS and ADFG share mutual concern for all fish and wildlife resources...,” be deleted and replaced with a statement that where the agencies differ, refuge purposes have supremacy and the state should be preempted.

#### IX. Wild and Scenic River Review:

**[32627.040 Wild and Scenic Rivers -- General]** The Service is fulfilling a legal mandate to complete a review of candidate Wild and Scenic rivers within this planning process (Wild and Scenic Rivers Act of 1968 (P.L. 90-542)). The agency is required to complete an inventory of the rivers of the refuge, identify their special values and character and determine their eligibility for Wild and Scenic river designation, including those rivers not currently in designated Wilderness. In finalizing this planning process, we urge the Service to include recommendations for Wild and Scenic river designations for candidate rivers outside of designated or recommended Wilderness Areas only, so that they might be additive protection outside of a Wilderness Area. Additionally, **[32627.041 Wild and Scenic Rivers -- General]** the agency needs to indicate how it has met and intends to continue to meet the requirements of the Act in managing portions of the Ivishak,

upper Sheenjek and Wind rivers within the boundaries of the Arctic Refuge that were designated as wild rivers in Section 602 of ANILCA, and address how the agency is maintaining the outstanding values associated with the Refuge's three Wild Rivers.

**[Preamble 32627.042]** The Wild and Scenic Rivers Act directed the following:

Sec. 1. (b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. . . . (16 U.S.C. 1271)

Sec. 1. (c) The purpose of this act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which the standards according to which additional components may be added to the system from time to time.  
(16 U.S.C. 1272)

Sec. 2. (b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following: 1) Wild river areas – Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

2) Scenic river areas – Those rivers or sections of rivers that are free of impoundments, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

3) Recreational river areas – Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past (16. U.S.C. 1273)

**[32627.042 Wild and Scenic Rivers -- General]** It is the duty of the Service to address the Wild and Scenic Rivers Act and rivers within the refuge that are either currently designated and managed as Wild Rivers or may be eligible for such designations in the future.

X. Management Categories and the State USFWS Template:

**[Preamble 32627.043]** Overall we commend the USFWS for producing the most effective and consistent version of the USFWS Alaska Template of any revised refuge thus far. For the most part activities are managed consistently in both the Wilderness and Minimal Management categories, which is encouraging. Regarding access concerns, we strongly support that recreational Off-Road-Vehicles (ORV's) and commercial helicopter air-taxi's are not allowed in Wilderness, Wild River or Minimal management categories. **[32627.043 Transportation and Access -- Mode of Transportation]** We do have concerns, however, regarding the relaxation of restrictions for some activities, such as motorized access, as in the case with snowmobiles, from the original CCP to the current draft (see Table 3-2, pgs. 3-48 and 3-49). We do not support the USFWS relaxing restrictions of this sort from the 1988 plan in the revised CCP.

Further, **[32627.044 Refuge Management Policies/Guidelines -- Table 2-1 - Activity/Use by Management Category]** we take issue with the inclusion of the Intensive and Moderate

Management categories in the DEIS, when on page 2-75, Table 2 – 1. Activities, public uses, commercial activities or uses, and facilities by management category, indicates that the Moderate and Intensive Management categories, which are shaded in gray, do not apply to the refuge. We see no reason for their inclusion in the DEIS, and we strongly urge the USFWS to remove them from the FEIS and Record of Decision (ROD) as they do not apply to the Arctic Refuge. Further, [32627.045 Management Categories -- Moderate] in the DEIS, Chapter 2.4.18.4, Commercial Harvest of Timber and Firewood, inappropriately includes discussion of commercial harvest of timber in a “Moderate” management category, among other management categories. The Moderate management category should not be included here on page 2-68 in the DEIS, or the FEIS, as it does not apply to the refuge. If the Moderate management category is similarly included in other places in the DEIS, we encourage the USFWS to remove it.

#### XI. State RS2477 Right-of-Way Claims:

We agree with the Service that the identification of RS 2477 rights-of-way by the State of Alaska does not automatically establish their validity; rather, such claimed rights-of-way are not valid until they have been determined to be so through a legitimate process applying the proper standards – either through demonstration that these rights were perfected prior to the enactment of the Federal Land Policy and Management Act of 1976, or through an appropriate judicial process. Under no circumstances do we think that section line easements may be legitimate RS 2477 rights-of-way. We appreciate the Service’s disclosure of the States assertions regarding RS2477.

#### XII. [32627.046 ANILCA -- General] The Original Arctic National Wildlife Range’s Purposes Apply to the Entire Arctic Refuge:

In the CCP, the FWS states that the purposes for which the original Arctic National Wildlife Range (“Arctic Range”) was established only apply to those lands in the original Arctic Range: “Under Section 305 of the Alaska National Interest Lands Conservation Act (“ANILCA”), the Range’s original wildlife, wilderness, and recreation purposes still apply to those lands in the former Range.”<sup>5</sup> However, under FWS’s own longstanding policy and guidance regarding determining the purpose of each refuge in the National Wildlife Refuge System,<sup>6</sup> the purposes of the original Arctic Range apply to all Arctic Refuge lands. The misinterpretation and misapplication of Refuge purposes pervades the CCP and the management decisions that FWS is considering and proposing. Thus, it is vital that FWS clearly state that the original Arctic Range purposes apply to the entire Arctic Refuge and that the CCP reflect this understanding.

[Preamble 32627.047] The original Arctic Range was established in 1960 “to preserve unique wildlife, wilderness, and recreational values.”<sup>7</sup> ANILCA expanded the original Arctic Range by adding 9.2 million acres, included additional refuge purposes and re-designated the unit as the Arctic National Wildlife Refuge. These new, additional purposes include: (v) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling; (vi) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (vii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and (viii) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and quantity within the refuge.[8]

ANILCA Section 305 states that:

All proclamations, Executive orders, public land orders and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act.[9]

This is a clear statement from Congress that Public Land Order 2214 — which set forth the Arctic Range purposes — was to remain in effect post-ANILCA unless it is inconsistent with ANILCA. The legislative history of ANILCA indicates that Congress did not intend the purposes included in ANILCA for the expanded Arctic Refuge to be the exclusive refuge purposes: “Sections 301, 302 and 303 set forth the purposes for each designated or re-designated unit and additions to existing units. Enumeration of purposes is not exclusive, but is set forth as a guide for management.”<sup>10</sup>

The purposes set out in Public Land Order 2214 for the Arctic Range are not inconsistent with the purposes set out in ANILCA for the Arctic Refuge; the two authorities set forth overlapping and complimentary purposes recognizing the exceptional wilderness, wildlife, recreation, subsistence resources, international importance, and water quality of the Refuge.<sup>11</sup> All of the values recognized in both sets of purposes support the other recognized values; for example, recognizing and managing to protect the wilderness values of the Arctic Refuge allows for the achievement and furtherance of protecting the wildlife values.

Thus, ANILCA itself and its legislative history indicate that Congress intended that Public Land Order remain in effect for the newly expanded and re-designated Arctic Refuge and that the purposes included in ANILCA were to be inclusive, rather than exclusive, of existing Arctic Refuge purposes.

As the USFWS’s longstanding policy and guidance regarding determining expanded refuge purposes clearly states:

When we acquire an addition to a refuge under an authority different from the authority used to establish the original refuge, the addition also takes on the purpose(s) of the original refuge unless Congress determines otherwise, but the original refuge does not take on the purpose(s) of the addition unless Congress determines otherwise.[12]

In the present case, the Arctic Refuge additions were established under a different authority (ANILCA) than the authority used to establish the original Arctic Range (Public Land Order 2214).

601 FW 1 at 1.16. In the present case, the Arctic Refuge additions were established under a different authority (ANILCA) than the authority used to establish the original Arctic Range (Public Land Order 2214). Thus, applying FWS’s policy for determining the purposes of a refuge,<sup>13</sup> for FWS’s current determination that the Arctic Range purposes only apply to those lands within the original Arctic Range to hold true, there would need to be some indication from Congress that the original Arctic Range purposes should not apply to the entire Arctic Refuge.

Nothing in ANILCA indicates that Congress did not intend the original Arctic Range purposes to apply to the entire Arctic Refuge. To the contrary, ANILCA Section 305 states that:

All proclamations, Executive orders, public land orders and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act.

P.L. 96-487 (Dec. 2, 1980) (emphasis added). This is a clear statement from Congress that Public Land Order 2214 — which set forth the Arctic Range purposes — was to remain in effect post-ANILCA unless it is inconsistent with ANILCA. The legislative history of ANILCA indicates that Congress did not intend the purposes included in ANILCA for the expanded Arctic Refuge to be the exclusive refuge purposes: “Sections 301, 302 and 303 set forth the purposes for each designated or redesignated unit and additions to existing units. Enumeration of purposes is not exclusive, but is set forth as a guide for management.” House Report No. 96-97(I) at 174 (April 18, 1979) (emphasis added).

The purposes set out in Public Land Order 2214 for the Arctic Range are not inconsistent with the purposes set out in ANILCA for the Arctic Refuge; the two authorities set forth overlapping and complimentary purposes recognizing the exceptional wilderness, wildlife, recreation, subsistence resources, international importance, and water quality of the Refuge.<sup>14</sup> All of the values recognized in both sets of purposes support the other recognized values; for example, recognizing and managing to protect the wilderness values of the Arctic Refuge allows for the achievement and furtherance of protecting the wildlife values.

