

Issue Brief for Congress

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Arctic National Wildlife Refuge (ANWR): Controversies for the 108th Congress

Updated March 12, 2003

M. Lynne Corn and Bernard A. Gelb
Resources, Science, and Industry Division
Pamela Baldwin
American Law Division

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Arctic National Wildlife Refuge (ANWR): Controversies for the 108th Congress

SUMMARY

One major element of the energy debate in the 108th Congress is whether to approve energy development in the Arctic National Wildlife Refuge (ANWR) in northeastern Alaska, and if so, under what conditions, or whether to continue to prohibit development to protect the area's biological resources. The Refuge is an area rich in fauna, flora, and commercial oil potential. Sharp increases in prices of gasoline and natural gas from late 2000 to early 2001, followed by terrorist attacks, and further increases in 2003, have renewed the ANWR debate for the first time in 5 years; however, its development has been debated for over 40 years. Few U.S. locations onshore stir as much industry interest as the northern area of ANWR. Current law forbids energy leasing in the Refuge.

In the 108th Congress, one bill, H.R. 39, to open the refuge to development, has been introduced in the 108th Congress. Two bills (H.R. 770 and S. 543) have been introduced to designate the area as wilderness.

Six bills were introduced in the 107th Congress that would have directly affected the future of the Refuge. Four bills would have opened the refuge to development. Two would have designated the coast of ANWR as wilderness. Only one bill (H.R. 4, a compre-

hensive energy bill) passed both chambers. The House version contained provisions to open the refuge to development, while the Senate version did not. The bill did not emerge from conference.

Development advocates argue that ANWR oil would reduce U.S. energy markets' exposure to crises in the Middle East; boost North Slope oil production; extend the economic life of the TransAlaska Pipeline System; and create many jobs in Alaska and elsewhere. They maintain that ANWR oil could be developed with minimal environmental harm, and that the footprint of development could be limited to 2,000 acres. Opponents argue that intrusion on this ecosystem cannot be justified on any terms; that oil found (if any) would provide little energy security and could be replaced by cost-effective alternatives; and that job claims are overstated. They also maintain that proposals to limit any footprint size have not been worded so as to apply to Native lands, which could then be developed if the Arctic Refuge were opened.

If Congress does not act, the status quo, which prohibits development unless Congress acts, will continue.

MOST RECENT DEVELOPMENTS

President Bush continues to support ANWR development as part of a national energy strategy. However, some Members of Congress have indicated their continuing opposition to such proposals. In the Omnibus Appropriations Act (P.L. 108-7) for FY2003, Congress arguably left the door open to pre-leasing studies in the Refuge. One bill, H.R. 39, has been introduced to authorize energy development in the Refuge. Two bills (H.R. 770 and S. 543) have been introduced to designate the area as wilderness. A March 2003 report by the National Academy of Sciences analyzed harmful and beneficial effects of existing development on the North Slope, and considered possible effects of expansion of development.

BACKGROUND AND ANALYSIS

The Arctic National Wildlife Refuge (ANWR) consists of 19 million acres in northeast Alaska. It is administered by the Fish and Wildlife Service (FWS) in the Department of the Interior (DOI). Its 1.5 million acre coastal plain is viewed as one of the most promising U.S. onshore oil and gas prospects. According to the U.S. Geological Survey (USGS), there is even a small chance that taken together, the fields on this federal land could hold as much economically recoverable oil as the giant field at Prudhoe Bay, found in 1967 on the state-owned portion of the coastal plain west of ANWR, now estimated to have held 11-13 billion barrels.

At the same time, the Refuge, and especially the coastal plain, is home to a wide variety of plants and animals. The presence of caribou, polar bears, grizzly bears, wolves, migratory birds, and many other species in a nearly undisturbed state has led some to call the area "America's Serengeti." The Refuge and two neighboring parks in Canada have been proposed for an international park, and several species found in the area (including polar bears, caribou, migratory birds, and whales) are protected by international treaties or agreements. The analysis below covers, first, the economic and geological factors that have triggered new interest in development, followed by the philosophical, biological, and environmental quality factors that have triggered opposition to it.

The conflict between high oil potential and nearly pristine nature in the Refuge creates a dilemma: should Congress open the area for oil and gas development or should the area's ecosystem be given permanent protection from development? What factors should determine whether to open the area? If the area is opened, to what extent can damages be avoided, minimized, or mitigated? To what extent should Congress legislate special management of the area if it is developed, and to what extent should federal agencies be allowed to manage the area under existing law?

