THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

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September 16, 2024

Submitted electronically at BLM_NPRA_SpecialAreas@blm.gov

U.S. Department of the Interior
Director (630), Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Re: "RFI: Special Areas in the National Petroleum Reserve in Alaska" (FR Doc. 2024-15743)

Director Stone-Manning,

The State of Alaska (State) strongly opposes BLM's process for establishing Special Areas through the National Petroleum Reserve – Alaska (NPR-A or the Petroleum Reserve) Management Rule (Rule), which is currently being judicially challenged by nearly every major stakeholder of the Petroleum Reserve. Accordingly, we maintain that this RFI process is inappropriate and inconsistent with law. The expansive suite of information already in possession of the Department of the Interior as to the status of resources in the Petroleum Reserve does not justify new special areas under any legally appropriate standard. Conducting an RFI and cherry picking from the responses as post-hoc justifications for pre-determined policy actions does not change this reality.

We assert this is a process that intentionally dilutes Alaska and Alaskans' voices. It ignores the need for collaboration with NPR-A communities and residents and State experts as primary inputs for management. Conducting this process in this way threatens to diminish both the communities and the resources it purports to protect. Accordingly, we reincorporate by reference the State's prior comments and significant concerns about the underlying rule, and fundamentally object to the RFI process.

This process should be stopped and any expansion of Special Areas under this Rule should be delayed until the multiple stakeholder lawsuits asserting this process is unlawful are adjudicated. The State maintains that procedures should, in fact, be created for reducing Special Areas and removing unnecessarily imposed protective measures. We reserve all claims and challenges to this process and any outcome it may lead to, and do not waive any challenge to the underlying Rule by submitting this letter during the RFI period.

BLM's actions take the governance of shared Native and Federal lands out of the hands of Alaskan Natives and communities of the Petroleum Reserve and passes it to special interest groups in the Lower-48 whose sole goal is to stop development at any expense, all under the guise of collecting innocuous information about resource values. The breadth of active avoidance of both State officials and the leadership of communities within the Petroleum

Reserve in the process to date affirms this fact. Technocratic justifications for prohibiting development and economic activity actively sought after by NPR-A villages, communities, and residents is noxious government paternalism at its worst and directly contrary to applicable federal law. Despite promises of collaboration made by Secretary Haaland and others from the Administration on these kinds of issues, this pattern is only worsening with the RFI process.

BLM's actions impair existing federal obligations and leases. This process creates substantial uncertainty and ambiguity as to how the inherently conflicting terms of the existing leases and the Rule, along with the Special Areas identified through these defective processes, will be managed going forward. BLM is required to provide for the exploration and development of the resources of the Petroleum Reserve, so this kind of action could not be reasonably anticipated by parties who acted in reliance on a stable regulatory establishment of predictable permitting processes and timelines for exploration, development, and production that was in place prior to the Rule. BLM is promoting uncertainty rather than domestic energy production at a time when our country's energy production capacity is increasingly one of our most critical geo-strategic assets.

The RFI process also dismisses the time, data, science, stakeholder engagement, and collaboration that has been used to make every decision of this nature in the Petroleum Reserve to date, including recent NPR-A Integrated Activity Plan (IAP) development processes. In fact, the NPR-A IAP that was adopted by this Administration did not support the need for this Rule and already analyzed each existing Special Area under the exact same consideration – are the current special areas appropriate? Once the Administration realized existing data and NPR-A IAP analysis do not support the expansion of Special Areas (and in some cases may have justified their reduction), BLM has pivoted to strategically avoid both data and stakeholders that do not support the predetermined outcome of expanding the Petroleum Reserve's Special Areas.

As the State has repeatedly made clear, BLM's process for creating Special Areas, like the Rule itself, is out of alignment with congressional intent for the Petroleum Reserve and applicable federal law. Specifically, BLM must balance all its efforts in the Petroleum Reserve with the dominant mandate of the Naval Petroleum Reserve Production Act (NPRPA) to establish an "expeditious program of competitive leasing of oil and gas."[1] Instituting Special Areas in which leasing and new infrastructure is categorically barred; protection of surface values and surface resources are elevated to the exclusion of any other use; or exploration, development, and production of oil and gas are burdened to the point of being prohibited are all fundamentally counter to the NPRPA.

This process bolsters the State's concern that BLM continues to strategically defer and avoid engagement with NPR-A stakeholders so that this Administration can make decisions in a vacuum. Meaningful engagement with State and local leadership should have started before BLM published and developed a Rule or request for information, not during a nationwide public comment period. Forcing this arbitrary process forward and ignoring opposition filed by nearly

[1] 42 U.S.C. Section 6506a(a).

every major stakeholder in the Petroleum Reserve has reached the point of being openly disrespectful to the communities, residents, and leadership of the NPR-A.

The inappropriateness of BLM's manipulated public process is only outmatched by the significant negative impacts and fundamental changes the Rule would impose on the purposes of the Petroleum Reserve. This process has proceeded without acknowledging or giving any indication of care to the long-term impacts of such highly restrictive management approaches. There has been no impact analysis or economic analysis for either the underlying rule nor this RFI, which would lay bare the negative impacts of the Rule. These analyses matter because the impacts and economic consequences of the process will be severely negative for the Congressionally recognized interests of the communities within the NPR-A. Despite promises of Co-Stewardship of Petroleum Reserves' shared lands, BLM is driving management and conservation decisions through a nationwide public process with no collaboration given to the local people and the communities of the NPR-A. The empty promises, ongoing manipulation, and deferred engagement continue to erode the trust needed for constructive management within the Petroleum Reserve.

The State objects so strongly to the RFI because of the repeated pattern of BLM and Department of the Interior actions. As discussed above, there has been a flawed and manipulated – and extremely rushed – public process in developing the rule. There has been disregard for subsistence timing and needs, and how they may actually limit the justifications for some special areas or stipulations. There has been active avoidance of meaningful – or any – engagement with many stakeholders, often through disrespectful perpetual deferral. Baseless assertions that there are no direct economic impacts, diminutions of existing leaseholders rights, or secondary impacts to communities, despite the undeniable reality of the economic impacts of restricting economic activity. Public admissions that the rushed process is intended to avoid the political risk of these policies being rejected under the Congressional Review Act. A one-way ratchet for static and inflexible restrictions, despite the inherently dynamic nature of the resources that are purportedly being managed and protected. Naked dismissal of the federal laws governing the Petroleum Reserve. Sidestepping prior public processes that already answered these same questions. All of these abuses coincidentally point in one direction.

In this context, the RFI is a unambiguously a pretextual effort to have preferred groups submit preferred information to justify preferred decisions, rather than engage with the actual data from the actual place, with the people that actually live there, to manage for the clearly-stated legal purposes of the Area. It is painfully obvious that this administration has no intention of working with Alaska or listening to the federal laws applicable to the Petroleum Reserve, and will silence Alaska at the expense of NPR-A Communities, Villages, residents and the State as a whole.

The State of Alaska has a long history of resource development, wildlife, and the subsistence lifestyle coexisting. The North Slope specifically has demonstrated over decades that oil and gas exploration, development, production, and transportation under some of the harshest environmental conditions in the world can occur safely and responsibly with the appropriate regulatory controls and environmental protections in place. Activities on the Slope must meet or exceed the high standards demanded by one of the most rigorous environmental regulatory

regimes of any state for balancing development with the protection of resources using best management practices and mitigation measures. This rigorous regulatory regime continues to ensure that subsistence practices can be sustained while providing economic benefits for NPR-A Native Villages, Communities Corporations and residents.

This Rule and its subsequent processes are not needed to protect the Petroleum Reserve's resources and the way of life for NPR-A residents. We strongly encourage BLM to build off the decades of collaboration and data within the Petroleum Reserve rather than disregarding those efforts because it is impossible to square their reality with the Administration's predetermined objectives.

Attached and incorporated by reference are the State consolidated comments on the proposed Rule that explain in detail why the process is both unlawful and disrespectful to the State and the communities, residents, and stakeholders of the Petroleum Reserve and should be immediately withdrawn.

Sincerely,

John C. Boyle III
Commissioner, Alaska Department of Natural Resources

Enclosures

- State of Alaska cover letter and consolidated comments on BLM's NPR-A proposed Rule
- State's November 7, 2023 Letter Mr. Steven Cohn, BLM Alaska State Director

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December 7, 2023

Submitted electronically at www.regulations.gov

U.S. Department of the Interior
Director (630), Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Attn: 1004–AE95

Re: Proposed Rule, Management and Protection of the National Petroleum Reserve in Alaska
88 Fed. Reg. 62,025 (Sept. 8, 2023)

Dear Director Stone-Manning:

The State of Alaska (State) has reviewed the Bureau of Land Management's (BLM) Proposed Rule, "Management and Protection of the National Petroleum Reserve in Alaska," 88 Fed. Reg. 62,025 (Sept. 8, 2023) ("Proposed Rule") and submits the following comments and concerns.

The State strongly opposes both the Proposed Rule and BLM's lack of public process, which seems to be designed to silence and ignore the State and Alaskan stakeholders and obscure the massive negative impacts of the rulemaking. To date, BLM has not provided meaningful engagement at any level on the Proposed Rule or future management of the National Petroleum Reserve–Alaska (NPR–A) with the State, the North Slope Borough, or the tribal or Alaska Native Corporation representatives of NPR-A communities that we are aware of. BLM and this Proposed Rule marginalizes impacts for all stakeholders, ignores data gathered through multiple prior BLM-led NPR–A Integrated Activity Plans (IAPs) about critical resources and their location, and neglects (or ignores) whaling subsistence activities and their importance—thus creating a rule that is completely disconnected from the people of the region and Alaskan stakeholders. The rule's focus on conservation at the expense of any development activity in the *Petroleum* Reserve is also completely disconnected from BLM's statutory authorities and obligations.

