

# CRS Report for Congress

Received through the CRS Web

## **Arctic National Wildlife Refuge (ANWR): Legislative Actions Through the 108<sup>th</sup> Congress**

**March 30, 2005**

Anne Gillis  
Information Research Specialist  
Knowledge Services Group

M. Lynne Corn and Bernard A. Gelb  
Specialist in Natural Resources and  
Specialist in Industry Economics  
Resources, Science, and Industry Division

Pamela Baldwin  
Legislative Attorney  
American Law Division

# Arctic National Wildlife Refuge (ANWR): Legislative Actions Through the 108<sup>th</sup> Congress

## Summary

A major element of the energy policy debate in Congress has been 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 in order to protect the area's biological resources. Current law forbids energy leasing in the Refuge. ANWR 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 and again in 2004 to 2005, and terrorist attacks in the United States and Middle Eastern oil fields, renewed the ANWR debate for the first time in five years. However, its development has been debated for over 40 years.

This report is intended to provide a summary of legislative attempts from the 95<sup>th</sup> through the 108<sup>th</sup> Congresses, with emphasis on the 107<sup>th</sup> and 108<sup>th</sup> Congress, to address the issues of energy development and preservation in the Refuge. This history has been cited by many, in and out of Congress, as a background for issues being raised in the 109<sup>th</sup> Congress. The report contains little analysis of the substance of this issue, which is covered in other CRS reports. See CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109<sup>th</sup> Congress*, for information on actions in the 109<sup>th</sup> Congress relative to ANWR. This report will not be updated.

In the 107<sup>th</sup> Congress, provisions to open ANWR to development were incorporated into H.R. 4, an omnibus energy bill passed by the House. The Senate passed its own version of H.R. 4, which lacked Refuge development provisions. Conferees met, but were unable to reconcile the two versions of H.R. 4 in many areas, including Refuge development. No conference report was issued. The legislation lapsed at the end of the 107<sup>th</sup> Congress.

In the 108<sup>th</sup> Congress, the Senate passed an amendment to strip language from the Senate budget resolution that would have facilitated subsequent passage of ANWR development legislation. The House passed H.R. 6, an omnibus energy bill, which would have opened ANWR to development. It included an amendment to limit certain features of federal leasing development to no more than 2,000 acres, without restricting the total number of acres that could be leased. The Senate passed its version of H.R. 6 by adopting the provisions of its omnibus energy legislation from the 107<sup>th</sup> Congress, which contained no provision to open the Refuge to development. The conference committee did not include ANWR development language in the conference report. The conference report was agreed to by the House; the Senate considered the measure, but a cloture vote failed. The legislation lapsed at the end of the 108<sup>th</sup> Congress.

## Contents

Background and Analysis .....	1
Legislative History of the Refuge, 1957-2000 .....	4
The Early Years .....	4
The 1970s .....	4
The 1980s .....	4
From 1990 to 2000 .....	5
Legislative History of the Refuge, 2001-2002 .....	6
Legislative History of the Refuge, 2003-2004 .....	7
FY2004 Reconciliation .....	7
Comprehensive Energy Legislation .....	8
Major Legislative Issues in the 107 <sup>th</sup> and 108 <sup>th</sup> Congresses .....	9
Environmental Direction .....	9
The Size of Footprints — Federal Lands .....	10
Native Lands .....	11
Revenue Disposition .....	12
Natural Gas Pipeline .....	13
Project Labor Agreements .....	14
Oil Export Restrictions .....	14
NEPA Compliance .....	15
Compatibility with Refuge Purposes .....	15
Judicial Review .....	16
Special Areas .....	16
Non-Development Options .....	17
Legislation in the 107 <sup>th</sup> Congress .....	18
Legislation in the 108 <sup>th</sup> Congress .....	19
For Additional Reading .....	20
Archived CRS Products .....	22

## List of Tables

Table 1. Votes in the House of Representatives on Energy Development within the Arctic National Wildlife Refuge .....	2
Table 2. Votes in the Senate on Energy Development within the Arctic National Wildlife Refuge .....	3

# Arctic National Wildlife Refuge (ANWR): Legislative Actions Through the 108th Congress

## 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 on the North Slope of the Brooks Range is currently viewed as one of the most likely undeveloped U.S. onshore oil and gas prospects. According to the U.S. Geological Survey, 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 coastal plain west of ANWR. That state-owned portion of the coastal plain is now estimated to have held 11-13 billion barrels of oil.

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. That analysis is followed by a history of congressional actions on this issue, with a focus on those in the 107<sup>th</sup> and 108<sup>th</sup> Congresses. See **Tables 1** and **2** for votes in the House and Senate from the 96<sup>th</sup> through the 108<sup>th</sup> Congresses.

The conflict between high oil potential and nearly pristine nature 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, how 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? If Congress takes no action, the Refuge remains closed to energy development.

**Table 1. Votes in the House of Representatives on  
Energy Development within the Arctic National Wildlife Refuge**

<b>HOUSE</b>			
<b>Congress</b>	<b>Date</b>	<b>Voice/ Roll Call</b>	<b>Brief Description</b>
95 <sup>th</sup>			no floor votes
96 <sup>th</sup>	5/16/79	#152	Udall-Anderson substitute for H.R. 39 adopted by House (268-157); included provisions designating all of ANWR as wilderness.
	5/16/79	#153	H.R. 39 passed House (360-65).
	11/12/80	voice (unan- imous)	Senate version (leaving 1002 area development issue to a future Congress) of H.R. 39 passed House.
97 <sup>th</sup>			no floor votes
98 <sup>th</sup>			no floor votes
99 <sup>th</sup>			no floor votes
100 <sup>th</sup>			no floor votes
101 <sup>st</sup>			no floor votes
102 <sup>nd</sup>			no floor votes
103 <sup>rd</sup>			no floor votes
104 <sup>th</sup>	11/17/95	#812	House agreed (237-189) to conference report on H.R. 2491 (H.Rept. 104-350), FY1996 budget reconciliation (a large bill that included 1002 area development provisions; see text).
105 <sup>th</sup>			no floor votes
106 <sup>th</sup>			no floor votes
107 <sup>th</sup>	8/1/01	#316	House passed Sununu amendment to H.R. 4 to limit specified surface development of 1002 area to a total of 2,000 acres (228-201).
	8/1/01	#317	House rejected Markey-Johnson (CT) amendment to H.R. 4 to strike 1002 area development title (206-223).
	8/2/01	#320	H.R. 4, an omnibus energy bill, passed House (240-189). Title V of Division F contained 1002 area development provisions.
108 <sup>th</sup>	4/10/03	#134	House passed Wilson (NM) amendment to H.R. 6 to limit certain features of 1002 area development to a total of 2,000 acres (226-202).
	4/10/03	#135	House rejected Markey-Johnson (CT) amendment to H.R. 6 to strike 1002 area development title (197-228).
	4/11/03	#145	House passed H.R. 6, a comprehensive energy bill (247-175); Division C, Title IV would have opened the 1002 area to energy development.

