

November 7, 2023

Via: <https://eplanning.blm.gov/eplanning-ui/project/2015144/510>

Serena Sweet, Supervisory Planner  
Bureau of Land Management, U.S. Dept. of the Interior  
Alaska State Office  
Attention – Draft Coastal Plain Leasing Supplemental EIS  
222 West 7th Avenue  
Anchorage, AK 99513

**Re: Comments in response to Notice of Availability of the Draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement.**

Dear Ms. Sweet:

The American Petroleum Institute (“API”) and the Alaska Oil and Gas Association (“AOGA”) (collectively “the Associations”) appreciate the opportunity to provide these comments on the Draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement (“Draft SEIS”) published by the U.S. Department of Interior (“DOI”), Bureau of Land Management (“BLM”) in September 2023.<sup>1</sup>

As we stated in prior comments submitted in response to BLM’s August 4, 2021, Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska (“2021 NOI”),<sup>2</sup> the preparation of this Draft SEIS is unnecessary and jeopardizes Coastal Plain energy development, which is critical to Alaska’s economy and our country’s national security. The oil and natural gas industry has a 50-year track record of safe and responsible energy development on the North Slope of Alaska while respecting and often supporting reasonable stipulations to protect the Alaskan environment and wildlife. We look forward to continuing to partner with Alaskan communities and policymakers to leverage innovative technologies and best practices to safely develop oil and gas resources on Alaska’s North Slope under the congressionally-mandated Coastal Plain oil and gas leasing program.

---

<sup>1</sup> 88 Fed. Reg. 62,104 (Sept. 8, 2023). The “Coastal Plain” or the “1002 area” as referenced in this document refers to the approximately 1,563,500 acres within the approximately 19.3-million-acre Arctic National Wildlife Refuge (“ANWR”). See Coastal Plain Oil and Gas Leasing Program Record of Decision at p. 3, footnote 3, BLM (Aug. 2020) (“2020 ROD”).

<sup>2</sup> 86 Fed. Reg. 41,989 (Aug. 4, 2021).

## **I. Executive Summary**

Through the Tax Act's establishment of a competitive oil and gas program in the 1002 Area, Congress struck a balance between promoting oil and natural gas development in the Coastal Plain and protecting the environmental resources of the Refuge. While requiring at least two area-wide lease sales in the 1002 Area—the first within four years of the Act's enactment and the second within seven years—Congress also included certain limitations. The program authorizes only up to 2,000 surface areas of federal lands to be covered by production and support facilities during the term of the leases, and directs that the program be managed in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976. These protections strike the necessary balance without the need for further restrictions on surface activity. The State of Alaska and the people of the North Slope support the program, and the Alaska congressional delegation has recognized that it will help refill Trans Alaska Pipeline System (“TAPS”) while creating high-paying jobs, generating revenues for local, state, and federal treasuries, keeping energy prices affordable, and strengthening our national energy security.

The Associations recognize that politics have shifted since the Tax Act's enactment, and the Secretary has publicly stated her disagreement with policies underlying the required leasing program. Canceling the leases issued on January 6, 2021, put the DOI out of compliance with the Tax Act's mandate to complete at least one lease sale within four years. Furthermore, in doing so, DOI acted beyond its legal authority. Notwithstanding, even if the purported “deficiencies” with the Draft SEIS had merit, they could be easily addressed through future processes without any need to cancel existing and completed leases.

Although the Associations disagree that the Draft SEIS is warranted, we have identified certain issues that warrant correction or clarification, including but not limited to:

- The Purpose and Need statement acknowledges that the Tax Act requires at least two lease sales to be held by December 22, 2024, but ignores that at least one of them needed to be completed by December 22, 2021. By canceling the 2021 leases, the DOI has fallen out of compliance with the Tax Act.
- Alternatives C and D do not meet the purpose and need as informed by the Tax Act because they restrict designating certain areas as opened or closed to leasing, permit less than 2,000 acres of surface development through the Coastal Plain, and prohibit surface infrastructure in sensitive areas contrary to the Tax Act's requirements.
- The no surface occupancy (“NSO”) restrictions and setbacks contained in the Draft SEIS, especially in Alternative D, are overly broad and inconsistent with the Tax Act and Congress's intent.
- BLM lacks authority to impose broad occupancy restrictions beyond the clearly stated 2,000 acres limitation the Tax Act establishes. The Act's plain language and legislative history make clear that Congress directed BLM to authorize up to 2,000 surface areas of

federal lands separate and in addition to any federal lands subject to rights-of-way or easements.

- The Associations recognize the importance of clear and enforceable leasing stipulations and ask that the proposed stipulations be updated to comply with the plain language of the Tax Act and provide greater clarity on several restrictions in Leasing Stipulation 1.
- The Associations appreciate some of the changes made to the ROPs based on our prior comments, but highlight certain issues for your consideration related to ROP 6(a), 6(c), 7, 8, 9, 10, 11e, 34, and 41(a).
- We also recommend minor corrections and updates to caribou and polar bear wildlife considerations in the Draft SEIS.

## II. Table of Contents

I.	Executive Summary .....	2
II.	Table of Contents .....	4
III.	The Associations and Their Interests.....	6
IV.	Overview of Development of Oil and Gas Resources in Alaska and the Coastal Plain.....	7
	A. Continued Access to Oil and Natural Gas Resources—Including Those in the Coastal Plain—Is Essential for U.S. Energy Security. ....	7
	B. Congress’s Directive to Establish a Coastal Plain Leasing Program Balances the Benefits of Responsible Oil and Natural Gas Development in the Region with Conservation. ....	9
	C. The Development of an Oil and Natural Gas Leasing Program in the Coastal Plain Has the Broad Support of Alaskans.....	9
	D. Alaska’s Oil and Natural Gas Industry Has a Proven Track Record of Operating Responsibly in Alaska.....	10
V.	The Associations’ Comments on BLM’s Obligations to Comply with the Tax Act for the Coastal Plain Leasing Program.....	13
	A. Vacating the Initial Seven Leases Does Not Excuse BLM’s Obligation to Complete Two Lease Sales by Specified Dates.....	13
	B. DOI Acted Beyond the Scope of Its Authority When It Canceled the January 6, 2021 Leases.....	14
	C. The Department May Not Use Its Limited Authority As a Pretext for Policy Changes.....	15
	D. Even If the BLM Properly Identified “Deficiencies,” There Was No Need to Vacate the January 6, 2021, Leases. ....	17
VI.	The Associations’ Comments on the Draft SEIS.....	18
	A. Per the Tax Act, the Purpose and Need Statement Must Reflect and Adhere to the Leasing Schedule Mandated by Congress. ....	18
	B. Alternative B Remains the Associations’ Recommended Alternative and Should Be Adopted As the Preferred Alternative. ....	19
	C. NSO Provisions and Setbacks Must Not Conflict with Congress’s Mandate	

under the Tax Act.....	20
i. BLM Lacks Authority to Impose Broad Surface Occupancy Restrictions Beyond the Clearly Stated 2,000 Acres Limitation Set Out in the Tax Act. ..	22
ii. Any Potential Leasing Stipulations or ROPs Must Not Be Unreasonably Restrictive, Inappropriate, or Unsupported by Law or the Best Available Science. ....	24
D. Wildlife Considerations are Adequately Evaluated in the Draft SEIS. ....	26
i. Caribou.....	26
ii. Polar Bear.....	27
VII. Conclusion .....	28

### III. The Associations and Their Interests.

API is a nationwide, non-profit trade association that represents all facets of the oil and gas industry, which supports 10.3 million U.S. jobs and nearly eight percent of the U.S. economy. API's nearly 600-member companies include large integrated companies, as well as exploration and production, refining, marketing, pipeline and marine businesses, and service and supply firms. API was formed in 1919 as a standards-setting organization, and the organization has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability for oil and gas resource development across the nation.

AOGA is a non-profit, professional trade association whose mission is to foster the long-term viability of the oil and gas industry for the benefit of all Alaskans. AOGA's membership includes 14 companies, representing the majority of companies engaged in the exploration, production, refining, and transportation of oil and gas across Alaska, both onshore and offshore. AOGA's members have a well-established history of prudent and environmentally responsible oil and gas exploration, development, and production in Alaska.

The Associations' members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources. The Associations' members have a substantial interest in the effective environmental stewardship of natural resources, throughout the nation and in the Coastal Plain. All segments of the oil and gas industry are subject to extensive permitting and regulatory requirements at local, state, and federal levels for activities such as the drilling and producing from oil and gas wells, refining crude oil, transporting crude oil or refined product, and operating filling stations. Protecting our environment is important, and the Associations and our members remain committed to working with federal, state, and local regulators to ensure that environmental programs relating to oil and gas development are protective, clear, administrable, and legally sound.

The Associations have long embraced opportunities to provide constructive insight on the development of the Coastal Plain Oil and Gas Leasing Program, including fully participating in all stages of the environmental review. Most recently, the Associations submitted detailed comments in response to the 2021 NOI.<sup>3</sup> The Associations also submitted detailed comments on the Draft Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program ("Draft EIS").<sup>4</sup> Our comments reflect deep support for the safe and environmentally responsible development of the oil and gas leasing program in the small coastal portion of the ANWR in a way that gives meaningful effect to Congress's explicit requirements in Title II of Public Law No. 115-97 ("hereinafter referred to as the "Tax Act").

