



November 7, 2011

Sharon Seim, Planning Team Leader
Arctic National Wildlife Refuge
101 12th Ave., Rm. 236
Fairbanks, AK 99701

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

Dear Ms. Seim:

Arctic Slope Regional Corporation ("ASRC") and the North Slope Borough ("NSB", "Borough") hereby submit the following comments in response to the Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement for the Arctic National Wildlife Refuge, noticed by the U.S. Fish and Wildlife Service ("USFWS") in the *Federal Register* on August 15, 2011. *Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement, Arctic National Wildlife Refuge, Fairbanks, AK, 76 Fed. Reg. 50490 (Aug. 15, 2011).*

I. INTRODUCTION

What we now know as the Arctic National Wildlife Refuge ("ANWR", "Refuge") was originally established in 1960, when President Eisenhower's Secretary of the Interior, Fred Seaton, signed a Public Land Order establishing the 8.9 million acre Arctic National Wildlife Range. After years of debate over the fate of the Range, in 1980, Congress enacted the Alaska National Interest Lands Conservation Act ("ANILCA"). ANILCA doubled the size of the Range, renamed it the Arctic National Wildlife Refuge, and designated eight million acres (most of the original Range) as wilderness. The remaining northernmost 1.5 million acres of the Refuge, the Coastal Plain, was addressed in Section 1002 of ANILCA, and is now referred to as the 1002 Area. Section 1002 reserved judgment on the future of the Coastal Plain, setting the area aside for further assessment of its oil and gas development potential and its fish and wildlife resources. In 1987, after six years of environmental, geologic, and economic study required by ANILCA, the Department of the Interior recommended that the 1002 Area be opened to responsible oil and gas development. Since completion of that report, numerous wells have been drilled and oil fields discovered near ANWR. However, in Section 1003 of ANILCA, Congress prohibited any development of oil and gas within ANWR, including the Coastal Plain, until authorized by a future act of Congress.

In April 2010, the USFWS issued a request for comments relating to the scope of its comprehensive conservation plan (“CCP”) and environmental impact statement for ANWR. 75 Fed. Reg. 17763 (Apr. 7, 2010). ASRC and NSB submitted comments to the USFWS in which we urged that the Service not take any action through the CCP revision process that would, directly or indirectly, impact or foreclose the substantial economic opportunities associated with the potential for future development of the enormous projected onshore and offshore oil and gas reserves in the Coastal Plain or that would place additional regulatory or permitting onuses on local residents that depend on the Refuge for their subsistence needs. In addition, ASRC presented oral testimony at the May 11, 2010, public hearing on this issue that was held in the Alaska Regional Office of the Service.

On August 15, 2011, the USFWS issued a public notice announcing the availability of a draft comprehensive conservation plan (“CCP”) and draft environmental impact statement (“DEIS”) for ANWR for public review and comment. The draft CCP and DEIS describes and evaluates six alternatives for the long-term management of the Refuge. These alternatives range from a “no action” alternative providing for the continuation of current management practices to a far-reaching alternative that would recommend virtually the entire Refuge—including the nearly 1.5 million acre Coastal Plain—for designation under the Wilderness Act and four additional rivers for designation as Wild and Scenic Rivers. The draft CCP and DEIS do not identify a preferred alternative. However, once the USFWS selects one and finalizes the plan, the plan will establish goals and objectives for, and otherwise guide, the USFWS’s management of the Refuge for at least the next 15 years.

The USFWS’s plan revision is of critical importance to ASRC and NSB. ASRC is the Alaska Native Corporation formed under the Alaska Native Claims Settlement Act (“ANCSA”) that encompasses the entire North Slope of Alaska. ASRC has a growing shareholder population of approximately 11,000, and represents eight villages on the North Slope: Point Hope; Point Lay; Wainwright; Atkasuk; Barrow; Nuiqsut; Kaktovik; and Anaktuvuk Pass.

The North Slope Borough is the regional municipal government encompassing nearly 89,000 square miles of northern Alaska- a territory larger than 39 of our 50 states. Most of the Refuge’s 19 million acres lie within the Borough’s boundaries and, as a consequence, management decisions made by the USFWS have wide-ranging ramifications for NSB communities located within and near the Refuge as well as the region as a whole. We understand better than any the diversity and ecological significance of the landscapes found within the Refuge, and we have the greatest stake in preserving for future generations its special and essential qualities. For thousands of years, the lands and waters of ANWR have sustained the Iñupiat and other indigenous peoples of the region. We have for millennia been part of the ANWR landscape, and expect to remain there for millennia more. And the NSB is determined to be an advocate for the economic and subsistence rights of its residents.

ASRC is committed both to increasing the economic and shareholder development opportunities within our region, and to preserving the Iñupiat culture and traditions that strengthen both our shareholders and ASRC. A founding principle of ASRC is respect for the Iñupiat heritage. A portion of our revenues is invested into supporting initiatives that

aim to promote healthy communities and sustainable economies. By adhering to the traditional values of protecting the land, the environment and the culture of the Iñupiat, ASRC has successfully adapted and prospered in an ever-changing economic climate.

ASRC owns approximately five million acres of land on Alaska's North Slope, conveyed to the corporation under ANCSA as a settlement of aboriginal land claims. Under the express terms of both ANCSA and ANILCA, the unique character of these lands, founded in federal Indian law and the most significant Native claims settlement in U.S. history, must be recognized by the Congress and the Federal government in making any land management decisions. In the unique framework created by ANCSA and ANILCA, Congress expected that regional corporations, including ASRC, would be responsible for developing the economic infrastructure, including management of the abundant natural resources on and under the lands conveyed to them, to provide for the economic well-being of Alaska Natives.

ASRC lands are located in areas that either have known resources or are highly prospective for oil, gas, coal, and base metal sulfides. ASRC remains committed to fulfilling its obligations to Alaska Natives, including its shareholders, by developing these resources and bringing them to market in a manner that respects Iñupiat subsistence values while ensuring proper care of the environment, habitat, and wildlife. ASRC and Kaktovik Iñupiat Corporation ("KIC"), the Native Corporation for the Village of Kaktovik, own more than 92,000 subsurface and surface acres, respectively, in the Coastal Plain. In 1971, ANCSA gave KIC surface rights to 92,160 acres of federal lands adjacent to the Village (the only settlement in ANWR), originally allowing KIC to select 69,120 of these acres within the Range and the remainder outside the Range. In 1980, ANILCA subsequently allowed KIC to relinquish its selected lands outside the Refuge and instead to select the remainder of its Corporation lands within the Refuge. ASRC holds the subsurface rights to these lands. These lands hold significant potential for onshore oil and gas development. However, as a result of Section 1003 of ANILCA, developments of these important economic resources remain off limits until further act of Congress.

ASRC and NSB agree, as the USFWS appropriately has stated, that the agency does not have the authority to decide whether the 1002 Area should be made available for oil and gas leasing, and therefore appreciate that the USFWS will not consider or respond to comments that support or oppose such development during this CCP revision process. However, the USFWS must be cognizant that its decision to undertake wilderness review of the 1002 Area and any effort to obtain wilderness designation for the 1002 Area cannot be viewed independently from the question of oil and gas development. As the USFWS has recognized, any decision to recommend the area for wilderness designation could have significant implications for future oil and gas development by making it more difficult for Congress to open the area to such development in the future as provided for in ANILCA. It is for this reason, discussed further in these comments, that ASRC and NSB urged the USFWS not to include wilderness review of the 1002 Area within the scope of its CCP revision process and continue to urge the USFWS to drop any further consideration of any alternative that would recommend the Coastal Plain for wilderness designation. New recommendations for including additional rivers in the Coastal Plain for inclusion in the

National Wild and Scenic River System under the Wild and Scenic Rivers Act present similar concerns.