**Table 2. Votes in the Senate on Energy Development within the Arctic National Wildlife Refuge**

SENATE			
Congress	Date	Voice/ Roll Call	Brief Description
95 <sup>th</sup>			no floor votes
96 <sup>th</sup>	7/22-23/80	#304	Motion to table Tsongas amendment (including a title to designate all of ANWR as wilderness) to H.R. 39 defeated (33-64).
	8/18/80	#354	Senate adopted cloture motion on H.R. 39 (63-25).
	8/19/80	#359	Senate passed Tsongas-Roth-Jackson-Hatfield substitute to H.R. 39 (78-14); this bill is current law, and leaves decision about any 1002 area development for a future Congress.
97 <sup>th</sup>			no floor votes
98 <sup>th</sup>			no floor votes
99 <sup>th</sup>			no floor votes
100 <sup>th</sup>			no floor votes
101 <sup>st</sup>			no floor votes
102 <sup>nd</sup>	11/1/91	#242	Cloture motion on S. 1220 failed (50-44); one title would have opened 1002 area to development.
103 <sup>rd</sup>			no floor votes
104 <sup>th</sup>	5/24/95	#190	Senate voted to table Roth amendment to strip 1002 area revenue assumptions from S.Con.Res. 13 (56-44).
	10/27/95	#525	Senate voted to table Baucus amendment to strip 1002 area development provisions in H.R. 2491 (51-48).
105 <sup>th</sup>			no floor votes
106 <sup>th</sup>	4/6/00	#58	Senate voted to table Roth amendment to strip 1002 area revenue assumptions from the FY2001 budget resolution (S.Con.Res. 101) (51-49).
107 <sup>th</sup>	12/3/01	#344	Lott-Murkowski-Brownback amendment to Daschle amendment to H.R. 10 included 1002 area development title in H.R. 4, as passed by the House. A cloture motion on the amendment failed (1-94).
	4/18/02	#71	Senate failed to invoke cloture on Murkowski amendment to S. 517, an omnibus energy bill. ANWR language of the amendment was similar to that in the House-passed version of H.R. 4 (46-54).
108 <sup>th</sup>	3/19/03	#59	Senate passed Boxer amendment to delete certain revenue assumptions from S.Con.Res. 23, the FY2004 budget resolution; floor debate indicated that amendment was clearly seen as a vote on developing 1002 area (52-48).

Basic information on the Refuge can be found in CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*,<sup>1</sup> and at the FWS website, [<http://www.r7.fws.gov/nwr/arctic>],<sup>2</sup> which includes links to other organizations interested in the area. An extensive presentation of development arguments can be found at [<http://www.anwr.org>], sponsored by Arctic Power, a nonprofit coalition. Opponents' arguments can be found variously at [<http://www.alaskawild.org>], [<http://www.protectthearctic.com/>], or [<http://www.tws.org/arctic/>]. Maps of the coastal plain showing existing oil development areas on state land can be found at [<http://www.dog.dnr.state.ak.us/oil/products/maps/maps.htm>].)

## Legislative History of the Refuge, 1957-2000

**The Early Years.** The energy and biological resources of northern Alaska have raised controversy 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, DOI announced plans to withdraw lands in northeastern Alaska to create an "Arctic National Wildlife Range." 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 9.5 million-acre area as the Arctic National Wildlife Range.

**The 1970s.** In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA, P.L. 92-203, 85 Stat. 688) 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 (surface rights, as opposed to rights to exploit any energy or minerals beneath the surface) 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 Native corporation created under ANCSA, and headquartered within ANWR) 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.

**The 1980s.** 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

---

<sup>1</sup> Full citations of past CRS publications are at the end of this report. For brevity, these publications will be referred to only by number and title in the text's first reference, and only by number in any subsequent references.

<sup>2</sup> This website and the others listed in this paragraph were visited on March 30, 2005.

9.2 million acres.<sup>3</sup> Section 702(3) of ANILCA designated much of the original range as a wilderness area, but did not include the coastal plain. (For more on wilderness designation, see CRS Report RL31447, *Wilderness: Overview and Statistics*.) 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.<sup>4</sup> Section 1002 of ANILCA directed that a study of the Coastal Plain (which therefore is often referred to as the *1002 area*) and its resources be completed within five years and nine months of enactment. The resulting 1987 report was called the *1002 report* or the Final Legislative Environmental Impact Statement (FLEIS).

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 and CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*.)

**From 1990 to 2000.** In recent years, there have been various attempts to authorize opening ANWR to energy development. In the 104<sup>th</sup> Congress, the FY1996 budget reconciliation bill (H.R. 2491, §§5312-5344) would have opened the 1002 area to energy development, but the measure was vetoed, as many observers had expected. President Clinton cited the ANWR sections as one of his reasons for the veto. (For key provisions of that legislation, see archived CRS Issue Brief IB95071, *The Arctic National Wildlife Refuge*, available from the authors.)

While bills were introduced, the 105<sup>th</sup> Congress did not debate the ANWR issue. In the 106<sup>th</sup> Congress, bills to designate the 1002 area of the Refuge as wilderness and others to open the Refuge to energy development were introduced. Revenue assumptions about ANWR were included in the FY2001 budget resolution (S.Con.Res. 101) reported by the Senate Budget Committee on March 31, 2000. An amendment to remove this language was tabled. However, conferees rejected the language. The conference report on H.Con.Res. 290 did not contain this assumption, and the report was passed by both chambers on April 13. S. 2557 was introduced May 16, 2000; it included a title to open the Refuge to development. Hearings were held on the bill, but a motion to proceed to consideration of the bill on the Senate floor did not pass.

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

---

<sup>3</sup> Additional land was added in later years, bringing the current total to 19.3 million acres. Portions of the Refuge added in 1980 and later were not included in the wilderness system.