---

<sup>3</sup> See API and AOGA comments on Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska (Oct. 4, 2021) ("API and AOGA 2021 NOI Comments").

<sup>4</sup> See API and AOGA comments on Draft Environmental Impact Statement on Coastal Plain Oil and Gas Leasing Program (Mar. 13, 2019).

#### **IV. Overview of Development of Oil and Gas Resources in Alaska and the Coastal Plain.**

The oil and natural gas industry provides the energy that has made the United States the world's leading producer and refiner today. Through 21st-century innovation and technological advancement, our members' activities helped the nation capitalize on its domestic energy abundance with cleaner operations, facilities, and products. Our industry is committed to continually improving its environmental performance while producing the energy required by a modern economy. The U.S. is the world's leading producer and refiner today owing to this commitment.

##### **A. Continued Access to Oil and Natural Gas Resources—Including Those in the Coastal Plain—Is Essential for U.S. Energy Security.**

Global forecasts indicate that oil promises to remain an important part of our nation's energy mix for the foreseeable future. The U.S. Energy Information Administration ("EIA") predicts that, by 2050, petroleum and other liquids (followed by natural gas) will remain the energy source most relied upon in the United States to continue to power our economy and to meet the challenges that our dynamic nation will face in the future.<sup>5</sup> U.S. consumption of oil increased every year from 2012 to 2019 and is now near pre-pandemic levels.<sup>6</sup>

Our nation's long-term energy security will depend upon diversity of sources. It is important to remember that U.S. domestic production is mostly made up of modest amounts from hundreds of thousands of wells in thousands of oil and natural gas fields, both onshore and offshore. Every discovery makes a proportional contribution to supplies over 10, 20, or in some cases, 50 or more years. The U.S. needs a constant supply of new discoveries to replace declining production from existing and end-of-life wells to meet our nation's growing demand for energy. Disruption in that production could create an imbalance that could have adverse impacts on domestic supplies and prices for American businesses, consumers, and homeowners.

The EIA forecasts that by 2050, U.S. demand for both oil and natural gas will be near pre-pandemic levels. The EIA also estimates that oil and natural gas will provide nearly two-thirds of the energy consumed in 2050.<sup>7</sup> 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 as a result of their exploration and production activities.

The United States is a net exporter of liquid petroleum fuels.<sup>8</sup> To maintain this benefit to the American economy, including the competitive advantage it provides for American manufacturers and the budget relief it provides for American families, developing secure access to areas of great energy resource potential like the Coastal Plain is vitally important. EIA finds that "every additional barrel of crude oil produced from ANWR is projected to reduce U.S. net

---

<sup>5</sup> EIA, *Annual Energy Outlook 2023*. Available at: <http://www.eia.gov/aeo>.

<sup>6</sup> Energy Institute, 2023 Statistical Review of World Energy 19, available at <https://www.energyinst.org/statistical-review>.

<sup>7</sup> EIA, *Annual Energy Outlook 2023*.

<sup>8</sup> See EIA, *Monthly Energy Review*. Available at [https://www.eia.gov/outlooks/aeo/pdf/AEO2023\\_Narrative.pdf](https://www.eia.gov/outlooks/aeo/pdf/AEO2023_Narrative.pdf).

imports of liquid fuels by about one barrel.”<sup>9</sup> Significant investment in U.S. production is needed now to both maintain and grow production as production volumes from developed fields, however large, are always in decline. Oil production from the Coastal Plain will significantly help to maintain the energy advantage and energy security the U.S. now enjoys and will reduce U.S. consumers’ expenditures on crude oil and petroleum product imports.<sup>10</sup>

The U.S. Geological Society (“USGS”) estimated that the Coastal Plain (including federal and non-federal lands) contains between 5.7 and 16.0 billion barrels of undiscovered, technically recoverable oil.<sup>11</sup> While the precise estimate still needs to be delineated, we know that there is a great deal of petroleum in the Coastal Plain. Working off the USGS estimate and other information in 2008, the EIA projected a low case peak production of 510,000 barrels per day and a high case production of 1.45 million barrels per day.<sup>12</sup> These projections suggest that production could equal as much as 1.45 million barrels per day for approximately 12 years, with continued production for many years thereafter, lowering the nation’s dependency on imports and reducing volatility associated with risks to global markets, including most recently a global pandemic, political instability associated with Russia’s invasion of Ukraine, and political instability associated with recent events in the Middle East.

Importantly, development of the oil and natural gas resources in the 1002 Area would also serve to help maintain the integrity of TAPS, a critical link to America’s energy distribution. TAPS, which stretches from Prudhoe Bay to the port of Valdez, has transported more than 18 billion barrels of oil since it came online in 1977—securely supplying the U.S. with important oil resources.<sup>13</sup>

In 1988, oil production derived from Alaska’s North Slope exceeded two million barrels a day, an amount that traversed TAPS and constituted approximately a quarter of this nation’s domestic crude oil production.<sup>14</sup> However, the quantity of oil production in Alaska has declined, with TAPS transporting approximately 467,547 barrels per day in 2023.<sup>15</sup> Given the vast natural resources available in the Coastal Plain and the fact that it is located less than 60 miles from TAPS, future production would vastly increase the crude oil TAPS delivers to the American people and it would be done quickly, efficiently, and responsibly.<sup>16</sup>

---

<sup>9</sup> EIA, *Analysis of Projected Crude Oil Production in the Arctic National Wildlife Refuge*, May 2018. Available at: <https://www.eia.gov/outlooks/aeo/anwr.php>.

<sup>10</sup> *Id.*

<sup>11</sup> USGS, *Economics of 1998 U.S. Geological Survey’s 1002 Area Regional Assessment: An Economic Update*, USGS Open-File Report 2005-1359.

<sup>12</sup> EIA, *Analysis of Crude Oil Production in the Arctic National Wildlife Refuge*, May 2008.

<sup>13</sup> See TAPS Throughput and Alaska Oil. Available at: <https://www.alyeska-pipe.com/trans-alaska-pipeline-system-taps-overview/>.

<sup>14</sup> *Id.* (overview on TAPS operations).

<sup>15</sup> *Id.*

<sup>16</sup> See Press Release, *Murkowski, Sullivan Introduce Bill to Allow Energy Production in 1002 Area of Arctic Coastal Plain*, Jan. 2017.



**B. Congress’s Directive to Establish a Coastal Plain Leasing Program Balances the Benefits of Responsible Oil and Natural Gas Development in the Region with Conservation.**

A plain reading of the Tax Act shows that Congress directed the establishment of a competitive oil and natural gas program in the 1002 Area and, in doing so, framed the context for responsible management of the 1002 Area under that program. That is, Congress clearly intended to permit oil and gas development in the 1002 Area in a manner that is appropriately protective of the environmental resources of the Refuge.<sup>17</sup>

To ensure that the Secretary carry out Congress’s intent that there be a meaningful leasing program in the 1002 Area, Congress specifically directed the Secretary to conduct at least two area-wide lease sales in the Area—the first lease sale within four years of the Act’s enactment and the second lease sale within seven years of enactment—with each lease sale containing at least 400,000 acres and comprised of areas with the highest hydrocarbon potential.<sup>18</sup> It also required the Secretary to issue any rights-of-way or easements across the Coastal Plain necessary to carry out the oil and natural gas program.<sup>19</sup>

At the same time, reflecting the balance between conservation and development that Congress determined to be appropriate, Congress included certain limitations on the program—authorizing only up to 2,000 surface acres of federal lands to be covered by production and support facilities during the term of the leases,<sup>20</sup> as well as directing that the program be managed in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976.<sup>21</sup> By restricting the footprint of oil and natural gas development under the program to a mere 0.128% of the 1002 Area, Congress recognized the significant ecological attributes of the Refuge and the 1002 Area, providing for oil and natural gas development while allowing ample room for wildlife in the remaining 1002 Area that is roughly the size of the Commonwealth of Massachusetts.

**C. The Development of an Oil and Natural Gas Leasing Program in the Coastal Plain Has the Broad Support of Alaskans.**

Congressional approval to open the Coastal Plain for oil and natural gas development has been a high priority of the State of Alaska, North Slope Borough, Arctic Slope Regional

---

<sup>17</sup> The Associations also recognize that the context for planning for the management of the ANWR is influenced by the 1990 Federal Subsistence Management Program, gradual increase in public use of many portions of the Refuge (notably float trips on several Refuge rivers) coupled with the opening of the Dalton Highway to public traffic, and changes in populations of Refuge wildlife, fish and habitats that FWS professionals and third-party researchers may have observed. The Associations believe that the management objectives to sustain naturally occurring fish and wildlife species in the Arctic National Wildlife Refuge, along with accommodation of other human uses on the Coastal Plain can be achieved with oil and gas exploration and development activities allowed to proceed on a small portion of the Coastal Plain.

<sup>18</sup> Pub. L. No. 115-97 § 20001(c)(1).

<sup>19</sup> *Id.* § 20001(c)(2).

<sup>20</sup> *Id.* § 20001(c)(3).