Eight million acres, or 42 percent, of the 19.6 million acre Refuge—including 500,000 acres of its eastern coastal plain—already have been designated by Congress as wilderness under the Wilderness Act. Most of the remainder of the Refuge also is closed to oil and gas development, though not formally designated as wilderness. As discussed further in these comments, given the unique status of the 1002 Area under Federal law, the enduring presence of the Iñupiat people in the area, the subsistence needs of these Native and other rural residents of the area, the extent of existing designated wilderness in the area, and other relevant considerations, the USFWS should not include wilderness review or take any steps toward obtaining wilderness designation for the 1002 Area under the Wilderness Act as part of this CCP revision. Nor should the USFWS recommend any additional rivers in the Coastal Plain or the remainder of the Refuge for designation under the Wild and Scenic Rivers Act.

It remains critical to ASRC and NSB that USFWS not take any action that, through the pursuit of wilderness designation, would have the effect of foreclosing the substantial economic opportunities associated with the potential for future development of the Coastal Plain's enormous projected onshore oil and gas reserves. Responsible oil and gas development of the 1002 Area of ANWR would provide a safe and secure source of energy to the nation, create important jobs for economically disadvantaged Alaska Native people and others throughout the country, and help ensure future flows through the Trans-Alaska Pipeline System, which is now operating at only one-third of its original capacity. With advances in technology, it is possible to develop the Coastal Plain's oil and gas reserves and allow access to much-needed energy resources with minimal land disturbance in the Refuge and without significant disturbance to wildlife. Technological advances have significantly reduced the "footprint" of oil and gas development. And ASRC and NSB continue to believe that responsible resource development and healthy populations of caribou and other wildlife within the Refuge are not mutually exclusive goals.

ASRC and NSB appreciate this opportunity to provide meaningful input to the USFWS as it continues to develop a revised CCP for the Refuge. As the USFWS continues to move forward with this effort to update the CCP, ASRC and NSB urge the agency to be mindful of the fact that the Refuge is, and has long been, the home of Alaska Native people who continue to maintain a strong connection to the land that is fundamental to our very way of life. In addition to the substantial value that our people (and the broader Alaska Native community) will draw from responsible development of the Coastal Plains bountiful oil and gas resources if and when Congress permits it, the land and its resources are essential to our subsistence way of life. As it updates the CCP, we urge the USFWS to fulfill its commitment to an ongoing, meaningful partnership with ASRC, NSB, and the broader Alaska Native community, and not to take any action that could deprive our people of access to and use of these resources or otherwise adversely impact the culture and heritage that lies at the very foundation of who we are.

II. NO WILDERNESS RECOMMENDATION OF THE COASTAL PLAIN / 1002 AREA.

For the following reasons, ASRC and NSB strongly oppose Alternatives C and E described in the Draft Plan and respectfully urge that USFWS drop these alternatives from further consideration. The USFWS should not recommend the Coastal Plain for designation as wilderness as part of this CCP revision process. Nor should USFWS make recommendations for wilderness designations of any other portion of the Refuge.

A. The Unique Status of the Coastal Plain / 1002 Area Makes Recommendation of the Area for Wilderness Designation Inappropriate

The Coastal Plain / 1002 area has unique status under Federal law that makes it inappropriate for the USFWS to have undertaken wilderness review of the area and now to be considering recommending the area for wilderness designation by Congress. As discussed in greater detail below, ANILCA created a clear path for the study of and recommendations for potential oil and gas development in ANWR, and specifically with respect to the Coastal Plain. The USFWS recognizes in its planning materials that certain decisions relating to management of the Refuge, and particularly the 1002 area, have been reserved by and to Congress. In this regard, in the Federal Register Notice regarding this CCP revision process, the USFWS explained:

Some concerns and interests related to the Refuge will not be addressed in the Revised CCP. For example, the U.S. Congress has reserved for itself in sections 1002(i) and 1003 of ANILCA, 16 U.S.C. §§ 3142(i), 3143, the decision as to whether or not the Refuge Coastal Plain (also called the 1002 Area) should be made available for oil and gas development. *Therefore, the Service does not have the authority to decide this issue, and we will not consider or respond to comments that support or oppose such development during this CCP process.*

75 Fed. Reg. at 17764-65 (emphasis added). The USFWS appropriately has placed “off the table” any discussion or consideration of whether the 1002 Area should be made available for oil and gas development. ASRC and NSB believe that the issue of when/whether oil and gas development should be authorized in the 1002 area is inextricably linked with the process of conducting a wilderness review and recommending/not recommending the 1002 area for wilderness designation and, because Congress clearly reserved for itself the task of making the determination, the USFWS should now abandon any consideration of any alternative, such as Alternative C and Alternative E, that would include recommendation of the 1002 Area for wilderness designation by Congress.

Indeed, the USFWS should not take **any action** through this CCP revision process that would have the intent or effect of prejudging Congress’s decision relating to this reserved authority. It is difficult to envision how the USFWS can undertake wilderness review of the 1002 Area and consider recommendation of the area for wilderness designation

independent of the issues that the agency has recognized are reserved by law for congressional decision and beyond the scope of this CCP revision process. In fact, the Draft Plan recognizes as much when it admits that, under Alternative C, *the likelihood of opening the 1002 Area to oil and gas exploration would be substantially reduced.*" Draft Plan at 5-33 (emphasis added). It further states that, under Alternative C, "[w]ilderness designation could have a major, long-term, regional or greater and negative effect on economic development by restricting potential oil and gas exploration and development of the 1002 Area." Draft Plan at 5-39. Conversely, in its discussion of the environmental consequences of Alternative F, the Draft Plan states "No additional wilderness recommendations could allow for the 1002 Area to more easily be opened by Congress to oil and gas, preserving this potential economic opportunity." Draft Plan at 5-71.

Any assertion, therefore, that the USFWS will not address in this planning process whether or not the Coastal Plain should be made available for oil and gas development is specious at best. The USFWS itself explicitly acknowledges that its decision whether or not to recommend the Coastal Plan for wilderness designation will substantially impact whether or not the area is opened to potential oil and gas exploration and development. Given the agency's recognition that Congress has reserved for itself the decision as to whether or not the Coastal Plain should be made available for oil and gas development, further consideration of alternatives that would recommend wilderness designation for the 1002 Area simply distracts the agency and the public from giving appropriate attention to the other important issues at stake in revising the CCP, and undermines congressional authority to make the ultimate decision on oil and gas development.

B. Recommendation of the Coastal Plain and Other Additional Areas of the Refuge for Wilderness Designation is Contrary to the Alaska National Interest Lands Conservation Act (ANILCA) and USFWS Policy

Despite the explanation set forth in section D.2.1 of the Draft Plan, the Secretary's effort to consider recommending wilderness designation of additional wilderness areas on Alaska's North Slope is, in fact, fundamentally inconsistent with the provisions of ANILCA that were carefully drafted to ensure a balance between protection of scenic, natural, cultural and environmental values and satisfaction of the economic and social needs of the State of Alaska and its people. Notably, as further discussed below, and contrary to statements in the Draft Plan, it is also inconsistent with Service policy.

Section 101(d) of ANILCA expressly recognizes that "the 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, in that section, Congress found that "the designation and disposition of the public lands in Alaska" pursuant to ANILCA "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." Thus, section 101(d) states that ANILCA obviated "the need for future legislation designating new conservation system units, new national

conservation areas, or new national recreation areas," *including new units of the National Wilderness Preservation System. See ANILCA § 102(4).*

This critically important point is again made in the "no more" provision of section 1326 of ANILCA. This provision expressly limits the authority of the executive branch to establish or expand conservation areas in the state, again based upon Congress's determination that ANILCA established "a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition." Although we recognize that Congress would have the ultimate say in whether any additional lands are designated as wilderness, by considering alternatives that would recommend new wilderness areas, the actions contemplated by the USFWS in the wilderness review and identification of alternatives inappropriately strikes a new balance that would further favor the protection of wilderness characteristics and diminish the availability of lands for uses that may be inconsistent with the protection of such characteristics.