Thus, ANILCA itself and its legislative history indicate that Congress intended that Public Land Order remain in effect for the newly expanded and redesignated Arctic Refuge and that the purposes included in ANILCA were to be inclusive, rather than exclusive, of existing Arctic Refuge purposes. Accordingly, because these purposes are complimentary and not inconsistent, under FWS’s policy, the purposes of the original Arctic Range apply to the entire Arctic Refuge.

Thus, [32627.047 ANILCA -- Designated Wilderness and ANILCA] in applying USFWS’s policy to determine the purposes of a refuge, for USFWS’s current determination that the Arctic Range purposes only apply to those lands within the original Arctic Range to hold true, there would need to be some indication from Congress that the original Arctic Range purposes should not apply to the entire Arctic Refuge. Without such an indication from Congress, the original Arctic Range purposes should apply to the entire Arctic Refuge. <sup>15</sup>

Accordingly the purposes of the original Arctic Range apply to the entire Arctic Refuge. The FWS thus should correct this mistake in the CCP.

### XIII. FWS Properly Did Not Consider An “Oil and Gas Alternative”

FWS correctly did not consider an oil and gas alternative, or scenarios which evaluate impacts of oil and gas exploration, development or production from the refuge.<sup>16</sup> NEPA “places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action... [I]t also ensures that the agency will inform the public that it has indeed considered environmental concerns in the decision-making process.” *Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, 524 F.3d 938, 947 (9th Cir. 2008) (citing *Baltimore Gas & Elec. Co. v. Nat’l Res. Def. Coun., Inc.*, 462 U.S. 87 (1983)). NEPA requires that an EIS include “alternatives to the proposed action.<sup>17</sup> To help define the alternatives, CEQ regulations require that the agency “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”<sup>18</sup> Thus, under NEPA, an agency only needs to consider alternatives that meet the purpose and need for the proposed action.<sup>19</sup>

The purpose of FWS’s proposed action “is to develop a Revised Plan for Arctic Refuge to provide management direction for the next 15 years.”<sup>20</sup> The action is needed to:

\* Update management direction related to national and regional policies and guidelines used to implement Federal laws governing Refuge management[;] \*\*\*

- \* Describe and protect the resources and special values of Arctic Refuge[;]
- \* Incorporate new scientific information on resources of the Refuge and surrounding areas[;] \*\*\*
- \* Evaluate current Refuge management direction based on changing public use of the Refuge and its resources[;] \*\*\*
- \* Ensure the purposes of the Refuge and the mission of the Refuge System are being fulfilled[;]
- \* Ensure that opportunities are available for interested parties to participate in the development of management direction[;]
- \* Provide a systematic process for making and documenting resource management decisions[;]
- \* Establish broad management direction for Refuge programs and activities[;]
- \* Provide continuity in Refuge management[;]
- \* Establish a long-term vision for the Refuge[;]
- \* Establish management goals and objectives[;]
- \* Define compatible uses[;]
- \* Provide additional guidance for budget requests[; and]
- \* Provide additional guidance for planning work and evaluating accomplishments[.][21]

Considering an oil and gas leasing, exploration, development, or production alternative would not achieve any of the management goals or objectives identified by FWS as the need for the agency action. Oil and gas activities are not currently allowed in the Arctic Refuge; ANILCA section 1003 states that the "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 [Refuge] shall be undertaken until authorized by an act of Congress."<sup>22</sup> Further, oil and gas activities are contrary to the purposes of the Refuge, and are inconsistent with the Refuge's purposes — neither the original purposes establishing the Arctic National Wildlife Range, nor the expanded purposes described in ANILCA.<sup>23</sup> Additionally, the National Wildlife Refuge System Administration Act of 1966, as amended, states that each refuge shall be managed to fulfill both the purposes for which the original refuge was established and the mission of the Refuge System.<sup>24</sup> The revision of the Arctic Refuge CCP must follow these legal guidelines and set forth management regimes that are consistent with the layered Refuge purposes.

Thus, considering an alternative allowing for oil and gas development in the Arctic Refuge would not achieve the purpose and need for the FWS's revision of the CCP and FWS properly did not consider such an alternative.<sup>25</sup>

#### XIV. Other Areas of the DEIS that Need to Be Strengthened:

##### A) [Preamble 32627.048] The FWS Does Not Adequately Consider the Cumulative Impacts of the Action in the ANILCA Section 810 Evaluation

NEPA requires that agencies disclose the environmental impacts of an action within the Environmental Impact Statement (EIS). 42 U.S.C. § 4332(2)(C)(i), (ii). See also 40 C.F.R. § 1508.25(c). The environmental impacts of an action include the direct, indirect and cumulative impacts. 40 C.F.R. § 1502.16. Cumulative impacts are defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions." 40 C.F.R. § 1508.7. To satisfy NEPA's requirements, the

cumulative impacts analysis must be reasonably detailed; as the Ninth Circuit has explained, “[g]eneral statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379-80 (9th Cir. 1998). As the Ninth Circuit stated in *Lands Council v. Powell*, “the general rule under NEPA is that, in assessing cumulative effects, the Environmental Impact Statement must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and the differences between the projects, are thought to have impacted the environment.” 379 F.3d 738, 745 (9th Cir. 2004), rev’d on other grounds, *Lands Council v. Powell*, 395 F.3d 1019 (9th Cir. 2005).

**[32627.048 Environmental Consequences -- Cumulative Effects: General]** The cumulative impacts analysis in the CCP DEIS is insufficient to satisfy NEPA’s requirements to consider and analyze the cumulative impacts of a project. The DEIS purports to consider the cumulative effects, stating “At the end of each alternative, we disclose the anticipated cumulative effects of the alternative on the biophysical and human environments and to reasonably foreseeable future actions. . . . The anticipated positive or negative effects of the reasonably foreseeable activities are discussed first, followed by a discussion of anticipated cumulative effects of each alternative.” DEIS at 5-2.26 However, the discussion of cumulative impacts associated with each alternative with respect to the effects of the alternative and the effects of reasonably foreseeable future actions is lacking. At the end of the discussion of the environmental consequences of each alternative, the DEIS contains a few sentences discussing the impacts of the alternative on the Arctic Refuge and its management, followed by the very cursory statement that “These effects would be cumulative to the effects of climate change, development activities, and management decisions made by other throughout the region.” DEIS at 5-20, 5-32, 5-43, 5-55, 5-67, and 5-75. There is no actual discussion or analysis of the impacts of climate change, development activities or management decision in the region on the Arctic Refuge. As the Ninth Circuit explained,

[i]n accord with NEPA, the Forest Service must ‘consider’ cumulative impacts. [] To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the Forest Service’s decisions, can be assured that the Forest Service provided the hard look that it is required to provide.

*Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379 (9th Cir. 1998) (internal citation omitted)

To the extent that FWS is relying on Appendix C to the DEIS to provide that analysis, FWS must clearly say so. Additionally, **[32627.049 Environmental Consequences -- Cumulative Effects: General]** review of Appendix C reveals that the analysis of the planning efforts is incomplete and inadequate. First, as explained below, the planning efforts included in Appendix C fail to include multiple current and reasonably foreseeable future actions. Second, the impacts discussed for each planning effort are cursory, generally consisting of statements that the action is not thought to adversely affect Refuge management. See e.g., DEIS at Appendix C: Other Planning Efforts at C-6. As explained above, this cursory discussion does not satisfy NEPA. See *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d at 1379.

To satisfy NEPA, FWS needs to take a hard look at the cumulative impacts of past, present and reasonably foreseeable future actions on Refuge management, objectives and goals. This requires an analysis and discussion of such impacts in the EIS. See *Lands Council*, 379 F.3d at 745. Without such, the DEIS for the Arctic Refuge CCP is inadequate.

**[32627.050 International Treaty Obligations -- ]** We also note that a cumulative impact analysis for the Porcupine Caribou Herd is an international obligation. The International Porcupine

Caribou Herd Agreement states that “When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyse potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou.”

B) The FWS Failed to Consider and Analyze the Cumulative Impacts to the Refuge and Refuge Management from Multiple Reasonably Foreseeable Future Actions

NEPA requires that agencies disclose the environmental impacts of an action within the Environmental Impact Statement (EIS). 42 U.S.C. § 4332(2)(C)(i), (ii). See also 40 C.F.R. § 1508.25(c). The environmental impacts of an action include the direct, indirect and cumulative impacts. 40 C.F.R. § 1502.16. Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. To comply with NEPA, the EIS must contain quantified data and discussion of how the proposed project and reasonably foreseeable future projects will affect the environment. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

As explained by the Ninth Circuit, NEPA “is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” *Kern v. Bureau of Land Management*, 284 F.3d 1062, 1072 (9th Cir. 2002). If “it is reasonably possible to analyze the environmental consequences in an EIS . . . the agency is required to perform that analysis.” *Id.*; see also 40 C.F.R. § 1502.16 (must assess the environmental impacts of all “proposed actions”); 40 C.F.R. 1501.12 (agency must identify effects “in adequate detail”).

In other words, an agency may not “avoid an obligation to analyze in an EIS environmental consequences that foreseeably arise from [a proposed action] . . . merely by saying that the consequences are unclear or will be analyzed later.” *Id.* The agency must also consider the impacts of reasonably foreseeable future actions on the proposed action. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

Reasonably foreseeable future actions under NEPA include proposed projects. *N. Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 980 (9th 2006), citing *Lands Council v. Powell*, 379 F.3d 738, 746 (9th 2004), *rev'd on other grounds*, 395 F.3d 1019 (9th Cir. 2005). NEPA defines a proposed project as one that is “at that stage in the development . . . when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.” 40 C.F.R. § 1508.23. Additionally, projects where an agency has formally announced the project and has issued a summary of the project are reasonably foreseeable. See *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 812 (9th Cir. 1999).

