

Friends of Alaska National Wildlife Refuges

Center for Biological Diversity

National Wildlife Refuge Association

Natural Resources Defense Council

The Wilderness Society

Wilderness Watch

World Wildlife Fund

Mr. Richard Voss, Refuge Manager
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Arctic NWR – Sharon Seim
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November 15th, 2011

**Re: Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan Draft
Environmental Impact Statement**

Dear Mr. Voss:

Thank you for the opportunity to comment on the Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan Draft Environmental Impact Statement (DEIS). Please accept the following comments submitted on behalf of the Friends of Alaska National Wildlife Refuges, Center for Biological Diversity, National Wildlife Refuge Association, Natural Resources Defense Council, The Wilderness Society, Wilderness Watch and World Wildlife Fund regarding the Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan DEIS.

The groups represented on this letter support Alternative E. Please find below our more detailed comments regarding our position and the DEIS:

I. Support for Alternative E - The USFWS Should Recommend Wilderness for the Coastal Plain and Other Suitable Lands in the Refuge:

The groups represented on this letter support Alternative E because it is the Alternative that would best protect the integrity of the entire Refuge ecosystem, including the very important coastal plain, as well as best achieve the purposes of the Refuge. Alternative E would also best fulfill the vision of those who

advocated for establishment of the refuge because it is the best alternative for ensuring that wildness and natural processes will remain as the permanent defining qualities of the entire refuge.

Furthermore, Alternative E is the only Alternative which would consolidate administration of nearly the entire Refuge under the provisions of the Wilderness Act, assuring the most appropriate stewardship and strongest protection for this incomparable place. Additionally, Alternative E best supports the overall goals the U.S. Fish and Wildlife Service (USFWS) has identified for the refuge in the DEIS, which we support and generally find to be excellent.

Drawing on the idea of wilderness preservation pioneered by Robert Marshall and Aldo Leopold, the Refuge founders, Olaus and Mardy Murie and others established a bold wilderness vision for the Arctic Refuge. Originally established as the Arctic National Wildlife Range in 1960 by the Eisenhower administration, the Arctic Refuge is the only national wildlife refuge established specifically to preserve wilderness values. Similarly, those who advocated for, authored and passed the Alaska National Interest Lands Conservation Act in 1980 and expanded the Arctic Refuge had a bold vision for Alaska's vast arctic and sub-arctic lands, and this vision involved ecosystem protection, wilderness protection, the protection of subsistence resources, access to those resources and a continued subsistence way of life. The Arctic Refuge was part of this vision, and Alternative E best supports it.

The purposes of the refuge identified in ANILCA include:

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

The Revised CCP DEIS demonstrates and articulates the rationale for why wilderness protection for all three wilderness study areas within the draft plan – the Coastal Plain, Brooks Range and the Porcupine Plateau - would not only best achieve the purposes of the refuge, but also best achieve the mission of the Refuge System¹. In the Wilderness reviews for all three Wilderness Study Areas in the refuge and for all refuge purposes, the DEIS indicates that wilderness would best achieve the purposes of the refuge. For example, the DEIS indicates regarding the suitability of the Coastal Plain Wilderness Study Area and achieving refuge purposes:

¹ See pages H-16 through H-28 in the Revised CCP DEIS.

By definition, wilderness designation preserves wilderness values, including the area's natural scenic conditions, intact ecological processes, and the inherent wild character of its various life forms. Designation would require Refuge management to be more attentive to these qualities and would likely increase public scrutiny of any proposed actions that might diminish them. Wilderness designation could better protect the area's undeveloped character by potentially precluding structures and installations, such as radio repeater stations, where they are unnecessary for meeting Refuge purposes, including the purposes of the Wilderness Act.²

Virtually identical statements are made in the DEIS in the suitability analyses for both the Brooks Range and Porcupine Plateau Wilderness Study Areas as well. By preserving wilderness values, the USFWS would best achieve refuge purposes, including "conserving fish and wildlife populations and their habitats in their natural diversity; fulfilling international treaty obligations of the United States with respect to fish and wildlife and their habitats; providing . . . the opportunity for continued subsistence uses by local residents; and ensuring . . . water quality and quantity.

Further, regarding the Refuge System Mission, the DEIS states that wilderness:

"would provide the greatest assurance that . . . [the Brooks Range, Porcupine Plateau and Coastal Plain areas] . . . would remain unaltered and essentially free of the intent to control or manipulate the land, its creatures, and natural processes, thereby ensuring the area retains its ecological integrity now and for future generations."³

Thus the DEIS strongly demonstrates that Alternative E, which includes wilderness recommendations for all three Wilderness Study Areas, would best meet refuge purposes and the mission of the overall Refuge System.

Additionally, the entire Refuge is eminently qualified for Wilderness designation. This is well documented in the three reviews presented in this Draft CCP. Any wilderness recommendation that is less than what Alternative E proposes could be interpreted by some in Congress to indicate that not all of the Refuge is suitable for Wilderness protection. This is a critical point in the history of the Refuge. Now is the time to speak for the whole Refuge in a manner that will assure that this entire magnificent place will remain wild and free. For all of the above reasons and more, the groups represented on this letter strongly support Alternative E and the agency's preliminary wilderness recommendations for all three of the Wilderness Study Areas.

We commend the USFWS for moving forward and embracing the possibility of bold conservation in this draft plan including recommending wilderness. We strongly urge the USFWS to take this historic opportunity and recommend wilderness for the Coastal Plain of the Arctic refuge as well as other suitable lands in the refuge. Some would like to develop the Coastal Plain for oil and gas resources, but

² See Appendix H, p. H-26, Section H.3.3, "Suitability of the Coastal Plain Wilderness Study Area," H.3.3.1. "Achieving Refuge Purposes."

³ See pages H-18, H-23, and 28 in the Revised CCP DEIS.

industrial development is not compatible with goals 1 and 2 of the draft plan - protecting ecological processes and wilderness character, and we support these goals. Due to the ongoing threat of oil and gas development, the Coastal Plain is our top priority for protection in the refuge, and now more than ever we need bold leadership for conservation in the Arctic.

An important component of Alternative E is that it would bestow Wilderness protection for the Coastal Plain of the Refuge as well as nearly all of the other lands within the Refuge that are currently not designated as Wilderness. The Arctic Refuge's coastal plain functions as a critical birthing ground for polar bears, many bird species and the internationally significant Porcupine Caribou herd. The coastal plain also has been a vital resource for communities in the Arctic, including both Inupiat and Athabaskan cultures. The people of the Gwich'in Nation, for example, call this area "the sacred place where life begins." For the Gwich'in, protecting the coastal plain of the refuge - a vital piece of their traditional way of life and culture for thousands of years that is centered around the Porcupine Caribou herd - is a human rights issue.

We believe the USFWS has carefully considered the needs of local villages in this Alternative and determined that intensively used lands directly adjacent to villages, totaling over 190,000 acres, are not suitable for wilderness recommendation. This will ensure the continuation of such local community activities and prevent potential management conflicts. We support this effort on the part of the agency, as we strongly support the continued viability of local communities and their subsistence way of life. Overall we believe that wilderness designation provides a positive influence through the protection it provides for the fish, wildlife, plants and water resources that are vital for the subsistence of local people. In addition, we also believe that ANILCA provided necessary and sufficient exceptions regarding wilderness uses for subsistence and other local community needs in order to ensure the long-term viability of local communities, subsistence resources and access to those resources.