Wilderness recommendation of certain areas on Alaska's North Slope also would be inconsistent with section 1001 of ANILCA. Section 1001(b) of ANILCA did authorize the Secretary of the Interior to undertake a study to "review the wilderness characteristics, and make recommendations for wilderness designation" of "all Federal lands (other than submerged lands on the Outer Continental Shelf) in Alaska north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve Alaska other than lands included in the National Petroleum Reserve Alaska and in conservation system units established under [ANILCA]." *See also ANILCA § 1004.* And, section 1001(c), in addition to calling for the Secretary to make findings on "the potential oil and gas resources of these lands," called for the Secretary to make findings on "the national interest in preservation of the wilderness characteristics of these lands."

Section 1001(b) of ANILCA also requires that the study referenced above include an assessment of "the potential oil and gas resources of these lands" and requires that the Service "make recommendations concerning future use and management of those resources." *See, ANILCA, § 1001(b)(1).* The study and findings authorized and required under sections 1001 and 1004 were required to be completed "no later than eight years after the date of enactment of [ANILCA]." In accordance with the statute, the USFWS began the required studies in 1981, and information gathered from the various biological, seismic and geological studies was used to complete a Legislative Environmental Impact Statement (LEIS), which included the Secretary's final report and recommendation, that was submitted to Congress in 1987. Notably, the environmental impact statement prepared by the Department of the Interior in connection with the report concluded that designation of the 1002 Area as wilderness "is not necessary to protect the 1002 area environment and is not in the best interest of the Nation." *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. Dep't of the Interior, Apr. 1987, at 189.* In addition, in that report the Secretary of Interior recommended that Congress authorize an oil and gas leasing program that would avoid unnecessary adverse effects on the environment.

Thus, although Congress has not acted to date on the recommendation in the report that was required by ANILCA, it is clear that the USFWS's obligations under these provisions have long since been completed, and the provisions' authorities are now moot and provide no further authority to the USFWS to undertake additional studies or reviews of the area's wilderness potential or to recommend wilderness designation of the area on the basis of such studies or reviews.

The Draft Plan's response to these provisions of ANILCA is not consistent with the policies cited for its support. First, with respect to the issue of whether a wilderness review is *required*, the Draft Plan erroneously relies on USFWS policy as a basis for conducting a wilderness review for ANWR during this planning process. Draft Plan at D-3. As a threshold matter, it does not make sense to suggest, as the Draft Plan does, that general Service policy must be followed even when fundamentally inconsistent with specific statutory authority governing the Service's management of particular areas. But, the Draft Plan does not even accurately describe the cited policies, which do, in fact, recognize the unique provisions of ANILCA and did not require a wilderness review as part of this planning process. 601 FW 3 does not address wilderness review. While 610 FW 4 does at least address wilderness review, it does not, as the Draft Plan states, direct refuges in Alaska to conduct wilderness reviews during comprehensive conservation planning. In fact, paragraph 4.2 of 610 FW 4 explicitly states just the opposite:

This chapter covers all lands of the National Wildlife Refuge System (Refuge System) *that are outside of Alaska*, are not currently designated wilderness, and are subject to wilderness review. *Wilderness reviews are not required for refuges in Alaska.* Refer to 610 FW 5.17 for additional guidance for Alaska.

610 FW 4 (emphasis added). And paragraph 5.17 of 610 FW 5.17, explicitly addressing the question whether the Service conducts wilderness reviews of refuge lands in Alaska, makes the point again:

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.*

610 FW 5.17 (emphasis added). Accordingly, the Draft Plan's statement that Service policy directs refuges in Alaska to conduct wilderness reviews during cooperative conservation planning is wrong. The Service's cited policies therefore provide no basis whatsoever for undertaking a wilderness review as part of this planning process.

The Draft Plan also relies on a one-page January 2010 Director's Memorandum, which apparently relies upon this same flawed reading of 610 FW 4. That Memorandum states: "As you revise the Comprehensive Conservation Plans for Alaska National Wildlife Refuges, you should conduct a complete wilderness review of refuge lands and waters that includes the inventory, study, and recommendation phases, in accordance with 610 FW 4." As noted above, however, 610 FW 4 clearly states that "[w]ilderness reviews are not required for refuges in Alaska" and refers to 610 FW 5.17 "for additional guidance for Alaska." As such, there is no legitimate basis for USFWS to have undertaken a wilderness review for the Refuge as part of this planning process. Accordingly, any action by USFWS to recommend areas for wilderness designation on the basis of this review would be inappropriate and contrary to ANILCA and USFWS policy.

The Draft Plan further erroneously asserts that section 1004 of ANILCA requires the Refuge "to maintain the wilderness character of the Coastal Plain and its suitability for inclusion in the National Wilderness Preservation System." Draft Plan at D-3, 5-38, 5-61. Section 1004 directed the Secretary, as part of the study required by section 1001, to "review the suitability or nonsuitability for preservation as wilderness of the Federal lands described in section 1001 and report his findings to the President." 16 U.S.C. § 3144(a). Section 1004 further provided for "the wilderness study area designated by this section" 1004 to be administered by the Secretary to maintain then-existing wilderness character and potential for inclusion in the National Wilderness Preservation System. 16 U.S.C. § 3144(c). This requirement, in accordance with its express language, was clearly limited to the wilderness study area designated by 1004. It did not extend to other areas of the Refuge. Any other reading of the statute, such as that adopted by USFWS in the Draft Plan, is wrong.¹

In fact, USFWS policies do not impose such a requirement in wilderness study areas ("WSAs"), recommended wilderness, and proposed wilderness in Alaska. In this regard, Paragraph 5.18 of 610 FW 5.17 makes clear that: The review provisions of ANILCA (see section 1317(c)) do not affect the normal administration and management of the affected areas of the refuge until Congress takes action. We will manage WSAs, recommended wilderness, and proposed wilderness according to the management direction in the CCP for these areas. In Alaska, MRAs are not required for proposed refuge

¹ And, if true, it would only support ASRC's and NSB's conclusion that wilderness designation of the Coastal Plain would have negligible benefits to Refuge resources as compared to the "no action" alternative and would only serve to make it more difficult for Congress to make the area available for oil and gas leasing and development in the future.

management activities and commercial services in WSAs, recommended wilderness, and proposed wilderness.

610 FW 5.17. Thus, even WSAs, recommended wilderness, and proposed wilderness in Alaska are to be managed in accordance with the normal management direction in the plan, and not managed to maintain the area's wilderness character and its suitability for inclusion in the National Wilderness Preservation System.

Second, with respect to the issue of whether a wilderness review violates the "no more" clause referenced above, the USFWS has indicated that it believes that such reviews do not violate ANILCA "because the reviews do not constitute a withdrawal nor are they being conducted for the sole purpose of establishing a conservation system unit." Draft Plan at 3-6. ASRC and NSB respectfully suggest that this is an attempt to draw a distinction without a difference. Sections 101(d) and 1326 of ANILCA clearly evidence Congressional intent that ANILCA sets forth the complete and sole plan for management of public lands in Alaska, and that absent further Congressional action, further establishment or designation of lands is not necessary nor authorized. We note that Section 1326 (b) -- which contains the "sole purpose of establishing a conservation unit" language that is cited by the USFWS -- states in its entirety:

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.

16 U.S.C. § 3213(b)(emphasis added).

ASRC and NSB submit that the purpose of the wilderness review that is at issue here is both related to and similar to studies that are undertaken for the purpose of "considering the establishment of a conservation system unit, national recreation area, national conservation areas." To that end, we believe that undertaking this review violates the prohibition set forth in Section 1326(b) of ANILCA.