We maintain BLM continues to push a political timeline on Alaskans at the expense of residents and local stakeholders of the NPR–A. BLM's approach of dictating to Alaskans and Alaska Native Communities what is best for them, rather than collaborating with them to incorporate traditional, cultural, and regional knowledge, is offensive and completely disregards the promises made by Secretary Haaland and many others from the current Administration. If this rule is not withdrawn or significantly modified, including through direct engagement with the State, North Slope Borough, and representatives of impacted communities within the NPR-A, it will cement a legacy of disregard for Alaskans and our North Slope Alaska Native communities that directly

harms Alaska's economy, culture, and unique way of life. It will also break the commitment made to the State under its statehood compact that Alaska would be able to develop its resources for the benefit of Alaskans and the nation, and violates the "no more" clause of the Alaska National Interest Lands Conservation Act (ANILCA) by establishing more de facto non-development areas.

The State's strong opposition to BLM's process is only outweighed by our concerns and opposition to the significant negative impacts and fundamental changes the Proposed Rule would impose on the NPR–A. The Proposed Rule would fundamentally depart from Congress' intent for management of the *Petroleum* Reserve that is the NPR–A. Whereas Congress envisioned BLM would "conduct an expeditious program of competitive leasing" to develop the petroleum resources while protecting other resources through mitigating impacts, the Proposed Rule constructs a "management framework" to solidify a process with a sole focus of expanding conservation units until no more resource and economic opportunities exist for the NPR–A and its communities. For these reasons, and the reasons detailed below, BLM must withdraw the Proposed Rule.

Executive Summary

- BLM has developed the proposed rule through a flawed and manipulative public process.
- BLM has not afforded the State and stakeholders adequate opportunity for comment on the Proposed Rule.
- Congress clearly intended the *Petroleum* Reserve (the NPR-A) would be managed for the primary purpose of resource development.
- The Proposed Rule's treatment of Special Areas contradicts the National Petroleum Reserve Production Act (NPRPA) and undermines Congress' intended management of the NPR–A. The Proposed Rule will result in ever-expanding Special Areas managed for "maximum protection" of surface values without any evidence that these additional protections are necessary.
- The Proposed Rule would manage Special Areas as prohibited new Conservation System Units (CSUs), in violation of the "no more" clause in ANILCA.
- Designation of Special Areas is an inappropriate tool to manage the NPR–A's dynamic resources.
- The Proposed Rule restricts activities outside of Special Areas in a manner inconsistent with the NPRPA, as amended.
- The Proposed Rule increases environmental justice impacts on under-served and disproportionately impacted communities.
- BLM has not complied with procedural requirements necessary to finalize the Proposed Rule. Because the Proposed Rule would effective substantive changes to the NPR–A's management that result in costs to the oil and gas sector, the State, and stakeholders, BLM must prepare a full economic analysis as required by Executive Order (EO) 12866 and the Regulatory Flexibility Act.

Similarly, BLM cannot utilize a categorical exclusion to fulfill its obligations under the National Environmental Policy Act (NEPA) but instead must prepare an environmental impact statement (EIS).

BLM Has Developed the Proposed Rule Through a Flawed and Manipulative Public Process.

BLM's efforts to avoid working with local stakeholders of the NPR–A is almost impressive in its breadth. Not only has the State been excluded, but also leaders from impacted NPR–A Alaska Native communities, the North Slope Borough, the BLM-created NPR–A Working Group, the Congressionally established Arctic Slope Regional Corporation, the tribal representatives from the Inupiat Community of the Arctic Slope (ICAS), the Voice of the Arctic Inupiat (VOICE), and the general public of Alaska and residents of the NPR–A. These process deficiencies are especially stark after so many prior NPR–A-focused planning and permitting efforts featured comprehensive consultation and process. Conversely, this may be the North Slope's most disconnected and disingenuous public process in the modern era.

By first de- and re-selecting the no action alternative for the most recent NPR–A IAP and effectively reverting back to the 2013 NPR–A IAP, and then offering the Proposed Rule as a new management/conservation tool with no State, local, or NPR–A community input, BLM purports to recast a decade of public process while somehow excluding all traditional, community, and regional knowledge necessary to create a management plan or tool that balances the needs of all stakeholders in the NPR–A.

BLM has selectively chosen to ignore the data and science from past EISs and field studies that do not meet BLM's goal of utilizing "Special Areas" to expand conservation and maximum restrictions across the NPR–A. In the most recent NPR–A IAP, BLM recommended *removing* the Colville Special Unit Area because the data no longer supported the location of the protected resource. BLM had also identified that the raptor nesting data did not match the Special Area and proposed to remove it and to protect these resources through IAP stipulations, which protect resources and habitat regardless of location. Not only does BLM ignore this data, the Proposed Rule highlights this Special Area as protecting the same resources for which the data does not support. Nor is there any new analysis, or new data, justifying this change. BLM's own prior process and analysis is apparently irrelevant.

BLM's use of Special Areas, which inherently feature static boundary lines, to protect dynamic resources will function in practice as a management tool for BLM to develop an ever-growing and expanding conservation unit. The Proposed Rule is infused with BLM's intent to expand conservation regardless of data, science, stakeholder input, etc., rather than acknowledging that resources should be protected through carefully-fabricated IAP stipulations, Best Management Practices (BMPs), or Required Operating Procedures (ROPs) that are developed with comprehensive process. These tools ensure that resources are protected throughout the NPR–A, regardless of whether a resource stays within or moves outside BLM's fictional lines.

The Proposed Rule is fixated on conservation and preservation as tools and greatly restricts BLM's – and NPR–A stakeholders' – ability to implement adaptive management. This Proposed

Rule develops a conservation tool rather than a rule focused on developing a balanced management plan that considers all stakeholders on the NPR–A.

BLM continues to manipulate the process and stakeholders by conducting the absolute minimum engagement during the required notice-and-comment period and by promising stakeholder engagement only after the rule has been formulated and its outcomes seemingly approved. Meaningful engagement should start before BLM publishes and develops a draft rule, plan, or management framework—not during the required public process or after the Proposed Rule is drafted and published.

The Proposed Rule discusses community and stakeholder involvement but ignores that the communities and residents of the NPR–A are raising questions and concerns about the rule. BLM has described the Proposed Rule as the framework that will guide the management of the NPR–A. Therefore, it is confusing why BLM does not think it is important to develop "the framework" with the stakeholders of the NPR–A.

It is incredibly disingenuous for BLM to make promises to the State, NPR–A communities, North Slope Borough leadership, and NPR–A residents about meaningful engagement moving forward when BLM has excluded us from the development of this Proposed Rule. To highlight how disingenuous this process has been, BLM created the NPR–A Working Group through the 2013 NPR–A IAP, to ensure that NPR–A communities and stakeholders are able incorporate North Slope economics, subsistence concerns, and traditional and ecological knowledge and to solicit recommendations from local residents in the management of the NPR–A. BLM itself cites the duties of the Working Group are "to discuss local concerns relevant to project development and *implementation of BLM planning decisions with BLM."* Not only did BLM not coordinate or collaborate with the NPR–A Working Group on the Proposed Rule, the State understands this Working Group was not even formally notified of it until nearly 20 days after it was published.

BLM Has Not Afforded the State and Public Adequate Opportunity for Public Comment.

BLM's public comment period on the Proposed Rule has been identified by numerous stakeholders as inadequate to allow for meaningful opportunity to comment. The State hereby incorporates its November 7, 2023, letter to Mr. Steven Cohn, BLM Alaska State Director, outlining why the public comment period, even in light of the 30 days of extensions granted to-date, fails to provide the public—including the State, Alaskans, and the Native communities and residents of the NPR–A—an adequate opportunity to review and comment on the Proposed Rule.

Congress Clearly Intended the *Petroleum* Reserve (the NPR-A) Would be Managed for the Primary Purpose of Resource Development.

The legislative history of the NPRPA and subsequent legislative actions demonstrate that Congress intended that the NPR–A would be used for resource – meaning oil and gas – production, fitting with its designation as a *Petroleum* Reserve. Both BLM's subsequent management of the NPR–A and judicial decisions have confirmed this congressional intent. The

Proposed Rule departs from the NPRPA and Congress' intent by elevating protection of surface values to the exclusion of oil and gas production.

> Congress Intended that Resource Development Would Be the NPR–A's Principal Purpose.

Congress transferred administration of the NPR–A to the Department of the Interior from the Navy in 1976 because the NPR–A's exploration under Navy stewardship was "proceeding at a snail's pace." H.R. Rep. No. 94-81, at 8 (1976). Congress intended that this transfer would allow the NPR–A to be "fully explore[d], fully develop[ed], and produce[d]." *Id.*

When the NPR–A was transferred to the Department of the Interior, Congress was operating within the backdrop of a crushing oil embargo, which was repeatedly remarked upon in the congressional record. *See, e.g.*, Hearings on H.R. 49 to Authorize the Secretary of the Interior to Establish on Certain Public Lands of the United States National Petroleum Reserves the Development of Which Needs to be Regulated in a Manner Consistent With the Total Energy Needs of the Nation, and for Other Purposes: Hearings Before Investigating Subcommittee of the Committee on Armed Services, 94th Cong. 447 (Apr. 9, 10, 1975) ("It would be small consolation in the event of a conflict if we had all the reserves in [NPR–A], but could not use them in a national emergency." (statement of Admiral Harry Train)). Out of concern towards future oil shortages affecting Americans, Congress rejected the Navy's "inadequate state of development and readiness" concerning their administration of the NPR–A. *Id.* at 87 (statement of Rep. Bell); *see also* 122 Cong. Rec. H 2617, H2622 (daily ed. Mar. 31, 1976) (statement of Rep. Anderson) (explaining that developing the NPR–A would be "a significant step that this Congress can take toward energy self-sufficiency for the United States").