II. The USFWS Fulfilled Its Legal Mandate With The Inclusion of a Wilderness Review in This Planning Effort.

Both existing and potential future designated wilderness is a resource and a value of the Refuges which must be addressed. The Service's laws and policies require that wilderness reviews be conducted as part of the CCP process. For example, Section 304(g)(1) and (2) of the Alaska Lands Act directs the Service to develop and periodically revise CCP's which must identify and describe the special values of the refuge, including wilderness values. Specifically the Alaska National Interest Lands Conservation Act (ANILCA) Section 304(g) states:

(1) The Secretary shall prepare, and from time to time, revise, a comprehensive conservation plan (hereinafter in this subsection referred to as the 'plan') for each refuge.

(2) Before developing a plan for each refuge, the Secretary shall identify and describe –

(A) the populations and habitats of the fish and wildlife resources of the refuge;

(B) the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge;”

Additionally, Section 1317(a) of ANILCA directs the Service to study all of the non-wilderness lands in Alaska refuges and recommend areas suitable for inclusion in the National Wilderness Preservation System. Section 1317(a) of ANILCA states:

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

While the Service completed a process to determine wilderness recommendations in the 1980’s, for all Alaska refuges including the Arctic, the Secretary of the Interior never forwarded the recommendations to the President. Thus we believe the Service still has not met the requirements of Section 1317 of ANILCA overall for Alaska’s refuges. Regardless, the intent of ANILCA with respect to wilderness reviews in refuges is clear that all Alaska refuges are deserving of wilderness reviews and recommendations. And while the Arctic Refuge was dealt with differently than other refuges in ANILCA in Section 1002 of the Act, we believe that at this time, the purposes of section 1002 have been fulfilled, and that it is the legal duty of the Service to complete a wilderness review and recommendation for the Arctic Refuge, like all other refuges in Alaska or elsewhere in the nation.

The purpose of section 1002 of ANILCA was to:

. . . provide for a comprehensive and continuing inventory and assessment of the fish and wildlife resources of the coastal plain of the Arctic National Wildlife Refuge; an analysis of the impacts of oil and gas exploration, development, and production, and to authorize exploratory activity within the coastal plain in a manner that avoids significant adverse effects on the fish and wildlife and other resources.

The resulting baseline studies cost millions of dollars and have been completed. To no one’s surprise, the studies provided volumes of evidence that the coastal plain is an extraordinary wilderness enclave and vital wildlife sanctuary.⁴

Additionally, the National Environmental Policy Act requires that an agency analyze a reasonable range of alternatives in every agency action, such as a planning process like the CCP Revision. Because all

⁴ In April 1987, Secretary of the Interior, Donald Hodel, disregarded what the studies showed and forwarded the Final Legislative EIS and Arctic National Wildlife Refuge Coastal Plain Resource Assessment to Congress, with a recommendation that Congress authorize full-scale oil and gas leasing for the entire 1.5 million acres of the coastal plain. This recommendation ignored the fact that the assessment itself confirmed the internationally significant wilderness and wildlife values of the coastal plain.

values and uses of the refuges must be considered in a broad planning effort such as a CCP revision, analysis of wilderness recommendations is included within the reasonable range of alternatives.

The Service's Refuge Planning Policy (65 Federal Register 33892, May 25, 2000), which "applies to all units of the National Wildlife Refuge System" (i.e., it applies to refuges in Alaska) (602 FW 1.2), also requires that a new wilderness review be conducted as one of the required elements of all CCPs. Specifically, the Service's planning policy directs the following:

- "Concurrent with the CCP process, we will conduct a wilderness review and incorporate a summary of the review into the CCP." (602 FW 3.4(C)(1)(c))
- "Identify and describe the following conditions and their trends for the planning unit and, as appropriate, for the planning area: ... (xx) Existing special management areas, or the potential for such designations (e.g. wilderness, research natural areas, and wild and scenic rivers." (602 FW 3.4(C)(1)(e))
- "Develop a range of alternatives, or different approaches to planning unit management, that we could reasonably undertake ... to help achieve the goals of the National Wilderness Preservation System." (602 FW 3.4(C)(4)(b))
- The "Checklist of Required Comprehensive Conservation Plan Elements" found in Exhibit 3-3 of the planning policy includes "Wilderness review." "Wilderness review" is defined in the policy as "[t]he process we use to determine if we should recommend Refuge System lands and waters to Congress for wilderness designation. The wilderness review process consists of three phases: inventory, study, and recommendation. The inventory is a broad look at the refuge to identify lands and waters that meet the minimum criteria for wilderness. The study evaluates all values (ecological, recreational, cultural), resources (e.g. wildlife, water, vegetation, minerals, soils), and uses (management and public) within the Wilderness Study Area. The findings of the study determine whether we will recommend the area for designation as wilderness."

There is also a key directive from "Fulfilling the Promise: The National Wildlife Refuge System" – the Service's vision document, released in March 1999, that guides administration of the Refuge System. That document directed in part that:

"The Service should evaluate lands added to the System since the Service completed its wilderness reviews and recommend suitable areas for designation. In addition, the Service should take a fresh look at areas previously studied for suitability as wilderness that were not recommended. For example, while the Service determined, in 1985, that 52.7 million acres of refuge lands in Alaska qualified for designation as wilderness, only 3.4 million acres were recommended for such designation. On many refuges, circumstances and management may have changed since the recommendations were made." (pg. 23)

In addition, the Service's recently finalized Wilderness Policy allows wilderness reviews for Alaska refuges, and other legislation, regulations and guiding policies as outlined above directing the agency specify that wilderness reviews will be completed during CCP planning processes.

Thus, the legal requirements for including wilderness reviews and recommendations within CCP revision processes are clearly laid out, and we support the Service's review of all suitable wilderness lands in this planning process.

Without completing a wilderness review and/or making recommendations for wilderness, we believe the Service would be out of compliance with ANILCA, the National Environmental Policy Act (NEPA) and the agency's own policies and guidelines. The U.S. District Court ruled in 2001 (*Sierra Club v. Lyons*, No. J00-0009-CV (D. Alaska March 30, 2001)) in a similar situation that the Forest Service needed to complete a wilderness review and analyze wilderness recommendations for the Tongass Land Management Plan in order to satisfy requirements of NEPA. We strongly support the USFWS's decision to fulfill its legal obligations by completing a wilderness review as part of this planning process.

III. Conservation Role of the Arctic Refuge in America's Arctic:

It is impossible during this moment in time not to consider other activities already underway or proposed in America's Arctic, and the vital conservation role the Arctic Refuge has and can and should continue to play into the future, as we contemplate off-shore oil and gas development scenarios, the industrial corridor in the central Arctic and other potential developments on BLM lands in the Western Arctic's National Petroleum Reserve - Alaska. Indeed the lands comprising the Arctic Refuge have played a vital conservation role during the past 50 years as well as throughout history, prior to the refuge's establishment, and should continue to play this critical conservation role for generations to come.