Accordingly, nothing in the Draft Plan's discussion of the ANILCA "No More" clauses provides a legitimate basis for the USFWS's decision to conduct a wilderness review of the Coastal Plain of ANWR. In fact, Section 1326(b) of ANILCA expressly prohibits such a review, and the decision to undertake the review was inconsistent with USFWS policy and with ANILCA. Any further action to pursue recommendation of the Coastal Plain for designation as wilderness on the basis of this review would be similarly contrary to USFWS policy and ANILCA. Congress spelled out the respective roles and responsibilities of USFWS and Congress with respect to the underlying issue of oil and gas development in ANWR, including in the Coastal Plain. The USFWS fulfilled its limited role on this issue when it submitted the LEIS and embedded ANILCA Report to Congress in 1987; further decision making regarding oil and gas development rests solely with Congress. The

USFWS, therefore, must abandon any further consideration of Alternatives C and E, or any other option that would include wilderness recommendation for the Coastal Plain, as it moves to finalize its plan. And for the reasons stated above, ASRC and NSB also oppose any alternatives that include wilderness recommendations for any other portions of the Refuge.

C. The Draft Plan Misconstrues Section 1317 of ANILCA

The Draft Plan also misconstrues section 1317 of ANILCA in an apparent effort to support its assertion of authority to conduct a wilderness review of the Coastal Plain. In the Draft Plan, the USFWS asserts that “Section 1317 of ANILCA requires that all refuge lands that were not designated as wilderness to be reviewed as to their suitability for wilderness designation.” Draft Plan at A-5. However, the USFWS glosses over the specific language of section 1317 and ignores the fact that section 1317 set forth a one-time process for wilderness review, with specific timeframes, and that the limited review provided for by the language already has been completed.

In this regard, section 1317 of ANILCA provides that “*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 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(a) (emphasis added). It further provides that “*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.*” 16 U.S.C. §3205(b) (emphasis added). This general wilderness review authorized by section 1317 was completed years ago. There is nothing whatsoever in section 1317 to indicate that Congress intended that this section provide the USFWS continuing authority to conduct wilderness reviews of all non-designated lands within the National Park System and National Wildlife Refuge System in Alaska *ad infinitum*. In fact, section 1317’s language is much to the contrary. Accordingly, the Draft Plan’s erroneous description of section 1317 should be struck from the Plan.

D. The 1002 Area Does Not Meet Minimum Requirements for Designation as Wilderness

ASRC and NSB continue to maintain that the area identified in the Draft Plan as the Coastal Plain WSA does not meet the Wilderness Act’s minimum requirements for designation as wilderness, and is therefore not suitable for consideration for congressional designation as such. Section 2(c) of the Wilderness Act defines “wilderness” as follows:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as *an area where the earth and its community of life are untrammled*

by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

16 U.S.C. § 1131(c) (emphasis added).

Despite the Draft Plan's conclusion to the contrary, Draft Plan at 4-13, this definition does not describe the Coastal Plain. As the Draft Plan itself recognizes, "[t]he Iñupiat and Athabascan people of the region have used the lands and resources of the Refuge for many centuries." Draft Plan at 4-128. This long history of use and occupancy makes the area identified in the Draft Plan as the Coastal Plain WSA unsuitable for recommendation for wilderness designation.

Rather than relying upon the definition of wilderness as specifically set forth by Congress in the Wilderness Act, the USFWS wrongly redefines these wilderness criteria to have an overwhelming focus on that which is "modern." The Draft Plan describes wilderness as: (1) being "free from roads, structures, and other evidence of *modern* human occupation or improvements;" (2) "essentially unrestricted and free from *modern* human control or manipulation;" and (3) "substantially free from the effects of *modern* civilization." Draft Plan at 4-13 (emphasis added). Yet, the term "modern," of course, appears nowhere in the statutory definition of wilderness. Compared to the way of life enjoyed by most people in the lower-48 states, the way of life enjoyed by residents of Alaska's North Slope would not reflect what most people would consider modern. Nonetheless, it is our way of life. The fact that we live without certain modern conveniences and that we work and live in modest structures does not, as USFWS seems to believe, make the lands on which we live undeveloped, untrammled, or natural.

The Village of Kaktovik, the only village within the 19.6 million acres of the ANWR's boundaries, is situated within the 1.5 million acres of the Coastal Plain. As noted above (and on page 4-6 of the Draft Plan), ASRC and KIC, the Native Corporation for the Village of Kaktovik, own more than 92,000 subsurface and surface acres, respectively, in the Coastal Plain. Kaktovik is the ancestral village center of the native Qaaktuġvigmiut (Kaktovikmiut) of the Arctic Coast of Alaska. These lands that these Iñupiat people have called home for thousands of years extend from the continental divide in the Brooks Range to approximately 100 kilometers offshore in the Arctic Ocean, from the Sagavanirktok River

on the west, well into present-day Canada on the east. For centuries, the Qaaktuġvigmiut have made their home along the coast, surviving off the resources of the waters and lands between the Arctic Ocean and the mountains to the south. Iñupiat are the only indigenous people of this land. For thousands of years, their culture has been defined by their connection with this place and all of the bounty it provides. This close relationship with the land has sustained the Qaaktuġvigmiut people in this challenging Arctic environment for ages.

The area also has a military history that has had an effect on the lands. In 1947, the U.S. Air Force constructed a runway and hangar on the historic Kaktovik Village site. Soon thereafter, the runway was extended and the area served as the site for installation of a Distant Early Warning Line (DEW Line) radar station, named BAR Main. Two other intermediate DEW Line sites were built fifty miles east and west of the Kaktovik site. The eastern site was named BAR-A and is located near Demarcation Bay. The western site was named POW-D and is located near Brownlow Point. The three stations were among the earliest constructed in the DEW Line program. Their construction involved airstrips, fuel tank farms, landfills, housing and working quarters, primitive sewage disposal systems, radar antennas and the like. DEW Line construction logistics involved the use of tractor-conveyed skid-mounted trains (known as “Cat Trains”) which moved from site to site. The Cat Trains were used even in the summer months, before it was learned that it was easier and less damaging to travel over frozen ground and snow cover. The scars left by the Cat Trains along the North Slope coastline remain visible to this day; the Coastal Plain of ANWR is definitely NOT untrammled. See Draft Plan at 4-136. Although the radar towers have since been removed, impacts on the lands remain.

The Coastal Plain is not appropriate for consideration for wilderness designation. “Man” has called the Coastal Plain home for thousands of years, and can hardly be considered a “visitor” there. And, the area is clearly not one without human habitation. Any suggestion to the contrary—to say that our homelands, where we have lived and that have sustained us for thousands of years, are absent of people, as if we do not exist—is, at best, mistaken and, at worst, insulting.

E. Wilderness Designation Would Severely Impair the Ability of the Refuge to Continue to Provide for Subsistence Use and Related Needs of Rural Residents

For many Alaskans, particularly Alaska Natives residing in remote, rural villages, subsistence hunting, fishing, and gathering remains the primary source of food. Subsistence also remains a critical element of a culture that has survived in the harsh Arctic Alaskan environment for thousands of years. In view of this, Congress has provided clear direction that the cultural and other aspects of subsistence living must be protected. ANILCA specifically recognized that the continued opportunity for subsistence uses of public lands is critical to physical, economic, traditional, social and cultural existence of rural Native and non-Native residents of Alaska. 16 U.S.C. § 3111(1). As well, one of the purposes of the Refuge, pursuant to ANILCA, is to provide the opportunity for continued

subsistence uses by local residents, consistent with the other Refuge purposes of conserving fish and wildlife populations and habitats in their natural diversity and fulfilling international treaty obligations with respect to fish and wildlife. ANILCA § 303(2)(B)(iii).

Section 810 of ANILCA, 16 U.S.C. § 3120, requires the heads of Federal agencies to evaluate the effects of any proposed land withdrawal, reservation, lease, occupancy, use, or other disposition of Federal lands upon subsistence uses. This evaluation must include findings on three specific issues: (1) the effect on subsistence uses and needs; (2) the availability of other lands for the purpose sought to be achieved; and (3) other alternatives that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. Section 810 also prohibits agencies from proceeding with any proposed disposition that would significantly restrict subsistence uses, without first following certain procedures and making certain findings.