<sup>21</sup> *Id.* § 20001(b)(3).

Corporation (the Alaska Native Regional Corporation for the North Slope region), Kaktovik Iñupiat Corporation (the Alaska Native Village Corporation for the Native village of Kaktovik), and the oil and natural gas industry since 1987 when DOI first recommended that action be taken by Congress to consider leasing the Coastal Plain for oil and gas development.<sup>22</sup> In addition, over two-thirds of Alaskans support the production of oil and natural gas in a portion of the ANWR.<sup>23</sup> Originally, initial activities in the Coastal Plain were pursuant to the requirements of the Alaska National Interest Lands Conservation Act (“ANILCA”), which required DOI to conduct biological and geological surveys of the Coastal Plain and to provide Congress with the results of the studies and a recommendation for future management of the area.<sup>24</sup>

Congressional action concerning this area in the past reflected the recognition that the crude oil resources believed to lie in geologic strata found below the Coastal Plain may be the single largest conventional crude oil resource under U.S. dominion. The Alaska congressional delegation has stated that, “[t]he U.S. Geological Survey estimates this area contains 10.4 billion barrels of technically recoverable oil,” and that “[n]ew production from the 1002 area will help refill TAPS while creating high-paying jobs, generating revenues for the state and federal treasuries, keeping energy prices affordable for families and businesses, and strengthening national energy security.”<sup>25</sup>

#### **D. Alaska’s Oil and Natural Gas Industry Has a Proven Track Record of Operating Responsibly in Alaska.**

For the last five decades, Alaskan oil and natural gas operations have a demonstrated history of being safe, effective, and environmentally responsible, and have been a proving ground for technologies that have steadily reduced both the footprint and the impacts of oil and natural gas exploration, development, production, and transportation activities. The balance that utilization of these technologies enables is also achievable in those portions of the Coastal Plain with the highest potential for the discovery of hydrocarbons—areas where crude oil and natural gas resources of national and strategic significance are believed to exist—leased under the Coastal Plain Oil and Gas Leasing Program. The record of our industry’s exploration and production operations on lands elsewhere on the Alaska North Slope—lands that are likewise of significance to wildlife populations and to the people who depend on them—supports this assertion. In addition, due to its proximity to existing infrastructure, the Coastal Plain provides a key opportunity to develop “advantaged oil”—that is, oil that can be produced with significant reliance on existing infrastructure, thus reducing the overall cost and footprint of development.

---

<sup>22</sup> See 1987 Report. See e.g., Alaska Journal of Commerce, *Our Village is Not a National Monument*, Guest Commentary by Matthew Rexford, tribal administrator for the Village of Kaktovik, Apr. 14, 2021. *The Arctic Sounder, Kaktovik Shows Support in ANWR Testimony*, Mar. 15, 2019.

<sup>23</sup> Alaska Chamber & Dittman, Public Opinion Survey Results, 2021. Available at: <https://growthzonesitesprod.azureedge.net/wp-content/uploads/sites/1007/2021/09/Alaska-Chamber-Road-Show-Presentation-2021.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> Press Release by Senators Lisa Murkowski, Don Sullivan, and Rep. Don Young, *Delegation Welcomes Announcement of First Coastal Plain Lease Sale*, Dec. 3, 2020.

Development of the North Slope began in the early 1960s just after Alaska Statehood. In 1964, the State held its first North Slope lease sale.<sup>26</sup> The massive Prudhoe Bay field was discovered in 1968.<sup>27</sup> To resolve outstanding Alaska Native claims to land title throughout Alaska and facilitate development of the Prudhoe Bay oilfield and construction of TAPS, Congress in 1971 enacted the Alaska Native Claims Settlement Act (“ANCSA”).<sup>28</sup>

ANCSA established 12 Alaska land-based regional corporations and over 200 village corporations which were granted 44 million acres of land, including subsurface rights, and which received nearly a billion dollars as compensation for the land lost.<sup>29</sup> Each of the regional and village corporations in each area could “select” certain lands.<sup>30</sup> The lands granted were expected to enable the newly created for-profit corporations to produce returns—and provide economic, social, and cultural benefits—for their shareholders, in part through resource development. One of the eight North Slope Native communities with land selection rights was the village of Kaktovik, which sits within the geographic boundary of the ANWR along the Beaufort Sea. The village of Kaktovik, through its Alaska Native Village Corporation, KIC, is entitled to approximately 92,000 surface acres in the 1002 Area.<sup>31</sup>

In 1980, 16 National Wildlife Refuges were created in Alaska, including the 19.3-million-acre ANWR, although within ANWR boundaries, the selected KIC lands remain as private inholdings.<sup>32</sup> Oil and natural gas development on the KIC lands was also prohibited until enactment of the Tax Act lifted the prohibition in 2017.

In its long history of production, the North Slope has produced, and TAPS has delivered, over 18 billion barrels of oil.<sup>33</sup> It is without dispute that this production has provided unparalleled economic and social benefits to the State of Alaska, Alaska native organizations, municipalities, and all of Alaska’s citizens. This activity brought tens of thousands of people out of poverty and into more modern technology. Despite the 2014-2016 economic downturn, the oil and natural gas industry remains a backbone of Alaska’s economy. As of 2018, over 77,600 direct and indirect Alaska jobs are attributable to oil and natural gas investment and activity, which represents 24% of all wage and salary Alaska jobs.<sup>34</sup> In addition, the oil and natural gas industry provides the largest cash contribution to the Alaska Permanent Fund.

---

<sup>26</sup> Alaska Journal of Commerce, *An Alaska Oil Patch Timeline* (June 2007).

<sup>27</sup> *Id.* CRS, *Arctic National Wildlife Refuge: An Overview* (2018).

<sup>28</sup> 43 U.S.C. § 1601 *et. seq.* For additional information, see [www.ancsaregional.com](http://www.ancsaregional.com).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Anchorage Daily News, *Our Village is Not a National Monument* (Apr. 11, 2021).

<sup>32</sup> See CRS, *Arctic National Wildlife Refuge: An Overview* at 7-8 (summarizing history of land selections).

<sup>33</sup> See TAPS discussion above.

<sup>34</sup> McDowell Group prepared for AOGA, *The Role of Oil and Gas in Alaska’s Economy*, 2020. Available at: <https://www.aoga.org/wp-content/uploads/2021/01/Reports-2020.1.23-Economic-Impact-Report-McDowell-Group-CORRECTED-2020.12.3.pdf>.

These benefits have been produced through an established record of safe and environmentally responsible development that is respectful of Alaska’s natural resources and communities. This outstanding record stems in significant part from an industry commitment to employing best management practices (“BMPs”) and providing extensive training programs for North Slope workers, such as the mandatory safety training course provided through the industry-organized North Slope Training Cooperative.<sup>35</sup>

The associated Alaska Safety Handbook provides standardized safety procedures, including BMPs, for Alaska oil and natural gas operations.<sup>36</sup> Additionally, the North Slope Environmental Field Handbook provides best environmental practices and standardized measures for compliance with environmental regulations.<sup>37</sup> This standardization ensures that employees and contractors implement a consistent set of safe and responsible practices and procedures.

The development of the North Slope also has an impressive record of environmental stewardship and innovation. For example, oil and natural gas operators and in U.S. Fish & Wildlife Service (“FWS”) jointly developed procedures, training, and best practices for managing human-polar bear interactions that set the global gold standard for human-bear interactions and have been repeatedly recognized as a success.<sup>38</sup> This program establishes detailed plans and procedures that, *inter alia*, reduce and manage oilfield attractants to polar bears, outline a chain-of-command for responding to any polar bear, and provide polar bear awareness and response training for employees. The natural gas and oil industry has invested millions of dollars into this program and related polar bear research, monitoring, and infrastructure modifications. Responsible industry practices have also ensured that polar bear denning in the vicinity of oil and natural gas operations has been carefully monitored and protected to allow for the successful emergence of the sow and cub(s).

Similarly, our members regularly employ caribou mitigation measures, such as avoidance of off-road travel during and after peak caribou calving, to minimize potential impacts during the calving season, specifications for pipelines and roads to allow for unaltered caribou movement, and seasonal speed restrictions on vehicles. These measures are highly effective in mitigating oil and natural gas activity impacts to caribou.<sup>39</sup>

---

<sup>35</sup> See North Slope Training Cooperative. Available at: <https://www.alaskasafetyalliance.org/training/north-slope-training-cooperative-nstc/>.

<sup>36</sup> Alaska Safety Handbook, 2018 (published by 8 oil and gas companies).

<sup>37</sup> North Slope Environmental Field Handbook, Mar. 2011 (Rev. 1 12/5/2011).

<sup>38</sup> See FWS, *Special Rule for the Polar Bear*, 73 Fed. Reg. 28,306, 28,314 (May 15, 2008) (program has “proven to be beneficial to the conservation of marine mammals such as the polar bear”); FWS, *Determination of Threatened Status for the Polar Bear (Ursus maritimus) Throughout Its Range*, 73 Fed. Reg. 28,212, 28,266 (May 15, 2008) (program, i.e., mitigative regulations, has “proven to be highly successful in providing for polar bear conservation in Alaska”); *id.* (“Oil and gas exploration, development, and production activities do not threaten the [polar bear] species throughout all or a significant portion of its range ....”).