As we sit poised for new industrial development in the Arctic, the groups represented on this letter continue to strongly support the protection of ecologically valuable lands in America's Arctic in order to ensure the long-term viability of wildlife populations and habitat, people and communities of the Arctic overall as well as for climate change moderation in the Arctic and beyond. Indeed the Refuge founders called for it to be an area that is left alone to function as a scientific control in order to better understand and manage the effects of human activities elsewhere in the Arctic. Its value in this regard is more evident than ever as industrial development and other activities increase in the Arctic region. The Coastal Plain of the refuge, and the entire Arctic Refuge, is a treasured, vitally important and irreplaceable Arctic landscape – and one that should be protected to ensure future population viability in America's Arctic and the nation.

IV. Overall Support for the Draft Plan:

In general, there are many aspects of the draft plan that groups represented on this letter support. We outline many of these here and then discuss some of them in greater detail below. The aspects of the plan that we support overall include:

- The excellent and nicely articulated vision.

- The Wilderness Review underway. This is the first wilderness review of any Alaskan refuge that has had its CCP revised, and we congratulate the USFWS for finally following through with this aspect of refuge planning, which is legally required.
- Analyzing all non-wilderness designated areas of the refuge in the Wilderness Review.
- Determining suitable lands for wilderness throughout the refuge.
- Identifying the need for wilderness training for its staff and education for the public about the Refuge wilderness.
- The scope of the Alternatives.
- The proposed goals, especially 1 and 2, directing protection of ecological processes and wilderness character.
- The strong proposed Management Guidelines overall.
- Addressing climate change as part of this process and in future management of the refuge.
- The very strong Special Values of the Arctic Refuge section.
- The USFWS recognizing the agency's legal requirement to look beyond the boundaries of the refuge and the foresight the agency has demonstrated as it considers the conservation role of the refuge locally, regionally, at the State level and as part of the circumpolar Arctic. The agency is rightfully considering other management plans, cooperating with other agencies on planning processes elsewhere in the Arctic that are moving forward, and is following through with the Landscape Conservation Cooperative as well as considering management of neighboring lands in order to determine the refuge's conservation role.

While there is much that we support in this Draft Plan, we believe that the Final CCP must require that the Service address the long standing issues relating to visitor use and wilderness stewardship which have led to the impairment of wilderness character in several areas of the refuge. We offer recommendations regarding how this long neglected situation must be corrected in section: VII. Wilderness Stewardship and Visitor Use Issues, below.

V. Goals, Objectives and Management Guidelines in the Plan:

We support all of the proposed goals overall, especially 1 and 2, specifying protection of ecological processes and wilderness character.

A) Goal 1 - We support Refuge Goal 1 and appreciate that the CCP recognizes that the importance of managing without intent to alter natural order and evolution, regardless of the cause of change.

1) Objective 1.1 - We suggest that under objective 1.1., the second paragraph under *Rationale* be identified as the *Strategy* for implementation of this objective (page 2-2). We also suggest that this strategy identify more explicitly that in some instances, Refuge ecosystems will be allowed to adapt/evolve to a state which is different than historical conditions.

2) Strategy - Refuge managers must weigh all the factors identified by establishing purposes, laws, policy, and science when considering whether proposed activities support or detract from the refuge's biological integrity, diversity, and environmental health. We favor the

least intensive approaches wherever possible. We start by considering the historical structure and function of Refuge ecosystems that, based on sound professional judgment, were believed to exist prior to substantial human-related changes to the landscape. Refuge management actions will be focused on maintaining those conditions but will recognize that climate change or other factors external to the Refuge may ultimately make maintenance of historic conditions unattainable.

In some cases, adaptive management that restores or mimics natural ecosystem processes or functions to achieve Refuge purpose(s) will be considered, but active manipulation of habitats and populations will generally be avoided ***and that the Refuge will be allowed to adapt or evolve to a new natural state.***

In general, the retention, protection and restoration of the wilderness character must be the highest goal. Wilderness management is entirely about protecting the area's wilderness character. To maintain or restore wilderness character some manipulation may be required in rare instances. For example, it may be necessary to take action to provide interim protection for an imperiled species to aid its recovery, as was done for the California golden trout in the Golden Trout Wilderness. On the other hand, as your document says, we do not favor manipulation generally. Climate change may create a situation where some management actions would be needed to maintain species deemed part of the wilderness character, but those actions would need to be considered in the context of how they affect other components of the area's wilderness character. Protection of wilderness character must be the guiding principle overall.

- 3) **Objective 1.2** - We support the development of an I&M Plan. According to the draft CCP, this could take 5 years from the Final CCP approval to begin to be implemented. This seems like a long time, so we encourage the staff to consider how scientific review might be incorporated into the drafting stages rather than waiting for a full draft to review. We suggest moving/editing the following text from Objective 1.13 (Strategy) to Objective 1.2 (Strategy): This *plan will be* developed in partnership with others, including the Refuge System I&M Program, Landscape Conservation Cooperatives, National Park Service Vital Signs Monitoring Program, USGS Alaska Climate Science Center, *BLM Arctic Field Office/NPR-A* and ADFG.
- 4) **Objective 1.3** - It seems like the I&M plan might be a component of the Research Plan, encompassing the broader research objectives of the Refuge.
- 5) **Objective 1.4** - We strongly support scientific peer review of the I&M and Research plans. We feel it is especially important that the Refuge seek input from other entities engaged in research in Alaska's Arctic in order coordinate research efforts. This would serve to increase the scale of research, facilitate better data sharing, as well as potentially reduce costs. This would be particularly important for I&M protocols. Priority entities include BLM, NPS, the

Arctic LCC, the North Slope Borough, ADFG, industry, academia, science-based NGO's and other independent scientists. The North Slope Science Initiative (NSSI) Science Technical Advisory Panel (STAP) may be useful in the helping with the scientific peer-review process.

- 6) **Objective 1.5** - We believe that Climate Change and expanding industrial development adjacent to the Refuge will likely have significant impacts on ecological processes on the Refuge. We therefore recommend that important stressors, such as these, affecting Refuge species and/or ecosystems be identified as part of the I&M and Research planning efforts, and that detection of and identifying causes of change in Refuge ecological processes be fully integrated into these plans. This integration is clearer in objective 6.1 than presented here, and we suggest revision. Also, as written, this objective lacks a strategy. We suggest including a strategy that meets the goal while allowing time for specific strategies to address these stressors to come out of the I&M and Research plans.
 - 7) **Suggested Revision of Objective 1.5** - Climate Change and Other Stressors—concurrent with development of the I&M and Research Plans, the Refuge will identify the most important stressors affecting Refuge species and/or ecosystems. Research, inventorying and monitoring activities will be designed to identify changes associated with these stressors and guide management activities.
 - 8) **Suggested Strategy for Objective 1.5:** Strategy: Understanding the potential impacts of climate change and other stressors on Refuge ecological processes should be guided by a scientific understanding of ecosystem structure and function now and into the future. This can be done by integrating conceptual models of contemporary ecosystems (see Objective 1.2) with models or projections of climate change and other stressors, such as land use change (see figure below). Integrating these models will allow us to develop hypothesis of how the Refuge's ecosystem might change and these hypotheses can be tested through research (including gathering local knowledge), inventorying and monitoring. As understanding of the ecosystem is improved over time, management actions will be evaluated based on how they help the ecosystem adapt to climate change and other stressors.
- B) **Goal 2** - We support this goal, however, it should be modified in the Final Plan to acknowledge that where wilderness character has already been impaired, that actions will be taken to restore it and prevent impairment in the future (please see our further comments below under section: VII. Wilderness Stewardship and Visitor Use Issues).
- 1) **Objective 2.3** - Wilderness Stewardship Plan: We believe that due to the long standing issues regarding unregulated visitor use and impairment of wilderness character in several areas of the Refuge, the Final CCP must commit the Service to initiate an appropriate wilderness stewardship and/or visitor use planning process as soon as the CCP is finalized. Furthermore, we are concerned that language such as "*prolonged scoping and preplanning*

phases...” signals more delay on the part of the Service in addressing this urgent need. These concerns would normally seem unreasonable, however, due to the nearly 30 years of neglect of this issue on the part of the Service, there is reason for our concern. (see our further comments below under section: VII. Wilderness Stewardship and Visitor Use Issues).