(Basic information on the Refuge can be found in CRS Report RL31278 and at the FWS web site, [<http://www.r7.fws.gov/nwr/arctic>], which includes links to a number of other organizations interested in the area. Maps of the state's portion of the coastal plain showing existing oil development areas can be found at [<http://www.dog.dnr.state.ak.us/oil/products/maps/maps.htm>]. An extensive presentation of

development arguments can be found at [<http://www.anwr.org>], sponsored by a consortium of groups. Opponents' arguments can be found variously at [<http://www.alaskawild.org>], [<http://www.protectthearctic.com/>], or [<http://www.tws.org/arctic/>].)

Legislative History of the Refuge

The energy and biological resources of northern Alaska have been controversial for decades, from legislation in the 1970s, to a 1989 oil spill, to more recent efforts to use ANWR resources to address energy needs or to help balance the federal budget. In November 1957, an application for the withdrawal of lands in northeastern Alaska to create an “Arctic National Wildlife *Range*” was filed. The first group actually to propose to Congress that the area become a national wildlife range, in recognition of the many game species found in the area, was the Tanana Valley (Alaska) Sportsmen’s Association in 1959. On December 6, 1960, after statehood, the Secretary of the Interior issued Public Land Order 2214 reserving the area as the “Arctic National Wildlife Range.”

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA, P.L. 92-203) to resolve all Native aboriginal land claims against the United States. ANCSA provided for monetary payments and also created Village Corporations that received the surface estate to approximately 22 million acres of lands in Alaska. Village selection rights included the right to choose the surface estate in a certain amount of lands within the National Wildlife Refuge System. Under §22(g) of ANCSA, the chosen lands were to remain subject to the laws and regulations governing use and development of the particular Refuge. Kaktovik Inupiat Corporation (KIC, the local corporation) received rights to three townships along the coast of ANWR. ANCSA also created Regional Corporations which could select subsurface rights to some lands and full title to others. Subsurface rights in National Wildlife Refuges were not available, but in-lieu selections to substitute for such lands were provided.

In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA, P.L. 96-487, 94 Stat. 2371), which included several sections about ANWR. The Arctic Range was renamed the Arctic National Wildlife Refuge, and was expanded, mostly southward and westward, to include an additional 9.2 million acres. Section 702(3) of ANILCA designated much of the original Refuge as a wilderness area, but not the coastal plain.¹ Instead, Congress postponed decisions on the development or further protection of the coastal plain. Section 1002 of ANILCA directed a study of ANWR’s “coastal plain” (which therefore is often referred to as the “1002 area”) and its resources to be completed within 5 years and 9 months of enactment. The resulting 1987 report was called the *1002 report* or the Final Legislative Environmental Impact Statement (FLEIS). ANILCA defined the “coastal plain” as the lands on a specified map – language that was interpreted as excluding most Native lands, even though these lands are *geographically* part of the coastal plain.

Section 1003 of ANILCA prohibited oil and gas development in the entire Refuge, or “leasing or other development leading to production of oil and gas from the range” unless authorized by an Act of Congress. (For more history of legislation on ANWR and related developments, see CRS Report RL31278; for legal issues, see CRS Report RL31115.)

¹ Newer portions of the Refuge were not included in the wilderness system.

In more recent years, the 104th Congress attempted to authorize the opening of ANWR in the FY1996 reconciliation bill (H.R. 2491, §§5312-5344), but the measure was vetoed. President Clinton cited the Arctic Refuge sections as one of his reasons for vetoing the measure. (For key provisions of that legislation, see archived CRS Issue Brief IB95071, available from the authors.)

While bills were introduced, the ANWR issue was not debated in the 105th Congress. In the 106th Congress, bills to designate the 1002 area of the Refuge as wilderness and others to open the Refuge to energy development were again introduced. Assumptions about ANWR revenues were included in the FY2001 budget resolution (S.Con.Res. 101) as reported by the Senate Budget Committee on March 31, 2000. An amendment to remove the language was tabled. However, conferees rejected the language. The conference report on H.Con.Res. 290 did not contain this assumption. The report was passed by both Houses on April 13.

Only three recorded votes relating directly to ANWR development occurred from the 101st to the 106th Congress. All were in the Senate:

- In the 104th Congress, on May 24 1995, there was a motion to table an amendment that would have removed ANWR development titles from the Senate version of H.R. 2491, the reconciliation bill. The motion passed (Roll Call No.190), leaving ANWR development in the bill.
- In the same Congress, on October 27, 1995, there was another motion to table a similar amendment to H.R. 2491. This motion also passed (Roll Call No.525).
- In the 106th Congress, the vote to table an amendment to strip ANWR revenue assumptions from the budget resolution (S.Con.Res. 101; see above) was passed (April 6, 2000, Roll Call No.58), leaving those assumptions in the bill.