<sup>4</sup> This report will use “Coastal Plain” to refer to the land legally designated under ANILCA and under subsequent Executive Branch rulings. In lower case (“coastal plain”), the term will be used in the geographic sense, i.e., the north of the foothills of the Brooks Range. It stretches from the Canadian border west to Bering Strait. Its width varies from about 10 miles (at the Canadian border) to over 100 miles south of Barrow.

- In the 104<sup>th</sup> Congress, on May 24 1995, a motion to table an amendment that would have stripped ANWR development titles from the Senate version of H.R. 2491 passed (Roll Call #190). (See above.)
- In the same Congress, on October 27, 1995, another motion to table a similar amendment to H.R. 2491 also passed (Roll Call #525).
- In the 106<sup>th</sup> 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 #58).

## **Legislative History of the Refuge, 2001-2002**

H.R. 4, an omnibus energy bill containing ANWR development provisions, passed the House on August 2, 2001 (yeas 240, nays 189; Roll Call #320). Title V of Division F was the text of H.R. 2436 (H.Rept. 107-160, Part I). The measure would have opened ANWR to exploration and development. The previous day, an amendment by then Representative Sununu to limit specified surface development to a total of 2,000 acres was passed (yeas 228, nays 201; Roll Call #316). Representatives Markey and Johnson (CT) offered an amendment to strike the title; this was defeated (yeas 206, nays 223; Roll Call #317). The House appointed conferees on June 12, 2002. (See below for action after Senate passage of H.R. 4.)

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. Their amendment also included provisions prohibiting cloning of human tissue. A cloture motion was filed on the Lott amendment, and the Senate failed to invoke cloture (yeas 1, nays 94; Roll Call #344) on December 3, 2001. Instead, the Senate voted the same day in favor of invoking cloture on the underlying amendment (S.Amdt. 2170), (yeas 81, nays 15; Roll Call #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 on pension reform, and thus the amendment fell.

The next vehicle for Senate floor consideration was S. 517, which concerned 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 by Senators Murkowski and Stevens, respectively, on April 16. The language of the two amendments was, in most sections, identical to that of H.R. 4 (Division F, Title V). Key differences included a requirement for a presidential determination before development could proceed, an exception to the oil export prohibition for Israel, 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 (Roll Call #71) 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.

Lacking a provision to develop ANWR, the text of S. 517, as amended, was substituted for the text of the House-passed H.R. 4, and passed the Senate (yeas 88, nays 11; Roll Call #94) on April 25, 2002. Conferees attempted to iron out the substantial differences between the two versions in the time remaining in the second session. The conference committee chairman, Representative Tauzin, indicated that the ANWR issue, as one of the most controversial parts of the bill, would be considered toward the end of the conference, after less controversial provisions. Press reports at the time indicated that conferees were likely to drop provisions to develop the Refuge. Interior Secretary Norton stated that she would recommend veto of a bill lacking ANWR development provisions.<sup>5</sup> In the end, no conference agreement was reached, and H.R. 4 died at the end of the 107<sup>th</sup> Congress.

Finally, H.R. 770 and S. 411 would have designated the 1002 area as wilderness, but no action was taken on either bill.

## Legislative History of the Refuge, 2003-2004

Work began on FY2003 Interior appropriations in the 107<sup>th</sup> Congress but was not completed until the 108<sup>th</sup> Congress. In the 107<sup>th</sup> Congress, for the FY2003 Interior appropriations bill, the House Committee on Appropriations had agreed to report language on the Bureau of Land Management (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 [ANWR]” (H.Rept. 107-564, H.R. 5093). But §1003 of ANILCA prohibited “development leading to production of oil and gas” unless authorized by Congress. Thus, the committee’s report language was viewed by some as barring the use of funds for pre-leasing 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. A series of continuing resolutions provided funding for DOI into the 108<sup>th</sup> Congress.

Conferees on the FY2003 Consolidated Appropriations Resolution (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 [BLM] energy and minerals program.” This change from the House report language was interpreted by some as potentially making available funds for preliminary work for 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 was not clear.

**FY2004 Reconciliation.** During the 108<sup>th</sup> Congress, development proponents sought to move ANWR legislation through the FY2004 budget reconciliation process to avoid a possible Senate filibuster later in the session. (Reconciliation bills in the Senate are considered under special rules that do not permit filibusters. See CRS Report 98-814, *Budget Reconciliation Legislation: Development and Consideration*

---

<sup>5</sup> Tom Doggett “Interview — Norton wants energy bill veto if no ANWR drilling,” Reuters News Service (September 19, 2002).

and CRS Report RL30862, *Budget Reconciliation Procedures: The Senate's 'Byrd Rule.'*) The House agreed to the FY2004 budget resolution (H.Con.Res. 95) on March 21 (yeas 215, nays 212; Roll Call #82). The resolution contained reconciliation instructions to the House Resources Committee for reductions, but did not specify the expected source of the savings. If the House language had been adopted, ANWR development language might have been considered as part of a reconciliation measure to achieve the savings. S.Con.Res. 23, as reported by the Senate Budget Committee, stated:

The Senate Committee on Energy and Natural Resources shall report a reconciliation bill not later than May 1, 2003, that consists of changes in laws within its jurisdiction sufficient to decrease the total level of outlays by \$2,150,000,000 for the period of fiscal years 2004 through 2013.

To meet this directive, the committee would very likely have reported legislation to open ANWR to development. On March 19, 2003, Senator Boxer offered S.Amdt. 272 to delete this provision. Floor debate indicated that the Boxer amendment was clearly seen as a vote on developing ANWR. The amendment passed (yeas 52, nays 48; Roll Call #59.) The amended Senate version of the resolution was ultimately accepted by both House and Senate. As a result, while the Committee on Energy and Natural Resources could still report legislation to authorize opening the Refuge, such legislation would not have been eligible for inclusion in a reconciliation bill. Without the procedural protections associated with reconciliation, a filibuster could have been used to prevent a vote on an authorization bill. (See CRS Report RS20368, *Overview of the Congressional Budget Process.*) In the end, the conferees on the budget resolution included no instructions to the House Resources and Senate Energy and Natural Resources Committees.