- 2) **Objective 2.4:** Comprehensive Wilderness Management: We generally support this objective, however, we recommend that in the Final Plan it be modified to include restoration of wilderness characteristics where they have been degraded or impaired within designated Wilderness. The Draft CCP only addresses restoration on minimal management lands.
- 3) **Objective 2.5:** Administrative Facilities: The buildings at Peters Lake are out of conformance with the Wilderness. Their removal should be a required action in the Final CCP. Facilities located at Big Ram Lake, built before refuge designation, are also inconsistent with Refuge purposes. The Final CCP should require their removal as well.
- 4) **Objective 2.6:** Wilderness Character Monitoring: We generally support this in concept, however, we are concerned that wilderness qualities have already degraded in some areas of the designated Wilderness, and the Draft CCP does not commit to address this long standing issue in a timely enough manner (see our further comments under section: VII. Wilderness Stewardship and Visitor Use Issues).

- C) **Goal 5** – We support this goal overall and have suggestions regarding the proposed priority and schedule for wilderness stewardship and visitor use plans.

We fully support the goal to provide a place for wildlife-dependent and wilderness-associated recreational activities that emphasize adventure, independence, self-reliance, exploration, and solitude while protecting the biological and physical environments. This is in keeping with the type of “recreation” that Refuge founders had in mind when they worked for establishment of the original Arctic National Wildlife Range. It is one of the characteristics for which the Arctic Refuge is renowned and is very important to nearly all visitors who come to the Refuge. We concur with most underlying objectives for this goal, however have significant concerns about the priority and schedule that is proposed (Pages 6-3 to 6-6) for wilderness stewardship and visitor use plans. Please see our comments under Wilderness Stewardship. This important goal for the Arctic Refuge will not be achieved if Objective 5.3 Visitor Use Management Plan is not given the highest priority, and accomplished in a shortened timeframe.

D) Management Guideline 2.4.11 (Fish and Wildlife Habitat Management)

We fully support this guideline and urge that it be retained in the Final CCP. The approach to leave habitats unaltered and un-manipulated so that natural processes are allowed to continue, is entirely in keeping with the original purposes of the Arctic National Wildlife Range (1960), as

well as the ANILCA purposes and Wilderness Act purposes as well. In addition, this guideline is essential in preserving the Special Values of the Arctic Refuge and in meeting CCP plan requirements in Section 304(g)(3)(A)(ii) of ANILCA. It is also important to acknowledge that it was the intent of Refuge founders that the Arctic Refuge be preserved in its natural condition, as scientific benchmark of great value.

VI. Special Values of Arctic Refuge

We support the Special Values of Arctic Refuge as they appear in the Draft CCP (Pages 1-20 to 1-22). The Final CCP should retain this section as it exists and require that the Special Values of the Refuge are used to guide all management decisions for the Refuge.

VII. Wilderness Stewardship and Visitor Use Issues:

For nearly thirty years it has been widely known that unregulated visitor use has resulted in degraded wilderness qualities in several areas of the Refuge. Concern over such conditions has been expressed in public comments, letters of complaint, news articles and in discussions with Refuge staff over many years. The problem was recognized in the 1988 CCP which committed to address the issue in subsequent “step down” plans, however, no such plans were ever completed. Instead there have only been a few relatively minor administrative measures taken by the Service, primarily for the Kongakut River area. This issue was once again brought forward by the public during scoping for the current CCP revision process. While many problem issues are recognized in the Draft CCP (D.5 Visitor Use Issues), nearly all are relegated to “considered but eliminated from detailed study.” We are very concerned because the draft CCP primarily addresses only the Kongakut River in the Alternatives and does so with relatively minor measures which do not adequately address the issue. The final CCP must include the strongest possible commitment that the Service will act to restore wilderness character throughout the Refuge (not just the Kongakut River) to the level and quality that existed when Congress designated Wilderness in 1980. An appropriate wilderness stewardship plan which comprehensively and specifically addresses visitor use issues throughout the Refuge must have top priority. It should be prepared and implemented with adequate monitoring of its effectiveness, as soon as possible.

We are concerned about the Service’s commitment to addressing wilderness stewardship issues appropriately and in a timely manner. The priority and schedule provided on pages 6-3 to 6-6 indicates that the wilderness stewardship and visitor use management plans are assigned to second priority status, and would not be completed until 8 or 10 years from now. Given the long standing problems and degradation of wilderness character associated with neglect and unregulated public use in the Refuge during the past 30 years, and the fact that impairment continues to increase, it is irresponsible to delay addressing these issues for nearly another decade. These plans must be set as priority 1 and the schedule for completion needs to be compressed to no more than 2 years in the Final Plan. The Service

has not fulfilled the legal requirement to preserve wilderness character in designated Wilderness (Section 4(b) of the Wilderness Act). It must not delay for another decade its responsibility to do so.

In addition, we have the following specific comments regarding wilderness stewardship and visitor use:

- In several instances (Pages 4-215, 4-216 and others) the draft CCP acknowledges that wilderness qualities along the Kongakut River are degraded by high levels of visitor use. The Draft CCP fails to address the fact that the Kongakut is not the only area of the Refuge where values have been degraded. Public comments were submitted during scoping, which included, as an example, photographic documentation of an aircraft landing strip scar on the upper Sheenjok River (in designated Wilderness and within the Wild River corridor) which had occurred since 1980. There are many other such examples. Omissions of this type render the draft CCP inadequate for meeting the basic requirements to “*identify and describe significant problems*” (Section 304 (g)(2)(E) of ANILCA). The Final CCP must describe and address resource problems in a more thorough and comprehensive manner.
- Given the wide recognition of long standing wilderness quality degradation on the Kongakut River, and other areas in the Refuge, all alternatives should have included a commitment to address this problem in a subsequent step down plan.
- In discussion of effects of Alternative A, (Page 5-19) the text inappropriately claims that by allowing the quality of wilderness opportunities to degrade on the Kongakut (which is the current situation) that the “*freedom and unconfined recreation... may balance the degradation.*” The Draft CCP fails to indicate that the Service is legally bound to preserve wilderness character (Section 4(b) of the Wilderness Act) for such designated areas as the Kongakut.
- On Page 5-29 (near the bottom): The claim is made that in designated wilderness: “*More invasive research methods would be limited or minimized.*” The Final CCP should clearly affirm that invasive research methods are incompatible with Wilderness and will not be authorized.
- Page 5-30: Claims are made that visitor monitoring on the Kongakut, would support actions that could be taken to prevent thresholds from being exceeded. Given the fact that such measures have been employed for the past 12 years, and wilderness conditions continue to decline, it is clear that this approach is not working, because no effective actions have been taken. With no limits on the number of commercial guides and air taxis (Figure 4-12) and no over-all limits on the number of groups allowed on the River at the same time, the positive effects claimed on page 5-30 are not substantiated by the facts on the ground.
- The need for appropriate regulation of aircraft access in the Refuge is also a widely recognized issue due to a progression of long term impacts to soils, vegetation, visual esthetics and other wilderness characteristics. The final CCP must commit to addressing aircraft issues in a manner that incorporates appropriate (reasonable regulations) “*to protect natural and other values*”