The NPRPA was followed by Congressional approval of private oil and gas leasing in the NPR–A in 1980. *See* Department of the Interior Appropriations Act of 1981, Pub. L. No. 96-514, 94 Stat. 2957. Congress sought to combat the "serious question [of] whether [Congress is] going to get going on a meaningful drilling program." 126 Cong. Rec. 20,530, 20,531 (daily ed. July 30, 1980) (statement of Rep. Udall). And Congress was clear: "We are for oil exploration. We think it ought to be done." *Id.* at 20,532 (statement of Rep. Udall); *see also id.* at 20,537 (statement of Rep. Regula) (explaining how the nation "desperately need[s] to free [itself] from blackmail by the OPEC countries" through exploration and development of NPR–A). Aware that the NPR–A "is the most promising drilling program on the public lands of the United States," legislative history firmly supports the NPR–A's primary purpose of resource production. *Id.* at 20,533 (statement of Rep. Udall).

Furthermore, Congress declined the opportunity to manage the NPR–A to promote conservation over resource production. In 1980, Congress was presented with competing amendments on how to manage the NPR–A – some proposing highly restrictive regimes akin to the Proposed Rule. Longtime Alaska Congressman Don Young criticized these options precisely because they had the same purposes, and intended outcomes, as the Proposed Rule:

> *"Let me tell you what the administration bill does. It is a nothing bill. It allows no development of oil. It elevates the Fish and Wildlife Department into supreme*

commander of those lands. They set aside special areas and if that department sees one chance of wildlife being damaged, there shall be no drilling."

126 Cong. Rec. at 20,535. Congress rejected this proposal and similar proposals. Rather than focus on secondary concerns within the Petroleum Reserve at the cost of promoting its full oil and gas potential, Congress followed Congressman Young's "belief that we must proceed with all deliberate speed to develop" the vast oil resources of the NPR–A. *Id.* at 20,537.

Similarly, with its direction that exploration activities in Special Areas be conducted to assure "maximum protection" of surface values, Congress did not intend to prohibit oil and gas development in Special Areas entirely. *See* 42 U.S.C. § 6504(a). In fact, the conference report that preceded the NPRPA demonstrates that Congress intended the Secretary's authority to protect surface values in the NPR–A would be used to minimize adverse impacts on the environment while oil and gas activities proceeded – not to prohibit oil and gas activities:

> *"The legislation makes it clear that the secretary* ***may designate certain areas****—including the Utukok River Area and the Teshekpuk Lake area—where* ***special precautions may be necessary*** *to control activities which would disrupt the* ***surface values*** *or* ***disturb the associated fish and wildlife habitat values and related subsistence requirements*** *of the Alaska Natives.*
>
> *It is the intention of this provision to immediately authorize the Secretary to require that* ***the exploration activities*** *within these designated areas* ***be conducted in a manner designed to minimize adverse impact*** *on the values which these area contain. While* ***"maximum protection of such surface values" is not a prohibition of exploration-related activities within such areas****, it is intended that such exploration operations will be conducted in a manner which will* ***minimize the adverse impact*** *on the environment.*
>
> *To this end, the Secretary is expected to take into consideration the needs of resident and migratory wildlife and to* ***schedule exploration activities*** *in a manner which, and at such seasons as, will* ***cause the least adverse influence*** *on fish and wildlife. In scheduling exploration activities in such an area the Secretary should take steps to* ***minimize any adverse effects*** *on native subsistence requirements and associated fish and wildlife values. Specifically, he should* ***conduct exploration activities*** *in these areas during time of the year when the caribou calving season and the nesting and molting seasons of the birds* ***can be avoided****.*
>
> *While this provision suggests that certain areas should receive special consideration, the Members of the Committee of conference do not mean to imply that the Secretary should ignore the environmental ramifications of exploration activities in other areas. On the contrary, it is expected that the Secretary will take every precaution to* ***avoid unnecessary surface damage to minimize ecological disturbances throughout the reserve****."*

H.R. Rep. No. 94-942, at 21 (1976) (emphasis added). Therefore, Congress intended that resource development would be the NPR–A's primary purpose across its entire area, including in Special Areas.

> For Decades, BLM Recognized Congress' Intent When Managing the NPR–A and Special Areas Therein.

Since BLM's 1977 regulations to manage the NPR–A and, as recently as the current IAP, BLM has managed the NPR–A and its Special Areas to promote resource production while minimizing environmental impacts. BLM first carried Congress' intent forward in the NPRPA's current implementing regulations, which give the Secretary the authority to designate Special Areas and apply protective measures "to the extent consistent with the requirements of the Act for the exploration of the reserve." 43 C.F.R. § 2361.1(a). The preamble to the current, final regulations includes numerous statements that reinforce this understanding. In response to a comment that requested clarification that "continuation of oil and gas exploration is a requirement of the Act," the preamble states: "The objectives section includes that mandate." 42 Fed. Reg. 28,720 (May 27, 1977). Likewise, a request to "amend §2361.0-2 by deleting reference to the Secretary's responsibility to proceed with petroleum exploration and other uses" did not result in any changes to the final regulations. *Id.* at 28,721. As a result, the existing regulations codify and emphasize that oil and gas development can and will occur consistent with the NPRPA's safeguards for Special Areas. *See* 43 C.F.R. § 2361.0-2 ("activities which are or might be detrimental to such values will be carefully controlled to the extent consistent with the requirements of the Act for petroleum exploration of the reserve").

Similarly, when designating the Utukok River Uplands, Teshekpuk Lake, and Colville River Special Areas, BLM reiterated Congress' intent that Special Areas, and "maximum protection" of them, did not preclude oil and gas leasing and development. Specifically, BLM stated, "Maximum protection of designated special areas does not imply a prohibition of exploration or other activities. In scheduling activities in these or other special areas, steps to minimize adverse impacts on existing resource values will be required and implemented." 42 Fed. Reg. 28,723, 28,723 (June 3, 1977). BLM also discussed the need for protective measures for the western Arctic caribou herd in the Utukok River Uplands special area. *Id.* "Maximum" protective measures at the time included restrictions on low-level air access and seasonal protections during the calving season. *See id.* Similarly, "maximum" protective measures for migratory birds and waterbirds in the Teshekpuk Lake special area called for an emphasis on seasonal restrictions during important nesting, staging and molting periods. *See id.* Although Sagwon Bluffs is not in the NPR–A, the discussion for the Colville River Special Area also references seasonal restrictions on low-level aircraft flights to protect peregrine falcon nesting sites within the pipeline corridor. *See id.*

Furthermore, BLM's responses to comment on the IAP/EIS (2020) recognize that oil and gas leasing must occur in Special Areas. For example, BLM stated that "[t]he NPRPA requires 'maximum protection of important surface resources consistent with oil and gas exploration.' This provision makes clear that oil and gas activities are allowed in Special Areas, albeit subject to maximum protection conditions." IAP/EIS, App. Z at Z-571 (2020). Accordingly, from the

initial enactment of the NPRPA to as recently as three years ago, BLM reiterated Congress' intent that protection of environmental values cannot supersede or exclude resource production.

> Courts Have Affirmed that Special Areas Cannot be Managed to Exclude Oil and Gas Activities.

Courts have similarly recognized that the NPRPA's direction that exploration activities in Special Areas occur to assure "maximum protection" of surface values cannot prohibit development in Special Areas. Rather, as the Alaska District Court has explained, BLM must balance activities in Special Areas with resource protection:

> *"[A]llowing development in the [Teshekpuk Lake Special Area (TLSA)] fails to provide "maximum protection" in the absolute sense. But that is not the test. The test is . . . one of relativity; the degree of protection must be consistent with NPRPA. One of the stated objectives of NPRPA is the "expeditious program of competitive leasing of oil and gas in the Reserve." 42 U.S.C. § 6506a(a). Thus, the Secretary must necessarily balance the leasing of the lands in TLSA with the protection of the environment. In other words, the Secretary must balance the impact on the environment with the countervailing and, inevitably conflicting, mandate to develop a program of competitive leasing. See 42 C.F.R. § 6321.0-2. The Secretary, as he recognizes in his regulations, in developing the leasing program must provide maximum protection for the TLSA.* ***However, as noted above, maximization of protection of the environment does not mean that a leasing program provide maximum protection, but that to the extent that the leasing program permits development, that development be conducted in a manner that provides maximum protection****."*

Nat'l Audubon Soc'y v. Kempthorne, No. 1:05-cv-00008-JKS, 2006 U.S. Dist. LEXIS 110152, at *45–46 (D. Alaska Sept. 25, 2006) (emphasis added). And, just last month, the U.S. District Court for the District of Alaska recognized that Congress "clearly envisioned" that Special Areas would be developed for oil and gas production, simply with greater protections than outside of Special Areas. *Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.*, Nos. 3:23-cv-00058-SLG and 3:23-cv-00061-SLG, slip op. at 20 (D. Alaska Nov. 9, 2023) (citing 42 U.S.C. § 6504(a)). Thus, courts have consistently recognized Congress' clear intent for management of the NPR–A.

For all these reasons, BLM must withdraw or dramatically revise the rule to comply with the requirements of existing law.

The Proposed Rule Contradicts the NPRPA and Undermines Congress' Intended Management of Special Areas.

The Proposed Rule thwarts Congress' intended management of the NPR–A by precluding future oil and gas leasing and development in Special Areas. First, the Proposed Rule will result in ever-expanding Special Areas. Second, the Proposed Rule would establish a management standard of "maximum protection" of surface values in Special Areas, which conflicts both with

the NPRPA and Congress' intent. When this management standard is layered on ever-expanding Special Areas, the result will be the incremental closure of large swaths of the NPR–A to future oil and gas leasing and development—in direct contravention of Congress' intent when designating the NPR–A.

The Proposed Framework for Designating Special Areas Will Result in Ever-Expanding Special Areas.

Section 2361.30(a) of the Proposed Rule directs that BLM evaluate whether to designate new Special Areas, or to expand existing Special Areas, at least every five years. Moreover, section 2361.30(b) directs that BLM may not remove lands within Special Areas unless "all of the significant resource values that support the designation are no longer present." As a practical matter, BLM is unlikely to determine that multiple values are no longer present at all. Thus, net effect of section 2361.30 will be ever-expanding Special Areas within the NPR–A.