Although the USFWS, as required by law, undertook such an evaluation as part of its preparation the Draft Plan, that evaluation wrongly concluded with a finding that the proposed action would not result in significant restriction to subsistence uses and needs. As the USFWS has recognized, significant restriction to subsistence uses may occur when an action may substantially limit access by subsistence users to resources. The USFWS's section 810 evaluation concluded that, based upon section 811(b) of ANILCA and 50 C.F.R. § 36.12(a) of the Service's regulations, "None of the alternatives would reduce subsistence uses because of limitations on access or by physical or legal barriers to harvestable resources." Draft Plan at 5-87. Responding to concerns raised by residents of Kaktovik, ASRC, and NSB, the evaluation further explained that: "Current traditional methods and patterns of motorized and non-motorized access would not be affected by wilderness designation. Traditional access and subsistence uses would continue to be permitted according to ANILCA and current regulations and policies." Draft Plan at 5-94. To the contrary, we continue to maintain that wilderness designation for the Coastal Plain would impose substantial limitations on access to subsistence resources.

Of course, the USFWS is correct that "On refuge lands in Alaska, including wilderness areas, section 811(b) of ANILCA authorizes the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence activities." Draft Plan at 5-87. USFWS is also correct that "This mandate is carried forward and incorporated in Service regulation in 50 CFR 36.12(a)." Draft Plan at 5-87. However, ASRC and NSB strongly disagree with the USFWS's conclusion that, under Alternatives C and E, "Current traditional methods and patterns of motorized and non-motorized access would not be affected by wilderness designation." Draft Plan at 5-93, 5-96. As USFWS admits, "requests for construction or location of new cabins would receive greater scrutiny." Draft Plan at 5-93, 5-96. ASRC and NSB have no doubt that the same would be true for motorized and non-motorized access, and that this scrutiny -- and the attendant and unavoidable delays that are involved in any decision making process that involves these issues -- will lead to changes in the methods and patterns of access.

The USFWS correctly recognizes that “The subsistence user groups most affected by the Coastal Plain WSA-wide designation would be the north side Iñupiat village of Kaktovik.”² Draft Plan at 5-93. The Village of Kaktovik, the only village within the 19.6 million acres of the ANWR’s boundaries, is situated within the 1.5 million acres of the Coastal Plain. The population of the Kaktovik community is significantly—over eighty percent—Alaska Native or part Native. Designation of the Coastal Plain as wilderness under the Wilderness Act would severely impact the subsistence activities and traditional way of life for the residents of the Village of Kaktovik. The USFWS recognizes that the subsistence cycle for Kaktovik is constant and occurs year round. *See*, Draft Plan, Table 4-24 at p. 4-182. Despite being private land owners within the Coastal Plain, the Village would be surrounded by wilderness, making the villagers essentially refugees on their own land. Due to its isolation, the Village has maintained its Iñupiat Eskimo traditions. As with other rural communities in the region, subsistence hunting, fishing, and whaling are a major element of the traditional Native culture in the area and a primary source of nutrition, and play a major role in the local economy. Indeed, the USFWS recognizes that designation of the Coastal Plain as wilderness “could increase visitor use near Kaktovik’s traditional and subsistence use areas, which could increase conflicts between locals and visitors.” Draft Plan at 5-40.

In its section 810 evaluation, the USFWS makes the statement that “Some subsistence users would view the wilderness designation on their homeland as complementary to their subsistence and cultural perspective.” Draft Plan at 5-93. But USFWS also acknowledges that some of the Iñupiat residents impacted the most from wilderness designation, such as those that live in Kaktovik, would instead “view wilderness designation as a foreign concept and at variance with their traditional beliefs.” *Id.* Wilderness designation (and to some extent even management pending congressional action on a proposed designation) carries with it significant limitations on access and uses that will choke off traditional activities. Motorized access to the vast hunting areas around the villages by snowmachine and other vehicles, and shelters and semi-permanent structures used for camping and hunting activities, would be limited and problematic. Indeed, Alaska Native communities already confront these issues with existing nearby designated wilderness areas.

The designation of the thin ribbon of coastal plain that exists between the mountain front and the coastline as additional wilderness would compound and spread this burden. This area includes the total remainder of caribou and waterfowl hunting areas, fish camps, ancestral campsites, and existing Native allotments. Alternatives C and E propose wilderness “creep” toward the shoreline to eventually even surround privately-held lands near the Village. Life is difficult enough already with current wilderness areas. Sending this burden further northward to overlies even more fishing, waterfowl, and caribou harvest areas, gravesites and birthplaces, Native allotments, and semi-permanent hunting shelters would be devastating to the Iñupiat Natives for whom this area is their home and source of subsistence.

² *See* Draft Plan at 4-128 (“Arctic Village and Kaktovik are the villages that are the most heavily dependent on the Refuge for subsistence use because of their immediate proximity to the Refuge.”)

Alaska's North Slope is, and has long been, the home of Alaska Native people who continue to maintain a strong connection to the land that is fundamental to our very way of life. In addition to the substantial economic value that our people (and the broader community) can draw from responsible development of the area's resources (if and when Congress permits it), the land and its resources are essential to our subsistence way of life. The designation of new wilderness areas would further foreclose already limited economic opportunities for our people. Such action also would severely impair the ability of these lands to continue to provide for subsistence use and related needs of rural residents on the North Slope by substantially limiting subsistence users' access to and use of the area's natural resources. These are precisely the interests that ANILCA was carefully designed to protect when it struck its balance between resource protection and resource use and development.

Designation of additional wilderness cannot be rationalized with the promises that have been made to the Native Americans who live on the North Slope of Alaska. Our people already are deprived of substantial economic opportunity by virtue of the fact that the Coastal Plain of the Arctic National Wildlife Refuge is closed to such activities as oil and gas development without further act of Congress, by Federal government actions that have to date prevented development of the National Petroleum Reserve-Alaska, and by other land reservations, designations, and withdrawals in the area. Recommending additional land designations that could shut down our communities' traditional activities on top of this simply cannot be squared with current Federal Indian policy.

F. Wilderness Designation of the Coastal Plain is Unnecessary.

Finally, as the Secretary of Interior concluded in the 1987 Coastal Plain Resource Assessment: Report and Recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement, designation of the 1002 Area as wilderness "is not necessary to protect the 1002 area environment and is not in the best interest of the Nation." It is important to recognize that this conclusion has two separate and distinct parts. First, that designation of the 1002 Area is not necessary to protect the Coastal Plain environment; second, that designation of the 1002 Area is not in the best interest of the Nation.

With respect to the first part, the current statutory and regulatory regime governing management of the Refuge is sufficient to protect the values for which the Refuge was established and must be managed. ANILCA sections 1002 and 1003 prohibit oil and gas development until further Act of Congress.

This is also acknowledged throughout the Draft Plan. For instance, the USFWS acknowledges that all alternatives, including Alternative A which would retain the existing management structure, meet the mission of the Refuge System (Draft Plan at 3-54), and that all alternatives support the principles of ecosystem management and contribute to maintaining the health of intact ecosystems in Alaska (Draft Plan at 3-56).

In discussing the impacts to the human environment from Alternative C, the Draft Plan states:

The Coastal Plain Wilderness Study Area (WSA) is currently managed under Minimal Management. . . . Under current management, public use of the Refuge is managed similarly in wilderness and non-wilderness. Most restrictions on public use are derived from the area's status as a refuge and its regulations (e.g., Refuge Administration Act, Refuge Improvement Act, ANILCA, etc.) or are enacted by State laws (e.g., ADFG hunting regulations, Alaska Statute 19.40.210 prohibition of off-road vehicles from the Dalton Highway).

Draft Plan at 5-38, 5-61.

Because of the existing obligations and responsibilities of the USFWS that guide management of the Coastal Plain, and the fact that the Coastal Plain already is closed to oil and gas development until further act of Congress, there continues to be no valid reason to designate the Coastal Plain as Wilderness for the purposes of protecting the Coastal Plain environment.