[Preamble 32627.051, 052, 053] The Arctic Refuge Draft Environmental Impact Statement for the Draft Revised Comprehensive Conservation Plan fails to account for, and consider the impacts of, multiple reasonably foreseeable future actions, the effects of which will likely impact the FWS’s management of the Arctic Refuge. The reasonably foreseeable actions not analyzed in the DEIS are:

\* [32627.051 Environmental Consequences -- Cumulative Effects: General] Federal Bureau of Ocean Energy Management 2012-2017 OCS Oil and Gas Leasing Program-The Bureau of Ocean

Energy Management is currently in the process of developing a new five year leasing program for outer-continental shelf waters. See <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/Current-Five-Year-Leasing-Plan.aspx> (last visited October 25, 2011). The Proposed Program includes a lease sale in the Beaufort Sea. See Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program 2012-2017 (Oct 2011). Offering additional federal oil and gas leases in the Beaufort Sea could result in additional exploration and development activities in the area, increasing air and water pollution, industrial facilities, and demand for construction resources (i.e., gravel), among other things. The impacts of the leasing and the associated activities will impact the management, objectives and goals of the Arctic Refuge.

\* **[32627.052 Environmental Consequences -- Cumulative Effects: General]** State of Alaska Areawide Oil and Gas Lease Sales-The State of Alaska, Department of Natural Resources recently issued a Notice of Sale for a considerable lease sale for the vast majority of state lands in the Beaufort Sea Areawide, the North Slope Areawide and the North Slope Foothill Areawide areas on December 7, 2011. See <http://dog.dnr.alaska.gov/Leasing/LeaseSales.htm>. The lease sales could result in exploration and development activities in areas adjacent to the Arctic Refuge, increasing air and water pollution, industrial facilities, demand for construction resources (i.e., gravel) and water, among other things. The impacts of the lease sales and the associated activities will impact the management, objectives and goals of the Arctic Refuge.

\* **[32627.053 Environmental Consequences -- Cumulative Effects: General]** State of Alaska Board of Game Proposal 130 —This proposal authorizes a brown bear predator control program in Game Management Unit (“GMU”) 26B, which encompasses the State land on the North Slope as well as a portion of the Arctic Refuge. See Game Management Units/Special Management Units, Unit 26 Arctic Slope, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. The stated purpose of the program is to reduce brown bear predation on muskoxen. See Alaska Board of Game, 2011/2012 Proposal Book Arctic, Western, and Interior Regions, and Statewide Regulations, Cycle B Schedule at 174-76, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. As noted above, intensive management is inconsistent with Arctic Refuge purposes and values, and the FWS cannot allow Alaska to conduct such activities on the Refuge. That said, a brown bear predator control program on non-Refuge lands within GUM 26B will impact the population of brown bears within the Refuge and affect FWS’s management of the Refuge to protect the wildlife.

To comply with NEPA, FWS must consider and analyze the impacts from these reasonably foreseeable future projects (as well as any others that the agency is or becomes aware of) on the management, objectives and goals of the Arctic Refuge.

**[Preamble 32627.054] C) The FWS Failed to Consider the Cumulative Impacts of the Action in the ANILCA Section 810 Evaluation**

Title VIII of ANILCA recognizes that subsistence uses are a public interest and provides a framework to consider and protect subsistence uses in agency decision making processes. 16 U.S.C. §§ 3111–3126. As the Supreme Court explained:

[t]he purpose of ANILCA § 810 is to protect Alaskan subsistence resources from unnecessary destruction. Section 810 does not prohibit all federal land use actions which would adversely affect subsistence resources but sets forth a procedure through which such effects must be considered

and provides that actions which would significantly restrict subsistence uses can only be undertaken if they are necessary and if the adverse effects are minimized.

*Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 544 (1987).

Thus, ANILCA § 810 imposes a two-tiered process to evaluate a project's impacts on subsistence uses. First, the federal agency:

[i]n determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands . . . shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

ANILCA § 810(a), 16 U.S.C. § 3120(a). This initial finding is referred to as the “tier-1” determination, *Hanlon v. Barton*, 470 F. Supp. 1446, 1448 (D. Alaska 1988), and requires the agency to consider the cumulative impacts in making the determination. *Sierra Club v. Penfold*, 664 F. Supp. 1299, 1310 (D. Alaska 1987), *aff'd by Sierra Club v. Penfold*, 857 F.2d 1307 (9th Cir. 1988).

If the agency, after conducting the tier-1 analysis, determines that the activity will not “significantly restrict subsistence uses,” 16 U.S.C. § 3120(a), then the agency issues a Finding of No Significant Restriction (FONSR) and the requirements of ANILCA § 810 are satisfied. However, if the agency makes the initial determination that the action would “significantly restrict subsistence uses,” the agency must then make conduct a “teir-2” analysis, *Kunaknana v. Clark*, 742 F.2d 1145, 1151 (9th Cir. 1984); *Hanlon*, 470 F. Supp. at 1448. Under teir-2, the agency must determine whether any restriction on subsistence is necessary, involves the minimal amount of public lands necessary to accomplish the purpose of the use, occupancy or disposition of public lands, and takes steps to minimize the adverse impacts to subsistence uses and resources. 16 U.S.C. § 3120(a)(1)–(3). Thus, as the Ninth Circuit explained, ANILCA § 810 imposes procedural requirements as well as substantive restrictions on the agency's decisions. *Sierra Club v. Marsh*, 872 F.2d 497, 502–03 (9th Cir. 1989).

**[32627.054 ANILCA -- ANILCA Section 810 Evaluation]** In the CCP DEIS Section 810 Evaluation, FWS states that “[n]one of the management alternatives evaluated in this Plan propose actions that would reduce subsistence uses because of direct effects on wildlife or habitat resources or that would increase competition for subsistence resources.” DEIS at 5-87. While this may be true, the Section 810 Evaluation fails to consider whether the cumulative impacts of the proposed action may have significant restrictions on subsistence uses. To comply with ANILCA, the FWS must consider not only the direct effects, but also the cumulative impacts of the proposed action in making its determination that the proposed action would not have a significant restriction on subsistence uses. See *Sierra Club v. Penfold*, 664 F. Supp at 1310.

## XV. Conclusion:

The USFWS has an historic opportunity when it finalizes this plan, to recommend wilderness for the whole refuge and especially its Coastal Plain. We strongly recommend that the agency follow through with this so as to define for the American people strong leadership and management direction for one of America's remaining truly vital conservation resources which will benefit all Alaskans as well as generations of Americans to come. We encourage you to recommend Wilderness designation for all suitable lands in the Refuge (Alternative E), and to finally implement appropriate wilderness stewardship of this remarkable National treasure, the Arctic National Wildlife Refuge.

Thank you very much for this opportunity to comment on the Arctic Refuge plan.

Sincerely,

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1 See pages H-16 through H-28 in the Revised CCP DEIS.

2 See Appendix H, p. H-26, Section H.3.3, "Suitability of the Coastal Plain Wilderness Study Area," H.3.3.1. "Achieving Refuge Purposes."

3 See pages H-18, H-23, and 28 in the Revised CCP DEIS.

4 In April 1987, Secretary of the Interior, Donald Hodel, disregarded what the studies showed and forwarded the Final Legislative EIS and Arctic National Wildlife Refuge Coastal Plain Resource Assessment to Congress, with a recommendation that Congress authorize full-scale oil and gas leasing for the entire 1.5 million acres of the coastal plain. This recommendation ignored the fact that the assessment itself confirmed the internationally significant wilderness and wildlife values of the coastal plain.

5 DEIS at 1-18. See also U.S. FWS Refuge Purposes Arctic National Wildlife Refuge Map, available at: <http://arctic.fws.gov/pdf/ccppurposesp2011.pdf>.

6 See FWS Refuge Management Part 601 National Wildlife Refuge System, 601 FW 1 at 1.16 (July 26, 2006).

7 Public Land Order 2214 (Dec. 6, 1960).

8 94 Stat. 2390, P.L. 96-487 at §303(2) (Dec. 2, 1980).

9 P.L. 96-487 (Dec. 2, 1980) (emphasis added).

10 House Report No. 96-97(I) at 174 (April 18, 1979) (emphasis added).

11 The fact that the two sets of purposes are complimentary and not inconsistent is evidenced by FWS's determination that the pre-ANILCA and ANILCA purposes apply concurrently to those lands within the original Arctic Range.

12 601 FW 1 at 1.16.

13 We note that FWS appears to have contrary guidance regarding the purposes of refuges established by ANILCA. See FWS Refuge Management Part 603 National Wildlife Refuge System, 603 FW 2 at 2.8(B) (Nov. 17, 2000) (stating that "Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA"). However, because this guidance is found in the FWS manual addressing compatibility of uses of refuges and 601 FW 1 directly address identifying or determining the purposes of refuges, 601 FW 1 is the controlling guidance on this issue.

14 The fact that the two sets of purposes are complimentary and not inconsistent is evidenced by FWS's determination that the pre-ANILCA and ANILCA purposes apply concurrently to those lands within the original Arctic Range.