**Comprehensive Energy Legislation.** The House passed H.R. 6, a comprehensive energy bill, on April 11, 2003. Division C, Title IV would have opened the 1002 area to energy development. On April 10, the House had passed the Wilson (NM) amendment to H.R. 6 to limit certain features of development to a total of 2,000 acres (yeas 226, nays 202; Roll Call #134), without restricting the total number of acres that could be leased. As in the 107<sup>th</sup> Congress, Representatives Markey and Johnson (CT) offered an amendment to strike the title; this was defeated (yeas 197, nays 228; Roll Call #135). H.R. 4514 was identical to the ANWR title of the House version of H.R. 6 except in one provision on revenue disposition. (See "Major Legislative Issues," below.) In addition, one bill (H.R. 39) was introduced to open the 1002 area to development, and two bills (H.R. 770 and S. 543) were introduced to designate the 1002 area as wilderness.

The initial version of the Senate energy bill (S. 14) had no provision to open the Refuge, and Chairman Domenici stated that he did not plan to include one. After many weeks of debate in the Senate, as prospects of passage seemed to be dimming, Senators agreed to drop the bill they had been debating and to go back to the bill passed in the Democratic-controlled 107<sup>th</sup> Congress. On July 31, 2003, they substituted the language of that bill for that of the House-passed H.R. 6. There was widespread agreement that the unusual procedure was a means of getting the bill to conference. Members, including Chairman Domenici, indicated at the time their expectation that the bill that emerged from conference would likely be markedly

different from the bill that had just been passed by the Senate. One of the key differences between the two bills was the presence of ANWR development language in the House version, and its absence in the Senate version. (See CRS Issue Brief IB10116, *Energy Policy: The Continuing Debate and Omnibus Energy Legislation*.) Conference Chairman Domenici included the House title on ANWR in his working draft, but in the end, the conference committee deleted ANWR development features in the conference report (H.Rept. 108-375); the conference report was agreed to by the House on November 18, 2003 (yeas 246, nays 180; Roll Call #630); the Senate considered the measure, but a cloture vote failed (57 yeas, 40 nays; Roll Call # 456) on November 21, 2003.

The Senate focused in the second session on a reduced energy bill (S. 2095) that might then go to a second conference with the House; like its version of H.R. 6, this new bill did not contain ANWR development provisions. In any event, no scenario for energy legislation that was discussed publicly included provisions that would have opened the Refuge to development. However, the President's proposed FY2005 budget assumed legislation would be passed that would open the Refuge and would therefore produce revenues. This proposal would have assisted efforts to assume ANWR revenues in a budget resolution, and therefore aided its inclusion in a reconciliation package, as was attempted in the first session. The features of the bills mentioned above and the issues that most commonly arose in legislative debate are described below.

## Major Legislative Issues in the 107<sup>th</sup> and 108<sup>th</sup> Congresses

Some of the issues that have been raised most frequently in the ANWR debate are described briefly below. In addition to the issue of whether development should be permitted at all, key aspects of the 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; 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.)

**107<sup>th</sup> Congress.** H.R. 4, as passed by the House, was the model for two Senate amendments (S.Amdt. 3132 and S.Amdt. 3133), with some important variations. With brief background information for each topic, H.R. 4 is analyzed below, along with a few of the major features of the rejected Senate amendments to S. 517 (where these differ significantly from H.R. 4), and the two wilderness bills. (More background on each topic can be found in CRS Report RL31278.)

**108<sup>th</sup> Congress.** The analyses below describe features of H.R. 6 as passed by the House and H.R. 4514 (identical, except as noted in "Revenue Disposition," below). S. 2095 and the Senate version of H.R. 6 had no provision to develop the 1002 area, but any provisions corresponding to issues below are also described.

**Environmental Direction.** Should Congress open the Refuge to energy leasing, 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 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 similar general standards; alternatively, it could limit judicial review of environmental standards. Another issue would be the use of gravel and water resources essential for oil exploration and development. Congress could also leave environmental protection largely up to the administering agency — to be accomplished through regulations, or through lease stipulations. The former require public notice and comment, while the latter do not involve public participation, and may provide fewer public enforcement options. Other legislative issues include 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, among other things.

**107<sup>th</sup> Congress.** H.R. 4 (§6507(a)) would have required the Secretary to administer a leasing program so as to “result in no significant adverse effect on fish and wildlife, their habitat, subsistence resources, and the environment, ... including ... requiring the application of the best commercially available technology...” H.R. 4 (§6503(a)(2)) would have also required that this program be done “in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.” It is unclear how the two goals of environmental protection and of fair market value related to each other (e.g., if environmental restrictions might make some fields uneconomic). H.R. 4 (§6506(a)(3) and (5)) would have required lessees to be responsible and liable for reclamation of lands within the Coastal Plain to support pre-leasing uses or to a higher use approved by the Secretary. There were requirements for mitigation, development of regulations by DOI, and other measures to protect the environment. These included prohibitions on public access to service roads and other transportation restrictions. Other provisions could also have affected environmental protection. H.R. 770 and S. 411 would have designated the area as wilderness, as discussed below.

**108<sup>th</sup> Congress.** The House bill did not name a lead agency, but since §30403(a) stated that the program would be administered under the Mineral Leasing Act, BLM seemed likely to lead. The House bill (§30407(a)) would have required the Secretary to administer the leasing program so as to “result in no significant adverse effect on fish and wildlife, their habitat, and the environment, [and to require] the application of the best commercially available technology....” The House bill (§30403(a)(2)) would also have required that this program be done “in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.” It is unclear how the two goals of environmental protection and of fair market value were to relate to each other (e.g., if environmental restrictions might make some fields uneconomic). As in the 107<sup>th</sup> Congress, the House bill (§§30406(a)(3) and (5)) was identical to §§6506(a)(3) and (5) in the 107<sup>th</sup> Congress. H.R. 770 and S. 543 would have designated the area as wilderness, as discussed below.

**The Size of Footprints — Federal Lands.** Newer technologies permit greater consolidation of leasing operations, which would tend to reduce environmental impacts of development. On this issue, the debate in Congress has

focused on the size of footprints 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). (See CRS Report RL32108, *North Slope Infrastructure and the ANWR Debate*, for a description of development features on the North Slope.) In addition, it has been unclear whether structures on Native lands would be included under any provision limiting footprints. 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 facility of 2,000 acres (3.1 square miles, a limit currently supported by some development advocates) would not permit full development of the 1002 area: the current world 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.