Furthermore, BLM's five-year review is unnecessarily restrictive and unfounded in law. The NPRPA contains no requirement whatsoever that the Secretary designate any additional Special Areas or expand any existing Special Areas. *See* 42 U.S.C. § 6504(a). Furthermore, BLM lacks the resources to engage in a required five-year review. This unnecessary review process serves no benefit but to continually expand Special Areas within the NPR–A.

The Proposed Rule Inappropriately Establishes a Management Standard of "Maximum Protection" of Surface Values in Special Areas.

Section 2361.40 establishes a management standard of "maximum protection" of surface values in Special Areas, which elevates protection above resource production. It establishes "maximum protection" of surface values to be a general management standard within Special Areas. *See, e.g.*, 88 Fed. Reg. at 62,035 (stating that section 2361.40 "would affirmatively establish that assuring maximum protection of significant resource values is the management priority for Special Areas"). Essentially, "maximum protection" will be a baseline to disqualify any resource development activity from proceeding because the activity could not meet the standard of "maximum protection."

BLM then utilizes its newfound management standard of "maximum protection" of surface values in two elements of the Proposed Rule. First, BLM relies on this standard to justify the presumption in proposed section 2361.40(c) that no future oil and gas leasing or new infrastructure should be permitted in any Special Areas. *See* 88 Fed. Reg. at 62,036 ("To fulfill the BLM's statutory duty to assure maximum protection for those areas' significant resource values . . . additional activities should only be allowed when maximum protection is assured."). Second, BLM applies this standard to justify the Proposed Rule's stringent limitations on BLM's ability to remove lands from a Special Area in section 2361.30(b). *See id.* at 62,034–35 (asserting that the prohibition on removing lands from Special Area designations in section 2361.30(b) is consistent with BLM's statutory duty to "assume maximum protection of such surface values") (quoting language of 42 U.S.C. § 6504(a)).

The NPRPA, however, does not describe "maximum protection" of surface values as a general management standard nor does it contemplate that "maximum protection" can disqualify activities from proceeding. The NPRPA directs that exploration within Special Areas "**shall be conducted** in a manner which will assure the maximum protection of such surface values[.]" 42 U.S.C. § 6504(a) (emphasis added). This language does not contemplate a presumption against activities being conducted because of surface values – rather, they "shall" occur.

As explained above, Congress never intended that the NPRPA's direction that exploration activities be conducted to assure "maximum protection" of surface uses would be used to preclude oil and gas development entirely. *See* H.R. Rep. No. 94-942, at 21; *see also* 122 Cong. Rec. H2618 (daily ed. Mar. 31, 1976) (statement of Rep. Melcher) ("section 104 also makes it clear that the Secretary will identify and designate qualified areas having important values and uses which should be protected **during the oil and gas exploration period**" (emphasis added)).

Rather, the NPRPA contemplates that "maximum protection" would be relative to any proposed exploration activity, rather than a general management standard. Protection measures must be tailored to a given exploration activity and its associated level of impact. *See, e.g.*, *Nat'l Audubon Soc'y*, 2006 U.S. Dist. LEXIS 110152, at *45–46.

For these reasons, the general management standard set forth in section 2361.40 is invalid. Similarly, the presumption in proposed section 2361.40(c) that no future oil and gas leasing or new infrastructure should be permitted in any Special Areas is invalid, as well as the restriction on BLM's ability to remove lands from a Special Area in section 2361.30(b).

The Proposed Rule Would Manage Special Areas as Prohibited New Conservation System Units, in Violation of the "No More" Clause in ANILCA.

In ANILCA's "no more" clause, Congress unequivocally directed that no additional public lands in Alaska will be included in CSUs after ANILCA's passage. *See* 16 U.S.C. § 3103(c). Because ANILCA struck "a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition," Congress determined that "the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby." *Id.* § 3101.

The Proposed Rule's management of Special Areas, however, would treat Special Areas as CSUs, in violation of the "no more" clause. The Proposed Rule would elevate the protection surface resources, including recreational, fish and wildlife, and historical or scenic values, as the paramount purpose of Special Areas over and above resource production.

A comparison of management standards for CSUs and Special Areas under the Proposed Rule confirms that Special Areas would effectively be managed as CSUs—if not more stringently than CSUs. Under ANILCA, BLM may only approve transportation or utility systems in and across CSUs for which there is no other applicable law upon a determination that "such system would be compatible with the purposes for which the unit was established" and "there is no economically feasible and prudent alternative route for the system." 16 U.S.C. § 3165. The

Proposed Rule similarly authorizes new permanent infrastructure in Special Areas related to existing oil and gas leases "only if such infrastructure is essential for exploration or development activities and no practicable alternatives exist which would have less adverse impact on significant resource values of the Special Area." Proposed § 2361.40(d)(3). As a practical matter, no material distinction exists between BLM's ability to approve a transportation or utility system in CSUs and BLM's ability to approve new infrastructure related to existing oil and gas leases in Special Areas under the Proposed Rule. The Proposed Rule is an impermissible end-run around ANILCA's "no more" clause and cannot be finalized.

Designation of Special Areas Is an Inappropriate Tool to Manage the NPR–A's Dynamic Resources.

Designation of Special Areas continue to be an ineffective and inaccurate tool to manage discreate and dynamic resources in the NPR–A. Static boundaries of Special Areas do not represent the dynamic resources or the dynamic environment of the NPR–A and the Arctic. The Proposed Rule (and BLM) looks to exploit those inefficiencies and inaccuracies to expand Special Areas, which will shut down a growing ring of economic development opportunities within the NPR–A, including economic opportunities for Alaska Native Villages and the Congressionally-established Alaska Native Corporations of the NPR–A. The resources identified in these Special Areas do not limit themselves to these areas; instead, they move, migrate, and adapt to changing environments. Rather than working with stakeholders to identify appropriate management tools and practices that protect valuable NPR–A resources, regardless of location, BLM has unilaterally decided to force a conservation system tool (disguised as the Proposed Rule) onto the region, regardless of impacts and opinions the State and NPR–A Native communities and residents.

The Proposed Rule Improperly Restricts Activities Outside of Special Areas.

Section 2361.10 contorts Congress' direction in 42 U.S.C. § 6506a that BLM mitigate adverse effects to surface resources from proposed oil and gas activities into a management standard that BLM "protect" surface resources with the NPR–A. *See* § 2361.10(a). Although BLM states that its proposed changes to section 2361.10(a) "mirror the statutory language" of 42 U.S.C. § 6506a, *see* 88 Fed. Reg. at 62,032, 42 U.S.C. § 6506a does not use the term "protect" or establish a general management standard for activities within the NPR–A. Similarly, 42 U.S.C. § 6506a does not impose a broad "duty to protect the surface resources in the NPR–A," as BLM contends. *See* 88 Fed. Reg. at 62,032. Rather, 42 U.S.C. § 6506a(b), titled "Mitigation of Adverse Effects," simply directs that BLM shall include "conditions, restrictions, and prohibitions . . . to mitigate reasonably foreseeable and significantly adverse effects" from activities in the NPR–A.

Furthermore, section 2361.10(a) exceeds BLM's authority to the extent it would allow BLM to require a project proponent to "delay[ ] action on, or deny[ ] some or all aspects of proposed activities[.]" The language of 42 U.S.C. § 6506a(b) contemplates that activities in the NPR–A will proceed, subject to BLM's conditions, restrictions, and prohibitions, stating, "**Activities undertaken** pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions . . ." (emphasis added). This language does not provide BLM with the authority to

indefinitely delay or to deny proposed actions, particularly when such actions would occur pursuant to lease rights.

Additionally, the NPRPA does not allow BLM to consider "the incremental effects of the proposed activities when added to the effects of other past, present, and reasonably foreseeable actions" when authorizing activities in the NPR–A, as proposed in section 2361.10(b)(3). Specifically, the NPRPA does not allow BLM to condition, restrict, or prohibit activities in the NPR–A based on the incremental effects of activities other than a proposed action. Certainly, the NPRPA does not allow BLM to condition, restrict, or prohibit activities in the NPR–A because of potential effects from activities outside of the NPR–A. Doing so would subjugate development of the NRP–A to external actions that are beyond the control of a project proponent or BLM. Congress could not have intended that its goal of ensuring responsible and orderly activities in the NPR–A would be contorted to diminish the United States' ability to develop the NPR–A.

Finally, the Federal Land Policy and Management Act (FLPMA) does not override or alter the clear management direction of the NPRPA and allow BLM to adopt a management standard of protecting surface resources within the NRP–A at the expense of oil and gas development entirely. In the Proposed Rule's preamble, BLM points to FLPMA's direction that it "take any action necessary to prevent unnecessary or undue degradation" of the public lands as authority for the Proposed Rule. 88 Fed. Reg. at 62,2029. This statement, however, ignores the limits that other provisions of FLPMA impose, which apply to the NPR–A. Section 302(a) of FLPMA directs:

> The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, **except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law**.

43 U.S.C. § 1732(a) (emphasis added). BLM cannot credibly claim that FLPMA's general management direction for the public lands gives BLM authority to implement a rule that conflicts with the NRPRA – which dedicates the public lands in the NPR–A for the specific uses of oil and gas development.

The Proposed Rule Increases Environmental Justice Impacts on Under-Served and Disproportionately Impacted Communities.

While we understand it is contrary to the current administration's beliefs, the continuation of responsible resource development in the NPR–A is one of the single most effective things the federal government and BLM can do to provide economic and social benefits to North Slope communities and to promote an autonomous and self-sustaining future that reduces "environmental justice" impacts in the region. Not allowing new exploration and development in the NPR–A moving forward would be the biggest "environmental justice" impact of all to the communities, local and small businesses, and Alaska Native Village Corporations of the NPR–A. Stopping oil and gas production in the NPR–A would also deprive NPR–A communities of the

long-promised partnership in the benefits of resource production through the NPR–A Impact Mitigation Fund. Continued responsible development in the NPR–A is the answer to mitigating a host of "environmental justice" impacts to NPR–A communities and residents, but without the production royalties from future NPR–A developments the NPR–A Impact Mitigation Fund will not be able to generate revenue and fund necessary mitigation projects as promised by BLM Alaska and the federal government.