15 In its general guidance regarding allowable uses of refuges, FWS appears to have contrary guidance regarding the purposes of refuges established by ANILCA. See FWS Refuge Management Part 603 National Wildlife Refuge System, 603 FW 2 at 2.8(B) (Nov. 17, 2000) (stating that "Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA") ((emphasis added). Because this guidance is found in the FWS manual addressing compatibility of uses of refuges and 601 FW 1 directly addresses identifying or determining the purposes of refuges, 601 FW 1 is the controlling guidance on this issue.

16 See DEIS at 3-6 (stating that "An oil and gas alternative would not satisfy NEPA's requirement that alternatives meet the purpose and need for the Revised Plan, and the Service has no administrative authority over oil and gas development").

17 NEPA § 102, 42 U.S.C. § 4332(2)(C)(iii).

18 40 C.F.R. § 1502.13.

19 See *Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1097 (9th Cir. 2006) (stating that “The scope of reasonable alternatives that an agency must consider is shaped by the purpose and need statement articulated by that agency. The [agency] must consider all reasonable alternatives within the purpose and need it has defined”). See also *City of Carmel-by-the-Sea v. U.S. Dep’t of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997).

20 DEIS at 1-1.

21 DEIS at 1-1–1-2. See also DEIS Appendix D at D-1 (stating that “[t]he purpose and need for the Revised Plan is to ensure activities, action, and management fulfill the legal purposes for which the Refuge was established, fulfill the statutory mission of the National Wildlife Refuge System [] and provide direction on how the U.S. Fish and Wildlife Service [] will meet these purposes”).

22 16 U.S.C. § 3143.

23 See P.L. 96-487, § 303(2). The original 'Arctic National Wildlife Range' was created in 1960 by Public Land Order 2214 "For the purpose of preserving unique wildlife, wilderness and recreational values." Public Land Order 2214 (Dec. 6, 1960). The purposes added in ANILCA are: (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char [note that those residing in Alaska's North Slope rivers and lagoons are now classified as Dolly Varden] and grayling; (ii) to fulfill the international fish and wildlife treaty obligations of the United States; (iii) to provide the opportunity for continued subsistence uses by local residents; and (iv) to ensure water quality and necessary water quantity within the refuge.

P.L. 96-487, 94 STAT. 2451 (Dec. 2, 1980).

24 16 U.S.C. §§ 668dd(a)(3), 668dd(a)(4)(D).

25 See *Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d at 1097.

26 As an initial matter, this formulation of cumulative effects misstates the role of considering reasonable foreseeable future actions. As described by the FWS in the DEIS, FWS perceives its duty to require it to look at the impacts from the CCP alternatives on reasonably foreseeable future actions but not to require the FWS to look at the impacts of reasonably foreseeable future actions on the CCP alternatives. FWS must also consider the impacts of reasonably foreseeable future actions on the CCP alternatives to satisfy NEPA. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

**COMMUNICATION NUMBER 32628**  
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U.S. Fish and Wildlife Service  
Arctic NWR – Sharon Seim  
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re: Comments on the Draft Revised Comprehensive Conservation Plan, Environmental Statement, Wilderness Review and Wild and Scenic River Review for the Arctic National Wildlife Refuge

These comments are offered on behalf of the national organization of Wilderness Watch as well as its Alaska Chapter. Wilderness Watch is a non-profit conservation organization dedicated to education and advocacy for protection and proper stewardship of our Nation's National Wilderness Preservation System. Its members include many long-term Arctic Refuge professionals, and citizen activists, including one of the leaders of the campaign in 1960 to establish the original Arctic Range.

Having just celebrated the fiftieth anniversary of the establishment of the Arctic Refuge, we are now at a point of historic opportunity to embark on a new and improved era of stewardship of this incomparable wild place. Because the Arctic Refuge is recognized as our nation's largest and most complete wilderness landscape, the Final Revised CCP for the Arctic Refuge should establish the highest standards for wilderness stewardship which will assure the Refuge will remain wild and free of human control, and serve as the benchmark for the entire National Wilderness Preservation System.

**Wilderness Review and Recommendation**

We are pleased that the Draft CCP includes a wilderness review for the entire Refuge. It meets legal requirements to do so, and is the first time that this has been accomplished. We strongly support Alternative E which recommends Wilderness designation of nearly all of the non-designated lands in the Refuge, including the coastal plain. This would best protect the integrity of the entire Refuge and fulfill the vision of those who originally advocated for its establishment. Wilderness designation for the entire Refuge would also assure that wilderness and natural processes will remain as the permanent defining qualities of the Refuge. Furthermore, this Alternative is the only one which would consolidate nearly the entire Refuge under the provisions of the Wilderness Act, providing the most appropriate stewardship and strongest protection. This is a critical point in the history of the Refuge. Now is the time to speak for the whole Refuge and its integrity. **[32628.001 Wilderness -- Wilderness Review (includes Appendix H)]** We urge that

the Final CCP include a recommendation that all of the non-designated lands of the Arctic Refuge that were found to be suitable in the Wilderness Review, be designated as Wilderness.

#### Refuge Goals, and Management Guidelines

**[32628.002 Refuge Vision and Goals -- Goal 1 (including objectives)]** We found the Refuge Goals to be very appropriate and inspiring. We support them in general, however the word “essentially” should be deleted from Goal 1. This term is unnecessary and detracts from the overall intention that ecological process remain free of human interventions. In particular, we support Goals 1 and 2 because they recognize the great value of the Refuge as a place where ecological processes can be free of human intent to control them, and where wildness and wilderness character are preserved. They should be retained in the Final CCP.

Goal 5 is also of particular importance in that it speaks to the type of recreational values such as adventure, independence, self-reliance, exploration and solitude that motivated the Refuge founders to establish the Refuge, and for which the Refuge is renowned. We believe these qualities are extremely rare opportunities in the world today, and that management must be conducted in a manner that does not interfere with these very fragile values.

**[32628.003 Refuge Vision and Goals -- Goal 6 (including objectives)]** Goal 6: The Final Plan should modify this goal to specify that natural systems will be allowed to adapt and evolve (non intervention), consistent with Management Guideline 2,4.10.1

Management Guideline 2.4.11: We also strongly support the provisions of Management Guideline 2.4.11 which would keep Refuge wildlife habitats unaltered and unmanipulated, and not favor one species over another, but rather allow for natural processes to function.

Management Guideline 2.4.12: We fully support Guideline 2.4.12 which in similar manner as 2.4.11, would establish management intent to allow the diversity of life in the Refuge to continue with their inherent natural behavior, interactions and cycles without human intervention.

**[32628.004 Refuge Management Policies/Guidelines -- Fish and Wildlife Population Management]** Management Guideline 2.4.12.7: Recognizes that the ecological inter-connections of all life within the Refuge and management would strive to allow natural dynamics to continue without human interference. We support this approach, however, note that in the Final CCP this guideline should clearly state that predator control and Intensive Management activities totally conflict with the purposes of the Refuge and the preservation of wilderness character, and should be prohibited.

**[32628.005 Refuge Management Policies/Guidelines -- Recreation and Other Public Use]** Management Guideline 2.4.15: We support this important guideline which recognizes self-reliance, and preservation of opportunities for adventure, discovery, solitude and isolation as essential recreational experiences because they are the type of recreation which the Refuge founders had in mind, and that the Wilderness Act contemplated, and that the Refuge is uniquely suited to provide. We also support this because it commits the Service to employ the least intrusive means for public use management. The Final CCP should strengthen this part of the Management Guidelines by referencing the Special Values of the Arctic Refuge as a justification for this important approach to recreation and public uses in the Refuge.

#### Special Values of the Arctic Refuge

We believe that this section of the Draft CCP does an excellent job of identifying the complete spectrum of special values that are associated with the Arctic Refuge. These qualities were first recognized by the founders and are what the Refuge is famous for. This important documentation

should remain unaltered and retained in the Final CCP. Furthermore, the special values of the Refuge should be used to guide every management decision.

**[32628.006 Refuge Vision and Goals -- Goal 1 (including objectives)]** Objective 1.1: We support Objective 1.1 but the strategy should identify more explicitly that in some instances, Refuge ecosystems will be allowed to adapt/evolve to a state which is different than historical conditions. The strategy should clearly state that active manipulation of habitats and populations will be avoided and that Refuge ecosystems will be allowed to adapt or evolve to a new natural stasis.

Objectives 1.2, 1.3, and 1.4, 1.5: **[32628.007 Refuge Vision and Goals -- Goal 1 (including objectives)]** We recognize the need for ecological monitoring but recommend that Objectives 1-2, 1.3 and 1-4 be integrated so that these improvements can be accomplished more effectively. Likewise, **[32628.008 Refuge Vision and Goals -- Goal 1 (including objectives)]** initiatives relating to climate change (Objective 1-5) should be integrated with over-all ecological monitoring. **[32628.009 Refuge Vision and Goals -- Goal 1 (including objectives)]** The Final CCP should clearly specify that all investigations will be the least intrusive possible, consistent with preserving wilderness character and non-intervention principles that are established in the Management Guidelines (2.4.11, 2.4.12, and 2.4.12.7).

**[32628.010 Refuge Vision and Goals -- Goal 2 (including objectives)]** Objective 2.3: Wilderness Stewardship Plan: We believe that due to the long standing issues regarding unregulated visitor use and impairment of wilderness character in several areas of the Refuge, the Final CCP must commit the Service to initiate an appropriate wilderness stewardship and/or visitor use planning process as soon as the CCP is finalized. Furthermore, we are concerned that language such as “prolonged scoping and preplanning phases...” (Page 2-7) signals more delay on the part of the Service in addressing this urgent need. These concerns would normally seem unreasonable, however, due to the nearly 30 years of neglect of this issue on the part of the Service, there is reason for our concern. (please see our further comments under the heading: Wilderness Stewardship and Visitor Use Issues).