**107<sup>th</sup> Congress.** H.R. 4 (§6507(d)(9)) would have provided for consolidation of leasing operations; among other things, consolidation would tend to reduce environmental impacts of development. H.R. 4 (§6507(a)(3)) would have gone further to require, “consistent with the provisions of section 6503” (which included ensuring receipt of fair market value), that the Secretary administer the leasing program to “ensure that the maximum amount of surface acreage covered by production and support facilities, including airstrips and any areas covered by gravel berms or piers for the support of pipelines, does not exceed 2,000 acres on the Coastal Plain.” A floor amendment to H.R. 4 with this acreage restriction was passed on August 1, 2001 (yeas 228, nays 201; Roll Call #316). The terms used were not defined in the bill (nor discussed in the committee report), and therefore the full set of structures that might have fallen under the restriction was arguable (e.g., whether roads, gravel mines, and structures on Native lands would be included under this provision). Floor debate focused on the extent to which the facilities covered in the amendment would be widely distributed around the Refuge. The acreage limitation appeared not to apply to Native lands.

**108<sup>th</sup> Congress.** The House bill (§30407(d)(9)) provided for consolidation of leasing operations in language identical to that in the 107<sup>th</sup> Congress. A floor amendment by Representative Wilson (NM) to the House bill with an identical 2000-acre limit was passed on April 10, 2003 (yeas 226, nays 202; Roll Call #134). Floor debate focused on the extent to which the facilities would be widely distributed around the Refuge. In addition, Native lands might not have been limited by this provision. (See “Native Lands,” below.)

**Native Lands.** ANCSA resolved aboriginal claims against the United States by (among other things) creating Village Corporations that could select lands to which they held 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 (totaling approximately 92,000 acres) are all within the Refuge

and subject to regulations of the Refuge. 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 1002 area of the Refuge that are not subject to Refuge regulations.

**107<sup>th</sup> Congress.** H.R. 4 would have repealed the ANILCA prohibition on oil and gas development. If oil and gas development were authorized for the federal lands in the Refuge, it appears that development could occur 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. (See CRS Report RL31115 for additional legal analysis.) After the cloture vote on S.Amdt. 3132 on April 18, 2002, Senator Stevens publicly stated his intent to offer an amendment to open Native lands in this part of the Refuge to energy development, but he did not do so.

**108<sup>th</sup> Congress.** The House bill would have repealed the ANILCA prohibition on oil and gas development. (See preceding paragraph.)

**Revenue Disposition.** Another issue that has arisen during debates over leasing in the ANWR is that of disposition of possible revenues — whether Congress may validly allocate revenues according to a formula other than the 90/10 percent split specified 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 under the Mineral Leasing Act of 1920 (MLA; ch. 85; 30 U.S.C. 181), which contains (basically) a 90/10 split. However, Congress can establish a non-MLA leasing regimen with a different ratio — for example, the separate leasing arrangements that govern the National Petroleum Reserve-Alaska (where the revenue-sharing formula is 50/50).

In the past, a number of ANWR bills have specified the disposition of the federal portion of the revenues. Among the spending purposes have been federal land acquisition, energy research, and federal assistance to local governments in Alaska to mitigate the impact of energy development. Amounts would have been either permanently or annually appropriated. In the latter case, there would be little practical distinction between annually appropriating funds based on ANWR revenues and annually appropriating funds from the General Treasury. If there is no particular purpose specified for leasing revenues, the resulting revenues would be deposited in the Treasury where they would be available for any general government use.

**107<sup>th</sup> Congress.** Several sections of H.R. 4 related to revenues. Section 6512 would have provided that 50% of adjusted revenues be paid to Alaska. Then 50% of revenues from bonus payments were to go into a Renewable Energy Technology Investment Fund; and 50% from rents and royalties were to go into a Royalties Conservation Fund. It is not clear whether the basis for the shared revenues was to be gross or net receipts. More fundamentally, under §6503(a), the Secretary was to establish and implement a leasing program *under the Mineral Leasing Act*, yet §6512 directed a revenue sharing program different from that in the MLA. Establishing a

leasing program under the MLA, yet providing for a different revenue disposition could have raised additional questions of legal validity. If the alternative disposition were struck down and the revenue provisions were determined to be severable, it is possible that Alaska could have received 90% of the revenues from ANWR.

**108<sup>th</sup> Congress.** Several sections of the House bill related to revenues. Section 30409 would have provided that 50% of adjusted revenues be paid to Alaska, and the balance deposited in the U.S. Treasury as miscellaneous receipts, except for the portion allocated to a fund to assist Alaska communities in addressing local impacts of energy development under §30412. The assistance fund was not to exceed \$11 million in an unspent balance, with \$5 million available for annual appropriation. Section 30403(a) was identical to §6503(a) (establishing a leasing program under the MLA) in the 107<sup>th</sup> Congress. In addition, in the House version of H.R. 6, §30409(c) would have allowed certain revenues from bids for leasing to be appropriated for energy assistance for low-income households. This provision was lacking in H.R. 4514 — the only difference between the two bills.

**Natural Gas Pipeline.** Significant quantities of natural gas are known to exist in the developed oil fields on the North Slope, but cannot be sold elsewhere for lack of transportation. If a natural gas pipeline were constructed from these fields, any natural gas in ANWR might become economic as well. 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.

**107<sup>th</sup> Congress.** The Senate version of H.R. 4 attempted to address the pipeline by providing federal guarantees for loans to construct a natural gas transport system. Guarantees were not to exceed 80% of a loan; and the total loan principal to which guarantees apply was not to exceed \$10 billion. The Senate bill also provided for a tax credit for the production of Alaska North Slope gas that effectively established a price floor of \$3.25 per thousand cubic feet. Both the House and the Senate versions addressed the route issue by prohibiting the licensing of a route that enters Canada north of 68° latitude. Canadian energy industry interests objected to the prohibition of the northern route through Canada (a southern route would bypass gas reserves in far northwest Canada), and they said that the tax credit would have given Alaskan gas producers a price advantage over Canadian producers.

**108<sup>th</sup> Congress.** The Senate's revised bill, S. 2095, provided a loan guarantee not to exceed 80% of the total capital cost of the project, nor to exceed \$18 billion (indexed for inflation), and had a tax credit mechanism that effectively would guarantee a minimum price for natural gas transported through the pipeline. The House's H.R. 6 would have provided no means of reducing risk nor other economic incentive to build. Regarding the route, the House bill, both Senate bills, and the conference on H.R. 6 report prohibited the licensing of a route that enters Canada north of 68° latitude. Canadian energy interests opposed a production tax credit for Alaskan gas producers, which would tend to give a price advantage over Canadian producers. They also objected to the prohibition of a northern route through Canada because a southern route would bypass gas reserves in far northwest Canada. In fact, Canadian interests are moving to build a pipeline from that area.