(For a more extensive history of congressional actions concerning ANWR, see CRS Report RL31725, *Arctic National Wildlife Refuge: Legislative Issues Through the 107th Congress.*)

Legislation in the 107th Congress. H.R. 4, containing ANWR development provisions, passed the House on August 2, 2001 (yeas 240, nays 189; Roll Call No. 320). Title V, Division F, was the text of H.R. 2436 (H.Rept. 107-160, Part I), which would have opened ANWR to exploration and development. The previous day, an amendment by Representative Sununu to limit specified surface development to 2,000 acres was passed (yeas 228, nays 201; Roll Call No. 316). Representatives Markey and Johnson (CT) offered an amendment to strike the title; this was defeated (yeas 206, nays 223; Roll Call No. 317). The House appointed conferees on June 12, 2002.

There were a few recorded votes in the Senate on Refuge development in the first session. Senator Lott (on behalf of himself and Senators Murkowski and Brownback) offered an amendment (S.Amdt. 2171) to an amendment on pension reform (S.Amdt. 2170) to H.R. 10, a bill also on pension reform. Their amendment included, among other energy provisions, the ANWR development title in H.R. 4 as passed by the House, along with provisions prohibiting cloning of human tissue. A cloture motion was filed on the Lott amendment, and the Senate failed to invoke cloture (1-94, Roll Call No. 344) on December 3, 2001. Instead, the Senate voted the same day in favor of invoking cloture on the

underlying amendment (S.Amdt. 2170), by a vote of 81-15 (Roll Call No. 345). Because cloture was invoked on the underlying amendment, Senate rules required that subsequent and pending amendments to it be germane. The Senate's presiding officer subsequently sustained a point of order against the Lott amendment, which was still pending, on the grounds that it was not germane to the underlying amendment, and thus the amendment fell.

In the second session, the vehicle for Senate floor consideration was S. 517, which, as reported, concerned only energy technology development. On February 15, 2002, Senator Daschle offered an amendment (S.Amdt. 2917), an omnibus energy bill. It did not contain provisions to develop the Refuge, but two amendments (S.Amdt. 3132 and S.Amdt. 3133) to do so were offered on April 16. The language of the two amendments was, in most sections, identical to that of the House-passed version of H.R. 4 (Division F, Title V). Key differences included a requirement for a presidential determination before development could proceed, an exception for exports to Israel in the oil export prohibition, and a number of changes in allocation of any development revenues, as well as allowing some of those revenues to be spent without further appropriation. On April 18, the Senate essentially voted to prevent drilling for oil and gas in the Refuge. The defeat came on a vote of 46 yeas to 54 nays on a cloture motion to block a threatened filibuster on Senator Murkowski's amendment to S. 517, which would have ended debate and moved the chamber to a direct vote on the ANWR issue. The Senate appointed conferees on May 1, 2002.

Conferees met repeatedly in an attempt to reconcile the many differences between the two bills, but did not succeed. (See CRS Report RL31725 for further actions during the 107th Congress and for details of these bills.)

Finally, H.R. 770 and S. 411 would have designated the 1002 area as wilderness, but no action was taken on either bill. The issues most commonly arising in the current legislative debate are described below under *Major Legislative Issues*.

Legislation in the 108th Congress. In the 107th Congress, for the FY2003 Interior Appropriations bill, the House Committee on Appropriations agreed to report language on the BLM energy and minerals program in general, and stated that no funds were included in the FY2003 funding bill "for activity related to potential energy development within the Arctic National Wildlife Refuge [ANWR]" (H.Rept. 107-564, H.R. 5093). But §1003 of ANILCA contained the prohibition on leasing "or other development leading to production of oil and gas" unless authorized by Congress. Thus, the Committee's report language generally was viewed as barring the use of funds for preleasing studies and other preliminary work related to oil and gas drilling in ANWR. The report of the Senate Committee on Appropriations did not contain this prohibition.

Conferees on the FY2003 Omnibus appropriations bill (P.L. 108-7) included language in the joint explanatory statement stating that they "do not concur with the House proposal concerning funding for the energy and minerals program." This change from the House report language has been interpreted by some as potentially making available funds for preliminary work related to development in ANWR. However, as noted, the prohibition contained in ANILCA remains in effect, so the ability to use money in the bill for particular pre-leasing activities may not be clear.