**[32628.011 Refuge Vision and Goals -- Goal 2 (including objectives)]** Objective 2.4: Comprehensive Wilderness Management: We generally support this objective, however, we recommend that in the Final Plan it be modified to include restoration of wilderness characteristics where they have been degraded or impaired within designated Wilderness. The means for restoration should be determined through a minimum requirements analysis. The Draft CCP only addresses restoration on minimal management lands.

**[32628.012 Refuge Vision and Goals -- Goal 2 (including objectives)]** Objective 2.5: Administrative Facilities: The “Rationale” should also point out that these facilities are located within the Neruokpuk Lakes Public Use Natural Area (PUNA) as well as in the designated Wilderness. The buildings at Peters Lake are out of conformance with the Wilderness and PUNA purposes. Their removal should be a required action in the Final CCP. Facilities located at Big Ram Lake, built before refuge designation, are also inconsistent with Refuge purposes. The Final CCP should require their removal as well.

**[32628.013 Refuge Vision and Goals -- Goal 2 (including objectives)]** Objective 2.6: Wilderness Character Monitoring: We generally support this in concept, however, we are concerned that wilderness qualities have already degraded in some areas of the designated Wilderness, and the Draft CCP does not commit to address this long standing issue in a timely enough manner. (please see our further comments directly below).

## Wilderness Stewardship and Visitor Use Issues

**[32628.014 Step-Down Plans -- Wilderness Stewardship Plan]** For nearly thirty years it has been widely known that unregulated visitor use has resulted in degraded wilderness qualities in several areas of the Refuge. Concern over such conditions has been expressed by Refuge staff, in public comments, letters of complaint, news articles and in our discussions with Refuge staff over many years. The problem was recognized in the 1988 CCP which committed to address the issue in subsequent “step down” plans, however, no such plans were ever completed. Instead there has been only a few relatively minor administrative measures taken by the Service, primarily for the Kongakut River area.

This issue was once again brought forward by the public during scoping for the current CCP revision process. While many problem issues are recognized in the Draft CCP (D.5 Visitor Use Issues), nearly all are relegated to “considered but eliminated from detailed study.” We are very concerned because the draft CCP primarily addresses only the Kongakut River in the Alternatives and does so with relatively minor measures which do not adequately address the issue. The Final CCP must include the strongest possible commitment that the Service will act to restore wilderness character throughout the Refuge (not just the Kongakut River) to at least the level and quality that existed when Congress designated Wilderness in 1980, and that it will act to prevent degradation in the future. An appropriate wilderness stewardship plan which comprehensively and specifically addresses visitor use issues throughout the Refuge must have top priority. It should be prepared and implemented with adequate monitoring of its effectiveness, as soon as possible.

We are concerned, however, about the Service’s commitment to addressing these issues appropriately, and in a timely manner. The priority and schedule provided on pages 6-3 to 6-6, indicates that wilderness stewardship and visitor use management plans are assigned to second priority status, and would not be completed until 8 or 10 years from now. It is simply unacceptable that America’s premier wilderness has lacked a basic management plan for three decades. Given the long standing problems and degradation of wilderness character associated with neglect and unregulated public use in the Refuge during the past 30 years, and the fact that impairment continues to increase, it is irresponsible to delay addressing these issues for nearly another decade. These plans must be set as priority 1 and the schedule for completion needs to be compressed to no more than 2 years in the Final Plan. The Service has not fulfilled the legal requirement to preserve wilderness character in designated Wilderness (Section 4(b) of the Wilderness Act). It must not delay for another decade its responsibility to do so.

In addition, we have the following specific comments regarding wilderness stewardship and visitor use:

\* **[32628.015 Wild and Scenic Rivers -- Kongakut River]** Pages 4-215, 4-216 and others In several instances the draft CCP acknowledges that wilderness qualities along the Kongakut River are degraded by high levels of visitor use. The Draft CCP fails, however, to address the fact that the Kongakut is not the only area of the Refuge where values have been degraded. Public comments were submitted during scoping, which included, as an example, photographic documentation of an aircraft landing strip scar on the upper Sheenjok River (in designated Wilderness and within the Wild River corridor) which had occurred since 1980 (see scoping comments submitted by Mr. Greg Warren for more details). There are many other such examples that have been brought to the attention of the Refuge Manager and staff over a number of years. Omissions of this type render the draft CCP inadequate for meeting the basic requirements to “identify and describe significant problems” (Section 304 (g)(2)(E) of ANILCA). The Final CCP

must describe and address resource problems in a more thorough and comprehensive manner. Given the wide recognition of long standing wilderness quality degradation on the Kongakut River, and other areas in the Refuge, all alternatives should have included a commitment to address this problem.

\* **[32628.016 Wilderness -- Characteristics / Qualities]** Page 5-19 In discussion of effects of Alternative A, the text inappropriately claims that by allowing the quality of wilderness opportunities to degrade on the Kongakut (which is the current situation) that the “freedom and unconfined recreation... may balance the degradation.” The Draft CCP fails to indicate that the Service is legally bound to preserve wilderness character (Section 4(b) of the Wilderness Act) for such designated areas as the Kongakut. The Service does not have the freedom to “balance degradation” by allowing excessive levels of public use in Wilderness.

\* **[32628.017 Wilderness -- Effects of Alternatives]** Page 5-29 (near the bottom) The claim is made that in designated wilderness: “More invasive research methods would be limited or minimized.” The Final CCP should clearly affirm that invasive research methods are incompatible with Wilderness and will not be authorized.

\* **[32628.018 Recreation and Visitor Use -- Monitoring]** Page 5-30 Claims are made that visitor monitoring on the Kongakut , would support actions that could be taken to prevent thresholds from being exceeded. Given the fact that such measures have been employed for the past 12 years, and wilderness conditions continue to decline, it is clear that this approach is not working, because no effective actions have been taken. With no limits on the number of commercial guides and air taxis (Figure 4-12) and no over-all limits on the number of groups allowed on the River at the same time, the positive effects claimed on page 5-30 are not substantiated by the facts on the ground.

\* **[32628.019 Recreation and Visitor Use -- Air Transportation: Flying, Overflights, Landings]** The need for appropriate regulation of aircraft access in the Refuge is also a widely recognized issue due to a progression of long-term impacts to soils, vegetation, visual esthetics and other wilderness characteristics. The Final CCP must commit to addressing aircraft issues in a manner that incorporates appropriate (reasonable regulations) “to protect natural and other values” (Section 1110 ANILCA). Because aircraft access is intimately associated with visitor use and wilderness stewardship, these concerns must be integrated into a subsequent wilderness stewardship plan.

\* **[32628.020 Refuge Infrastructure and Administration -- Administrative Sites ]** Pages 4-236 and 4-237 Another issue of significant public concern, which has been expressed on numerous occasions over the past 30 years, is the facilities located at Peters Lake. The description here, fails to inform readers that these facilities occur within designated Wilderness and the Neruokpuk Lakes Public Natural Area and are inconsistent with the purpose of both land categories. It also exaggerates the 1999 reduction of its footprint by claiming: “ In 1999, the footprint from the original facility was altered and greatly reduced.” In fact approximately 360 square feet were removed in 1999 (including a generator shed, sauna and Quonset hut), leaving some 1128 square feet still in place. The description goes on to inflate the importance of the facility for science, when most of the studies that are listed occurred during a brief period some 50 years ago. In subsequent years it has been a haven for “agency leaders” and VIPs probably more that it has been used for studies. A primary reason that it has not been a haven for the field workers is that its access during the summer field season is limited to float planes, whereas wheel aircraft are largely the predominant form of access in the Refuge during summer. Finally, this description claims that “Lake ice usually lasts well into June,” but fails to mention that due to ice thinning and melting

around the edge of the lake it is rarely used by wheel aircraft after June 10. The favorable tone of this description contrasts with that given on Page 2-9 which indicates that actually these facilities are not needed. The buildings at Peters Lake are out of conformance with the designated Wilderness. Their removal should be a required action in the Final CCP. Facilities located at Big Ram Lake, built before refuge designation, are also inconsistent with Refuge purposes. The Final CCP should require their removal as well.

\* **[32628.021 Refuge Operations -- Effects of Alternatives]** Page 5-31 (Refuge Operations) The text asserts that designation of Wilderness might limit the use of remote sensing to monitor visitor use due to restrictions on installations. The Final CCP should be modified to acknowledge that if visitor use is appropriately limited and regulated to fulfill the legal requirement to preserve wilderness character in designated Wilderness (Section 4(b) of the Wilderness Act), intensive monitoring and other such management methods employed to facilitate excessive levels of visitor use would not be necessary. Page 5-32 (Cumulative Effects) also contains similar claims that designation of Wilderness might result in greater refuge operations due to increased visitor use, however, this would not be the case if appropriate regulations and limits were placed on visitor use for the purpose of preserving wilderness character.

\* **[32628.022 Step-Down Plans -- Wilderness Stewardship Plan]** Page 5-64 (Kongakut River) Text in this section claims that if a Refuge wide step down plan is implemented that it might have the effect of reducing attention to Kongakut specific issues. This can be prevented if the Service properly addresses its responsibility to preserve wilderness character. Section 4(b) of the Wilderness Act requires such preservation throughout the wilderness area, no exception is made for areas attracting more visitors. (See our comments above which call for both a comprehensive and specific Wilderness Stewardship Plan).