**Project Labor Agreements.** A recurring issue in federal or 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. There are few independent data to sort out these conflicting assertions and demonstrate whether PLAs contribute to lower or higher project costs. 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.

**107<sup>th</sup> Congress.** H.R. 4 (§6506) directed the Secretary to require lessees “to negotiate to obtain a project labor agreement.” The Secretary was to do so “recognizing the Government’s proprietary interest in labor stability and the ability of construction labor and management to meet the particular needs and conditions of projects to be developed ....” In §714 of the Senate-passed version of H.R. 4, the Senate “urges” the sponsors of any pipeline project to carry natural gas south to U.S. or Canadian markets from North Slope development (on or off the Refuge) “to negotiate a project labor agreement to expedite construction of the pipeline.”

**108<sup>th</sup> Congress.** The House’s H.R. 6 contained the same requirement for a PLA. The gas pipeline provisions in the House and Senate bills both urged the sponsors of the pipeline project “to negotiate a project labor agreement to expedite construction of the pipeline.”

**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 (TAPS) in 1973, and continuing into the current ANWR debate. Much of the TAPS route is on federal lands and the MLA 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 in 1973 that oil shipped through it could be exported only under very restrictive conditions. Subsequent legislation strengthened the export restrictions further.<sup>6</sup> Oil began to be shipped through the pipeline in increasing amounts as North Slope oilfield development grew in the 1970s and 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. In the early and mid-1990s, the combination of Californian and

---

<sup>6</sup> 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), which replaced the Export Administration Act of 1969.

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 California and North Slope producers.

By 1995, several years of low world oil prices and relative calm in the Mideast had reduced concern about petroleum supplies. Market forces eventually created pressure to change the law. On November 28, 1995, P.L. 104-58 (109 Stat. 557) was enacted, Title II of which amended the MLA to provide that oil transported through TAPS 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 barrels/day in 1996, ANS exports rose to 74,000 barrels/day in 1999, representing 7% of North Slope production. North Slope oil exports ceased voluntarily in May 2000, as Alaska producers found adequate U.S. markets at world prices.

**107<sup>th</sup> Congress.** H.R. 4 (§6506 (a)(8)) would have required the Secretary to prohibit export of oil produced under a lease in the 1002 area as a condition of a lease.

**108<sup>th</sup> Congress.** The House bill (§30406(a)(8)) would have required the prohibition on the export of oil produced in the 1002 area as a condition of a lease.

**NEPA Compliance.** The National Environmental Policy Act (NEPA; P.L. 91-190; 42 U.S.C. §4321) requires the preparation of an environmental impact statement (EIS) to examine the effects of major federal actions on the environment. The last full EIS examining the effects of energy development in ANWR was the Final Legislative Environmental Impact Statement (FLEIS) completed in 1987. A leasing program might be challenged in the absence of a newer analysis of possible environmental impacts.

**107<sup>th</sup> Congress.** Both bills addressed the issue. H.R. 4 (§6503(c)) deemed the 1987 FLEIS adequate with respect to actions by the Secretary to develop leasing regulations, yet required the Secretary to prepare an EIS with respect to other actions, some of which might require only a (usually shorter) “environmental assessment.” Consideration of alternatives was to be limited to two choices: a preferred option and a “single leasing alternative.” (Generally, an EIS analyzes a range of alternatives, including a “no action” alternative.)

**108<sup>th</sup> Congress.** Section 30403(c) of the House bill had the same provisions on NEPA compliance.

**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 general purposes of the Refuge System, and any specific purposes of the particular refuge.

**107<sup>th</sup> Congress.** H.R. 4 (§6503(c)) stated that the oil and gas leasing program and activities in the Coastal Plain were deemed to be compatible with the purposes for which ANWR was established and that no further findings or decisions were

required to implement this determination. This language appears intended to answer the compatibility question and to eliminate the usual compatibility determination processes. The general statement that leasing “activities” are compatible arguably encompassed necessary support activities such as construction and operation of port facilities, staging areas, personnel centers, etc.

**108<sup>th</sup> Congress.** Section 30403(c) of the House bill had the same provisions as in the 107<sup>th</sup> Congress.

**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, avoiding some level of review, curtailing the scope of the review, or increasing the burden imposed on challengers. In the past, bills before Congress have combined various elements.

**107<sup>th</sup> Congress.** H.R. 4 contemplated prompt action to put a leasing program in place and had sections on expedited judicial review. H.R. 4 would have required that complaints be filed within 90 days. H.R. 4 (§§6508(a)(1) and (2)) appeared to contradict each other as to where suits are to be filed and it is possible part of a sentence was omitted. H.R. 4 (§6508(a)(3)) would also have limited the scope of review by stating that review of a Secretarial decision, including environmental analyses, was to be limited to whether the Secretary complied with the terms of Division F of H.R. 4, be based on the administrative record, and that the Secretary’s analysis of environmental effects was “presumed to be correct unless shown otherwise by clear and convincing evidence to the contrary.” This standard in this context arguably would make overturning a decision more difficult.

**108<sup>th</sup> Congress.** The House bill (§30408) had the same provisions as in the 107<sup>th</sup> Congress.

**Special Areas.** Some have raised the possibility of setting aside certain special areas described in the FLEIS on the 1002 area 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 restricted.

**107<sup>th</sup> Congress.** H.R. 4 (§6503(e)) allowed the Secretary to set aside up to 45,000 acres of special areas, and named one specific area in which leases, if permitted, would forbid surface occupancy. The FLEIS identified four special areas which together total more than 52,000 acres, so the Secretary would have been required to select among these areas or any others that may seem significant. H.R. 770 and S. 411 would have designated the entire 1002 area as wilderness.

**108<sup>th</sup> Congress.** The House bill (§30403(e)) had the same provisions as in the 107<sup>th</sup> Congress. Section 30403(f) also stated that the closure authority in the ANWR title was to be the Secretary’s sole authority, which might limit possible secretarial actions under the Endangered Species Act (P.L.93-205; 16 U.S.C.

§1531ff). H.R. 770 and S. 543 would have designated the entire 1002 area as wilderness.