(Section 1110 ANILCA). Because aircraft access is intimately associated with visitor use and wilderness stewardship, these concerns must be integrated into a subsequent wilderness stewardship plan.

- Another issue of significant public concern, which has been expressed on numerous occasions over the past 30 years, is the facilities located at Peters Lake. The description found on Pages 4-236 and 4-237, fails to inform readers that these facilities occur within designated Wilderness. The buildings at Peters Lake are out of conformance with the Wilderness. Their removal should be a required action in the Final CCP. Facilities located at Big Ram Lake, built before refuge designation, are also inconsistent with Refuge purposes. The Final CCP should require their removal as well.
- Page 5-31 (Refuge Operations): The text asserts that designation of Wilderness might limit the use of remote sensing to monitor visitor use due to restrictions on installations. The Final CCP should be modified to acknowledge that if visitor use is appropriately limited and regulated to fulfill the legal requirement to preserve wilderness character in designated Wilderness, intensive monitoring and other such management methods employed to facilitate excessive levels of visitor use would not be necessary. Page 5-32 (Cumulative Effects) also contains similar claims that designation of Wilderness might result in greater refuge operations due to increased visitor use, however, this would not be the case if appropriate regulations and limits were placed on visitor use for the purpose of preserving wilderness character.
- Page 5-64 (Kongakut River): Text in this section claims that if a Refuge wide step down plan is implemented that it might have the effect of reducing attention to Kongakut specific issues. This can be prevented if the Service properly addresses its responsibility to preserve wilderness character. Section 4(b) of the Wilderness Act requires such preservation throughout the wilderness area, no exception is made for areas attracting more visitors. (See our comments above which call for both a comprehensive and specific Wilderness Stewardship Plan).
- Page M-22: The term untrammeled is defined as referring to *“the freedom of a landscape from the human intent to permanently intervene, alter, control or manipulate natural conditions or processes.”* Use of the word *“permanently”* is not a requirement of the Wilderness Act and its use is not consistent with the intent of the Wilderness Act. To retain the untrammeled condition of designated Wilderness requires foregoing any effort, temporary or permanent to intervene or manipulate the natural processes. The Final CCP should delete the word *“permanently”* from the description of untrammeled because it incorrectly describes a key descriptor for Wilderness.
- Page M-25: The definition of *wildness* is limited and incomplete. Like *untrammeled*, *wildness* refers to the state of an ecological system characterized by freedom from the human interest to alter, restrain or control ecological processes and thus not subject to management interventions or manipulations. *Wildness* can persist in environments that have been altered or continue to

be influenced by external human factors as long as nature's autonomy is respected and ecosystems are allowed to adapt to changes and evolve as they will. We recommend that the Final CCP include the above described definition as it better explains the term which is so crucial to the Arctic Refuge, and a large portion of the public's interest in such a special place.

- Pages 2-59 and 2-60 (Helicopters): We support the prohibition of helicopter landings for recreational purposes in the Refuge and urge that it be retained in the Final CCP. More restrictions need to be specified in the Final CCP (Management Guidelines) for the use of helicopters by agencies and cooperators.
- Page 2-71 (Administrative Sites and Visitor Facilities): The Final CCP should clearly indicate in the Management Guidelines that the construction or the placement of any new administrative buildings is prohibited in the Refuge.
- Pages 2-63 and 2-64 (Recreation and Other Public Uses): We support the policy to encourage self-reliance, and preservation of opportunities for adventure, discovery, and the experience of solitude and isolation. The Final CCP should strengthen this part of the Management Guidelines by referencing the Special Values of the Arctic Refuge as a justification for this important approach to recreation and public uses in the Refuge.

VIII. State "Game" Management and Refuge Management

The Draft CCP appropriately recognizes the need to coordinate with the Alaska Department of Fish and Game, but it fails to acknowledge that some State goals for managing wildlife such as predator control and 'intensive management' would conflict with the Arctic Refuge's purposes for maintaining wildlife populations in their natural diversity. The Final CCP must clearly indicate that when in conflict with state goals, wilderness values and Refuge purposes must prevail. In such cases, the FWS must exercise its responsibility to preempt the state fish and game department and its Boards of Game and Fish. Also, the Final CCP must assure that the primary Refuge purpose to conserve natural diversity must not be compromised by decisions to authorize predator control or habitat manipulation to increase game species for hunting. To ensure clarity to and to dissuade any attempts by the State of Alaska to pursue IM programs on Refuge lands, the Final CCP should explicitly preclude artificial manipulation or intensive management of wildlife populations to enhance game populations for human harvest and the use of predator control for this purpose should be prohibited in any form.

We are further concerned because the Draft CCP (Page 2-44 Federal, State and Local Governments) proposes that FWS should consider clearly incompatible Alaska actions on a case-by-case basis: *"separate refuge compatibility determinations addressing specific proposals will be required for State management activities that propose predator management, fish and wildlife control...or any other unpermitted activity that could alter ecosystems" of refuges in Alaska.* The Service does not need to initiate a compatibility determination or NEPA process to evaluate a State-sponsored proposal to

conduct predator control in Arctic Refuge. Rather, the FWS should incorporate language into the CCP and the draft Compatibility Determinations clearly stating that any State regulation or plan involving the use of predator control that conflicts with federal law or policy and the purposes of the Arctic Refuge will be preempted in the Refuge.

We recommend that in Appendix B 1.1, the statement, *“the USFWS and ADFG share mutual concern for all fish and wildlife resources...”*, be deleted and replaced with a statement that where the agencies differ, refuge purposes have supremacy and the state should be preempted.

IX. Wild and Scenic River Review:

The Service is fulfilling a legal mandate to complete a review of candidate Wild and Scenic rivers within this planning process (Wild and Scenic Rivers Act of 1968 (P.L. 90-542)). The agency is required to complete an inventory of the rivers of the refuge, identify their special values and character and determine their eligibility for Wild and Scenic river designation, including those rivers not currently in designated Wilderness. In finalizing this planning process, we urge the Service to include recommendations for Wild and Scenic river designations for candidate rivers outside of designated or recommended Wilderness Areas only, so that they might be additive protection outside of a Wilderness Area. Additionally, the agency needs to indicate how it has met and intends to continue to meet the requirements of the Act in managing portions of the Ivishak, upper Sheenjek and Wind rivers within the boundaries of the Arctic Refuge that were designated as wild rivers in Section 602 of ANILCA, and address how the agency is maintaining the outstanding values associated with the Refuge’s three Wild Rivers.