One bill (H.R. 39) has been introduced to open the 1002 area to development and two bills (H.R.770 and S. 543) have been introduced to designate the 1002 area as wilderness. In addition, widespread press reports have suggested that Members may seek to include ANWR development provisions in a budget reconciliation bill, perhaps during the summer of 2003, in order to avoid a possible filibuster in the Senate. (Reconciliation bills are subject to special rules in the Senate which do not permit filibusters. See CRS Report 98-814, *Budget Reconciliation Legislation: Development and Consideration* and CRS Report 97-695, *The Senate's Byrd Rule Against Extraneous Matter in Reconciliation Measures: A Fact Sheet*.)

The Energy Resource

Parts of Alaska's North Slope (ANS) coastal plain have proved abundant in oil and gas reserves, and its geology holds promise for ANWR. The oil-bearing strata extend eastward from structures in the National Petroleum Reserve-Alaska past the Prudhoe Bay field, and may continue into and through ANWR's 1002 area.

Oil. Estimates of ANWR oil potential, both old and new, depend upon limited data and numerous assumptions about geology and economics. The most recent government study of oil and natural gas prospects in ANWR, completed in 1998 by the USGS,² found that there is an excellent chance (95%) that at least 11.6 billion barrels of oil are present on federal lands in the 1002 area. There also is a small chance (5%) that 31.5 billion barrels or more are present. USGS estimates there is an excellent chance (95%) that 4.3 billion barrels or more are technically recoverable (costs not considered); and there is a small chance (5%) that 11.8 billion barrels or more are technically recoverable. But the amount that would be *economically* recoverable depends upon the price of oil. The USGS estimated that, at \$24/barrel (in 1996 dollars), there is a 95% chance that 2.0 billion barrels or more could be economically recovered and a 5% chance of 9.4 billion barrels or more. (Spot prices for crude oil averaged about \$35/barrel (bbl) in February 2003, or about \$32 in 1996 dollars. However, crude oil prices have been rising in reaction to reduced production by Venezuela and in nervous anticipation of a war against Iraq.) Roughly one-third more oil may be under adjacent state waters and Native lands.³ However, these areas would be difficult to develop without access through federal land.

Oil prices, geologic characteristics such as permeability and porosity, cash flow, and any transportation constraints would be among the most important factors affecting the development rates and production levels that would be associated with given volumes of oil resources. The U.S. Energy Information Administration estimated that at a relatively fast development rate, production would peak 15-20 years after the start of development, with maximum daily production rates of roughly 0.00015 (0.015%) of the resource. Production associated with the slower rate would peak about 25 years after the start of development at a daily rate equal to about 0.000105 (0.0105%) of the resource. Peak production associated

² U.S. Dept. of the Interior, Geological Survey. *The Oil and Gas Potential of the Arctic National Wildlife Refuge 1002 Area, Alaska*. USGS Open File Report 98-34. (Washington, DC: 1999). Summary and Table EA4.

³ Statement based upon data in USGS, *Frontier Areas and Resource Assessment: the Case of the 1002 Area of the Alaska North Slope*, by Emil D. Attanasi and John D. Scheunemeyer. USGS Open File Report 02-119, March 2002.

with a technically recoverable resource of 5.0 billion barrels (billion bbls) at the faster development rate would be 750,000 bbls per day. U.S. petroleum consumption is about 19 million bbls per day. (For economic impacts of development, see CRS Report RS21030.)

Natural Gas. Substantial quantities of natural gas are estimated to be in the 1002 area as well. Being able to sell this gas probably would enhance the commercial prospects of the 1002 area and the rest of the ANS — oil as well as gas. However, as with the abundant natural gas discovered at Prudhoe Bay, there currently is no way to deliver the gas to market. Until recently, the combination of pipeline construction costs and relatively low natural gas prices precluded serious consideration of pipeline construction. Higher gas prices in the last two years have increased interest in the construction of a pipeline to transport natural gas to North American markets — directly and/or via a warm-water port for shipment in tankers.

Advanced Technologies. As development has proceeded since the discovery of Prudhoe Bay, North Slope oil field operators have developed less environmentally intrusive ways to develop arctic oil, primarily through innovations in technology.

Field exploration has benefitted from new seismic technology. Advanced analytical methods generate high resolution images of geologic structures and hydrocarbon accumulations. And improved ice-based transportation infrastructure serves remote areas during exploration drilling on newly developed insulated ice pads. (However, for safety reasons, use of ice roads and pads may be limited in the more hilly terrain of the 1002 area; gravel structures would be required for greater safety.) More powerful computers allow the manipulation of vastly more data, yielding more precise well locations and, consequently, reduce the number of wells needed to find hydrocarbon accumulations.