<sup>39</sup> See, e.g., Alaska Dept. of Fish & Game, *Central Arctic Caribou Herd News* at 2, Winter 2016-17. (“The impact of oil infrastructure on [the Central Arctic caribou herd] has also been considered, but is not thought to be contributing to the decline since the herd grew substantially during peak oil development.”); Lawhead, Brian et al., BLM, *A Literature Review and Synthesis on the Effect of Pipeline Height on Caribou Crossing Success* (Apr. 2006); Noel,

Finally, oil produced from the Coastal Plain will have practical benefits. Along with oil from the NPR-A, Coastal Plain oil will add volume to TAPS just as state resources diminish, helping to maintain flow and temperature levels. As referenced above, Coastal Plain oil is “advantaged oil” because of its close proximity to existing infrastructure. This reduces the overall cost and footprint of new development, minimizing the impacts of oil production and transportation on the surrounding environment.

In sum, the development of Arctic Alaska’s oil and natural gas resources has produced enormous economic, social, and scientific benefits while reducing environmental impacts and protecting Alaska’s natural resources. This record of experience and knowledge proven by a half-century of responsible development on the North Slope, along with continued industry innovations, provides a sound basis for the safe and responsible exploration and development of the Coastal Plain.

## **V. The Associations’ Comments on BLM’s Obligations to Comply with the Tax Act for the Coastal Plain Leasing Program.**

Having reviewed the Draft SEIS, DOI appears to have used the NEPA review process as pretext to unlawfully cancel leases with which it no longer politically agrees, even though those leases were lawfully issued pursuant to Congress’s mandate. The procedural “deficiencies” the Draft SEIS purports to correct are not true deficiencies and, regardless of their merit, have no bearing on the lawfulness of the initial leases or their terms. By canceling them, the agency acted beyond the scope of its authority and fell out of compliance with the Tax Act. Although the Draft SEIS acknowledges that the Tax Act requires the Secretary to conduct at least two lease sales by December 22, 2024, it fails to acknowledge that the first of those sales needed to have been completed by December 22, 2021, and that the DOI’s cancellation of the issued leases conflicts with its congressional obligations.

### **A. Vacating the Initial Seven Leases Does Not Excuse BLM’s Obligation to Complete Two Lease Sales by Specified Dates.**

Section 20001(c) of the Tax Act directs the Secretary to conduct at least two area-wide Coastal Plain lease sales, each of at least 400,000 acres, by December 22, 2024.<sup>40</sup> Despite BLM’s efforts in the Draft SEIS to gloss over the leasing schedule required by the Act, the Tax Act specifically mandates that the first sale occur no later than December 22, 2021, and the second no later than December 22, 2024.<sup>41</sup> The Draft SEIS improperly—and presumably intentionally—conflates these separate obligations by simply describing the Tax Act as requiring “that at least two lease sales be held by December 22, 2024 . . .”<sup>42</sup>

---

Lynn. E. et al., *Caribou Distribution Near an Oilfield Road on Alaska’s North Slope, 1978-2001*, 32 *Wildlife Soc’y Bull* at 757, 2004.

<sup>40</sup> Pub. L. No. 115-97 § 20001(c).

<sup>41</sup> Pub. L. No. 115-97 § 20001(c) (emphasis added).

<sup>42</sup> Draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement (Aug. 2023) at 1.3.

The Associations note that because BLM has vacated the “initial” lease sale the Tax Act requires, its obligation to conduct the first lease sale by December 22, 2021 remains unmet. The Department is therefore still obligated to conduct two separate lease sales offering a minimum of 400,000 acres each, with the second no later than December 22, 2024, and it should be clear as to its plans to remedy its violation of the congressionally-mandated leasing requirement and schedule. Any contrary interpretation would conflict with Congress’s very plain directive with regard to the establishment of the Coastal Plain Oil and Gas Leasing Program.

**B. DOI Acted Beyond the Scope of Its Authority When It Canceled the January 6, 2021 Leases.**

When DOI cancelled the initial leases issued on January 6, 2021 due to alleged deficiencies it identified in its prior NEPA analysis, it fell out of compliance with Congress’s mandate under the Tax Act to complete at least one lease sale by December 22, 2021. The Tax Act provides no authority for the Secretary to cancel any leases issued pursuant to its provisions. Instead, Section 20001(b)(3) of the Tax Act directs the Secretary to “manage the oil and gas program on the Coastal Plain in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976 [NPRPA] . . . (including regulations).” The NPRPA, in turn, authorizes the Secretary only to “direct or assent to the suspension of operations and production.”<sup>43</sup> The only provision within the NPRPA that does speak to lease termination prohibits it, stating that “[n]o lease issued under this section covering lands capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same due to circumstances beyond the control of the lessee.”<sup>44</sup> While the NPRPA contemplates that a lease may be terminated, it is only under circumstances specifically proscribed by that act and not at the discretion of the Secretary.<sup>45</sup>

Recently, the Alaska District Court found that “Congress authorized DOI to suspend leases by virtue of the Tax Act’s reference to the NPRPA, which expressly allows the Interior Secretary to ‘direct or assent to the suspension of operations and production on any lease or unit.’”<sup>46</sup> That same reasoning should be applied here; Congress did not authorize DOI to cancel leases “by virtue of the Tax Act’s reference to the NPRPA,” which provides no authority to the Secretary to cancel leases, and instead specifically proscribes the circumstances under which a lease may terminate.

In a press release announcing the cancellation of the seven remaining leases issued pursuant to the January 6, 2021 lease sale, BLM asserts that “[t]he Secretary of the Interior has the authority to cancel or suspend oil and gas leases issued in violation of a statute or regulation,” that “the 2021 lease sale was seriously flawed and based on a number of fundamental legal

---

<sup>43</sup> 42 U.S.C. § 6506a(k)(2) (emphasis added).

<sup>44</sup> 42 U.S.C. § 6506a(i)(6).

<sup>45</sup> 42 U.S.C. § 6506a(i)(5) (providing for lease expiration “if no oil or gas is produced from a lease within 30 years after the date of the issuance of the lease”).

<sup>46</sup> *Alaska Indus. Dev. & Exp. Auth. v. Biden*, 2023 WL 5021555, at \*22 (D. Alaska Aug. 7, 2023) (citing 42 U.S.C. § 6506a(k)(2)).

deficiencies,” and that the leases issued pursuant to that lease sale therefore would be cancelled.<sup>47</sup>

In apparent recognition of the limits on its inherent authority, BLM’s argument has drifted from an assertion that the NEPA review process was deficient to an assertion that the issuance of the leases represented a serious “violation [of federal law].” However, none of the three process deficiencies identified by BLM in the Draft SEIS—including the purported failure to adequately analyze a reasonable range of alternatives in the Final EIS, purported failure of the 2020 ROD to properly interpret Section 20001 of the Tax Act,<sup>48</sup> and purported failure of the Final EIS to properly analyze GHG emissions—have any bearing on the issuance of or terms set forth in the leases issued pursuant to the January 6, 2021 lease sale. We have seen no suggestion—other than in the press release referenced above—of any legal deficiencies associated with the 2021 lease sale itself or in the leases issued pursuant to that lease sale.

Whatever limited legal support there may be for BLM’s authority to “correct administrative errors . . . by cancellation of leases,”<sup>49</sup> that authority is limited and “do[es] not open the door to administrative abuses.”<sup>50</sup> Here, BLM has offered no reasoned explanation suggesting that the cancellation of leases as a result of alleged deficiencies in the original NEPA analysis resulted in any administrative “error” at all. None of the three deficiencies BLM cites have any bearing on the issuance (or terms) of the leases issued pursuant to the 2021 lease sale. Because DOI lacks authority to vacate the leases, they must be reinstated.

### **C. The Department May Not Use Its Limited Authority As a Pretext for Policy Changes.**

To avoid the risk that an agency might use “the power to correct inadvertent ministerial errors . . . as a guise for changing previous decisions,”<sup>51</sup> a change in agency position must include reasoned explanations for the change.<sup>52</sup> DOI has not provided a reasoned explanation for its conclusion that the leases issued under the Coastal Plain Oil and Gas Leasing Program were invalid at inception or that cancellation was warranted.

---

<sup>47</sup> BLM, “Biden-Harris Administration Takes Major Steps to Protect Arctic Lands and Wildlife in Alaska” (Sept. 6, 2023) (emphasis added), available at <https://www.doi.gov/pressreleases/biden-harris-administration-takes-major-steps-protect-arctic-lands-and-wildlife-alaska#:~:text=Lease%20Cancellations%20in%20the%20Arctic%20National%20Wildlife%20Refuge&text=3401%20directed%20a%20new%20C%20comprehensive,the%20request%20of%20the%20lessees.>

<sup>48</sup> Although BLM does not explain why the ROD (which it prepared) fails to properly interpret Section 20001 of the Tax Act, we presume based on changes in the Draft SEIS that BLM primarily takes issue with the 2,000 acre limitation, which is irrelevant to the issuance of leases as part of a lease sale.

<sup>49</sup> *Boesche v. Udall*, 373 U.S. 472, 485 (1963).