\* **[32628.023 Glossary (Appendix M) -- ]** Page M-22: The term untrammled is defined as referring to “the freedom of a landscape from the human intent to permanently intervene, alter, control or manipulate natural conditions or processes.” Use of the modifier “permanently” is not consistent with the intent of the Wilderness Act. To retain the untrammled condition of designated Wilderness requires foregoing any effort, temporary or permanent to intervene or manipulate the natural processes. The Final CCP should delete the word “permanently” from the description of untrammled because it incorrectly describes a key descriptor for Wilderness.

\* **[32628.024 Glossary (Appendix M) -- ]** Page M-25: The definition of wildness is limited and incomplete. Like untrammled, wildness refers to the state of an ecological system characterized by freedom from the human interest to alter, restrain or control ecological processes and thus not subject to management interventions or manipulations. Wildness can persist in environments that have been altered or continue to be influenced by external human factors as long as nature’s autonomy is respected and ecosystems are allowed to adapt to changes and evolve as they will. We recommend that the Final CCP include the above described definition as it better explains the term which is so crucial to the Arctic Refuge, and a large portion of the public’s interest in such a special place.

\* **[32628.025 Transportation and Access -- Mode of Transportation]** Pages 2-59 and 2-60 (Helicopters): We support the prohibition of helicopter landings for recreational purposes in the Refuge and urge that it be retained in the Final CCP. More restrictions need to be specified in the Final CCP (Management Guidelines) for the use of helicopters by agencies and cooperators.

\* **[32628.026 Refuge Infrastructure and Administration -- Administrative Sites ]** Page 2-71 (Administrative Sites and Visitor Facilities): The Final CCP should clearly indicate in the

Management Guidelines that the construction or the placement of any new administrative buildings in the Refuge are prohibited.

State “Game” Management and Refuge Management

**[32628.027 Wildlife -- Predator Control]** The Draft CCP appropriately recognizes the need to coordinate with the Alaska Department of Fish and Game, but it fails to acknowledge that some State goals for managing wildlife such as predator control and “intensive management” would conflict with the Arctic Refuge’s purpose for maintaining wildlife populations in their natural diversity. The Final CCP must clearly indicate that when in conflict with state goals, Refuge purposes and Wilderness Act purposes must prevail. In such cases, the FWS must exercise its responsibility to preempt the state fish and game department and its Boards of Game and Fish. Also, the Final CCP must assure that the primary Refuge purpose to conserve natural diversity will not be compromised by decisions to authorize predator control or habitat manipulation to increase game species for hunting. To ensure clarity to and to dissuade any attempts by the State of Alaska to pursue intensive management programs on Refuge lands, the Final CCP should explicitly preclude artificial manipulation or intensive management of wildlife populations and their habitats to enhance game populations for human harvest. The use of predator control for this purpose should be prohibited in any form.

**[32628.028 Refuge Management Policies/Guidelines -- Cooperation and Coordination with Others]** We are further concerned because the Draft CCP (Page 2-44 Federal, State and Local Governments) proposes that FWS should consider clearly incompatible Alaska actions on a case-by-case basis: “separate refuge compatibility determinations addressing specific proposals will be required for State management activities that propose predator management, fish and wildlife control...or any other unpermitted activity that could alter ecosystems” of refuges in Alaska. The Service does not need to initiate a compatibility determination or NEPA process to evaluate a State-sponsored proposal to conduct predator control in Arctic Refuge. Rather, the FWS should incorporate language into the CCP and the draft Compatibility Determinations clearly stating that any State regulation or plan involving the use of predator control that conflicts with federal law or policy and the purposes of the Arctic Refuge will be preempted in the Refuge.

**[32628.029 Consultation and Coordination -- State Coordination]** We recommend that Appendix B 1.1 the statement: “the USFWS and ADFG share mutual concern for all fish and wildlife resources...” be deleted and replaced with a statement that where the agencies differ, Refuge purposes have supremacy and the state should be preempted.

Compatibility

The standard for compatibility determinations as defined in Section 6(3)(a)(i) of the National Wildlife Refuge Improvement Act of 1997 requires that the USFWS “not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use,” that is that the use is compatible with the primary purposes for which the refuge was established

**[32628.030 Refuge Management Policies/Guidelines -- Compatibility Determinations (includes Appendix G)]** The Draft CCP (Page 2-44) states: “The Service does not require refuge compatibility determinations for State wildlife management activities on a national wildlife refuge pursuant to a cooperative agreement between the State and the Service where the refuge manager has made a written determination that such activities support fulfilling the refuge purposes or the Refuge System mission.” We are concerned that by this statement the Service is waiving its responsibility to conduct a thorough compatibility determination which would require

public information and input. We further advise that in the case of designated Wilderness, the State:Federal Memorandum of Understanding (1982) does not specifically reference the Wilderness Act and its purposes. The Final CCP should clarify that Wilderness Act purposes and prohibitions are also required to be met before there is any sanctioning of State wildlife management activities. Page G-5 states: "All management and research activities conducted by ADFG under specific cooperative agreement with the Service to fulfill one or more purposes of the Refuge or the Refuge System mission are not subject to a compatibility determination." The Final CCP should provide a complete description of State management and research activities within the Refuge and its designated Wilderness. This information should be presented along with research and management programs of the Service as well as activities of other entities such as University researchers and other. The full range of management and research activities needs to be presented so that the public is properly informed and can determine if these actions may be subject to compatibility determinations and other proper authorizations under the law.

#### Appendix G Compatibility Determinations

**[32628.031 Refuge Management Policies/Guidelines -- Compatibility Determinations (includes Appendix G)]** Information provided in several determinations confirms use levels or conditions which suggest that adequate measures to maintain compatibility with Refuge purposes and Wilderness Act are not being met. For example: Page G-10 acknowledges that damage to vegetated surfaces from aircraft landings has been reported (see our comments above for Pages 4-215, 4-216 and others), and states that "we can limit where commercial operators can land." However the "Stipulations Necessary to Ensure Compatibility" that are provided only include such a restriction for the Kongakut River. Extensive public comments provided to the Service over many years have identified damaged vegetation in several areas of the Refuge other than the Kongakut. Yet there have been no other such restrictions established. Text on this page goes on to recognize that "These are emerging" issues that need to be monitored." These issues are not just "emerging," they have actually existed for several years. More monitoring alone will not stop the expansion of damage. Pages G-20, G-39 also include the "emerging issues" and "need to be monitored" statements indicating that action to prevent damage or problems is not being taken.

On Page G-9 it is recognized that: "There is currently no limit on the number of trips or clients permittees can take to the Refuge, nor is there a limit to the number of commercial air operators permitted to operate on the Refuge." The determination for Commercial Recreational Guide Services does not even mention that there is currently no limit on the number of recreation guides that are permitted to operate on the Refuge. Issues such as crowding, and human waste are acknowledged, on Page G-40 but are only relegated to "monitoring and assessment." We believe that several compatibility determinations fail to adequately analyze how this situation is consistent with preserving wilderness character according to Section 4b of the Wilderness Act. We question the legitimacy of these compatibility determinations.

#### Commercial Activities

**[32628.032 Recreation and Visitor Use -- Special Use Permitting]** Section 4(d)(6) of the Wilderness Act of 1964 allows commercial services to be performed in designated wilderness "to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas." To our knowledge the Service has not determined "the extent necessary" for commercial activities under permit within the Arctic Refuge. Indeed, the Draft CCP indicates for example, on Page G-9 "There is currently no limit to the number of trips or clients, permittees can take to the Refuge, nor is there a limit to the number of commercial air operators permitted to operate on the Refuge." It is our understanding that currently there is also

no limit to the number of commercial recreation guides permitted to operate on the Refuge. Table 4-12 (Page 4-210) shows a steep, progressive rise in the number of commercial permits issued by the Refuge for 1980, when Wilderness was designated (7 permits) to 2008 when nearly 40 permits were issued. Page D-9 acknowledges that “non-competitively awarded special use permits are increasing in number year to year.” The Draft CCP does not report the number of commercial permits for air operators and recreation guides have been issued from 2008 to 2011. The Final CCP should provide this number.

**[32628.033 Recreation and Visitor Use -- Special Use Permitting]** We are concerned that while the public has indicated in scoping that increasing permits and recreational uses are contributing to degraded wilderness character in the Refuge, the Service has decided to add this topic to the list of “issues considered but eliminated from detailed study.” Instead this issue is relegated to the possibility of a Visitor Use Management Plan that is given priority 2 and scheduled for completion as late as 2021 (Table 6-1). Looking at the graph on Table 4-12, one could project that there could easily be over 60 commercial air operators and recreation guides permitted on the Refuge by 2021. When is the Service going to determine what level of commercial services is “necessary” according to the Wilderness Act? Section 4(b) of the Wilderness Act requires each agency administering designated wilderness “shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.”

**[32628.034 Recreation and Visitor Use -- Special Use Permitting]** The Service received scoping comments recommending that an area free of commercial activity and mechanized access be considered for the Refuge as allowed under the Wilderness Stewardship policy (601 FW 2 E). This recommendation was relegated to “eliminated from detailed study.” Although the Service continues to avoid regulating the number of commercial operators, we disagree with the determination to not study this further. We request that the Final CCP include consideration of an area free of commercial activity and mechanized access in a Wilderness Stewardship or Visitor Use Management Plan. We also recommend that the Final CCP require that a freedom of choice option be included in the above planning process.