Recent advances in drilling also lessen the footprint of petroleum operations. New drilling bits and fluids and advanced forms of drilling — such as extended reach, horizontal and “designer” wells — permit drilling to reach laterally far beyond a drill platform, with the current record being seven miles at one site in China. Other advances reduce the space needed for a drilling rig, reduce equipment volume and weight, and lessen the generation of drilling waste. Modules that perform many functions also make production facilities more compact. Production drilling techniques using slim-hole technology such as coiled tubing and multilateral drilling also decrease the footprint, reduce waste, and increase recovery of hydrocarbons per well.

Proponents of opening ANWR note that these technologies would mitigate the environmental impact of petroleum operations, but not eliminate it. Opponents maintain that facilities of any size would still be industrial sites and would change the character of the Refuge, in part because the sites would be spread out in the 1002 area and connected by pipelines. They argue that whether environmental impacts would be minimized would depend in part on the wording of legislation, and that there still would be the need for gravel and the scarce water resources of the 1002 area; and that permanent roads, port facilities, and airstrips would follow the initial roadless construction. They further note that warming trends in the arctic have already shortened the season for winter travel across the tundra in developed areas, suggesting that ice technologies alone may be insufficient for exploration in the 1002 area if warming trends continue. They note that spills may occur, and that advanced technologies might not be mandated on Native lands.

A March 2003 report by the National Academy of Sciences (NAS) has highlighted impacts of existing development at Prudhoe Bay on arctic ecosystems. The NAS committee also noted beneficial economic and social effects of oil development in northern Alaska and credited industry for its strides in decreasing or mitigating environmental impacts. It said that some social and economic impacts have not been beneficial. Among the harmful environmental impacts observed were changes in migration patterns of bowhead whales, in the distribution and reproduction of caribou, and in populations of predators and scavengers that prey on bird populations. The NAS report specifically avoided an attempt to determine whether any beneficial effects (to Alaska residents, to the larger society, or to the economy, etc.) were outweighed by harmful effects (to other Alaska residents, subsistence resources, the environment, etc.).

The Biological Resources

The FLEIS rated the Refuge's biological resources highly: "The Arctic Refuge is the only conservation system unit that protects, in an undisturbed condition, a complete spectrum of the arctic ecosystems in North America" (p. 46). It also said "The 1002 area is the most biologically productive part of the Arctic Refuge for wildlife and is the center of wildlife activity" (p. 46). The biological value of the 1002 area rests on the intense productivity in the short arctic summer; many species arrive or awake from dormancy to take advantage of this richness, and leave or become dormant during the remainder of the year. Caribou have long been the center of the debate over the biological impacts of Refuge development, but other species have also been at issue. Among the other species most frequently mentioned are polar bears, musk oxen, and the 135 species of migratory birds that breed or feed there.

The Porcupine Caribou Herd (PCH) calves in or near the 1002 area in most years, and winters south of the Brooks Range in Alaska or Canada [<http://www.r7.fws.gov/nwr/arctic/pchmaps.html>]; it is the subject of a 1987 executive Agreement Between the United States and Canada on the Conservation of the Porcupine Caribou Herd (PCH). The herd is currently estimated at 130,000, but caribou population numbers fluctuate markedly. In both countries, it is an important food source to Native people and others — especially since other meat is either expensive or unavailable.

Some scientists cite studies that show a reduction in density of cows with calves near roads and developed areas around Kuparuk (Nellemann and Cameron, 1998). They fear that development and production in the 1002 area could cause cows to calve in less desirable locations or prevent the herd's access to sites providing relief from voracious insects. Based on the Prudhoe Bay experience, it appears that individual animals, especially adult males, habituate to the disturbance, and sometimes seek out gravel pads and roads for insect relief. However, cows with young calves appear to be more sensitive, and avoid roads and other human disturbance for distances of a mile or more. The preferred calving area for the PCH is more confined than for the herd around Prudhoe Bay and vicinity, and nearby similar habitat may not be available.

When cows are slowed by late thaws or heavy snows, they may not reach the 1002 area before calving. In the narrow coastal plain of the 1002 area, displacement to the south puts calving in or near the Brooks Range, where bears, golden eagles, and wolves (all calf predators) are more abundant; it could also force newborn calves to attempt to ford swollen rivers. In 2000, heavy snowfall delayed cows in reaching the 1002 area, and certain calf

survival statistics were the lowest ever recorded. The reduced calving highlighted the importance of the preferred area.

An updated assessment of an array of biological resources in the coastal plain was published in 2002 by the Biological Research Division of USGS.⁴ The report analyzed new information about caribou, musk oxen, snow geese and other species in the Arctic Refuge, and concluded that development impacts would be significant. A follow-up memo by one of the authors to the director of USGS clarified that if development were restricted to the western portion of the refuge (an option that was being considered by the Administration), the PCH would not be affected during the early calving period, since the herd is not normally found in the area at that time.⁵ Any impacts that might occur when the herd subsequently moves into the area were not discussed in the memo.