<sup>50</sup> *Id.*

<sup>51</sup> *American Trucking Ass’n, Inc. v. Frisco Transp. Co.*, 358 U.S. 133, 146 (1958) (citing *United States v. Seatrain Lines, Inc.*, 329 U.S. 424 (1947)).

<sup>52</sup> *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

DOI purported to justify cancellation of the leases on the same grounds it has given for undertaking a supplemental EIS: deficiencies in its prior NEPA analysis in the 2019 FEIS and 2020 ROD. Specifically, in the Draft SEIS, BLM has listed three alleged “legal deficiencies in the underlying record supporting the leases”: (1) insufficient analysis under NEPA, including failure to adequately analyze a reasonable range of alternatives in the Final EIS; (2) failure in the 2020 ROD to properly interpret Section 20001 of the Tax Act; and (3) the failure of the Final EIS to either give a quantitative estimate of the downstream greenhouse gas (“GHG”) emissions that would result from changes in consumption of oil abroad due to the foreseeable production of Coastal Plain oil, or sufficiently explain why the BLM could not give a quantitative estimate and provide a more thorough discussion of how changes in foreign oil consumption might change the GHG emissions analysis.<sup>53</sup>

The Associations have previously articulated our view that there are no “legal deficiencies” in the 2019 Final EIS or 2020 ROD to be addressed in a Supplemental EIS.<sup>54</sup> Secretary’s Order 3401 identifies no specific “deficiencies” but instead only vaguely refers to “insufficient analysis” under NEPA, including “failure to adequately analyze a reasonable range of alternatives” and a disagreement over the interpretation of the Tax Act. The Order does not adequately explain why the alternatives analyzed are unreasonable, why BLM’s Tax Act interpretation was wrong, or otherwise say why the analysis was “insufficient.”

Although it is well settled that vague claims of error “may not be used as a guise for changing previous decisions because the wisdom of those decisions appears doubtful in the light of changing policies,”<sup>55</sup> it appears that is precisely what the BLM has done. This administration has made clear it disagrees with the policies underlying the Tax Act.<sup>56</sup> But the “power to correct inadvertent ministerial errors may not be used as a guise for changing previous decisions because the wisdom of those decisions appears doubtful in the light of changing policies.”<sup>57</sup>

Instead, DOI’s development and approval of the Final EIS is “entitled to a presumption of regularity.”<sup>58</sup> DOI has also repeatedly defended the Final EIS in response to lawsuits filed in the U.S. District Court for the District of Alaska and defeated motions for preliminary injunction in all cases.<sup>59</sup> To date, no court has identified any deficiencies in the Final EIS. Accordingly,

---

<sup>53</sup> *Id.*

<sup>54</sup> API and AOGA 2021 NOI Comments at 8-9.

<sup>55</sup> *Am. Trucking Ass’ns v. Frisco Transp. Co.*, 358 U.S. 133, 146 (1958).

<sup>56</sup> See Executive Order 13990; see also September 6, 2023 comments of Secretary Haaland as reported by National Public Radio at <https://www.npr.org/2023/09/06/1197945859/anwr-alaska-drilling-oil-gas-leases-environment-energy-climate-change#:~:text=The%20administration%20is%20required%20to,lease%20sale%20by%20December%202024.>

<sup>57</sup> *American Trucking Ass’ns, Inc. v. Frisco Transp. Co.*, 358 U.S. 133, 146 (1958) (citing *United States v. Seatrain Lines, Inc.*, 329 U.S. 424 (1947)).

<sup>58</sup> 40 C.F.R. § 1505(2)(b); *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971).

<sup>59</sup> See *Gwich’in Steering Committee v. Bernhardt*, Case Nos. 20-cv-00204, 20-cv-00205, 20-cv-00223, 2021 WL 46703 (D. Alaska Jan. 5, 2021). (BLM may not lawfully change the position it has taken in litigation without acknowledging and explaining the change in position).



DOI's actions here appear to be the epitome of arbitrary and capricious decision making that is contrary to law.

**D. Even If the BLM Properly Identified “Deficiencies,” There Was No Need to Vacate the January 6, 2021, Leases.**

Even if BLM were to be justified in undertaking a Supplemental EIS to address the alleged deficiencies in the NEPA review process, BLM has not articulated a sufficient (let alone rational) basis for cancelling the leases issued pursuant to the January 6, 2021, lease sale. Vacating the leases under these circumstances is an abuse of the Department's discretion. None of the issues identified by BLM are so egregious to warrant cancellation of the leases and effectively undo the first lease sale mandated by the Tax Act. The “deficiencies” DOI has associated with the original NEPA review process all relate to future actions that will undergo NEPA review according to the plain terms of the 2019 Final EIS and 2020 ROD. Indeed, as BLM has stated, there is no activity that can currently proceed under the Coastal Plain Oil and Gas Leasing Program without additional NEPA review as provided by the Final EIS:

Before it conducts the second and each subsequent lease sale, the BLM will evaluate the adequacy of the EIS in light of new information and circumstances to determine whether additional analysis is needed in order to comply with NEPA. Future on-the-ground actions requiring BLM approval, including potential exploration and development proposals, would require further NEPA analysis based on the site-specific proposal. Potential applicants would be subject to the terms of the lease; however, the BLM Authorized Officer may require additional site specific terms and conditions before authorizing any oil and gas activity based on the project level NEPA analysis.<sup>60</sup>

Because every alleged “deficiency” DOI has identified will be addressed in the future and vacating the leases violates the Tax Act, it was an abuse of discretion to cancel them. This is especially true because the Tax Act clearly required issuance of the leases, and any purported deficiencies are procedural in nature and easily addressed through further NEPA review.<sup>61</sup> Because NEPA is a procedural statute, agencies often address any errors through additional process, rather than vacating agency actions.<sup>62</sup> Even if procedural errors occurred, given the Tax Act's mandate to complete a lease sale by December 22, 2021, DOI should have corrected those errors and applied its corrections to future activities under the leases. Cancelling the leases was

---

<sup>60</sup> Final EIS at 1-5-1-6.

<sup>61</sup> See e.g., *Douglas Timbers Operators v. Salazar*, 774 F. Supp. 2d 245, 259 (D.D.C. 2011) (“the possibility that BLM's failure to consult under the ESA was unlawful does not render the ROD ‘unlawful’”).

<sup>62</sup> See, e.g., *Clayton W. Williams Jr.*, 103 IBLA 192, 203 (1988); *N. Cheyenne Tribe v. Lujan*, 804 F. Supp. 1281, 1285 (D. Mont. 1991); see also *Douglas Timber Operators v. Salazar*, 774 F. Supp. 2d 245 (D.D.C. 2011); *Bd. of Cnty. Comm'rs of Pitkin Cnty.*, 186 IBLA 288, 293-95 (2015), *reconsideration denied*, 187 IBLA 328 (2016); *S. Utah Wilderness All.*, 194 IBLA 333, 334, 337 (2019). And, court courts have found that they have discretion about whether to vacate an action or not. E.g., *Solar Energy Indus. Ass'n v. Fed. Energy Reg. Comm'n*, 80 F.4th 956, 997 (9th Cir. 2023) (“When equity demands, we may leave the action in place on remand while the agency reconsiders the action or cures a procedural defect.”) (citation omitted).

grossly disproportionate to the magnitude of any alleged procedural deficiency and places BLM firmly in violation of its obligations under the Tax Act.

## **VI. The Associations' Comments on the Draft SEIS**

The Draft SEIS must adhere to certain obligations mandated by law. For example, the Draft SEIS states that its “purpose” is to “inform the BLM’s administration of the oil and gas leasing program in the Coastal Plain consistent with PL 115-97,” and that the “need” is dictated by certain requirements in Section 20001 of the Tax Act.<sup>63</sup> The Draft SEIS’s Purpose and Need Statement, however, is incomplete and glosses over key requirements in the Tax Act, which subsequently taints the scope of alternatives considered and the analysis of environmental effects.

The Associations emphasized certain fundamental points in our 2019 comments and requested that the Draft EIS be revised for consistency with the Tax Act. Specifically, we requested: (1) the Final EIS include a complete Purpose and Need statement consistent with congressional intent; (2) that BLM correct its application of the 2,000-acre surface area occupancy restriction; and (3) that BLM remove broad surface occupancy restrictions and setbacks at this leasing stage and allow area-wide access in the exploration phase while leaving appropriate surface mitigation measures to be determined later, once development plans are proposed. As discussed below, we continue to emphasize these three fundamental points in any environmental review pertaining to the oil and natural gas leasing program in the Coastal Plain.

### **A. Per the Tax Act, the Purpose and Need Statement Must Reflect and Adhere to the Leasing Schedule Mandated by Congress.**

The Purpose and Need statement must fully and accurately characterize the Tax Act’s congressional mandate to establish and administer a competitive oil and natural gas leasing program for the development, production, and transportation of oil and natural gas in and from the Coastal Plain. In the Draft SEIS, BLM states that:

Purpose: The joint lead agencies are undertaking this Leasing SEIS to inform the BLM’s administration of the oil and gas leasing program in the Coastal Plain consistent with PL 115-97. Need: Section 20001 of PL 115-97 requires the Secretary of the Interior, acting through the BLM, to establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain area within the Arctic Refuge. Further, Section 20001(c)(1) of PL 115-97 requires that at least two lease sales be held by December 22, 2024, and that each sale offer for lease at least 400,000 acres of the highest hydrocarbon potential (HCP) lands within the Coastal Plain, allowing for up to 2,000 surface acres of federal land to be covered by production and support facilities.