The Wild and Scenic Rivers Act directed the following:

Sec. 1. (b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. . . . (16 U.S.C. 1271)

Sec. 1. (c) The purpose of this act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which the standards according to which additional components may be added to the system from time to time.

(16 U.S.C. 1272)

Sec. 2. (b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of

the values referred to in section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

- 1) Wild river areas – Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.
- 2) Scenic river areas – Those rivers or sections of rivers that are free of impoundments, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.
- 3) Recreational river areas – Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past (16. U.S.C. 1273)

It is the duty of the Service to address the Wild and Scenic Rivers Act and rivers within the refuge that are either currently designated and managed as Wild Rivers or may be eligible for such designations in the future.

X. Management Categories and the State USFWS Template:

Overall we commend the USFWS for producing the most effective and consistent version of the USFWS Alaska Template of any revised refuge thus far. For the most part activities are managed consistently in both the Wilderness and Minimal Management categories, which is encouraging. Regarding access concerns, we strongly support that recreational Off-Road-Vehicles (ORV's) and commercial helicopter air-taxi's are not allowed in Wilderness, Wild River or Minimal management categories. We do have concerns, however, regarding the relaxation of restrictions for some activities, such as motorized access, as in the case with snowmobiles, from the original CCP to the current draft (see Table 3-2, pgs. 3-48 and 3-49). We do not support the USFWS relaxing restrictions of this sort from the 1988 plan in the revised CCP.

Further, we take issue with the inclusion of the Intensive and Moderate Management categories in the DEIS, when on page 2-75, *Table 2 – 1. Activities, public uses, commercial activities or uses, and facilities by management category*, indicates that the Moderate and Intensive Management categories, which are shaded in gray, do not apply to the refuge. We see no reason for their inclusion in the DEIS, and we strongly urge the USFWS to remove them from the FEIS and Record of Decision (ROD) as they do not apply to the Arctic Refuge. Further, in the DEIS, Chapter 2.4.18.4, Commercial Harvest of Timber and

Firewood, inappropriately includes discussion of commercial harvest of timber in a “Moderate” management category, among other management categories. The Moderate management category should not be included here on page 2-68 in the DEIS, or the FEIS, as it does not apply to the refuge. If the Moderate management category is similarly included in other places in the DEIS, we encourage the USFWS to remove it.

XI. State RS2477 Right-of-Way Claims:

We agree with the Service that the identification of RS 2477 rights-of-way by the State of Alaska does not automatically establish their validity; rather, such claimed rights-of-way are not valid until they have been determined to be so through a legitimate process applying the proper standards – either through demonstration that these rights were perfected prior to the enactment of the Federal Land Policy and Management Act of 1976, or through an appropriate judicial process. Under no circumstances do we think that section line easements may be legitimate RS 2477 rights-of-way. We appreciate the Service’s disclosure of the States assertions regarding RS2477.

XII. The Original Arctic National Wildlife Range’s Purposes Apply to the Entire Arctic Refuge:

In the CCP, the FWS states that the purposes for which the original Arctic National Wildlife Range (“Arctic Range”) was established only apply to those lands in the original Arctic Range: “Under Section 305 of the Alaska National Interest Lands Conservation Act (“ANILCA”), the Range’s original wildlife, wilderness, and recreation purposes still apply to those lands in the former Range.”⁵ However, under FWS’s own longstanding policy and guidance regarding determining the purpose of each refuge in the National Wildlife Refuge System,⁶ the purposes of the original Arctic Range apply to *all* Arctic Refuge lands. The misinterpretation and misapplication of Refuge purposes pervades the CCP and the management decisions that FWS is considering and proposing. Thus, it is vital that FWS clearly state that the original Arctic Range purposes apply to the entire Arctic Refuge and that the CCP reflect this understanding.

The original Arctic Range was established in 1960 “to preserve unique wildlife, wilderness, and recreational values.”⁷ ANILCA expanded the original Arctic Range by adding 9.2 million acres, included additional refuge purposes and re-designated the unit as the Arctic National Wildlife Refuge. These new, additional purposes include:

⁵ DEIS at 1-18. See also U.S. FWS Refuge Purposes Arctic National Wildlife Refuge Map, available at: <http://arctic.fws.gov/pdf/ccppurposesp2011.pdf>.

⁶ See FWS Refuge Management Part 601 National Wildlife Refuge System, 601 FW 1 at 1.16 (July 26, 2006).

⁷ Public Land Order 2214 (Dec. 6, 1960).

- (v) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and graying;
- (vi) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;
- (vii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and
- (viii) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and quantity within the refuge.^[8]

ANILCA Section 305 states that:

All proclamations, Executive orders, public land orders and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act.^[9]

This is a clear statement from Congress that Public Land Order 2214 — which set forth the Arctic Range purposes — was to remain in effect post-ANILCA unless it is inconsistent with ANILCA. The legislative history of ANILCA indicates that Congress did not intend the purposes included in ANILCA for the expanded Arctic Refuge to be the exclusive refuge purposes: “Sections 301, 302 and 303 set forth the purposes for each designated or re-designated unit and additions to existing units. *Enumeration of purposes is not exclusive*, but is set forth as a guide for management.”¹⁰

The purposes set out in Public Land Order 2214 for the Arctic Range are not inconsistent with the purposes set out in ANILCA for the Arctic Refuge; the two authorities set forth overlapping and complimentary purposes recognizing the exceptional wilderness, wildlife, recreation, subsistence resources, international importance, and water quality of the Refuge.¹¹ All of the values recognized in both sets of purposes support the other recognized values; for example, recognizing and managing to protect the wilderness values of the Arctic Refuge allows for the achievement and furtherance of protecting the wildlife values.

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

⁹ P.L. 96-487 (Dec. 2, 1980) (emphasis added).

¹⁰ House Report No. 96-97(I) at 174 (April 18, 1979) (emphasis added).

¹¹ The fact that the two sets of purposes are complimentary and not inconsistent is evidenced by FWS’s determination that the pre-ANILCA and ANILCA purposes apply concurrently to those lands within the original Arctic Range.

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

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

When we acquire an addition to a refuge under an authority different from the authority used to establish the original refuge, the addition also takes on the purpose(s) of the original refuge unless Congress determines otherwise, but the original refuge does not take on the purpose(s) of the addition unless Congress determines otherwise.^[12]

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

601 FW 1 at 1.16. In the present case, the Arctic Refuge additions were established under a different authority (ANILCA) than the authority used to establish the original Arctic Range (Public Land Order 2214). Thus, applying FWS's policy for determining the purposes of a refuge,¹³ for FWS's current determination that the Arctic Range purposes only apply to those lands within the original Arctic Range to hold true, there would need to be some indication from Congress that the original Arctic Range purposes should not apply to the entire Arctic Refuge.

Nothing in ANILCA indicates that Congress did not intend the original Arctic Range purposes to apply to the entire Arctic Refuge. To the contrary, ANILCA Section 305 states that:

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

P.L. 96-487 (Dec. 2, 1980) (emphasis added). This is a clear statement from Congress that Public Land Order 2214 — which set forth the Arctic Range purposes — was to remain in effect post-ANILCA unless

¹² 601 FW 1 at 1.16.