Effects on polar bear dens in the Refuge have also been an issue. Modern winter exploration technology, while an improvement over the environmental impacts of previous technologies in many respects, would be more likely to affect polar bears' winter dens, or conversely, the mitigation required to protect bear dens could increase the cost of exploration, development, and production. Polar bears are the subject of the international Agreement on the Conservation of Polar Bears, to which the United States is a party. Musk oxen, snow geese, and other species have also been featured in the ANWR debate. (For more about these species, see CRS Report RL31278.)

For opponents of development, the central issue is whether the area should be maintained as an intact ecosystem — off limits to development — not whether development can be accomplished in an environmentally sound manner. In terms that emphasize deeply held values, supporters of wilderness designation argue that few places as untrammled as the 1002 area remain on the planet, and fewer still on the same magnificent scale. Any but the most transitory intrusions (e.g., visits for recreation, hunting, fishing, subsistence use, research) would, in their view, damage the “sense of wonder” they see the area as instilling. The mere knowledge that a pristine place exists, whether one ever visits it, can be important to those who view the debate in this light.

Major Legislative Issues in the 108th Congress

A primary energy-related issue in the 108th Congress is whether to approve energy development in the ANWR, and if so, under what restrictions; or whether to continue to prohibit energy development to protect the area's biological resource and wilderness values. Some of the issues that have been raised most frequently in the current ANWR debate are described briefly below. In addition to the issue of whether development should be permitted at all, key aspects of the current debate include specifications that might be provided in legislation, including the physical size, or footprint, of development; the activities that might be permitted on Native lands; the disposition of revenues; labor issues; oil export restrictions;

⁴ U.S. Dept. of the Interior. Geological Survey. *Arctic Refuge Coastal Plain Terrestrial Wildlife Research Summaries*. Biological Science Report. USGS/BRD/BSR-2002-0001. 75 p.

⁵ Griffith, Brad. Memorandum to Director, USGS. “Evaluation of additional potential development scenarios for the 1002 Area of the Arctic National Wildlife Refuge.” April 4, 2002. 2 p.

compliance with the National Environmental Policy Act, and other matters. (References below to the “Secretary” refer to the Secretary of the Interior, unless stated otherwise.)

Environmental Direction. If Congress authorizes development, it could choose to leave environmental matters to administrative agencies under existing laws. Alternatively, Congress could impose a higher standard of environmental protection because the 1002 area is in a national wildlife refuge or because of the fragility of the arctic environment, or it could legislate a lower standard to facilitate development. The degree of discretion given to the administering agency could also affect the stringency of environmental protection. For example, Congress could include provisions requiring use of “the best available technology” or “the best commercially available technology” or some other general standards. Congress could also limit judicial review of environmental standards. Other issues could include regulating the use of gravel and water resources essential for oil exploration and development; limitations on miles of roads or other surface occupancy; the adequacy of existing pollution standards; prevention and treatment of spills; the adequacy of current environmental requirements; and aircraft overflights.

The Size of the Footprint. Newer technologies permit greater consolidation of leasing operations; among other things, consolidation would tend to reduce environmental impacts of development. On this issue, the debate in Congress has focused on the size of the footprint in the development and production phases of energy leasing. The term *footprint* does not have a universally accepted definition, and therefore the types of structures falling under a “footprint restriction” are arguable (e.g., whether to include roads, gravel mines, and port facilities). In addition, it has been unclear whether structures on Native lands would be included under any provision limiting footprint size.

Development advocates have emphasized the total acreage of surface disturbance, while opponents have emphasized the dispersal of not only the structures themselves but also their impacts over the 1.5 million acres of the 1002 area. One single compact facility of 2,000 acres (3.1 square miles, a limit supported by some development advocates during the 107th Congress) would not permit full development of the 1002 area: the current record for lateral drilling technology is 7 miles from the wellhead. Even if that record could be matched on all sides of a single pad, at most about 11% of the Coastal Plain could be developed. Instead, full development of the 1002 area would require that facilities, even if limited to 2,000 acres total, be dispersed around the Coastal Plain.