---

<sup>63</sup> Draft SEIS at § 1.3.

Any oil and gas program alternative must consider all five statutory purposes of the Arctic Refuge, none of which are superseded by any other (see **Table 1-2**).<sup>64</sup>

However, BLM conveniently ignores a critical shortcoming created by the administration's decision to cancel the remaining leases issued under the 2021 lease sale, which effectively undid that lease sale in its entirety. Specifically, the Tax Act requires two lease sales to be held by December 22, 2024—but, it very specifically requires one lease sale by December 22, 2021, and another lease sale by December 22, 2024. The Purpose and Need statement's reference to administration of the Coastal Plain Oil and Gas Leasing Program “consistent with PL 116-97” is therefore misleading and inaccurate.

The Associations also disagree with the Draft SEIS's suggestion that all five statutory purposes of the Arctic Refuge should receive equal weight in this review. Even if no single purpose is entirely “superseded” by another, given that the overarching reason for the amendments made by the Tax Act were to implement an oil and gas leasing program in the Coastal Plain, that purpose should receive greater weight.

**B. Alternative B Remains the Associations' Recommended Alternative and Should Be Adopted As the Preferred Alternative.**

The Draft SEIS states, “[a]ny decision that the BLM makes following the analysis in this Leasing SEIS must be consistent with PL 115-97 and take into consideration all of the Arctic Refuge's purposes set out in Section 303(2)(B) of ANILCA, as amended by Section 20001(b)(2)(B) of PL 115-97.”<sup>65</sup> Alternative B allows the opportunity to lease the program area and has the fewest acres with NSO stipulations.<sup>66</sup> As protective measures, Alternative B also provides for Leasing Stipulations and required operating procedures (“ROPs”) to avoid, minimize, and mitigate potential adverse environmental impacts.<sup>67</sup>

Alternatives C and D do not meet the purpose and need as it should be informed by the Tax Act, that is, to establish and administer a competitive oil and natural gas program for the leasing, development, production, and transportation of oil and natural gas in and from the Coastal Plain.

In response to our previous comments, BLM stated that all alternatives are designed to meet the stated Purpose and Need. We encourage the agency to reconsider. For reasons explained more fully below, we believe that restrictions designating certain areas as open or closed to leasing, permitting less than 2,000 acres of surface development through the Coastal Plain, and prohibiting surface infrastructure in sensitive areas do not meet the requirements of the Tax Act or the identified Purpose and Need.

---

<sup>64</sup> Draft SEIS at § 1.3 (emphasis in original).

<sup>65</sup> Draft SEIS at § 2.1.

<sup>66</sup> See Draft SEIS at § 2.3 Table 2-1.

<sup>67</sup> Draft SEIS at § 2.3.5, Table 2-3.

### C. NSO Provisions and Setbacks Must Not Conflict with Congress’s Mandate under the Tax Act.

As discussed above, the Associations support Alternative B and its corresponding Leasing Stipulations, but believe that the proposed NSO restrictions and setbacks in the Draft SEIS, especially in Alternative D, are overly broad and any updates must ensure consistency with the Tax Act and the intent of Congress.

The Tax Act provides no authority for BLM to include alternatives that designate certain areas of the Coastal Plain as open or closed to leasing. Indeed, neither ANILCA nor the Tax Act includes any mechanism or grant of authority for the DOI Secretary to withdraw some or all of the 1002 Area from leasing. Instead, Congress explicitly required the Secretary to offer for lease, in each lease sale, at least “400,000 acres area-wide” and “those areas that have the highest potential for the discovery of hydrocarbons.” It required the Secretary to issue “any rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation necessary to carry out” Section 20001. Congress set the applicable limit on surface facility development at 2,000 acres,<sup>97</sup> a minimal footprint in the approximately 1,563,500-acre Coastal Plain area and the 19.3-million-acre Arctic Refuge—this 2,000 acres amounts to less than 0.128% of the Coastal Plan and approximately 0.010% of the Refuge. Together, these provisions reflect Congress’ considered determination of a leasing program that strikes an appropriate balance between development and resource protection. Yet the map of Alternative D makes clear that it would not allow for a competitive leasing program in accordance with the provisions of Section 20001 and transportation would likely be impossible given the imposition of NSO restrictions in the vast majority of the 1002 area.<sup>68</sup>

While surface protection and mitigation measures can be appropriately considered as the NEPA and permitting processes move forward to review specific on-the-ground development proposals, the NSO stipulations comprise *a priori* prohibitions on surface use, which Congress did not authorize, and prevent the Secretary from carrying out its statutory obligations to offer for lease the areas with the highest potential for the discovery of hydrocarbons. Sweeping limitations on development never considered by Congress upset the intended balance and compromise the oil and natural gas program Congress established. In short, Congress has already spoken to surface development by limiting production and support facilities to 2,000 acres. Congress did not authorize BLM to further limit surface occupancy and to undermine its obligations with respect to leasing of those areas with the highest hydrocarbon potential and issuance of rights-of-way and easements in support of such leasing.

Relevant provisions of the Tax Act demonstrate that Congress intended to establish an oil and natural gas program throughout the Coastal Plain but not one with additional limits on surface development. Thus, Congress directed that the prohibition in ANILCA Section 1003 on development and production of oil and natural gas “shall not apply to the Coastal Plain.”<sup>69</sup>

---

<sup>68</sup> See Draft SEIS map 2-5.

<sup>69</sup> Tax Act § 20001(b) (“Section 1003 of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3143) shall not apply to the Coastal Plain.”) (citing ANILCA prohibition on oil and gas leasing in ANWR “until authorized by an Act of Congress”).

Instead, Congress made it a purpose of ANWR under Section 303(b)(2) of ANILCA “to provide for an oil and gas program on the Coastal Plain.”<sup>70</sup> In the same section, Congress affirmatively mandated the establishment of an oil and natural gas program “in and from the Coastal Plain.”<sup>71</sup> To carry out these provisions, Congress directed that the Secretary “shall issue any rights-of-way or easements across the Coastal Plain ... necessary to carry out this section.”<sup>72</sup> Congress required “area-wide” leasing sales and directed that the sales “shall offer... those areas that have the highest potential for the discovery of hydrocarbon.”<sup>73</sup> These provisions affirmatively direct the establishment of an “area-wide” oil and natural gas program “across the Coastal Plain,” including the as-yet-unknown “areas of the highest potential” for hydrocarbons.<sup>74</sup>

The NSO restrictions and extensive setbacks are inconsistent with the Tax Act’s requirement that BLM establish an “area-wide” program that includes those areas that have the highest potential for the discovery of hydrocarbons. The limited and dated subsurface data currently available does not allow for identification of the areas with the highest potential for hydrocarbon development. To carry out the intent of Congress, BLM must adopt a leasing approach that first allows for early area-wide access before considering area closures or limits on surface occupancy. BLM must recognize the importance of a thorough seismic acquisition and exploratory drilling period by lease holders in order to identify the areas with highest potential for hydrocarbon development, consistent with congressional intent.

Moreover, as discussed below, the consequences of the approach set forth in the Draft SEIS defeats the purpose and need of the leasing program. To carry out Congress’s intent, BLM must adopt an approach that allows for up-to-date geological and geophysical data acquisition and initial exploratory drilling. BLM should impose development-related mitigation measures based on site-specific information, and only after the areas with the highest potential for hydrocarbon development have been identified.

This plain intent of the Tax Act is further confirmed by the requirement that BLM manage the Coastal Plain program “in a manner similar to the administration of lease sales” for the NPR-A, “including [its] regulations,”<sup>75</sup> which must be interpreted as limited to the regulations in effect at the time of the congressional action. BLM’s inclusion of strenuous NSO stipulations in the ROD conflicts with this mandate. Neither the NPRPA nor its current implementing regulations, established an NSO regime across large swaths of the NPR-A.

---

<sup>70</sup> *Id.* § 20001(b)(2)(B).

<sup>71</sup> *Id.* § 20001(b)(2)(A) (“The Secretary shall establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.”).

<sup>72</sup> *Id.* § 20001(c)(2) (emphasis added).

<sup>73</sup> *Id.* § 20001(c)(1)(A) (“[T]he Secretary shall conduct not fewer than 2 lease sales area-wide under the oil and gas program under this section ... The Secretary shall offer for lease under the oil and gas program under this section--(I) not fewer than 400,000 acres area-wide in each lease sale; and (II) those areas that have the highest potential for the discovery of hydrocarbons.”).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* § 20001(b)(3).

Rather, the NPRPA provides specific protection of surface areas where needed.<sup>76</sup> Further, BLM’s NPRPA regulations contemplate that special stipulations may be set forth in the notice of sale, but “[a]dditional stipulations needed to protect surface resources and special areas may be imposed at the time the surface use plan and permit to drill are approved.”<sup>77</sup> Consistent with these regulations, the NPR-A Leasing EIS did not include broad NSO restrictions on lands offered for leasing.<sup>78</sup>

As BLM’s currently existing NPRPA regulations recognize, it is premature to make broad assumptions about the appropriateness of surface occupancy across large swaths of land, particularly when the Tax Act very clearly mandates area-wide leasing of the areas with the highest potential for hydrocarbon discovery.