**Non-Development Options.** Several options have been available to Congress to either postpone or forbid development, unless Congress were later to change the law. These options are allowing exploration only, designating the 1002 area as wilderness, and taking no action. The legislative history of these options is described below.

**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. For those opposed to energy development, the reasons are fairly clear: if exploration results in no or insufficient economic discoveries, any damage from exploration would remain. If there were economic discoveries, support for further development might be unstoppable. Those who support development see unacceptable risks in such a proposal. First, who would be charged with carrying out exploration, who would pay for it, and to whom would the results be available? Second, if no economic discoveries were made, would that be because the “best” places (in the eyes of whatever observer) were not examined? Third, might any small discoveries become economic in the future? Fourth, if discoveries did occur, could industry still be foreclosed from development, or might sparse but promising data elevate bidding to unreasonable levels? Fifth, if exploration is authorized, what provisions, if any, should pertain to Native lands? In short, various advocates see insufficient gain from such a proposal.

*107<sup>th</sup> Congress.* While an exploration bill was mentioned in the past, none was introduced in the 107<sup>th</sup> Congress.

*108<sup>th</sup> Congress.* No exploration bill was introduced in the 108<sup>th</sup> Congress.

**Wilderness Designation.** Energy development is not permitted in wilderness areas, unless there are valid pre-existing rights or unless Congress specifically allows it or later reverses the designation. Development of the surface and subsurface holdings of Native corporations would be precluded inside wilderness boundaries (though compensation might be owed). It would also preserve existing recreational opportunities and jobs, as well as the existing level of protection of subsistence resources, including the Porcupine Caribou Herd.

*107<sup>th</sup> Congress.* H.R. 770 and S. 411 would have designated the 1002 area as wilderness.

*108<sup>th</sup> Congress.* H.R. 770 and S. 543 would have designated the 1002 area as wilderness.

**Presidential Certification.** Under the two Senate amendments to S. 517 in the 107<sup>th</sup> Congress (which were ultimately rejected by the Senate), the leasing provisions would have taken effect upon a determination and certification by the

President that development of the Coastal Plain is in the national economic and security interests of the United States. This determination and certification were to be in the sole discretion of the President and are not reviewable. This option has not been raised in other bills.

**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 in the 107<sup>th</sup> Congress

### **H.R. 4 (Tauzin)**

Division F, Title V, contained the provisions of H.R. 2436, with the inclusion of a new provision for a 50/50 federal/state revenue split. Introduced July 27, 2001; referred to Committees on Energy and Commerce, Science, Ways and Means, Resources, Education and the Workforce, Transportation and Infrastructure, the Budget, and Financial Services. August 1, 2001, House passed Sununu amendment to limit specified surface development to 2,000 acres (yeas 228, nays 201; Roll Call #316) and defeated Markey-Johnson (CT) amendment to strike Title V defeated (yeas 206, nays 223; Roll Call #317). Passed House August 2, 2001 (yeas 240, nays 189; Roll Call #320). House conferees appointed June 12, 2002. Senate struck all after enacting clause and substituted text of S. 517 (amended); passed Senate April 25, 2002 (yeas 88, nays 11; Roll Call #94). Senate appointed conferees May 1, 2002.

### **H.R. 39 (D. Young)**

Would have repealed current prohibition against ANWR leasing; directed the Secretary to establish competitive oil and gas leasing program; specified that the 1987 FLEIS would be sufficient for compliance with NEPA; authorized set-asides up to 45,000 acres of Special Areas that restrict surface occupancy; set minimum for royalty payments and for tract sizes; and for other purposes. Introduced January 3, 2001; referred to Committee on Resources.

### **H.R. 770 (Markey)**

Would have designated Arctic coastal plain of ANWR as wilderness. Introduced February 28, 2001; referred to Committee on Resources.

### **H.R. 2436 (Hansen)**

Title V would have repealed current prohibition against ANWR leasing; directed Secretary to establish competitive oil and gas leasing program; specified that the 1987 FLEIS would be sufficient for compliance with NEPA; authorized set-asides up to 45,000 acres of Special Areas that restrict surface occupancy; set minimum acreage for the first lease sale and minimum royalty payments; prohibited ANWR oil export; specified project labor agreements; and for other purposes. Introduced July 10, 2001; referred to Committee on Resources and on Energy and Commerce. Reported (amended) by Resources on July 25 (H.Rept. 107-160, Part I)

and discharged by Energy and Commerce on July 25, 2001. Provisions incorporated into H.R. 4.

**S. 388 (Murkowski)**

Title V would have opened the 1002 area to energy leasing; provided for the timing and size of lease sales; specified that the 1987 FLEIS would be sufficient for compliance with NEPA; required posting of bonds for reclamation; required expedited judicial review; authorized set-asides up to 45,000 acres of Special Areas that restrict surface occupancy; provided for a 50/50 revenue split with the state; required on-site inspections, provided for use of any federal revenues; and other purposes. Introduced February 26, 2001; referred to Committee on Energy and Natural Resources.

**S. 411 (Lieberman)**

Would have designated Arctic coastal plain of ANWR as wilderness. Introduced February 28, 2001; referred to Committee on Environment and Public Works.

**S. 517 (Bingaman)**

Would have authorized a program for technology transfer in the Department of Energy. Introduced March 12, 2001; referred to Committee on Energy and Natural Resources. Reported June 6, 2001 (S.Rept. 107-30). February 15, 2002, laid before Senate by unanimous consent. February 15, 2002, S.Amdt. 2917 (Daschle) proposed, authorizing an omnibus energy program. S.Amdt. 3132 (Murkowski) and S.Amdt. 3133 (Stevens) would have opened the Refuge to energy development; filed April 16, 2002; S.Amdt. 3133 failed cloture motion (36 yeas to 64 nays; Roll Call #70) and was withdrawn, April 18, 2002. S.Amdt. 3132 failed cloture motion (46 yeas to 54 nays; Roll Call #71) on April 18, 2002. A cloture motion was filed on S. 517 on April 18, 2002; cloture invoked April 23 (yeas 86, nays 13; Roll Call #77). Senate incorporated this measure in H.R. 4 as an amendment, April 25, 2002.

**S. 1766 (Daschle)**

Would have altered national energy programs in a variety of ways; lacked provisions to open ANWR. Introduced December 5, 2001; not referred to Committee.