At a minimum the Service must place a moratorium on the issuance of any new commercial outfitter permits until an appropriate analysis of the need for commercial services and the extent that they are necessary is completed.

**[32628.035 Step-Down Plans -- Inventory & Monitoring Plan]** Effects of Hunting on Population Structure and Genetics

The Draft CCP acknowledges that the public expressed concern that trophy hunting for species such as Dall’s sheep (which targets old age, mature rams) in the Refuge could have negative effects on populations and genetics with long term negative consequences. This issue was assigned to the category: eliminated from detailed study and it was suggested that it may be considered in the Inventory and Monitoring Plan (step down). There are recently published scientific results about the effects of human harvest on a variety of species (Dairmont et al 2009). The Draft CCP goal #1 encourages the perpetuation of ecological processes and Management Guideline 2.4.12 requires management that enables natural behavior, interactions, and cycles. The Service’s Biological Integrity, Diversity, and Environmental Health Policy (Service Manual 601 FW 3) mandates the maintenance of the variety of life and its processes on Refuge lands. Furthermore, a primary Refuge purpose is to conserve wildlife in their natural diversity. We recommend that the Final Plan specify that this topic will be addressed in the proposed Inventory and Monitoring/Research plans, and results will be used to guide future management.

**[32628.036 Step-Down Plans -- General] Wilderness Values and Science Related Technologies**

The Draft CCP acknowledges that this issue was identified during public scoping as a concern, however it decided to eliminate it from detailed study (Page D-6). This is a rapidly emerging problem across the National Wilderness Preservation System and is not being adequately resolved through the existing Minimal Requirement Decision process. Therefore we recommend that the Final Plan include explicit requirements that the issue of science related technologies relative to Wilderness values be addressed in both the Inventory and Monitoring/Research Plan and the Wilderness Stewardship Plan.

**[32628.037 ANILCA -- Refuge Purposes and ANILCA] The Original Arctic National Wildlife Range's Purposes Apply to the Entire Arctic Refuge**

In the CCP, the FWS states that the purposes for which the original Arctic National Wildlife Range ("Arctic Range") was established only apply to those lands in the original Arctic Range: "Under Section 305 of ANILCA, the Range's original wildlife, wilderness, and recreation purposes still apply to those lands in the former Range." DEIS at 1-18. See also U.S. FWS Refuge Purposes Arctic National Wildlife Refuge Map, available at: <http://arctic.fws.gov/pdf/ccppurposesp2011.pdf>. However, under FWS's own longstanding policy and guidance regarding determining the purpose of each refuge in the National Wildlife Refuge System, see FWS Refuge Management Part 601 National Wildlife Refuge System, 601 FW 1 at 1.16 (July 26, 2006), the purposes of the original Arctic Range apply to all Arctic Refuge lands.

The original Arctic Range was established in 1960 "to preserve unique wildlife, wilderness, and recreational values." Public Land Order 2214 (Dec. 6, 1960). The Alaska National Interest Lands Conservation Act ("ANILCA") expanded the original Arctic Range by adding 9.2 million acres, included additional refuge purposes and re-designated the unit as the Arctic National Wildlife Refuge. These new, additional purposes include:

- (i) to conserve fish and wildlife populations and habitats in their national diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and graying;
- (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;
- (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and
- (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and quantity within the refuge.

94 Stat. 2390, P.L. 96-487 at §303(2) (Dec. 2, 1980).

As FWS's longstanding policy and guidance regarding determining expanded refuge purposes clearly states:

When we acquire an addition to a refuge under an authority different from the authority used to establish the original refuge, the addition also takes on the purpose(s) of the original refuge unless Congress determines otherwise, but the original refuge does not take on the purpose(s) of the addition unless Congress determines otherwise.

601 FW 1 at 1.16. In the present case, the Arctic Refuge additions were established under a different authority (ANILCA) than the authority used to establish the original Arctic Range

(Public Land Order 2214). Thus, applying FWS's policy for determining the purposes of a refuge,<sup>1</sup> for FWS's current determination that the Arctic Range purposes only apply to those lands within the original Arctic Range to hold true, there would need to be some indication from Congressional that the original Arctic Range purposes should not apply to the entire Arctic Range.

Nothing in ANILCA indicates that Congress did not intend the original Arctic Range purposes to apply to the entire Arctic Refuge. To the contrary, ANILCA Section 305 states that:

All proclamations, Executive orders, public land orders and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act.

P.L. 96-487 (Dec. 2, 1980) (emphasis added). This is a clear statement from Congress that Public Land Order 2214 — which set forth the Arctic Range purposes — was to remain in effect post-ANILCA unless it is inconsistent with ANILCA. The legislative history of ANILCA indicates that Congress did not intend the purposes included in ANILCA for the expanded Arctic Refuge to be the exclusive refuge purposes: “Sections 301, 302 and 303 set forth the purposes for each designated or redesignated unit and additions to existing units. Enumeration of purposes is not exclusive, but is set forth as a guide for management.” House Report No. 96-97(I) at 174 (April 18, 1979) (emphasis added).

The purposes set out in Public Land Order 2214 for the Arctic Range are not inconsistent with the purposes set out in ANILCA for the Arctic Refuge; the two authorities set forth overlapping and complimentary purposes recognizing the exceptional wilderness, wildlife, recreation, subsistence resources, international importance, and water quality of the Refuge.<sup>2</sup> All of the values recognized in both sets of purposes support the other recognized values; for example, recognizing and managing to protect the wilderness values of the Arctic Refuge allows for the achievement and furtherance of protecting the wildlife values.

Thus, ANILCA itself and its legislative history indicate that Congress intended that Public Land Order remain in effect for the newly expanded and redesignated Arctic Refuge and that the purposes included in ANILCA were to be inclusive, rather than exclusive, of existing Arctic Refuge purposes. Accordingly, because these purposes are complimentary and not inconsistent, under FWS's policy, the purposes of the original Arctic Range apply to the entire Arctic Refuge.

We request that the Final CCP be revised in all appropriate sections to correct the Draft CCP which misconstrues the laws and policies regarding Refuge purposes (as described above).

## Conclusion

Our review of the Draft CCP resulted in a mixed assessment. We are pleased that the Service included a full Wilderness Review of all non-designated lands in the Arctic Refuge (as required by law), and we generally found the Goals, Special Values, and Management Guidelines to be exemplary and very consistent with the vision of Refuge founders. However, we also found that much of the remainder of the Draft CCP conflicted with the very spirit of the Goals, Special Values and Management Guidelines. This conflict is evidenced in the numerous details which we provided above.

We are very concerned about several issues: degradation of wilderness character, excessive public use in several areas, impacts from aircraft landing and use, human waste problems, and rapidly rising commercial activities in the Refuge are a few examples, all of which contribute to impairment of wilderness character. The primary strategy proposed in the Draft CCP is to

address such issues in subsequent “step down” plans, however, we are well aware that such a tactic was taken in the 1988 Final CCP, and no step down plans were completed for the last 23 years. Furthermore, the Service proposes that the Wilderness Stewardship and Visitor Use Plans will be priority 2 and schedules them to be completed in 2021. It is entirely unacceptable and should be an embarrassment to Refuge managers that the area has gone for nearly 30 years without a wilderness stewardship plan, and the best current management can do is offer up the possibility that such a plan might be forthcoming in another decade. It is also unacceptable for the public, who have patiently brought forth their concerns during the past many years to be asked to wait another decade for relief from long standing degradation of wilderness character and neglectful stewardship of America’s premier Wilderness.

We recommend that the Final CCP be revised in a manner that elevates the entire document to the quality, intent, and spirit of the Goals, Management Guidelines and Special Values. Now is a critical point in the history of the Arctic Refuge, and we urge that the Service demonstrate strong, bold leadership as the Refuge founders did more than fifty years ago. We encourage you to recommend Wilderness designation for all suitable lands in the Refuge (Alternative E), and to finally implement appropriate wilderness stewardship of this remarkable National treasure, the Arctic National Wildlife Refuge.

Thank you for the opportunity to comment.

Sincerely,

[Signature]

Fran Mauer  
Alaska Chapter  
Wilderness Watch

1 We note that FWS appears to have contrary guidance regarding the purposes of refuges established by ANILCA. See FWS Refuge Management Part 603 National Wildlife Refuge System, 603 FW 2 at 2.8(B) (Nov. 17, 2000) (stating that “Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA”). However, because this guidance is found in the FWS manual addressing compatibility of uses of refuges and 601 FW 1 directly address identifying or determining the purposes of refuges, 601 FW 1 is the controlling guidance on this issue.

2 The fact that the two sets of purposes are complimentary and not inconsistent is evidenced by FWS’s determination that the pre-ANILCA and ANILCA purposes apply concurrently to those lands within the original Arctic Range.

**COMMUNICATION NUMBER 137006**  
**Steve Zack, Arctic Landscape Coordinator**  
**Wildlife Conservation Society**

From: Website User  
Sent: Tuesday, November 15, 2011 1:22 PM  
To: arcticrefugeccp@fws.gov  
Subject: Comments from an Organization

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Wildlife Conservation Society  
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November 15, 2011

U.S. Fish and Wildlife Service  
Arctic NWR – Sharon Seim  
101 12th Ave., Rm. 236  
Fairbanks, AK 99701-6237

RE: Comments on the draft revised Comprehensive Conservation Plan (CCP) and draft Environmental Impact Statement (EIS) for the Arctic National Wildlife Refuge.