With respect to the second part -- the issue of whether designation is in the best interest of the Nation -- ASRC and NSB submit that development of the oil and gas reserves in the Coastal Plain, if and when authorized by Congress, would address such fundamental "interests of the Nation" as current energy, economic and national security conditions, and that designation of the Coastal Plain, which would forever foreclose the development of these resources, clearly continues to not be in the best interests of the Nation. The USFWS must recognize that responsible development of the substantial oil and gas reserves in the 1002 Area of ANWR would provide a safe and secure source of energy to the nation, create important jobs for Alaska Natives and others throughout the country, and help ensure future flows through the Trans-Alaska Pipeline System, which is now operating at only one-third of its original capacity.

ASRC and NSB believe that the conclusions reached in the 1987 study -- that designation is neither necessary to protect the environment nor in the best interests of the Nation -- continue to be as true today, if not more true, than they were in 1987.

III. NO NEW WILD AND SCENIC RIVERS ACT DESIGNATIONS

In connection with this CCP revision process, USFWS evaluated twenty rivers and river segments in the Refuge for consideration for inclusion in the National Wild and Scenic Rivers System ("NWSRS"). Ten rivers were determined to be free-flowing and to possess at least one outstandingly remarkable value ("ORV") and therefore to be eligible. A suitability study was then conducted for the ten eligible rivers. Four of the rivers were preliminarily

determined to be suitable for inclusion: the Atigun River; the Hulahula River; the Kongakut River; and the Marsh Fork Canning River.

Based upon the Wild and Scenic Rivers Review, certain of the Alternatives identified in the Draft CCP would recommend these rivers for inclusion in the NWSRS. Alternative B would recommend the Hulahula, Kongakut, and Marsh Fork Canning Rivers for inclusion, but use existing management tools to maintain values for the Atigun River. Alternative C would recommend the Atigun River for inclusion, but use existing management tools to maintain values for the Hulahula, Kongakut, and Marsh Fork Canning Rivers. Alternatives D and E would recommend all four rivers for inclusion in the NWSRS as wild rivers.

ASRC and NSB oppose the recommendation of any of these rivers or river segments for inclusion in the NWSRS as wild rivers. USFWS instead should continue to use existing management tools to maintain values for all of these waters. For the reasons discussed further below, ASRC and NSB respectfully urge the USFWS not to recommend any additional rivers or river segments in the Refuge for inclusion in the NWSRS.

A. ASRC and NSB Support the Preliminary Non-Suitability Determinations for the Canning River, East Fork Chandalar River, Jago River, Okpilak River, Neruokpuk Lakes Complex, and Porcupine River

ASRC and NSB support the USFWS's preliminary non-suitability determinations for the Canning River, East Fork Chandalar River, Jago River, Okpilak River, Neruokpuk Lakes Complex, and Porcupine River. Although ASRC and NSB do not necessarily agree with or endorse the eligibility determinations for these rivers, ASRC and NSB believe that the USFWS properly determined that each of these rivers is not suitable for addition to the NWSRS. Each of these rivers, as the USFWS explained, already is afforded a high level of protection under existing authorities. The values of these rivers can be protected sufficiently through a Refuge-wide Visitor Use Management Plan and other relevant step-down plans identified in the revised CCP. *See* Draft Plan, App. I. at SUI-30, SUI-46, SUI-62, SUI-78, SUI-86, SUI-95. Moreover, various other factors make these rivers not suitable for inclusion, including, but not limited to, manageability concerns, economic and development consequences, potential impacts on access to subsistence resources, and State and Native Corporation opposition.

ASRC and NSB urge the USFWS to issue final suitability determinations with respect to these six rivers that are consistent with these preliminary determinations of non-suitability. ASRC and NSB would strongly oppose any decision by the USFWS to change any of these preliminary determinations of non-suitability and to find any of these six rivers suitable for inclusion in the NWSRS.

B. ASRC and NSB Oppose the Preliminary Suitability Determination for the Hulahula River, Which Should be Determined to be Not Suitable

ASRC and NSB urge the USFWS to reverse its preliminary suitability determination for the Hulahula River and to determine that the Hulahula River is not suitable for addition to the

NWSRS as a wild river. According to the USFWS, “The purpose of the suitability phase is to determine whether eligible segments would be appropriate additions to the NWSRS by considering tradeoffs between development and protection. Suitability factors include the physical, social and political environments; the economic consequences; and the manageability of rivers if they were to be designated.” Draft Plan, App. I. at SUIT-2. ASRC and NSB submit that, based on these factors, the Hulahula River is not suitable for inclusion in the NWSRS.

As an initial matter, like the six rivers that have been preliminarily determined to be not suitable for inclusion in the NWSRS, the Hulahula River is located within the boundary of PLO 2214 (the original Arctic Range) and is already afforded a high level of protection under existing authorities. Like those rivers, the Hulahula River’s visitor use could be managed through a Refuge-wide Visitor Use Management Plan, which is one of the step-down plans identified in the revised CCP. And, the River’s cultural values could be protected sufficiently through a Refuge-wide cultural resources management plan. There is no need to “gain additional management tools through potential designation.” Draft Plan, App. I at SUIT-55.

Other considerations also support a determination of non-suitability for the Hulahula River. ASRC and NSB believe that it would be extremely difficult for USFWS to manage the Hulahula River as part of the NWSRS. The Hulahula River passes through the middle of the Coastal Plain/1002 Area and through the western portion of private land owned by KIC. “[KIC] owns both the uplands and submerged lands along the lower 5.5 miles of the Hulahula River. [ASRC] owns the subsurface beneath KIC lands and may remove sand and gravel (oil and gas development on or below KIC lands still requires congressional authorization).” Draft Plan, App. I at SUIT-51. There are six native allotments in the area as well. These borders with private land and the potential for future oil and gas exploration and development will create new management issues and make it very difficult for USFWS to manage use in the Hulahula River corridor as part of the NWSRS.

Moreover, as USFWS recognizes, “The Hulahula River is one of the most important subsistence use rivers on the north side of the Refuge, particularly for fishing and Dall’s sheep hunting by Kaktovik residents.” Draft Plan, App. I at SUIT-51. The River is very important to local people who rely on it for pursuing a more traditional way of life. Despite USFWS’s assertions to the contrary, ASRC and NSB continue to believe that, like wilderness designation, inclusion of this river (or any other river in the Coastal Plain) in the NWSRS would needlessly complicate and restrict access to subsistence resources, impairing the ability of the river and adjacent lands to provide for continued subsistence use and related needs of rural residents. ASRC and NSB believe that application of the suitability factors cited in the Draft Plan, including consideration of the critical importance of the river corridor to subsistence use, clearly leads to the conclusion that the Hulahula River is not suitable for inclusion in the NWSRS, and that it should be included with the other six rivers for which the USFWS has made a preliminary determination on non-suitability.

C. Recommendation of Additional Rivers or River Segments in the Coastal Plain / 1002 Area for Inclusion in the NWSRS is Inappropriate Given the Unique Status of That Area

The Coastal Plain / 1002 Area, as discussed above, has unique status under Federal law. As USFWS has at least facially acknowledged throughout this planning process, Congress has reserved for itself in sections 1002(i) and 1003 of ANILCA, 16 U.S.C. §§ 3142(i), 3143, the decision as to whether or not the 1002 Area should be made available for oil and gas development. Given this fact, the USFWS should not take any action through this CCP revision process that would have the intent or effect of prejudging Congress's decision relating to this reserved authority.

As with the wilderness issue, it is difficult to envision how the USFWS can undertake wild and scenic river ("WSR") review independent of the issues that the agency has recognized are reserved by law for congressional decision and beyond the scope of this CCP revision process. Like the issue of wilderness review, the issue of WSR review is inextricably linked with the question whether the 1002 Area should be made available for oil and gas development—a question, as discussed above, specifically reserved for congressional decision. Indeed, in discussing the suitability of the Hulahula, Jago, and Okpilak Rivers, USFWS recognizes that "Recreational use and oil and gas exploration and development have the highest potential to be enhanced, foreclosed, or curtailed if the area were included in the NWSRS." Draft Plan, App. I at SUIT-52; *see also* Draft Plan, App. I at SUIT-59, SUIT-75. "There are continuous attempts to open the 1002 Area to oil and gas exploration and Development." Draft Plan, App. I at SUIT-59, SUIT-75. "Oil and gas exploration and development in the Hulahula River corridor could be impacted as a result of designation." Draft Plan, App. I at SUIT-53.