BLM Has Not Complied with Procedural Requirements Necessary to Finalize the Proposed Rule.

BLM has failed to meet its procedural obligations under EO 13132, EO 12866, the Regulatory Flexibility Act, and NEPA necessary to finalize the Proposed Rule. As justification for failing to meet these obligations, BLM repeatedly asserts the Proposed Rule will result in merely administrative and procedural changes. Yet, elsewhere BLM acknowledges that the Proposed Rule will substantively change BLM's management of the NPR–A and, further, that these changes will carry costs. Because of these substantive changes and resulting costs, BLM must prepare a full economic analysis, a federalism assessment, and an EIS, among other requirements.

> The Proposed Rule Establishes New, Substantive Standards that Impact Management of the NPR–A and Stakeholders.

BLM offers no more than conclusory statements as justification for not complying with its procedural obligations when promulgating the Proposed Rule. *See, e.g.*, Economic Analysis at 1 (stating that changes from the Proposed Rule are "editorial, administrative, or otherwise have no economic cost or benefit. . ."); 88 Fed. Reg. at 62,038 (stating the Proposed Rule "meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this Proposed Rule is 'of an administrative, financial, legal, technical, or procedural nature'"). Elsewhere, however, BLM erroneously suggests that it need not undertake a full economic analysis or regulatory flexibility analysis, or prepare an EIS or environmental assessment, because the Proposed Rule merely "restate[s] existing statutory standards." 88 Fed. Reg. at 62,039. These characterizations are inaccurate and misleading. The Proposed Rule establishes new and alters existing management standards for the NPR–A and, as a result, yields impacts to the management of the NPR–A and stakeholders.

First, in the Proposed Rule's preamble, BLM expressly recognizes that the Proposed Rule will establish new or alter existing standards, thus contradicting BLM's characterizations. Specifically, the preamble states:

- The Proposed Rule "**would improve upon** the existing regulations' standards and procedures[.]" 88 Fed. Reg. at 62,026 (emphasis added).

- "**New and revised standards** . . . are also needed to ensure that the BLM is fulfilling its statutory duties under the NPRPA, FLPMA, and other authorities to the best of its ability." *Id.* at 62,031 (emphasis added).

- "The Proposed Rule **would improve upon the standards** and procedures that implement" the requirement to "assure the maximum protection of . . . surface values" within Special Areas "to the extent consistent with the requirements of [the NPRPA] for the exploration of the reserve." *Id.* (emphasis added).

- A purpose of proposed section 2361.1 is "to **provide standards** and procedures to implement 42 U.S.C. § 6504(a)[.]" *Id.* (emphasis added).

- Proposed section 2361.4 would "**add** that the BLM is responsible for assuring maximum protection of Special Areas' significant resource values." *Id.* at 62,032 (emphasis added).

- "The Proposed Rule **would establish new standards** and procedures for managing and protecting surface resources in the NPR–A from the reasonably foreseeable and significantly adverse effects of oil and gas activities." *Id.* (emphasis added).

- Section 2361.30 "**would, for the first time, provide standards** and procedures for designating and amending Special Areas." *Id.* at 62,034 (emphasis added).

- Section 2361.40 "**would establish new standards** and procedures for achieving maximum protection of Special Areas' significant resource values, with a specific focus on addressing the impacts of oil and gas activities." *Id.* at 62,035 (emphasis added).

- Section 2361.40 "would **affirmatively establish** that assuring maximum protection of significant resource values is the management priority for Special Areas. Under proposed paragraph (a), the BLM would need to comply with this standard[.]" *Id.* (emphasis added).

- "[T]he Proposed Rule **would presume**, in proposed § 2361.40(c), that oil and gas leasing or infrastructure on lands allocated as available for such activities "should not be permitted unless specific information available to the Bureau clearly demonstrates that those activities can be conducted with no or minimal adverse effects on significant resource values." *Id.* at 62,039 (emphasis added).

Second, BLM expressly and repeatedly recognizes that the Proposed Rule will result in actual impacts. The preamble states:

- "BLM welcomes comment from the regulated community, including industry, residents of communities in and around the NPR–A, and Alaskan natives and indigenous Tribes **who may benefit or bear costs** from this Proposed Rule." 88 Fed. Reg. at 62,031 (emphasis added).

- "The BLM welcomes public comments on **the impact of this Proposed Rule** on small businesses." *Id.* at 62,037 (emphasis added).

- "The proposed rule **would affect** the relationship between operators, lessees, and the BLM[.]" *Id.* at 62,038 (emphasis added).

- The Proposed Rule's Special Areas designation and amendment process, and its management of oil and gas activities in Special Areas, **will result in unmonetized "costs and benefits**." Economic Analysis at 3; *see id.* at 3–4 (emphasis added).

Finally, BLM's assertions that the Proposed Rule will only result in administrative and procedural changes at no significant cost to the public are contradicted by findings of the Office of Information and Regulatory Affairs (OIRA). OIRA reviews all "significant regulatory actions" as defined in EO 14094. Here, OIRA has determined the Proposed Rule is significant. 88 Fed. Reg. at 62,037. With this determination, BLM cannot reasonably or convincingly assert the Proposed Rule's impacts are not.

BLM cannot evade its procedural obligations by characterizing the Proposed Rule as merely "restat[ing] existing statutory standards," 88 Fed. Reg. at 62,039, while at the same time recognizing the Proposed Rule's substantive impact. BLM's refusal to recognize the actual, tangible effects of the Proposed Rule infects its rationale for failing to comply with EO 12866, NEPA, and other procedural obligations.

> BLM Dismisses the Proposed Rule's Significant Effects on the State and the People of Alaska.

By characterizing the Proposed Rule as only effectuating administrative and procedural changes, BLM ignores its procedural obligations and presidential policies. First, the Proposed Rule does not adhere to EO 13563, which calls for improved regulation and regulatory review. EO 13563 sets forth a policy that regulations must promote predictability, reduce uncertainty, and use "innovative" and the "least burdensome" tools for achieving regulatory ends. EO 13563 § 1(a), 76 Fed. Reg. 3821 (Jan. 21, 2011). It also promotes public participation in the rulemaking process by directing each agency to hold "a comment period that should generally be **at least** 60 days." *Id.* § 2(b) (emphasis added). And, it directs that regulations "shall be based . . . on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole." *Id.* § 2(a).

The Proposed Rule is inconsistent with these directives. The Proposed Rule creates, rather reduces, uncertainty by instituting a framework that will increase the amount of land within Special Areas over time and by creating a presumption against new development in these areas. This uncertainty will translate to reduced investment and economic opportunities for areas adjacent to or near Special Areas. Additionally, the Proposed Rule's use of Special Areas as a land management tool is neither "innovative" nor the "least burdensome" tool. As BLM recognizes in the preamble to the Proposed Rule, Arctic resources are dynamic; they migrate, roam, and adapt. By contrast, Special Areas are static boundaries that cannot nimbly react to these dynamic resources while, at the same time, burdening the lands within them and the surrounding communities. Finally, the Proposed Rule wholly disregards public participation during the rulemaking process. While BLM has provided a 90-day comment period, it has not substantively consulted the State or the communities who are most directly affected by the paradigm shift in management, and BLM has ignored the chorus of requests from the interested

public for further extension and consultation. The Proposed Rule, and BLM's rulemaking process, woefully fall short of the directives EO 13563.

Additionally, BLM incorrectly determined that the Proposed Rule "does not have sufficient federalism implications to warrant preparation of a Federalism Assessment." 88 Fed. Reg. at 62,038. EO 13132 defines "[p]olicies that have federalism implications" to include "regulations . . . that have substantial direct effects on the States." EO 13132 § 1(a), 64 Fed. Reg. 43,256, 43,256 (Aug. 10, 1999). Here, the Proposed Rule's objective of increasing the amount of land within Special Areas over time, and its presumptive prohibition on development in these areas, infringes on existing State management of resources within the NPR–A. Additionally – the State and, derivatively, the NPR–A impact mitigation fund are direct beneficiaries of revenue generated from leasing and development in the NPR–A. Were the rule to have the effect of deferring or denying even a single moderately-sized development in the Petroleum Reserve, it could impact hundreds of millions of dollars in public revenue, not to mention billions of dollars in direct and indirect economic activity and value.

BLM must undertake a Federalism Assessment to evaluate the impact of the Proposed Rule on the State's powers. For example, section 2361.50(a) of the Proposed Rule states that BLM "will ensure that Special Areas are managed to protect and support fish and wildlife[.]" This direction conflicts with the State's "broad trustee and police powers over fish and wildlife within [its] borders." *See* 43 C.F.R. § 24.3(a). Additionally, various state agencies, including the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, and Alaska Department of Environmental Conservation issue and administer a variety of federal permits, which BLM recently recognized in the IAP. *See generally* Final IAP/EIS, App. D at D-6 – D-8 (2020). Finally, BLM's disregard for Congress' intent, and the provisions of the NPRPA, to allow for leasing and development activities in Special Areas implicates federalism concerns because the State and the people of Alaska bear in the impacts of the invalid Proposed Rule. BLM cannot ignore the State's authorities within the NPR–A or the impacts of the Proposed Rule. BLM must prepare a federalism assessment consistent with EO 13132.

BLM's Economic Analysis Fails to Comply with EO 12866.

BLM has not complied with EO 12866, as amended by EO 14094. BLM's Economic Analysis for the Proposed Rule, attached as a separate 12-page document, does not quantify, or even attempt to quantify, the significant economic impact of the Proposed Rule. Although BLM attempts to argue that the Proposed Rule's revisions are primarily "editorial, administrative, or otherwise have no economic cost or benefit. . ." *see* Economic Analysis at 1, BLM nevertheless admits that the Proposed Rule may impose costs in several different ways. *See id.* at 3. Although BLM declines to quantify these costs, it asserts without evidence that these costs are likely to be less than the $200 million threshold under section 3(f) of EO 12866. *See id.* at 1. Based on that unsupported assertion, BLM declines to undertake a full economic analysis or regulatory flexibility analysis. As detailed below, the proposed rule may affect billions in direct public revenues, with direct and indirect economic costs an order of magnitude larger still.