## Legislation in the 108<sup>th</sup> Congress

**H.R. 6 (Tauzin)**

Title IV, Division C would have repealed current prohibition against ANWR development, created energy leasing program, and provided for distribution of revenues. Introduced April 7, 2003; referred to eight committees, including Committee on Resources. April 10, 2003, House passed Wilson (NM) amendment to limit specified surface development to 2,000 acres (yeas 226, nays 202; Roll Call #134) and defeated Markey-Johnson (CT) amendment to strike Title IV, Division C (yeas 197, nays 228; Roll Call #135). Passed House April 11, 2003 (yeas 247, nays 175; Roll Call #145). Passed Senate (amended, no ANWR development provisions) July 31, 2003 (yeas 84, nays 15; Roll Call #317). Conference report (H.Rept. 108-

375) filed November 18, 2003. Conference report agreed to in House November 18, 2003 (yeas 246, nays 180; Roll Call #630). Cloture motion failed in Senate November 21, 2003 (yeas 57, nays 40; Roll Call #456).

**H.R. 39 (D. Young)**

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

**H.R. 770 (Markey)**

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

**H.R. 4514 (Pombo)**

Virtually identical to House-passed version of H.R. 6; see “Revenue Disposition” above for only difference. Introduced June 4, 2004; referred to Committee on Resources.

**S. 543 (Lieberman)**

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

## For Additional Reading

National Academies of Science. *Cumulative Environmental Effects of Oil and Gas Activities on Alaska’s North Slope*. March 2003. 452 p.

Nelleman, C. and R. D. Cameron. *Cumulative Impacts of an Evolving Oil-field Complex on the Distribution of Calving Caribou*. Canadian Journal of Zoology. 1998. Vol. 76, p. 1425.

Revkin, Andrew C. *Hunting for Oil: New Precision, Less Pollution*. New York Times. January 30, 2001. p. D1-D2.

U.S. Department of the Interior. Bureau of Land Management. *Overview of the 1991 Arctic National Wildlife Refuge Recoverable Petroleum Resource Update*. Washington, DC, April 8, 1991. 8 p., 2 maps.

U.S. Department of the Interior. Fish and Wildlife Service, Geological Survey, and Bureau of Land Management. *Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment*. Report and Recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement. Washington, DC, 1987. 208 p.

U.S. Department of the Interior. Geological Survey. *The Oil and Gas Resource Potential of the Arctic National Wildlife Refuge 1002 Area, Alaska*. 1999. 2 CD set. USGS Open File Report 98-34.

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

U.S. Department of the Interior. U.S. Geological Survey. "Evaluation of additional potential development scenarios for the 1002 Area of the Arctic National Wildlife Refuge." Memorandum from Brad Griffith, Assistant Leader, Alaska Cooperative Fish and Wildlife Research Unit, to Charles D. Groat, Director, U.S. Geological Survey. April 4, 2002 .

U.S. General Accounting Office.<sup>7</sup> *Arctic National Wildlife Refuge: An Assessment of Interior's Estimate of an Economically Viable Oil Field*. Washington, DC, July, 1993. 31 p. GAO/RCED-93-130.

CRS Issue Brief IB10136. *Arctic National Wildlife Refuge (ANWR): Controversies for the 109<sup>th</sup> Congress*. M. Lynne Corn, Bernard A. Gelb, Pamela Baldwin.

CRS Report RL31022. *Arctic Petroleum Technology Development*. Bernard A. Gelb, M. Lynne Corn, Terry R. Twyman.

CRS Report RS21030. *ANWR Development: Economic Impacts*. Bernard A. Gelb.

CRS Report RL31115. *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*. Pamela Baldwin.

CRS Report RL30862. *The Budget Reconciliation Process: The Senate's "Byrd Rule."* Robert Keith.

CRS Report RL32108. *North Slope Infrastructure and the ANWR Debate*. M. Lynne Corn.

CRS Report RS20368. *Overview of the Congressional Budget Process*. Bill Heniff, Jr.

CRS Report 98-814. *Budget Reconciliation Legislation: Development and Consideration*. Bill Heniff, Jr.

CRS Report RL31278. *Arctic National Wildlife Refuge: Background and Issues*. M. Lynne Corn (Coordinator).

CRS Report RL31447. *Wilderness: Overview and Statistics*. Ross W. Gorte.

CRS Report RL31033. *Energy Efficiency and Renewable Energy Fuel Equivalents to Potential Oil Production from the Arctic National Wildlife Refuge (ANWR)*. Fred Sissine.

---

<sup>7</sup> This agency is now called the Government Accountability Office.

## Archived CRS Products

For those interested in more historical detail, the following archived CRS products are available upon request. They were current as of the date given below. (For more information on these products, call Anne Gillis at 7-8984.)

IB10116. *Energy Policy: the Continuing Debate and Omnibus Energy Legislation*. Robert L. Bamberger. December 23, 2004. 16 p.

IB10111. *Arctic National Wildlife Refuge: Controversies for the 108<sup>th</sup> Congress*. M. Lynne Corn, Bernard A. Gelb, Pamela Baldwin. November 1, 2004. 16 p.

IB10094. *Arctic National Wildlife Refuge: Legislative Issues*. M. Lynne Corn, Bernard A. Gelb, Pamela Baldwin. October 22, 2002. 15 p.

IB10073. *The Arctic National Wildlife Refuge: the Next Chapter*. M. Lynne Corn, Bernard A. Gelb, Pamela Baldwin. December 17, 2001. 17 p.

IB10055. *The Arctic National Wildlife Refuge: the Next Chapter*. M. Lynne Corn, Pamela Baldwin. June 1, 2000. 16 p.

IB95071. *The Arctic National Wildlife Refuge*. M. Lynne Corn, Lawrence C. Kumins, Pamela Baldwin. September 5, 1996. 14 p.

IB91011. *Arctic Resources: Over a Barrel?* M. Lynne Corn, Claudia Copeland, Pamela Baldwin. April 24, 1992. 14 p.

IB89058. *Arctic Resources Controversy*. M. Lynne Corn, Claudia Copeland, Pamela Baldwin. January 12, 1990. 15 p.

IB87228. *Arctic Resources Controversy*. M. Lynne Corn, John E. Blodgett, Pamela Baldwin. January 4, 1989. 16 p.

IB87026. *The Arctic National Wildlife Refuge: Oil, Gas, and Wildlife*. M. Lynne Corn, John Schanz. December 17, 1987. 7 p.