The USFWS itself, then, explicitly acknowledges that its decision whether or not to recommend certain rivers for inclusion in the NWSRS could impact decisions with respect to whether certain areas are opened to potential oil and gas exploration and development. Given the agency's recognition that Congress has reserved for itself the decision as to whether or not the Coastal Plain should be made available for oil and gas development, and its prior conclusion that inclusion could impact oil and gas development determinations, further consideration of alternatives that would recommend WSR designation for rivers in the Coastal Plain is inappropriate and undermines congressional authority to make the ultimate decision on oil and gas development.

D. Certain Eligibility Determinations Appear to Have Been Arbitrary and Capricious

ASRC and NSB also wish to express their concern with the USFWS's eligibility evaluation process. In order to determine eligibility, the USFWS identified the relevant ORVs and developed a set of criteria to measure the extent, if any, to which each ORV is present on each particular river or river segment. However, rather than relying upon the data

collected through its evaluation process, when the data did not conform to the team's view, USFWS simply disregarded the data and instead adopted the team's view.

For example, the data gathered for the Atigun River, the Hulahula River, and the Marsh Fork Canning River relating to recreation, based upon the established criteria, did not support an eligibility finding for those rivers based on the recreational ORV. Nonetheless, the USFWS determined those rivers to have the Recreational ORV in any event, based on the team's "best professional judgment." Draft Plan, App. I at ELIG-B7-B8. Similarly, based on the defined criteria, the Hulahula River was not identified as having a cultural ORV. Nonetheless, the USFWS determined that "In the regional archaeologist's professional judgment, the Hulahula has cultural importance in our regions of comparison, and it does have the Cultural ORV (D. Corbett, Regional Archaeologist, pers. comm., Jan. 11, 2011)." Draft Plan, App. I at ELIG-B21.

The agency's disregard of the defined criteria results in identifying these rivers as having ORVs that they would not otherwise have. This impacts the USFWS's eligibility and suitability decisions, as well as the management of these rivers in the event they are recommended and/or designated for inclusion in the NWSRS. In the case of the Hulahula River, in particular, the result is especially significant. Based on the defined criteria alone, the Hulahula River was not identified as having *any* ORV. Accordingly, if USFWS had adhered to the defined criteria, the River would not have been determined eligible for addition to the NWSRS.

IV. ARCTIC REFUGE VISION STATEMENT

The Draft Plan sets forth a vision statement developed by Arctic Refuge staff about their vision for the Refuge's future. This draft statement reads as follows:

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.

Draft Plan at 1-23. ASRC and NSB continue to believe that the draft vision statement should be revised in several important respects.

First, the statement should be revised to more explicitly and clearly recognize the substantial value of the Refuge and its resources to the Refuge's indigenous peoples. We do appreciate that this draft vision statement does contain a reference to "traditional ways." And we also appreciate that USFWS revised the earlier version of the draft statement to include language regarding honoring the "native people." However, we believe that more is

still necessary to ensure that the vision statement reflects that one of the primary purposes of the Refuge is “to provide the opportunity for continued subsistence uses by local residents.” In this regard, in accordance with the relevant provisions of Titles III and VIII of ANILCA, we continue to propose that the following sentence be added to the vision statement: “The refuge and its wild resources continue to provide the opportunity for subsistence use by Iñupiat Natives living within the Refuge and other rural Alaskans, sustaining their physical, economic, traditional, and cultural existence.”

Second, the last sentence of the statement should be revised so that it does not contain the word “wilderness.” As the USFWS is aware, the word wilderness has both a common usage and a statutory usage (under the Wilderness Act of 1964). Obviously, not all areas of the Refuge have been designated (or even proposed or recommended as) wilderness. Although we presume that the USFWS intended to use the term in its common usage, this sentence inappropriately suggests a vision where the entire Refuge is treated and managed as wilderness. Given the very highly charged nature of the issue of wilderness designation concerning certain areas of the Refuge, especially the 1002 area, we believe that use of the term “wilderness” in the vision statement, regardless of the USFWS’s intention, is highly problematic. The use of the term wilderness in the vision statement can, and undoubtedly will by some, be interpreted to mean that the entire Refuge should be managed as wilderness, regardless of the fact that certain areas of the Refuge are not required to be and should not be managed as such. Use of the term will unnecessarily add to the controversy regarding wilderness designation for certain areas of the Refuge, and only further complicate the USFWS’s ability to manage the area in accordance with governing authorities. Accordingly, it should be replaced with a term that will be less controversial and that more accurately represents the status of the Refuge as a whole.

V. SPECIAL VALUES OF ARCTIC REFUGE

Section 304(g)(2)(B) of ANILCA requires that, before developing a CCP for a refuge, the Secretary must identify and describe “the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge.” The draft revised plan’s discussion of special values is problematic in several respects and must be revised before they are incorporated into a final CCP.

A Symbolic Value

The revised draft plan identifies “symbolic value” as one of “the most prominent Refuge values” that emerged from the USFWS’s examination of the special values of the refuge. Specifically, the revised draft plan states:

Since the first efforts to establish a “Last Great Wilderness,” most people who value this landscape have been less interested in how it can be used than in what its continued preservation represents. Millions who will never set foot in the Refuge find satisfaction, inspiration, and even hope in just knowing it exists. The Refuge represents the hope of a past

generation that one of the finest remnants of our natural inheritance will be passed on, undiminished, to future generations. For many people, the question of the Refuge's future has now come to symbolize daunting questions the nation faces regarding energy policy, sustainability, and our effect upon the larger biosphere we jointly inhabit.

Draft Plan at 1-22. ASRC and NSB submit that the inclusion of such "symbolic value" as a special value of the Refuge is problematic.

ASRC and NSB believe that the needs and concerns of local residents must be given greater consideration than the sentiments of those who will never set foot in the Refuge. . The goals of the revised CCP must be consistent with the purposes of the Refuge. Because "symbolic value" is not an explicit purpose of the Refuge, we believe that it should not be included in the final revised plan.

VI. REFUGE GOALS

A. Goal 4

ASRC and NSB strongly support the inclusion of Goal 4, relating to subsistence use, and its related objectives, in the final revised Plan. ASRC and NSB believe, however, that the USFWS should clarify the timeframes for Objectives 4.3, 4.4, and 4.5. The Draft Plan identifies these objectives as "Short-term Priorities (5-8 years)." Draft Plan at 2-13. However, as described in the Draft Plan, activities to accomplish each of these objectives appropriately would commence sooner than five years after Plan approval. ASRC and NSB believe that it is important for the activities identified under these three objectives to be undertaken sooner rather than later, and that the statement of a five to eight year timeframe is misleading and inappropriately distant. ASRC and NSB requests that USFWS clarify those Objectives 4.3, 4.4, and 4.5 are nearer-term priorities than five to eight years after Plan approval.

In addition, in the Strategy sections of both Objectives 4.4 and 4.5, the Draft Plan sets forth examples of governmental and other entities with which USFWS will develop partnerships and coordinate in order to implement and achieve those objectives. Although ASRC understands that these lists are not intended to be exclusive, ASRC respectfully urges that ASRC and the Village of Kaktovik be specifically identified in each of these objectives in the final revised Plan.

B. Goal 9

Goal 9 states that "The Refuge provides information to 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." Draft Plan at 1-24, 2-27. If, however, the Refuge is to fulfill this goal, the information provided must be accurate and complete, and free from any apparent or perceived bias. The Refuge was established for a

number of purposes. ASRC and NSB maintain that any goal relating to informational and educational opportunities should aim to enhance understanding and appreciation of *all* of the Refuge's purposes, and not only selective purposes that serve to advance a particular view or agenda.