Consideration of the range of potential impacts that the Proposed Rule may impose shows that it has the potential not only to involve significant economic cost, but that it may have significant

impacts on both small businesses and local communities. Accordingly, BLM's cursory economic analysis fails to meet the requirements of EO 12866.

The Proposed Rule would establish a new regulatory mechanism for soliciting public proposals for new Special Areas within NPR–A. Because of the restrictions on oil and gas exploration and development within Special Areas, the proposed establishment of a new Special Area is likely to involve significant public engagement and input. Myriad organizations—state agencies, native corporations, local communities, potential developers, small support businesses—may be impacted by such designations, and accordingly devote time and resources to understanding and engaging on such proposals. Just these costs alone will likely run into the millions and millions of dollars.

Moreover, the subsequent establishment of any new Special Areas, or increase in scope of existing Special Areas, would limit exploration and development opportunities within the boundaries of the new area. BLM makes no effort to discuss or quantify the impacts of foregone development opportunities in any newly established or expanded Special Areas made possible by these proposed regulations, or address the economic impact to personal livelihoods, local economies, State and Federal revenues, or resource markets.

Additionally, the Proposed Rule significantly alters the management character of Special Areas. This change would restrict the capacity for the development of infrastructure within Special Areas, even when such infrastructure is of minimal impact. Given the dearth of existing infrastructure within and surrounding NPR–A, these restrictions have the capacity to significantly complicate, and in some cases prevent, development in non-Special Areas of NPR–A open to oil and gas development as well, and even potentially in state-owned lands outside of NPR–A – all in addition to impacting local communities by making their ancillary use of any such infrastructure less likely.

Simply put, exploration activities in the NPR–A, including in Special Areas, could help improve the knowledge of subsurface prospectivity, which could lead to other potential developments in the future. By restricting these activities, the state economy will forego economic value from its oil and gas resources. Opportunities for joint State/Federal developments may also be impacted, and opportunities for later expansion of existing production at existing or planned developments could be curtailed or prevented altogether. Additionally, development restrictions could impact local gas development for community consumption in the future.

Impacts on exploration activities, and associated economic impacts and employment opportunities, would be significant on their own, outside of the even larger costs and consequences of delay or denial to following production and development. Oil and gas exploration activities generate tens to hundreds of millions of dollars of economic activity, employing workers for ice road construction, transportation crews, seismic crews, drillers/rigs, and camps. Additionally, robust exploration programs help to maintain contractor capacity within State for all oil and gas developments, and so reduced exploration could impact exploration capacity statewide.

The scale of potential impacts could very easily exceed the $200 million threshold of EO 12866. For instance, Conoco Phillips Alaska, Inc. spent in excess of $600 million in nominal direct investment on the Greater Mooses Tooth I development, a relatively small development within NPR–A that did not even require installation of dedicated processing facilities. In today's dollars, such a project would likely exceed $1 billion of investment. For a single project. Current developments at Willow and Pikka in the North Slope region are each expected to be in the multi-billion-dollar range. The interruption and delay, or even potentially total avoidance, of even one such project could quickly impose regulatory costs in excess of $200 million, which would be highly significant. Not even estimating these impacts – when BLM itself has prepared potential development scenarios in prior EIS documents for the NPR–A that the rule would effect, and when we have examples of projects proceeding today with billions of dollars of economic impact – is flagrant non-compliance with EO 12866 and the core requirements for reasoned agency action.

Economic impacts would not be limited to developers, either. Local communities on the North Slope commonly use oil and gas infrastructure for local transportation, and so development impacts would potentially deprive communities of opportunities for infrastructure and community development. Foregone development would also impact local economies by depriving support companies—many of which are small businesses—of contract opportunities. Additionally, foregone development would also potentially significantly reduce Impact Mitigation Fund payments from cash bonuses, rentals, and royalties generated from within NPR–A, which would otherwise be returned to local communities via grants, much of which is awarded to small businesses as well.

The curtailment of exploration and development activity also has the capacity to negatively impact State, Local, and Federal revenues. The Federal government would forego potential royalties on production within NPR–A from foregone development, and income taxes on the economic activity generated thereby. The State stands to lose out on corporate income tax and oil and gas production tax revenue, and both the State and local governments would lose out on property tax revenue from foregone exploration and development. Additionally, increased throughput in FERC rate-regulated pipelines would put downward pressure on oil tariffs, increasing the value of all oil production on the North Slope and the State's revenues therefrom. As current developments in the NPR–A are forecasted to generate billions of dollars in each of these categories, assertions that forestalling other potential projects is administrative and without significant economic consequence is defied by reality.

These impacts are likely to negatively impact societal distributional outcomes. The economic impacts of foregone exploration and development, as well as community, infrastructure, and economic development opportunities, are likely to be disproportionately borne in underdeveloped areas of the State and in predominately Native Alaskan communities. Foregone exploration and development projects may result in the elimination of opportunities for small business contractors/suppliers for exploration and development work within NPR–A as well, including Native Corporations operating in the North Slope.

A survey of the potential economic impacts of the Proposed Rule, as well as the scale of possible impacts, shows that BLM's cursory conclusion that these proposed regulations "will not have a

significant economic impact" is unsupportable. BLM's failure to consider or quantify the potential economic impacts of the Proposed Rule does not meet the requirements of EO 12866, and it should conduct a thorough economic analysis in order to honestly inform the public of the potential billions and billions of dollars in negative economic costs that it proposes to impose.

BLM Must Comply with the Regulatory Flexibility Act.

Additionally, BLM has failed to comply with the Regulatory Flexibility Act and must prepare Initial and Final Regulatory Flexibility Analyses before it can finalize the Proposed Rule. BLM myopically asserts that the Proposed Rule "is most likely to affect business currently operating in the oil and gas sector in the NPR–A." 88 Fed. Reg. at 62,037. Although the Proposed Rule will directly affect businesses operating in the oil and gas sector, the Proposed Rule will result in economic impacts to a broader sector of small business, as described above. The impacts of the Proposed Rule on the oil and gas sector will reverberate through communities in and near the NPR–A that depend on revenue from production from the NPR–A and revenue from the NPR–A Mitigation Impact Fund to fund necessary improvements and infrastructure. BLM must analyze these impacts in Initial and Final Regulatory Flexibility Analyses.

BLM Cannot Utilize a Categorical Exclusion to Satisfy Its NEPA Obligations.

BLM improperly relies on a categorical exclusion for the Proposed Rule and subverts its NEPA obligations. BLM asserts that the Proposed Rule "meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this Proposed Rule is 'of an administrative, financial, legal, technical, or procedural nature.'" 88 Fed. Reg. at 62,038. BLM's reliance on this categorical exclusion is inappropriate, for three reasons. First, BLM's invocation of this categorical exclusion is invalid on its face because BLM has failed to provide any substantive, reasoned explanation or rationale as to why a categorical exclusion applies to the Proposed Rule. Second, this categorical exclusion does not apply to the Proposed Rule because it establishes new and alters existing management standards for the NPR–A and, as a result, yields impacts to management of the NPR–A and the interested public. Finally, BLM cannot utilize any categorical exclusion because multiple extraordinary circumstances exist that prohibit its application. Instead, BLM must prepare an EIS to analyze the Proposed Rule's significant impacts.

BLM Has Not Provided Any Explanation as to Why It Meets the Criteria of 43 C.F.R. § 46.210(i).

BLM invalidly relies on the categorical exclusion at 43 C.F.R. § 46.210(i) without providing any rationale as to the Proposed Rule meets the criteria of this categorical exclusion. An agency must explain why a categorical exclusion applies to an action. *See Shearwater v. Ashe*, No. 14CV02830LHK, 2015 U.S. Dist. LEXIS 106277, at *49 (N.D. Cal. Aug. 11, 2015) ("because [the agency] did not adequately explain its reliance on either part of [43 C.F.R. § 46.210(i)] as a basis for avoiding further NEPA review of the [challenged rule], the Court concludes that [the agency's] application of the [categorical exclusion] was unreasonable"). BLM's NEPA Handbook requires that, when BLM determines that a rulemaking is categorically excluded, it must provide "an explanation that the action is categorically excluded." BLM

NEPA Handbook H-1790 § 3.2.1, pg. 14 (Rel. 1-1710 Jan. 30, 2008). Here, BLM asserted—in one sentence and without any factual support—that the Proposed Rule "meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this Proposed Rule is 'of an administrative, financial, legal, technical, or procedural nature.'" 88 Fed. Reg. at 62,038. BLM's naked assertion that this categorical exclusion applies is unsupported and therefore unreasonable. BLM's facial assertions alone to do not meet any standard of explanation or reasonability.

The Proposed Rule Is Not of an "Administrative, Financial, Legal, Technical, or Procedural Nature."

While asserted by BLM, the Proposed Rule is not of an "administrative, financial, legal, technical, or procedural nature" and therefore does not qualify for the categorial exclusion at 43 C.F.R. § 46.210(i). The Proposed Rule has substantive effect because it establishes new and alters existing management standards for the NPR–A, for the reasons previously outlined. Notably, these same kinds of management standards, or management actions of the same consequence, have historically been evaluated through comprehensive environmental reviews and public planning processes.

Courts have rejected an agency's reliance on the categorial exclusion at 43 C.F.R. § 46.210(i) when a rule affecting land management effectuates substantive management changes. *See, e.g.*, *Brady Campaign to Prevent Gun Violation v. Salazar*, 612 F. Supp. 2d 1, 16, 23 (D.D.C. 2009); *Shearwater v. Ashe*, No. 14CV02830LHK, 2015 U.S. Dist. LEXIS 106277, at *49 (Aug. 11, 2015). BLM cannot reasonably claim that the Proposed Rule is of an "administrative, financial, legal, technical, or procedural nature" when it will actually change what can happen on the ground across vast swaths of federal public land.