Any Final SEIS should remove these overly broad NSO restrictions and setbacks to ensure that the contemplated lease sales are administered in a manner consistent with the Tax Act. BLM should make determinations on the appropriateness of surface occupancy restrictions as compared to other successfully deployed mitigation measures based on site-specific analyses of reservoir targets, the best available technology, and site-specific wildlife studies, as is done in the NPR-A.

**i. BLM Lacks Authority to Impose Broad Surface Occupancy Restrictions Beyond the Clearly Stated 2,000 Acres Limitation Set Out in the Tax Act.**

Alternatives C and D allow for analysis of less than 2,000 acres of surface development throughout the Coastal Plain.<sup>79</sup> BLM must review the legal parameters that are clearly stated in the Tax Act and refrain from imposing additional unnecessary and unlawful surface occupancy restrictions.

---

<sup>76</sup> The NPRPA rescinded previous withdrawals for the Reserve under 42 U.S.C. § 6502 “for the purposes of the oil and gas leasing program authorized under this section” and instead provided for protection of surface areas where needed. *See* 42 U.S.C. § 6506(a)(e); *See, e.g., Id.* § 6504(a) (exploration in certain areas “shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve”); *Id.* § 6506(b) (authorizing Secretary to impose such conditions, restrictions, and prohibitions as deemed necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the NPR-A).

<sup>77</sup> 43 C.F.R. § 3131.3 (emphasis added); *See also* § 3162.3-1(c) (Lessee must “submit to the authorized officer for approval an Application for Permit to Drill for each well. No drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer’s approval of the permit.”).

<sup>78</sup> The NPR-A EIS included “Special Areas” related to specific resources on lease program lands, but was explicit that a Special Area designation “does not itself impose specific protections, but instead highlights areas and resources for which the BLM will extend ‘maximum protection’ consistent with exploration of the Reserve.” BLM, *National Petroleum Reserve-Alaska Final Integrated Activity Plan/Environmental Impact Statement* at ES-4 (June 2020); *See also N. Alaska Env’tl. Ctr. v. Kempthorne*, 457 F.3d 969, 976 (9th Cir. 2006) (describing NPR-A leases as “more like the ‘non NSO leases’” which “authorize the lessees to undertake development subject to government regulation of surface disturbing activities”).

<sup>79</sup> Draft SEIS at § 2.2.

The Tax Act requires BLM to authorize “up to 2,000 surface acres of Federal land on the Coastal Plain to be covered by production and support facilities . . . .”<sup>80</sup> BLM interprets this 2,000-acre limit on surface occupancy to apply to “all federal land across the Coastal Plain, regardless of whether such land is leased,” including “off-lease pipelines or roads authorized by a right-of-way [ROW] grant.”<sup>81</sup> The statutory language and legislative history are also clear that Congress directed BLM to authorize development of up to 2,000 surface acres of federal lands separate from and in addition to any federal lands subject to ROWs or easements.

With respect to ROWs and easements, the language of the Tax Act clearly directs that “[t]he Secretary shall issue any rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation necessary to carry out this section.”<sup>82</sup> Tax Act, Section 20001(c)(3) separately addresses surface occupancy for the separate purposes of “production and support facilities”—which are not within ROWs or easements.<sup>83</sup>

This plain statutory language is confirmed by the Joint Explanatory Statement of the Committee of Conference,<sup>84</sup> which makes clear that Congress did not intend for facilities on ROWs or easements to count toward the 2,000-acre limitation:

The legislation directs the Secretary to issue any necessary rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation associated with the oil and gas program. Additionally, the section authorizes the development of up to 2,000 surface acres of federal land on the Coastal Plain.<sup>85</sup>

This statement plainly shows that, through the Tax Act, Congress directed BLM to allow development of up to 2,000 surface acres of federal lands in addition to—not inclusive of—any federal lands subject to ROWs or easements. Any future interpretations of this provision regarding future actions under the Coastal Plain Oil and Gas Lease Program should provide for the development of up to 2,000 surface acres of federal land, not including ROWs or easements. The Final SEIS must be modified accordingly to provide for the development of up to 2,000 surface acres of federal land, not including ROWs or easements.

---

<sup>80</sup> Tax Act § 20001(c)(3).

<sup>81</sup> Draft SEIS at § 1.9.1.

<sup>82</sup> Tax Act, § 20001(c)(2) (emphases added).

<sup>83</sup> *Id.* at § 20001(c)(3).

<sup>84</sup> A joint explanatory statement is the most reliable piece of legislative history in ascertaining congressional intent. See McKinney, Richard J. & Sweet, Ellen A., *Federal Legislative History Research: A Practitioner’s Guide to Compiling the Documents and Sifting for Legislative Intent*. (last revised July 2015) (“in a legislative history of a U.S. public law, the greatest weight is usually accorded to the joint explanatory statement in a bill’s conference report”). Available at: <https://www.llsdc.org/federal-legislative-history-guide>.

<sup>85</sup> H.R. Rep. No. 115-466, at 675 (2017) (emphasis added).

**ii. Any Potential Leasing Stipulations or ROPs Must Not Be Unreasonably Restrictive, Inappropriate, or Unsupported by Law or the Best Available Science.**

Alaska's oil and natural gas industry has a history of safe, effective, and environmentally responsible development of Arctic Alaska spanning five decades. We have significant experience implementing stipulations and ROPs like those in the Draft SEIS. As we commented previously, based on our, and our members, extensive experience and expertise, some conditions are not practicable or require factual correction, whereas other conditions lack evidence showing that they are necessary or would be effective.<sup>86</sup>

We look forward to continuing to participate in this process and providing our expertise. However, again, we caution BLM against imposing conditions that are unreasonable, impracticable, or not supported by science or legal requirements. Conditions that are written clearly and with the input of industry's deep experience will aid BLM in implementing a robust and environmentally responsible oil and natural gas leasing program in the Coastal Plain.

**1. Leasing Stipulations**

Clearly written and enforceable Leasing Stipulations are a key to the successful development of a robust oil and natural gas leasing program. Leasing stipulations can be designed to protect one resource and also have positive benefits in protecting additional resources as well.

Overall, as before, we acknowledge the basis for and support most of the 14 Leasing Stipulations. In our comments on BLM's 2018 Draft EIS, we identified concerns relating to the NSO stipulations and broad setbacks as contemplated under Leasing Stipulations 1-5, 7, and 9 being inconsistent with the plain language of the Tax Act. These issues mostly related to their potential application under Alternatives C, D1, and D2 and, with the selection of Alternative B in the Final EIS and record of decision, became less concerning yet still problematic. Here, given that BLM has not identified a preferred alternative, we reiterate the concerns that we raised previously for BLM's continued consideration and resolution. For example, Leasing Stipulation 10 for Alternative D would prohibit surface occupancy within 3 miles of the southern and eastern boundaries of the Coastal Plain near the Mollie Beattie Wilderness Area. This presumptive setback is clearly inconsistent with the Tax Act and purpose and need as identified. In its place, additional NEPA review for case-specific projects can consider additional measures if needed.

We also continue to ask for greater clarity in Leasing Stipulation 1 on the justification between the required setback distances and protection of terrain, habitat or floodplain features, and that setbacks should not be arbitrary but instead based on the presence of such features. Setbacks affecting pipeline crossings should include clearly provided scenarios under which crossings would be permitted, thereby providing permittees greater certainty and not requiring waivers. For additional clarity, we recommended separating frameworks relating to river deltas from rivers and streams.

---

<sup>86</sup> API and AOGA 2021 NOI Comments at 26-29.



## 2. ROPs

These are additional mitigation measures providing protections for numerous resources within the Coastal Plain under which both responsible development and environmental protection can occur side-by-side. To a large extent, the 46 ROPs in the Final EIS provide a list of protections for Alternative B. We had previously provided comments for 10 ROPs highlighting inconsistencies, unnecessary language, or practical changes. Some conditions lacked evidence showing that they are necessary or would be effective.

For those condition-specific comments that were not considered in the Final EIS, we highlight key issues for your consideration.