¹³ We note that FWS appears to have contrary guidance regarding the purposes of refuges established by ANILCA. See FWS Refuge Management Part 603 National Wildlife Refuge System, 603 FW 2 at 2.8(B) (Nov. 17, 2000) (stating that “Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA”). However, because this guidance is found in the FWS manual addressing compatibility of uses of refuges and 601 FW 1 directly address identifying or determining the purposes of refuges, 601 FW 1 is the controlling guidance on this issue.

it is inconsistent with ANILCA. The legislative history of ANILCA indicates that Congress did not intend the purposes included in ANILCA for the expanded Arctic Refuge to be the exclusive refuge purposes: “Sections 301, 302 and 303 set forth the purposes for each designated or redesignated unit and additions to existing units. *Enumeration of purposes is not exclusive*, but is set forth as a guide for management.” House Report No. 96-97(I) at 174 (April 18, 1979) (emphasis added).

The purposes set out in Public Land Order 2214 for the Arctic Range are not inconsistent with the purposes set out in ANILCA for the Arctic Refuge; the two authorities set forth overlapping and complimentary purposes recognizing the exceptional wilderness, wildlife, recreation, subsistence resources, international importance, and water quality of the Refuge.¹⁴ All of the values recognized in both sets of purposes support the other recognized values; for example, recognizing and managing to protect the wilderness values of the Arctic Refuge allows for the achievement and furtherance of protecting the wildlife values.

Thus, ANILCA itself and its legislative history indicate that Congress intended that Public Land Order remain in effect for the newly expanded and redesignated Arctic Refuge and that the purposes included in ANILCA were to be inclusive, rather than exclusive, of existing Arctic Refuge purposes. Accordingly, because these purposes are complimentary and not inconsistent, under FWS’s policy, the purposes of the original Arctic Range apply to the entire Arctic Refuge.

Thus, in applying USFWS’s policy to determine the purposes of a refuge, for USFWS’s current determination that the Arctic Range purposes only apply to those lands within the original Arctic Range to hold true, there would need to be some indication from Congress that the original Arctic Range purposes should not apply to the entire Arctic Refuge. Without such an indication from Congress, the original Arctic Range purposes should apply to the entire Arctic Refuge.¹⁵

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

¹⁴ The fact that the two sets of purposes are complimentary and not inconsistent is evidenced by FWS’s determination that the pre-ANILCA and ANILCA purposes apply concurrently to those lands within the original Arctic Range.

¹⁵ In its general guidance regarding allowable uses of refuges, FWS appears to have contrary guidance regarding the purposes of refuges established by ANILCA. See FWS Refuge Management Part 603 National Wildlife Refuge System, 603 FW 2 at 2.8(B) (Nov. 17, 2000) (stating that “Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. *However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA*”) (emphasis added). Because this guidance is found in the FWS manual addressing compatibility of uses of refuges and 601 FW 1 directly addresses identifying or determining the purposes of refuges, 601 FW 1 is the controlling guidance on this issue.

XIII. FWS Properly Did Not Consider An “Oil and Gas Alternative”

FWS correctly did not consider an oil and gas alternative, or scenarios which evaluate impacts of oil and gas exploration, development or production from the refuge.¹⁶ NEPA “places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action... [I]t also ensures that the agency will inform the public that it has indeed considered environmental concerns in the decision-making process.” *Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, 524 F.3d 938, 947 (9th Cir. 2008) (citing *Baltimore Gas & Elec. Co. v. Nat’l Res. Def. Coun., Inc.*, 462 U.S. 87 (1983)). NEPA requires that an EIS include “alternatives to the proposed action.”¹⁷ To help define the alternatives, CEQ regulations require that the agency “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”¹⁸ Thus, under NEPA, an agency only needs to consider alternatives that meet the purpose and need for the proposed action.¹⁹

The purpose of FWS’s proposed action “is to develop a Revised Plan for Arctic Refuge to provide management direction for the next 15 years.”²⁰ The action is needed to:

- Update management direction related to national and regional policies and guidelines used to implement Federal laws governing Refuge management[;]

- Describe and protect the resources and special values of Arctic Refuge[;]
- Incorporate new scientific information on resources of the Refuge and surrounding areas[;]

- Evaluate current Refuge management direction based on changing public use of the Refuge and its resources[;]

- Ensure the purposes of the Refuge and the mission of the Refuge System are being fulfilled[;]
- Ensure that opportunities are available for interested parties to participate in the development of management direction[;]
- Provide a systematic process for making and documenting resource management decisions[;]
- Establish broad management direction for Refuge programs and activities[;]
- Provide continuity in Refuge management[;]

¹⁶ See DEIS at 3-6 (stating that “An oil and gas alternative would not satisfy NEPA’s requirement that alternatives meet the purpose and need for the Revised Plan, and the Service has no administrative authority over oil and gas development”).

¹⁷ NEPA § 102, 42 U.S.C. § 4332(2)(C)(iii).

¹⁸ 40 C.F.R. § 1502.13.

¹⁹ See *‘Ilio‘ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1097 (9th Cir. 2006) (stating that “The scope of reasonable alternatives that an agency must consider is shaped by the purpose and need statement articulated by that agency. The [agency] must consider all reasonable alternatives within the purpose and need it has defined”). See also *City of Carmel-by-the-Sea v. U.S. Dep’t of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997).

²⁰ DEIS at 1-1.

- Establish a long-term vision for the Refuge[;]
- Establish management goals and objectives[;]
- Define compatible uses[;]
- Provide additional guidance for budget requests[; and]
- Provide additional guidance for planning work and evaluating accomplishments[.][²¹]

Considering an oil and gas leasing, exploration, development, or production alternative would not achieve any of the management goals or objectives identified by FWS as the need for the agency action. Oil and gas activities are not currently allowed in the Arctic Refuge; ANILCA section 1003 states that the "production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the [Refuge] shall be undertaken until authorized by an act of Congress."²² Further, oil and gas activities are contrary to the purposes of the Refuge, and are inconsistent with the Refuge's purposes — neither the original purposes establishing the Arctic National Wildlife Range, nor the expanded purposes described in ANILCA.²³ Additionally, the National Wildlife Refuge System Administration Act of 1966, as amended, states that each refuge shall be managed to fulfill both the purposes for which the original refuge was established and the mission of the Refuge System.²⁴ The revision of the Arctic Refuge CCP must follow these legal guidelines and set forth management regimes that are consistent with the layered Refuge purposes.

²¹ DEIS at 1-1-1-2. *See also* DEIS Appendix D at D-1 (stating that "[t]he purpose and need for the Revised Plan is to ensure activities, action, and management fulfill the legal purposes for which the Refuge was established, fulfill the statutory mission of the National Wildlife Refuge System [] and provide direction on how the U.S. Fish and Wildlife Service [] will meet these purposes").

²² 16 U.S.C. § 3143.