Moreover, the fact that the Proposed Rule, if final, will not immediately authorize on-the-ground impacts does not permit BLM to rely on this categorical exclusion. Rather, NEPA requires BLM to analyze impacts that are reasonably foreseeable from the Proposed Rule. *See* 40 C.F.R. § 1508.1(g) (2023) (defining "effects or impacts" as "reasonably foreseeable" changes to the environment); *Brady Campaign to Prevent Gun Violation v. Salazar*, 612 F. Supp. 2d 1, 16, 23 (D.D.C. 2009) ("Defendants reached their determination that the Final Rule was strictly a legal amendment with no environmental impacts only after failing to adequately evaluate all reasonably foreseeable environmental impacts[.]"). And, BLM must also analyze those impacts that it believes may be beneficial. *See* 40 C.F.R. § 1508.1(g)(4).

Therefore, BLM must analyze the impacts of the Proposed Rule on the NPR–A and stakeholders. Most significant, BLM must analyze the effect of the Proposed Rule's presumption in section 2361.40(c) "that oil and gas leasing or infrastructure on lands allocated as available for such activities 'should not be permitted unless specific information available to the Bureau clearly demonstrates that those activities can be conducted with no or minimal adverse effects on significant resource values.'" 88 Fed. Reg. at 62,039. More generally, BLM must analyze the impacts of all of the new standards in the Proposed Rule and, further, their cumulative impact on the NPR–A and its users. These new substantive standards preclude BLM from subverting its

NEPA obligations by characterizing the Proposed Rule as of an "administrative, financial, legal, technical, or procedural nature."

Extraordinary Circumstances Exist that Preclude the Use of Any Categorical Exclusion.

BLM improperly concluded that the Proposed Rule does "not involve any of the extraordinary circumstances listed in 43 CFR 46.215." 88 Fed. Reg. at 62,038. BLM must evaluate an action that would be categorically excluded "to determine whether it meets any of the extraordinary circumstances in section 46.215[.]" 40 C.F.R. § 46.205(c)(1). If an action meets any of these extraordinary circumstances, "further analysis and environmental documents must be prepared for the action." *Id.* Extraordinary circumstances in 40 C.F.R. § 46.215 include, among others:

- "Having] significant impacts on public health or safety";
- "Hav[ing] a disproportionately high and adverse effect on low income or minority populations (EO 12898)";
- Having "significant impacts on such natural resources and unique geographic characteristics" as "historic or cultural resources," "migratory birds," and "ecologically significant or critical areas";
- "Hav[ing] significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species";
- "Establish[ing] a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects";
- "[I]nvolving unresolved conflicts concerning alternative uses of available resources."

43 C.F.R. § 46.215(a), (b), (c), (e), (h) and (j).

BLM's conclusion that the Proposed Rule does not involve any of these extraordinary circumstances is entirely improper. While the presence of even one may make a categorical exclusion inappropriate, each of the enumerated points is clearly relevant to the Proposed Rule.

First, BLM offers no facts or analysis in support of this conclusion. "[W]here 'there is substantial evidence in the record that an extraordinary circumstance might apply, an agency may act arbitrarily and capriciously by failing to explain its determination that a categorical exclusion is applicable.'" *Safari Club Int'l v. Jewell*, 960 F. Supp. 2d 17, 82 (D.D.C. 2013) (quoting *Reed v. Salazar*, 744 F. Supp. 2d 98, 116 (D.D.C. 2010)); *see also W. Watersheds Project v. Bernhardt*, 392 F. Supp. 3d 1225, 1250 – 51 (D. Or. 2019). Accordingly, BLM's invocation of this categorical exclusion is invalid for that reason alone – it doesn't even attempt to explain in detail why these circumstances are not present or do not apply.

Second, the Proposed Rule involves multiple extraordinary circumstances, any one of which would preclude BLM's use of a categorical exclusion. The Proposed Rule will have significant

impacts both to health and safety and to low income and/or minority populations because, by effectively prohibiting future oil and gas leasing and discouraging future development, the Proposed Rule will reduce revenues otherwise available to the NPR-A Impact Mitigation Fund, which supports projects for local communities most impacted by oil and gas development, including projects that promote public health and safety.[1] Moreover, decreased oil and gas activity in the NPR–A will reduce industry interactions with local communities and residents. Industry within the NPR–A has a long history of working with communities and residents on search and rescue and increasing safety conditions on the North Slope and in the NPR-A. Thus, the Proposed Rule will impact both health and safety and low income and/or minority populations.

The Proposed Rule will also significantly impact historic and cultural resources, migratory birds, ecologically significant areas, threatened and endangered species, and their habitats. In fact, it is one of the purposes of the Proposed Rule. In the Proposed Rule's preamble, BLM devotes more than two full pages of the Federal Register to describing these resources as they are found in or near the NPR–A. BLM asserts that "**[s]ignificant** surface resources are found throughout the NPR–A" and "are concentrated in the Teshekpuk Lake Special Area and the other Special Areas," 88 Fed. Reg. at 62,029 (emphasis added), including caribou, birds, marine mammals, cultural resources, and recreation resources, *id.* at 62,029–31. BLM explains that "ecologically significant or critical areas" and "migratory birds" are present in the NPR–A and its Special Areas. *Compare* 40 C.F.R. § 46.215(b) *with* 88 Fed. Reg. at 62,029–30, 62,033. Additionally, BLM details the threatened and endangered species and their habitat that exist in or near the NPR–A and its Special Areas. *Compare* 40 C.F.R. § 46.215(h) *with* 88 Fed. Reg. at 62,030, 62,034. Furthermore, BLM highlights the cultural sites, documented Traditional Land Use Inventory sites, and paleontological in the NPR–A. *Compare* 40 C.F.R. § 46.215(g) *with* 88 Fed. Reg. at 62,030, 62,033. Accordingly, the preamble to the Proposed Rule itself confirms that it falls within multiple extraordinary circumstances.

Moreover, the substantive management standards in the Proposed Rule will "[e]stablish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects." 43 C.F.R. § 46.215(e). For example, the Proposed Rule's presumption against future oil and gas leasing and new infrastructure in Special Areas would prevent BLM from leasing or authorizing new infrastructure in Special Areas unless BLM "clearly demonstrates that those activities can be conducted with no or minimal adverse effects on significant resource values." *See* Proposed § 2361.40(c). The Proposed Rule, if final, therefore would hamstring BLM's future decision-making as to how and whether oil and gas leasing may occur, and new infrastructure may be sited, in Special Areas. It therefore establishes "a precedent for future action" and "represent[s] a decision in principle about future actions with potentially significant environmental effects" that precludes BLM's use of a categorical exclusion.

[1] National Petroleum Reserve–Alaska (NPR–A) Impact Mitigation Grant Program Report to the First Session of the Thirty-third Alaska Legislature (Jan. 2023), available at https://www.commerce.alaska.gov/web/Portals/4/pub/NPR-A%20Grant/2023%20NPR-A%20Report%20to%20the%20Legislature.pdf.

Finally, and perhaps most telling, the Proposed Rule involves the extraordinary circumstance of "unresolved conflicts concerning alternative uses of available resources." *See* 40 C.F.R. § 46.215(b). The Proposed Rule, as well as use and management of the NPR–A, remains highly controversial. As of December 6, 2023, the Proposed Rule had received more than 135,000 public comments. Moreover, BLM has altered its IAP for the NPR–A three times in the last 10 years—once in 2013, again in 2020, and again in 2022. Litigation over the IAP is ongoing. All of these controversies reflect "unresolved conflicts concerning alternative uses of available resources" in the NPR–A.

BLM has previously recognized the value of preparing an EIS as in both the agency's and the public's interest when preparing controversial rules related to land management (in that case, grazing):

> *"As we worked with the public, it became clear there would be some controversy over impacts of the changes. As we continued working with the public, we expected there would be controversy over impacts of the changes. We decided early in the process to prepare an EIS because we wanted to develop the rule in a way that solicited continued public involvement and comment in a manner typical of an EIS."*

See 71 Fed. Reg. 39,402, 39,502 (July 12, 2006). Similarly, when BLM finalized the existing rules at 43 C.F.R. part 2360, subpart 2361, it prepared an environmental assessment. 42 Fed. Reg. 28,720 (May 27, 1977).

For all of these reasons, extraordinary circumstances preclude application of a categorical exclusion and demand that BLM prepare an EIS prior to finalizing the Proposed Rule.

Conclusion

BLM's process for this Proposed Rule is so manipulated and rushed it appears strategically directed towards a pre-determined outcome. While not published by BLM, its officials have identified this is to avoid Congressional Review Act scrutiny. Given that the Proposed Rule has, to-date, avoided collaboration and input from the BLM's own NPR–A Working Group, appropriate engagement with communities within the NPR–A, tribal consultation, a clear and robust public process, economic analysis, statutory NPRPA purpose analysis, and still further omissions, it makes sense that Congressional oversight is also actively being avoided. Any one of these defects should give BLM significant pause, and together they are a flashing siren that BLM needs to halt the process and withdraw the Proposed Rule.

BLM continues to avoid directly hearing from Alaskans living in the NPR–A, ignore North Slope cultural and subsistence activities, and to create procedural hurdles to silence major issues and concerns with the Proposed Rule. This was painfully obvious at the Anchorage meeting where public questions were limited (or entirely ignored) if they did not meet BLM's predetermined outcome for the meeting. BLM did not even take open comment at the public "meeting," as has been done for every other NPR–A planning activity in the past. BLM's limited process (written only in English) only answered selected questions, advantageously

paraphrased questions to limit BLM's response, did not allow the public to speak, and had no intention of gathering knowledge, data, or collaborating.

The State strongly encourages BLM to do meaningful engagement with Alaskan stakeholders as well as a true analysis of impacts from this Proposed Rule. It is completely disingenuous to say that there are no impacts from this Proposed Rule because it is nothing more than a "clerical" exercise or "administrative" effort. The State as well as many others have just begun to understand the impacts of this Proposed Rule and while BLM has found it convenient to assume there are no impacts, additional time is needed to do meaningful analysis of the true consequences if it were to be promulgated. BLM's agenda and timeline march on though, seemingly unconcerned with understanding actual impacts to Alaskans and our communities.