Native Lands. ANCSA resolved aboriginal claims against the United States by (among other things) creating Village Corporations that could select lands to which they could hold the surface estate, and Regional Corporations that could select surface and subsurface rights as well. The surface lands (originally approximately three townships) selected by Kaktovik Inupiat Village (KIC) are along the coastal plain of ANWR, but were administratively excluded from being considered as within the “1002 Coastal Plain.” These lands and a fourth township that is within the defined Coastal Plain (these four totaling approximately 92,000 acres) are all within the Refuge and subject to its regulations. The Arctic Slope Regional Corporation (ASRC) obtained subsurface rights beneath the KIC lands pursuant to a 1983 land exchange agreement. In addition, there are currently more than 10,000 acres of conveyed and individually owned Native allotments in the area of the Refuge that are not subject to its regulations.

Once oil and gas development is authorized for the federal lands in the Refuge, development would be allowed on the more than 100,000 acres of Native lands, arguably free of any acreage limitation applying to development on the federal lands. The extent to which the Native lands could be regulated to protect the environment is uncertain, given the status of allotments and some of the language in the 1983 Agreement with ASRC.

Revenue Disposition. Another issue that has arisen during debates over leasing in ANWR is that of disposition of possible revenues — whether Congress may validly provide for a disposition of revenues formula other than the 90% -10% split mentioned in the Alaska Statehood Act. A court in *Alaska v. United States* (35 Fed. Cl. 685, 701 (1996)) seems to have indicated that the language in the Statehood Act means that Alaska is to be treated like other states for federal leasing conducted under the Mineral Leasing Act (MLA), which contains (basically) a 90 - 10 split. However, Congress can establish a non-MLA leasing regimen — for example, the separate leasing arrangements that govern the National Petroleum Reserve-Alaska, where the revenue sharing formula is 50/50.

Project Labor Agreements. A recurring issue in federal and federally-funded projects is whether project owners or contractors effectively should be required, by “agreement,” to use union workers. Project labor agreements (PLAs) are agreements between a project owner or main contractor and the union(s) representing the craft workers for a particular project that establish the terms and conditions of work that will apply for the particular project. The agreement may also specify a source (such as a union hiring hall) to supply the craft workers for the project. Typically, the agreement is binding on all contractors and subcontractors working on the project, and specifies wage rates and benefits, discusses procedures for resolving labor and jurisdictional disputes, and includes a no-strike clause. Proponents argue that PLAs ensure a reliable, efficient labor source and help keep costs down. Opponents contend that PLAs inflate project costs and decrease competition. Construction and other unions and their supporters strongly favor PLAs because they believe that PLAs help ensure access for union members to federal and federally funded projects. Nonunion firms and their supporters believe that PLAs unfairly restrict their access to those projects. There is little independent information to sort out these conflicting assertions and demonstrate whether PLAs contribute to lower or higher project costs.

Natural Gas Pipeline. A decision to construct a pipeline to transport natural gas from Alaska to North American markets entails risk as well as a decision on the route. Most congressional supporters of a natural gas pipeline have preferred to prohibit the licensing of a route that enters Canada north of 68 degrees latitude. Canadian energy industry interests have objected to the prohibition of a northern route through Canada because a southern route would bypass gas reserves in far northwest Canada; they also oppose a proposed production tax credit for Alaskan gas producers that effectively would tend to give a price advantage over Canadian producers.

Oil Export Restrictions. Export of North Slope oil in general, and any ANWR oil in particular, has been an issue, beginning at least with the authorization of the TransAlaska Pipeline and continuing into the current ANWR debate. Much of the pipeline’s route is on federal lands and the Mineral Leasing Act of 1920 prohibits export of oil transported through pipelines granted rights-of-way over federal lands (16 U.S.C. 185(u)). The Trans-Alaska Pipeline Authorization Act (P.L. 93-153, 43 U.S.C. 1651 *et seq.*) specified that oil shipped through it could be exported but only under restrictive conditions. Subsequent legislation

strengthened the TransAlaska Pipeline export restrictions further.⁶ Oil began to be shipped through the pipeline in increasing amounts as North Slope oilfield development grew through the late 1980s. With exports effectively banned, much of North Slope oil went to West Coast destinations; the rest was shipped to the Gulf Coast via the Panama Canal or overland across the isthmus.

However, market forces eventually created pressure to change the law. In the early and mid-1990s, the combination of California and federal offshore production, North Slope oil, and imports resulted in such large quantities relative to demand that crude oil prices in California fell below those elsewhere in the United States, eliciting complaints from Californian and North Slope producers. By 1995, three or four years of low world oil prices and relative calm in the Mideast had reduced concern about petroleum.

On November 28, 1995, P.L. 104-58 (109 Stat. 557) was enacted, Title II of which amended the Mineral Leasing Act to provide that oil transported through the Pipeline may be exported unless the President finds, after considering stated criteria, that it is *not* in the national interest. The President may impose terms and conditions; and authority to export may be modified or revoked. Beginning with 36,000 bbl/day in 1996, ANS exports rose to a peak of 74,000 bbl/day in 1999, representing 7% of North Slope production. ANS oil exports ceased voluntarily in May 2000.