Dear Ms. Seim:

On behalf of the Wildlife Conservation Society, we welcome the opportunity to comment upon the U.S. Fish and Wildlife Service (FWS) draft revised Comprehensive Conservation Plan (CCP) and draft Environmental Impact Statement (EIS) for the Arctic National Wildlife Refuge. As detailed below, the Coastal Plain of the Arctic National Wildlife Refuge is a unique and critical habitat for caribou, polar bears, migratory waterfowl and migratory shore birds. As such, WCS recommends

that FWS adopt Alternative C – recommending the Coastal Plain Wilderness Study Area for wilderness designation. FWS’s efforts to create a transparent and publically-guided CCP/EIS process are commendable. Additionally, WCS appreciates FWS’s willingness to consider all possible alternatives by refraining from stating a preferred alternative.

## Introduction and Summary

The Wildlife Conservation Society (WCS) is a science-based organization with a worldwide reach of projects and activities centered on the conservation of wildlife and wild lands. Our long-term involvement in Alaskan Arctic conservation began when WCS, then known as the New York Zoological Society, organized and financed the Murie expeditions from 1956-58 that made the case for creation of the Arctic National Wildlife Refuge. Those efforts emphasized the importance of protecting a large region in the Arctic ranging from the Brooks Range to the Coastal Plain because of the scale of wildlife movements.

In 2001, concerned about the lack of wildlife science informing the battles over the Arctic National Wildlife Refuge’s Coastal Plain future, WCS began conducting wildlife research near Prudhoe Bay and Kuparuk within the existing oil fields and at remote field sites in the National Petroleum Reserve-Alaska, as part of a larger effort to understand some indirect effects on wildlife of the existing “oil footprint” as it might inform management decisions concerning the 1002 Area of the Refuge. WCS research and subsequent conservation efforts have focused on how nesting birds and predators are influenced by oil development activities and by a changing climate. This research has indicated that climate change is an ongoing threat to wildlife in the Arctic Coastal Plain and that oil and gas development can impose additional negative impacts on wildlife in this region.

### I. The Coastal Plain Provides Critical Habitat for Arctic Species

As noted in the Draft CCP and EIS Summary, “an overwhelming majority of the almost 95,000 comments received from the public pertained to the Refuge’s coastal plain (also known as the 1002 Area).” WCS’s core conservation concerns for the Arctic National Wildlife Refuge center on the disproportionate importance of the Coastal Plain for wildlife. This region has been referred to as the “biological heart” of the refuge for many reasons. It is the essential corridor of movement of the Porcupine Caribou herd that moves between Canada and the U.S., and it is a frequent site for calving of their young. Likewise, female polar bears use the coastal plain for denning and rearing young. It is also recognized as an important region for post-breeding feeding of snow goose and other migratory waterfowl in the fall. Finally, the Coastal Plain of the Arctic National Wildlife Refuge contains important areas (e.g., Canning River delta) for high densities of breeding populations of migratory shorebirds.

The geographic context of the Refuge’s Coastal Plain is also very important to recognize: it is a relatively narrow strip of coastal plain due to the close proximity of the Brooks Range. Such proximity and the numerous watersheds emanating from the Brooks Range make for many riverine bluffs and ample denning site opportunities for polar bear (more numerous compared to the rest of Alaska’s Coastal Plain). For other wildlife, it means that the coastal habitats are in a narrow corridor, and the wildlife issues within that corridor are constrained by lack of easy movement due to displacement as the Beaufort Sea to the north and Brooks Range to the south act as barriers. This is important to recognize because existing studies of the effects on caribou movement and calving, and those of indirect effects of subsidized nest predators, are drawn from Arctic regions where movements are not constrained. Therefore, the narrow corridor of the Coastal Plain could amplify adverse effects of any development resulting from altering the wilderness-like setting of the Coastal Plain in the Arctic Refuge. The unique geographic character

of the Coastal Plain resulting in vital habitat for wildlife validates the need to support Alternative C – recommending wilderness designation for the Coastal Plain Wilderness Study Area.

## II. Oil and Gas Development Can Negatively Impact Arctic Wildlife

The majority of commenters focused on the issue of wilderness designation in the Coastal Plain and the effect it would have on oil and gas development (Arctic Refuge CCP draft summary). Research has indicated that development in Arctic Alaska can negatively impact both birds and caribou. As mentioned above, the geographic character of the Coastal Plain of the Arctic National Wildlife Refuge would likely amplify impacts. WCS's previous and on-going research (Liebezeit et al. 2009, Ecological Applications, Liebezeit and Zack 2008, Arctic) indicates that the Coastal Plain region would almost certainly be subject to increased predation pressure to nesting birds if human activities involving the building of permanent structures and facilities (e.g. energy extraction development) were allowed. This would jeopardize populations of some bird species that are already experiencing population declines.

The Porcupine Caribou Herd frequently moves into the Coastal Plain of the Arctic National Wildlife Refuge to calve its young and to escape biting insects with the cool breezy weather near the Beaufort shoreline. Development can significantly alter caribou herd movements, often with strong energetic and nutritional consequences (e.g., Cameron et al. 2005 Arctic). Such effects would likely be dramatic in the narrow corridor of the Coastal Plain where displacement is constrained both north and south. Finally, disturbance to the threatened polar bear that dens and raises young here adds challenges to a species that is already fighting for its long-term survival in arctic Alaska. In light of the research identifying the negative impacts that oil and gas development can have on Arctic species, it is imperative that FWS choose Alternative C – recommending wilderness designation for the Coastal Plain Wilderness Study Area, thus preventing oil and gas development in this valuable habitat.

## III. Arctic Species are Threatened by Climate Change

**[137006.001 Step-Down Plans -- Inventory & Monitoring Plan]** As noted by the Arctic Refuge CCP draft summary, “climate change is expected to continue to affect Refuge resources and the associated human environment for the foreseeable future.” Since there are few current actions the USFWS believes they can do to manage climate change in the Refuge (see pg. 7 in Arctic Refuge CCP draft summary), limiting development in the Arctic Coastal Plain through a Wilderness designation (Alternative C) would preserve any potential Refugia for wildlife within its boundaries. Such designation could also help mitigate for climate change in number of ways (see Dudley et al.2010, Natural Solutions), such as providing access to natural resources and habitat for wildlife populations shifting ranges to higher latitudes, like the Coastal Plain. WCS recommends that this premise is clearly articulated in a climate change adaptation plan as part of the Inventory and Monitoring (I & M) planning effort.

## IV. Clarification Is Needed on Process to Address Climate Change in Arctic Refuge

**[137006.002 Step-Down Plans -- Inventory & Monitoring Plan]** WCS is encouraged to see the CCP/EIS will place some emphasis on addressing climate change influence on the wildlife and landscape of the Refuge through scientific research / monitoring and traditional knowledge (Goal 6) and that this information will feed into some type of climate change adaptation strategy (Goal 6 – objective 6.2, 6.3). However, it is unclear what the details and timeline of such a strategy are and how or if they will be articulated in any way. WCS recommends that the climate change effort and strategy for the Refuge be fully articulated in a “Climate change Adaptation Plan”. Initially, more emphasis should be placed on developing such a plan as opposed to the “long-term research and

monitoring.”. The plan should be created in order to guide new directions in applied research for the next 5-15 years. WCS is also pleased to see that changes in fire management will be considered in the Refuge as the frequency of fires in the region has increased due to climate change. In the tree line zone, fire management will be particularly important as fire is known to speed up conversion to taiga like-conditions.

WCS is aware of the climate change vulnerability assessment that has already been conducted for Arctic Refuge mammals by Defenders of Wildlife ([http://www.defenders.org/programs\\_and\\_policy/climate\\_change/publications.php](http://www.defenders.org/programs_and_policy/climate_change/publications.php)). WCS is currently conducting an Alaskan Arctic-wide vulnerability assessment for bird species with support from the Arctic LCC – a consortium of federal agencies and partners. Vulnerability assessments are an important starting point for managing wildlife and landscapes with respect to climate change so further vulnerability assessments in the Refuge on other taxa (birds, fish) as part of the overall climate change adaptation plan are encouraged.

**[137006.003 Step-Down Plans -- Inventory & Monitoring Plan]** Although the USFWS management guideline on climate change is to follow “a process of non-intervention” – likely because current management options are limited – WCS would stress that in the future, intervention of some type may be needed in order to help protect species imperiled by a changing climate. This should be noted in the forthcoming I & M plan. We understand that the I & M plan will be developed over the course of 3-7 years in a step-down process. As a science-based NGO involved in Arctic Alaskan wildlife research and conservation since the early moves to establish the refuge, WCS could play an important role in helping to guide the development of this plan. WCS requests consideration to be an active participant in the development and review of the plan.

#### Conclusion

WCS recommends Management Alternative C, which would recommend that the Coastal Plain Wilderness Study Area of the Arctic National Wildlife Refuge be included in the National Wilderness Preservation System. The high wildlife value of the Coastal Plain makes this region of particular importance for wilderness designation. This is especially important since threatening human impacts in this region could be devastating to wildlife populations – particularly the Porcupine Caribou, polar bears, and feeding and nesting bird species. Also, only a small portion (

Overall, WCS is pleased with the level of detail in the CCP/EIS and looks forward to further opportunities to collaborate on issues related to wildlife conservation in Arctic Alaska.

Sincerely,

Joe Liebezeit, Wildlife Conservation Society  
Dr. Steve Zack, Wildlife Conservation Society  
Dr. Joel Berger, Wildlife Conservation Society  
Dr. Martin Robards, Wildlife Conservation Society

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