ASRC and NSB oppose the inclusion of Objective 9.8, dealing with "National Interest," in the final revised Plan. Objective 9.8 of the Draft Plan states:

The people who live nearby and/or visit Refuge lands will always be important constituents of the Refuge and Service. The Refuge also needs to be mindful of the millions of people across the nation that have an interest in this place. There is a large constituency that will never set foot on the Refuge but value the Refuge as a symbolic landscape and heritage for future generations. Their interests need to be among the factors considered as the Refuge develops its management plans, conducts field work, and informs the public about the Refuge environment.

Draft Plan at 2-30. As discussed above with respect to the special values of the Refuge, the interests of local residents directly affected by management decisions must be given a higher priority than the symbolic interest of people who will never set foot in the Refuge. The Refuge was established and must be managed for a number of purposes. However, protection of symbolic interests of individuals who have no direct connection to the Refuge is not among these enumerated purposes. Accordingly, we believe Objective 9.8 should be struck from the final revised Plan.³

VII. MANAGEMENT POLICIES AND GUIDELINES

A. Access for Subsistence Purposes

ASRC and NSB strongly support the inclusion of Section 2.4.13.1, Access for Subsistence Purposes, in the final revised Plan, but believe that, at drafted, it provides an insufficient discussion of the Section's requirements. Draft Plan at 2-59. For many Alaskans, particularly Alaska Natives residing in remote, rural villages, subsistence hunting, fishing, and gathering remains the primary source of food. Subsistence also remains a critical

³ For the same reason, consideration of "symbolic values"—including the purported benefit to "people who may never visit" from the "knowledge that such places exist"—should be removed from the discussion of "Wilderness Management" on page 2-34 of the Draft Plan. Similarly, USFWS should remove the following sentences from Section 2.4.9.6 of the Draft Plan, addressing "Other Constituencies": "Refuge management will also consider the interests of its large non-local and non-visiting constituency when making decisions. The Refuge will seek input from these constituents when issues of local or national interest arise that may affect how the Refuge is managed." Draft Plan at 2-46. Alternatively, USFWS should revise these sentences to reflect that this "constituency" is simply the public at-large, and not a specific constituency that warrants any specialized or heightened consideration.

element of a culture that has survived in the harsh Arctic Alaskan environment for thousands of years. Section 811 of ANILCA is vital to such subsistence use.

ANILCA section 811, 16 U.S.C. § 3121, *requires* USFWS to ensure that subsistence users “have reasonable access to subsistence resources on the public lands” and to permit snowmobile, motorboat, and other traditionally used means of transportation on the public lands for subsistence use, subject to reasonable regulation. *See also* 50 C.F.R. § 36.12. Section 1110, 16 U.S.C. § 3170, further requires USFWS to permit in the Refuge the use of snowmachines, motorboats, airplanes, and non-motorized surface transportation methods for traditional activities and for travel to and from villages and homesites, subject to reasonable regulation to protect the natural and other values of the Refuge. In this regard, section 304(g)(1) also requires the USFWS, before revising the CCP plan, to identify and describe the cultural values of the Refuge, as well as “present and potential requirements for access with respect to the refuge” pursuant to Title XI of ANILCA. The USFWS must ensure that the final revised Plan fully adheres to these requirements and fully preserves the rights of subsistence users under these provisions.

In order to help ensure that present and future Refuge managers recognize the full extent of what Section 811 requires, USFWS should revise Section 2.4.13.1 in the final revised Plan by adding a discussion of Section 811(a)’s mandate that “The Secretary *shall* ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands,” 16 U.S.C. § 3121(a) (emphasis added).

B. Section 810 Evaluations

ASRC and NSB strongly support the inclusion of Section 2.4.13.2, Section 810 Evaluations. Draft Plan at 2-59. However, the discussion of Section 810 in the Draft Plan is incomplete and understates the important limitations that this provision imposes upon the USFWS’s ability to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of Refuge lands.⁴

When it enacted ANILCA in 1980, Congress included several important provisions to protect subsistence activities in Alaska. Among these, Congress enacted section 810, 16 U.S.C. § 3120, to ensure that the Federal government’s management of Federal lands in Alaska does not interfere with the subsistence way of life. Accordingly, section 810 requires Federal agencies to evaluate the impact of their management decisions on subsistence activities, resources, and habitat. And, if this impact may be significant, the agency must ensure that the restriction of subsistence uses is necessary and that the proposed activity involves the minimal amount of public lands necessary, and take steps to

⁴ As noted above, ASRC and NSB further maintain that the section 810 evaluation undertaken in connection with the development of the Draft Plan wrongly concluded that the alternatives that would recommend the Coastal Plain for wilderness designation would not significantly impact subsistence access and use.

minimize the adverse impacts of the proposed activity upon subsistence uses and resources.

A more complete discussion of this provision should be included in the final revised Plan—both in Section 2.4.13.2 and in Section 4.4.4.1 (Draft Plan at 4-166)—to help ensure that present and future Refuge managers recognize the full extent of the requirements and limitations that Section 810 imposes on the USFWS’s decision making processes.

VIII. MANAGEMENT ACTIONS COMMON TO ALL ALTERNATIVES

In its discussion of alternatives, the Draft Plan sets forth several management actions common to all alternatives. One category of these management actions is “public use and access,” addressed in Section 3.2.1.2 of the Draft Plan. Although Section 3.2.1.2 of the Draft Plan contains a paragraph addressing subsistence, this discussion is insufficient.

First, the bulleted list of actions that the USFWS and the Refuge will continue to take as “standard practice” with regard to “public use and access” contains no reference to subsistence use and access for subsistence use, and is therefore incomplete. ASRC and NSB propose that USFWS add the following bullets to the list of standard practices under Section 3.2.1.2 in the final revised Plan:

- provide the opportunity for continued subsistence uses by local residents
- ensure that rural residents engaged in subsistence uses have reasonable access to subsistence resources, subject to reasonable regulation

Second, although the “Subsistence” paragraph appropriately recognizes that “[p]roviding for continued subsistence opportunities is an important purpose of Arctic Refuge,” the paragraph otherwise only addresses resource monitoring to ensure the compatibility of subsistence use. It says nothing of how, under each alternative, USFWS will, in accordance with the relevant provisions of ANILCA, provide for such continued subsistence opportunities. Given the stated importance of this purpose of the Refuge, this discussion should be expanded to explain that, regardless of the alternative selected, USFWS will provide the opportunity for continued subsistence uses by local residents and ensure that rural residents engaged in subsistence uses have reasonable access to subsistence resources, subject to reasonable regulation.

IX. CONCLUSION

The USFWS’s CCP revision is critically important to ASRC and the NSB. To us, the Refuge is not something that is merely “symbolic” of an intangible ideal. It is the very place that our people have called home since time immemorial, and that continues to provide the resources that support our survival. In addition to the substantial potential value that responsible development of the area’s natural resources holds for our people, the land and its resources are essential to our subsistence way of life. As the USFWS completes its

CCP update, it is essential that the agency be mindful of those who live and work on these lands, and provide for future management of the Refuge that fully recognizes our continuing presence in the Refuge and helps ensure that presence for years to come. In this regard, and for the reasons discussed in detail in these comments, it is critical to ASRC and NSB that the revised CCP ultimately adopted by the USFWS not recommend the Coastal Plain for inclusion within the National Wilderness Preservation System. Similarly, USFWS also should not recommend any new rivers in the Coastal Plain or elsewhere in the Refuge for inclusion in the NWSRS. USFWS must not take any action in this process that would have the effect of foreclosing the substantial economic opportunities associated with the potential for future responsible development of the Coastal Plain's enormous projected onshore oil and gas reserves, or that could deprive our people of continued access to and use of subsistence resources.

ASRC and NSB appreciate the USFWS's consideration of these concerns as it works to finalize the revised Plan. ASRC and NSB look forward to continuing to work with the USFWS and to strengthening our relationship going forward.

Respectfully submitted,
ARCTIC SLOPE REGIONAL CORPORATION

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