If Congress wished to limit export of any oil from the 1002 area, it might apply the restriction to oil transported through the TransAlaska Pipeline (TAPS). However, there are a number of indicators of warming trends in the Arctic, and if these continue, oil shipment via tanker could become practical. If high crude oil prices on the world market provided sufficient incentive for such shipments, an export ban that applies only to oil transported through TAPS might not be sufficient to prevent export of any ANWR oil.

NEPA Compliance. The National Environmental Policy Act (NEPA) requires the preparation of an environmental impact statement (EIS) to examine the effects of major federal actions on the environment, and to provide public involvement in agency decisions. The last full EIS examining the effects of leasing development in ANWR was completed in 1987 and some observers assert that a new EIS is needed to support development now. Generally, an EIS analyzes several alternatives, including a “no action” alternative. Some development supporters would like to see the process truncated, in light of past analyses and to hasten production. Opponents of energy development argue that a 15-year gap since the last analysis would necessitate a thorough update and stress the flaws they found in the 1987 EIS.

Compatibility with Refuge Purposes. Under current law for the management of national wildlife refuges (16 U.S.C. §668dd), an activity may be allowed in a refuge only if it is compatible with the purposes of the particular Refuge and with those of the Refuge System as a whole. Past development bills have “deemed” that the oil and gas leasing program and activities in the coastal plain are compatible with the purposes for which the ANWR was established and that no further findings or decisions are required to implement

⁶ The Energy Policy and Conservation Act of 1975 (P.L. 94-163), the 1977 amendments to the Export Administration Act (P.L. 95-52 and P.L. 95-223), and the Export Administration Act of 1979 (P.L. 96-72).

this determination. This language appears to answer the compatibility question and to eliminate the usual compatibility determination processes. The extent of leasing “activities” that might be included as compatible is debatable and arguably might encompass necessary support activities, such as construction and operation of port facilities, staging areas, and personnel centers.

Judicial Review. Leasing proponents urge that any ANWR leasing program be put in place promptly; expediting judicial review may be one means to that goal. Judicial review can be expedited through procedural changes such as reducing the time limits within which suits must be filed, by avoiding some level of review, by curtailing the scope of the review, or by increasing the burden imposed on challengers. In the past, bills before Congress have combined various elements.

Special Areas. Some have raised the possibility of setting aside certain special areas described in the FLEIS for their ecological or cultural values. This could be done either by designating the areas specifically in legislation, or by authorizing the Secretary to set aside areas to be selected after enactment. Development of such areas could be forbidden and/or surface occupancy could be limited.

Non-Development Options. Several options are available to Congress that would either postpone or forbid development, unless Congress were later to change the law. These options include allowing exploration only, designating the 1002 area as wilderness, and taking no action.

Exploration Only. Some have argued that the 1002 area should be opened to exploration first, before a decision is made on whether to proceed to leasing. Those with this view hold that with greater certainty about the presence or absence of energy resources, a better decision could be made about whether to open the coastal plain for full leasing. This idea has had relatively little support over the years. (See CRS Report RL31278 for a discussion of the pros and cons of this approach.) Various advocates see insufficient gain from such a proposal. While an exploration bill has been mentioned in the past, none has been introduced in the 108th Congress.

Wilderness Designation. Energy development is not permitted in wilderness areas, unless there are pre-existing rights or unless Congress specifically allows it or later reverses the designation. Development of the surface and subsurface holdings of Native corporations is precluded as long as oil and gas development is not allowed on the federal lands in the Refuge. Wilderness designation would tend to preserve existing recreational opportunities and jobs, as well as the existing level of protection of subsistence resources, including the Porcupine Caribou Herd.

No Action. Because current law prohibits development unless Congress acts, this option also prevents energy development. Those supporting delay often argue that not enough is known about either the probability of discoveries or about the environmental impact if development is permitted. Others argue that oil deposits should be saved for an unspecified “right time.”

LEGISLATION

H.R. 39 (D. Young)

Repeals current prohibition against development in ANWR; and for other purposes. Introduced January 7, 2003; referred to Committee on Resources.

H.R. 770 (Markey)

Designates the 1002 area of ANWR as wilderness. Introduced February 13, 2003; referred to Committee on Resources.

S. 543 (Lieberman)

Designates the 1002 area of ANWR as wilderness. Introduced March 5, 2003; referred to Committee on Environment and Public Works.

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