- **ROP 6(a)** – EPA’s minimum air monitoring standards are difficult to implement without existing infrastructure. We request that the language of this ROP be modified to limit site-specific air monitoring at locations without existing infrastructure to extraordinary circumstances in which existing baseline concentrations are known to be materially different from regional measurements. This modification is appropriate because over 30 years of baseline data collection shows uniform baseline background conditions at or below measurement thresholds across the Coastal Plain, except in cases of localized wind-blown fugitive dust and wild land fires.
- **ROP 6(c)** – To remove ambiguity, this ROP should be revised to clarify the scope of indirect emissions sources or to allow indirect sources to be addressed qualitatively, consistent with the most current practice on the North Slope.
- **ROP (7)** – While not applying to Alternative B, we want to again emphasize the need to remove this ROP if considered for other alternatives. It requires a proponent of a permanent oil and natural gas development to design and implement a monitoring study of contaminants in locally used subsistence foods. Potential contaminants from oil and gas operations are already prevented from entering subsistence foods due to the applicability of numerous monitoring and release prevention requirements. And requiring this type of sampling can be intrusive on the users and likely to be met with skepticism. If deemed necessary on a case-by-case basis, this type of sampling is best conducted by a regulatory agency.
- **ROP 8** – We have significant concerns with ROP 8 and recommend its removal. This ROP would prevent the withdrawal of unfrozen water from springs, rivers, and streams during winter. This ROP would have significant adverse impacts on oil and natural gas operations, particularly given that rivers and streams comprise most of the water resource available in the lease areas. Moreover, the ROP is unnecessary and inconsistent with proven existing regulation of water withdrawals on the North Slope. BLM should consider modifying this ROP to be similar to stipulations protecting anadromous fish, including the use of fish screens and limitations on the amount of liquid water under ice that could be removed.

- **ROP 9** – Based on our experience with this ROP in NPR-A where it is contentious, we recommend deleting paragraph (d) and adding a clause to paragraphs (a) and (b) that allows up to 20% total lake volume to be used when both ice and water are being withdrawn. This would be protective of hydrology and habitat, and consistent with state regulations.
- **ROP 10** – This ROP for Alternative B appears to have been modified and we appreciate the clarifications provided especially per our comments to treat polar bears and ice seals separately with their own species-specific requirements. We also had concerns for Alternative D language requiring a sound source verification which we believe would be difficult to attain in shallow waters and not provide reliable data. Instead, we recommended that adding language that operators “will work closely with regulators to ensure that mitigation measures are developed that are consistent with the Marine Mammal Protection Act and agency marine mammal guidelines, and take into account practicability, site-specific information, and project activity details.”
- **ROP 11(e)** – This component of the ROP prohibits ice roads from using the same route each year and states that an undefined offset may be required to avoid portions of previous ice road routes. This is not warranted because, as recognized in the GMT2 Supplemental EIS, “[a] study by Yokel et al. (2007) suggests that seasonal ice roads and pads constructed within the same footprint each year do not have additive effects over years.”<sup>119</sup> Moreover, constructing an ice road in the same location as subsequent years is considered best practice and may be necessary to avoid difficult terrain, archaeological sites or sensitive environmental resources.
- **ROP 34** – This ROP would require minimum flight altitudes over certain areas and we ask for clarification to accommodate the need to fly lower for some required activities (e.g., archaeological clearance, spill response equipment staging and demobilization). In addition, rather than providing for “possible suspension of all flights” for “disturbance determined to be unacceptable,” this ROP should be modified to provide for “adjustments, including redirection, modified scheduling, or temporary suspension of specific flights....” Finally, the ROP’s provision that takeoffs and landings to support oil and natural gas operations would be limited “to the maximum extent possible” should be revised to limit takeoffs and landings “to the extent practicable and consistent with prudent operation of facilities.”

We urge BLM to address these comments in the Final SEIS and, above all, ensure that Alternative B remains as the preferred option with supporting Leasing Stipulations and ROPs that are feasible and effective for responsible mitigation.

#### **D. Wildlife Considerations are Adequately Evaluated in the Draft SEIS.**

##### **i. Caribou**

The Draft SEIS’s analysis of potential impacts to the Porcupine Caribou Herd and Central Arctic Caribou Herd is well-written with robust analysis but contains some outdated and

incomplete data that appears to overstate the potential adverse effects of oil and natural gas development on caribou and the likelihood of those effects.

Also, the Draft SEIS includes discussion on potential impacts of roads on calving caribou but it does not include references and analysis recognizing that a herd's reaction to a road may lessen with habituation. For example, in its August 2018 Supplemental EIS for GMT2, BLM recognized that multiple studies suggest that caribou habituate to infrastructure and roads:

Wolfe et al. (2000) reported that, once caribou were initially exposed to infrastructure, crossing transportation corridors occurred more often than expected. *Habituated cow-calf groups crossed roads as frequently as bulls, and roads did not have an observable effect on animal distribution or individual energetic cost.* Boertje et al. (2012) and Nicholson et al. (2016) found that large ranges, historic movement patterns, and large-scale migratory behavior persist even when highways and roads bisected those ranges.<sup>87</sup>

Similar studies relate to the potential impact of aircraft noise which also fail to recognize that caribou can become habituated to such noise. It was appropriately considered in the GMT2 Supplemental EIS:

Prolonged exposure to low-level aircraft could increase daily energy expenditure and decrease individual fitness or reproductive capacity over time if not properly mitigated. Alternatively, *caribou can become habituated to aircraft*; particularly when aircraft consistently maintain altitudes greater than 500 feet above ground level and do not engage in hazing or harassing behavior. *Habituated animals do not associate aircraft with danger and, as a result, exert minimal additional energy when overflown.*<sup>88</sup>

These are a few examples of references that BLM has relied on for evaluating other oil and natural gas activities, and they must be considered in any reevaluation. The concept of species becoming habituated is known and is referenced by BLM's own assessment and should be considered here.

## ii. Polar Bear

The Final EIS presents a robust description of polar bear distribution and potential impacts, but at most, we recommend only minimal corrections and updates to ensure any Final SEIS presents an accurate depiction of potential polar bear denning and denning impacts, and properly characterizes the potential for and minimal effects from human-bear interactions. These types of changes can be made as part of NEPA review for on-the-ground activities.

Overstatements or inaccurate and unsupported statements should not be considered. For example, the Final EIS states without supporting citation that there are “[a] few records” of

---

<sup>87</sup> GMT2 Supplemental EIS at 352.

<sup>88</sup> *Id.* at 351 (emphases added; citations omitted).

female polar bears denning successfully near oilfield infrastructure since the beginning of development along the central Beaufort Sea coast.<sup>89</sup> However, as we stated in our Draft EIS Comments, industry monitoring reports required under Marine Mammal Protection Act letters of authorization indicate that between five and 10 instances of the successful emergence of a sow and cub(s) have been recorded on or around oilfield infrastructure between 2008 and 2018.<sup>90</sup>

Additional data showing that maternal denning occurs near oilfield infrastructure and activity in greater numbers than is reflected in the Draft SEIS should be considered especially in evaluations of any additional conditions. We believe that implementation of established avoidance and mitigation measures means that construction of program infrastructure is not likely to significantly impact maternal denning.

The Final SEIS should also eliminate unsupported assertions about potential impacts from oil and natural gas activities to maternal denning. It should also reflect the oil and natural gas industry's history of implementing procedures, training, mitigation measures, and best practices for human-polar bear interactions that minimize the potential for polar bear disturbance or harassment.

## VII. Conclusion

We appreciate the opportunity to participate in review of the Draft SEIS for the Coastal Plain Oil and Gas Leasing Program.

We believe that, with the issuance of a rigorous Final EIS and ROD in 2019 and 2020, respectively, BLM initially met all applicable legal requirements, including conducting a comprehensive NEPA review that analyzed foreseeable effects of future development and considered reasonable range of alternatives.

DOI has embarked on this supplementation process based on a purported need to correct "deficiencies" in the Final EIS that do not exist, and even if they did, they are certainly not so egregious as to warrant cancellation of the January 6, 2021, leases. In cancelling those leases, DOI has exceeded the scope of its limited authority and acted contrary to Congress's explicit direction. We ask for the leases to be immediately reinstated, and any supplemental updates to the Final EIS—if deemed necessary—to be conducted concurrently with the implementation of the program. The scope of any supplemental EIS must be limited to future leases (from two separate lease sales if the cancelled leases are not reinstated), new permitting actions, and specific on-the-ground activities.

---

<sup>89</sup> Draft SEIS at 3-233.

<sup>90</sup> See, e.g., Letter of Authorization reports for BPXA (e.g., Badami Ice Road 2008-09, Sag River/Heald Point 2009, L5 drill site 2018, and Put 23 Mine site 2014-15), ENI (e.g., Spy Island - Nikaitchuq 2011), and Hilcorp (e.g., Endicott Road 2017); see also FWS, *Mama Polar Bear and Cub Make it through Denning Season Thanks to Collaborative Work*, June 2017. Available at: <https://fws.maps.arcgis.com/apps/MapJournal/index.html?appid=6b07fba073c348d4adf21c371bec0805> (describing successful emergence of mother and cub next to oil and gas facility).

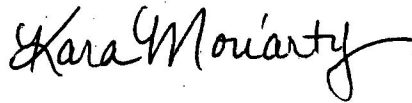
The Associations and our members look forward to working collaboratively with BLM and other interested parties in the continued implementation of an oil and natural gas program in the Coastal Plain as authorized by the Tax Act. We welcome the opportunity for a robust program that allows for responsible development while respecting regional and local uses and is protective of important environmental resources in keeping with all the purposes of ANWR as set out in ANILCA.

Sincerely,

Respectfully submitted,



Amy Emmert  
Senior Policy Advisor  
American Petroleum Institute  
(202) 682-8372  
[emmerta@api.org](mailto:emmerta@api.org)



Kara Moriarty  
President  
Alaska Oil and Gas Association  
(907) 272-1481  
[moriarty@aoga.org](mailto:moriarty@aoga.org)