²³ *See* P.L. 96-487, § 303(2). The original 'Arctic National Wildlife Range' was created in 1960 by Public Land Order 2214 "For the purpose of preserving unique wildlife, wilderness and recreational values." Public Land Order 2214 (Dec. 6, 1960). The purposes added in ANILCA are:

- (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char [note that those residing in Alaska's North Slope rivers and lagoons are now classified as Dolly Varden] and grayling;
- (ii) to fulfill the international fish and wildlife treaty obligations of the United States;
- (iii) to provide the opportunity for continued subsistence uses by local residents; and
- (iv) to ensure water quality and necessary water quantity within the refuge.

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

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

Thus, considering an alternative allowing for oil and gas development in the Arctic Refuge would not achieve the purpose and need for the FWS's revision of the CCP and FWS properly did not consider such an alternative.²⁵

XIV. Other Areas of the DEIS that Need to Be Strengthened:

A) The FWS Does Not Adequately Consider the Cumulative Impacts of the Action in the ANILCA Section 810 Evaluation

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

The cumulative impacts analysis in the CCP DEIS is insufficient to satisfy NEPA’s requirements to consider and analyze the cumulative impacts of a project. The DEIS purports to consider the cumulative effects, stating “At the end of each alternative, we disclose the anticipated cumulative effects of the alternative on the biophysical and human environments and to reasonably foreseeable future actions. . . . The anticipated positive or negative effects of the reasonably foreseeable activities are discussed first, followed by a discussion of anticipated cumulative effects of each alternative.” DEIS at 5-2.²⁶ However, the discussion of cumulative impacts associated with each alternative with respect to the effects of the alternative and the effects of reasonably foreseeable future actions is lacking. At the end of the discussion of the environmental consequences of each alternative, the DEIS contains a few sentences

²⁵ *See 'Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d at 1097.

²⁶ As an initial matter, this formulation of cumulative effects misstates the role of considering reasonable foreseeable future actions. As described by the FWS in the DEIS, FWS perceives its duty to require it to look at the impacts from the CCP alternatives on reasonably foreseeable future actions but not to require the FWS to look at the impacts of reasonably foreseeable future actions on the CCP alternatives. FWS must also consider the impacts of reasonably foreseeable future actions on the CCP alternatives to satisfy NEPA. *See Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

discussing the impacts of the alternative on the Arctic Refuge and its management, followed by the very cursory statement that “These effects would be cumulative to the effects of climate change, development activities, and management decisions made by other throughout the region.” DEIS at 5-20, 5-32, 5-43, 5-55, 5-67, and 5-75. There is no *actual discussion or analysis* of the impacts of climate change, development activities or management decision in the region on the Arctic Refuge. As the Ninth Circuit explained,

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

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

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

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

We also note that a cumulative impact analysis for the Porcupine Caribou Herd is an international obligation. The International Porcupine Caribou Herd Agreement states that “When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyse potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou.”

B) The FWS Failed to Consider and Analyze the Cumulative Impacts to the Refuge and Refuge Management from Multiple Reasonably Foreseeable Future Actions

NEPA requires that agencies disclose the environmental impacts of an action within the Environmental Impact Statement (EIS). 42 U.S.C. § 4332(2)(C)(i), (ii). *See also* 40 C.F.R. § 1508.25(c). The environmental impacts of an action include the direct, indirect and cumulative impacts. 40 C.F.R. § 1502.16. Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of

the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. To comply with NEPA, the EIS must contain quantified data and discussion of how the proposed project and reasonably foreseeable future projects will affect the environment. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028 (9th Cir. 2007) (citations omitted); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994-95 (9th Cir. 2004).

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

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

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

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

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

of the leasing and the associated activities will impact the management, objectives and goals of the Arctic Refuge.

- **State of Alaska Areawide Oil and Gas Lease Sales**—The State of Alaska, Department of Natural Resources recently issued a Notice of Sale for a considerable lease sale for the vast majority of state lands in the Beaufort Sea Areawide, the North Slope Areawide and the North Slope Foothill Areawide areas on December 7, 2011. See <http://dog.dnr.alaska.gov/Leasing/LeaseSales.htm>. The lease sales could result in exploration and development activities in areas adjacent to the Arctic Refuge, increasing air and water pollution, industrial facilities, demand for construction resources (i.e., gravel) and water, among other things. The impacts of the lease sales and the associated activities will impact the management, objectives and goals of the Arctic Refuge.
- **State of Alaska Board of Game Proposal 130** —This proposal authorizes a brown bear predator control program in Game Management Unit (“GMU”) 26B, which encompasses the State land on the North Slope as well as a portion of the Arctic Refuge. See Game Management Units/Special Management Units, Unit 26 Arctic Slope, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. The stated purpose of the program is to reduce brown bear predation on muskoxen. See Alaska Board of Game, 2011/2012 Proposal Book Arctic, Western, and Interior Regions, and Statewide Regulations, Cycle B Schedule at 174-76, available at: <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2011-2012/alaskaboardofgame2012.pdf>. As noted above, intensive management is inconsistent with Arctic Refuge purposes and values, and the FWS cannot allow Alaska to conduct such activities on the Refuge. That said, a brown bear predator control program on non-Refuge lands within GUM 26B will impact the population of brown bears within the Refuge and affect FWS’s management of the Refuge to protect the wildlife.

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

C) The FWS Failed to Consider the Cumulative Impacts of the Action in the ANILCA Section 810 Evaluation

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

[t]he purpose of ANILCA § 810 is to protect Alaskan subsistence resources from unnecessary destruction. Section 810 does not prohibit all federal land use

actions which would adversely affect subsistence resources but sets forth a procedure through which such effects must be considered and provides that actions which would significantly restrict subsistence uses can only be undertaken if they are necessary and if the adverse effects are minimized.

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

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

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

ANILCA § 810(a), 16 U.S.C. § 3120(a). This initial finding is referred to as the “tier-1” determination, *Hanlon v. Barton*, 470 F. Supp. 1446, 1448 (D. Alaska 1988), and requires the agency to consider the cumulative impacts in making the determination. *Sierra Club v. Penfold*, 664 F. Supp. 1299, 1310 (D. Alaska 1987), *aff'd* by *Sierra Club v. Penfold*, 857 F.2d 1307 (9th Cir. 1988).

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

In the CCP DEIS Section 810 Evaluation, FWS states that “[n]one of the management alternatives evaluated in this Plan propose actions that would reduce subsistence uses because of direct effects on wildlife or habitat resources or that would increase competition for subsistence resources.” DEIS at 5-87. While this may be true, the Section 810 Evaluation fails to consider whether the cumulative impacts of the proposed action may have significant restrictions on subsistence uses. To comply with ANILCA, the

FWS must consider not only the direct effects, but also the cumulative impacts of the proposed action in making its determination that the proposed action would not have a significant restriction on subsistence uses. *See Sierra Club v. Penfold*, 664 F. Supp at 1310.

XV. Conclusion:

The USFWS has an historic opportunity when it finalizes this plan, to recommend wilderness for the whole refuge and especially its Coastal Plain. We strongly recommend that the agency follow through with this so as to define for the American people strong leadership and management direction for one of America's remaining truly vital conservation resources which will benefit all Alaskans as well as generations of Americans to come. We encourage you to recommend Wilderness designation for all suitable lands in the Refuge (Alternative E), and to finally implement appropriate wilderness stewardship of this remarkable National treasure, the Arctic National Wildlife Refuge.

Thank you very much for this opportunity to comment on the Arctic Refuge plan.

Sincerely,



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