BLM should look at alternatives and different tools that better manage valuable and dynamic resources with the original intent of the NPR–A. BLM's apparent fear that meaningful engagement, sincere impact and economic analysis, and evaluation of alternative management practices and tools will disrupt BLM's unnecessarily aggressive timeline speaks to the improper and illegal basis for the Proposed Rule. All these actions point to an effort solely focused on shutting down resource development through expanding what amounts to conservation units through "Special Areas." Using such implied conservation units to draw static lines around dynamic resources with the consequence of precluding exploration and development of oil and gas is directly contrary to the NPRPA's recognition that its protections be balanced with the fact that the orderly exploration and development of the *Petroleum* Reserve proceed.

For these reasons, and the reasons laid out in the attachments to this letter, the State strongly opposes BLM's process, the intent of the Proposed Rule, the lack of analysis, and its subversion of existing law; and we request that BLM withdraw the Proposed Rule or, at a minimum, dramatically revise it in consultation with the State and impacted communities of the NPR–A. We anticipate many other critical stakeholders will raise major concerns about the Proposed Rule, and need BLM's sincere and meaningful analysis and engagement and creates a process which respects Alaskan culture, subsistence activities, economy, and way-of-life. Unfortunately, to-date the process has been one of the most disrespectful processes we have seen from any Administration.

Sincerely,

Doug Vincent-Lang
Commissioner, Alaska Department of Fish and Game

Emma Pokon
Commissioner, Alaska Department of Environmental Conservation

John C. Boyle III
Commissioner, Alaska Department of Natural Resources

cc: Senator Lisa Murkowski
Senator Dan Sullivan
Representative Mary Peltola

Enclosures

- State of Alaska Consolidated Comments on BLM's NPR-A Proposed Rule
- State's November 7, 2023 Letter Mr. Steven Cohn, BLM Alaska State Director

State of Alaska comments on NPR-A Proposed Rule for the Management and Protection of the NPR-A

Page/table/reference	Department/Program	Comments
Deleted section 2361.0-2	ANILCA Team	Please reinstate an "Objectives" section to the regulations. The proposed revision of 2361.1 is not redundant with Section 2361.0-2 "Objectives" in the current regulations. In the existing regulations, the Objectives section clarifies that environmental protections are designed to control exploration and production activities, the proposed regulations do not make this clear in any portion of the regulation package.
Section 2361.3	ANILCA Team	Please add ANILCA to this Section on Authority. ANILCA provides the governing statute regarding subsistence on these public lands (see definition in ANILCA Section 102) as well as allowances for the construction of cabins (ANILCA 1303(b)); temporary access across the Reserve for purposes of surveying, and other temporary uses (ANILCA 1111); and the continuance of existing uses and temporary facilities and equipment for related to those activities (ANILCA 1316).
Section 2361.4	ANILCA Team	Please revise this language in line with the NPRPA, we suggest the following: The Bureau of Land Management is responsible for the surface and subsurface management of the Reserve, including protecting surface resources - by mitigating, as necessary and appropriate, reasonably foreseeable and significantly adverse effects on the surface resources ~~environmental degradation~~ and assuring maximum protection of significant resource values in Special Areas to the extent consistent with the requirements of this Act for exploration and production. The Act authorizes the Bureau to prepare rules and regulations necessary to carry out surface management and protection duties.
Section 2361.10	ANILCA Team	The final rule needs revision to recognize the priority purpose of the NPRPA is to explore for, develop, and transport the reserve's oil and gas resources (NPRPA Section 105). Protection of the environmental, fish and wildlife, and historical or scenic values which are or might be detrimental to such values are to be "controlled to the extent consistent with the requirements of the Act for petroleum exploration (and development) of the reserve." 43 CFR 2361.0-2 (Objectives). The Brief Administrative History in the proposed rule's preamble appropriately recognizes that Congress heavily debated the role of the naval reserve and the protection of environmental, fish and wildlife, and historical or scenic values. We recognize that Public Law 96-514 expanded the Secretary's authority to not only mitigate through conditions and restrictions, but also with prohibitions as the Secretary deems necessary or appropriate. However, the proposed regulations fail to recognize that Congress, in the NPRPA, clarified that any restrictions or prohibitions

		implemented are to mitigate reasonably foreseeable and significant adverse effects occurring during a competitive leasing program for oil and gas activities. BLM has consistently managed the Reserve to focus on mitigating development activities. Shortly after the NRPRA's passage, BLM explained : "In scheduling activities in … Special Areas, **steps to minimize adverse impacts** [emphasis added] on existing resource values will be required and implemented." 42 Fed. Reg. 28,723 (June 3, 1977). BLM further emphasized, "Maximum protection of designated Special Areas does not imply a prohibition of exploration or other activities. In scheduling activities in these or other Special Areas, steps to minimize adverse impacts on existing resource values will be required and implemented…" *Id.*
Section 2361.10(e)(1)	ANILCA Team	This Section must clarify that BLM cannot prohibit subsistence use of or access to lands within the Reserve including Special Areas in accordance with ANILCA Section 811 BLM may only condition subsistence access by "reasonable regulation." Subsistence uses and resources are overseen by the Federal Subsistence Board, which implements ANILCA Title VIII; subsistence uses and resources should be deleted from the list of protections the authorized officer can limit, restrict, or prohibit the use of or access to lands within the Reserve. Additionally, if BLM is going to close any lands to hunting, fishing, or recreational shooting, they must follow the closure procedures found in the John D. Dingell Jr. Act – Sportsmen's Access to Federal Lands, Section 4103.
Section 2361.20	ANILCA Team	In administering the Reserve, Congress directed BLM to protect significant subsistence, recreational, fish and wildlife, or historical or scenic values when approving exploration activities (NPRPA Sec. 104). We request BLM remove reference to protecting "important" and "primitive" recreational experiences (protection of "recreational experiences" is sufficient), and "wilderness values." The Utukok River Uplands Special Area was identified as containing critical habitat for caribou in 1977 not "wilderness values." Any wilderness values in the NPR-A were to have been identified by the Task Force created under NPRPA Section 105 to "Study of the Reserve."
Section 2361.30; Special Areas Designation and Amendment Process; Preamble, pg. 62034	ANILCA Team	The existing regulations set out the appropriate process for designating and amending Special Areas through the IAP process. We request deletion of the evaluation requirements at 2361.30(a)(1) as FLPMA Section 201 requires BLM to prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. We question whether BLM has the appropriate staffing levels to formally carry out a review every 5

		years as our experience in reviewing federal planning documents indicates agencies in Alaska struggle to meet mandated 10- or 20- year planning review timeframes. Evaluations related to Special Areas for their wilderness values are also not consistent with Sec. 1326 or Sec. 1320 of ANILCA.
Section 2361.30(b); Special Areas designation amendment process;	ANILCA Team	The proposed rule reinterprets Naval Petroleum Reserves Production Act (NPRPA) (PUBLIC LAW 94-258—APR. 5, 1976) where NPRPA Sec. 4(b), calls for **exploration** of the Utukok River and Teshekpuk Lake areas while the proposed rule de facto **withdraws** Special Areas from future exploration. We request BLM retain management of Special Areas through Integrated Activity planning and not move forward with proposed Section 2361.30, Special Areas Designation and Amendment Process.
Section 2361.30; Special Areas designation and amendment process	ANILCA Team	In the event BLM does not strike Section 2361.30, we request Section 2361.30(a)(5) be eliminated from the final rule. The proposed allowance for interim management conflicts with the Federal Land Management Act (FLPMA) and the NPRPA. FLPMA, Section 201 (43 U.S.C. §1711) directs BLM to "prepare and maintain on a continuing basis an inventory of all public lands land for their resources and other values" but states that the "identification of such areas shall not, of itself, change or prevent change of the management or use of the public lands." NPRPA Section 104(b) provides the Secretary with the authority to designate certain areas containing "significant subsistence, recreational, fish and wildlife, or historical or scenic values.". However, Sec. 104(b) also states that exploration within Special Areas will only assure the maximum protections of such surface values "to the extent consistent with the requirements of [NPRPA] for the exploration of the reserve." The Federal Register notice for the existing regulations similarly states that "Maximum protection of designated Special Areas does not imply a prohibition of exploration or other activities. In scheduling activities in…Special Areas, steps to minimize adverse impacts on existing resource values will be required and implemented" (42 FR 28723, June 3, 1977). In establishing a competitive oil and gas leasing program, Congress again linked conditions, restrictions, and the newly added authority for prohibitions, directly to development activities. "Activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably

		foreseeable and significantly adverse effects on the surfaces resources of the [NPR-A]." 42 U.S.C. §6506a(b) The proposed regulations, as discussed elsewhere in these comments, exceed Congressional authority by creating de facto CSUs rather than proposing conditions to mitigate project proposals. BLM must pause this revision process; we suggest the existing regulations remain in place. Additionally, from a practical standpoint, interim Special Area management would result in patchwork special management, potentially in conflict with existing planning documents, over long periods of time in direct conflict with BLM's goal of planning at the landscape scale. This interim management provision is problematic because it provides no structure for public involvement in the development of interim management and no timeline requirements for initiation of a new plan or plan amendment after nomination. Instead, any Special Areas nominated outside of a planning cycle (e.g., an Integrated Activity Plan amendment or the 5-year evaluation cycle) should be collected and considered during the next planning process.
Section 2361.30 Special Areas designation and amendment process.	ANILCA Team	The proposed rule will effectively permanently withdraw Special Areas. For example, Utukok Uplands Special Area is designated for wilderness characteristics and the designation cannot be removed unless the resource value of "wilderness" is no longer present, yet development and infrastructure are prohibited. The FLPMA Section 603 exemption makes it clear, there shall be no wilderness reviews or wilderness management in NPR-A. *See* 42 U.S.C. §6506a(c). This is further confirmed by ANILCA, which excluded the NPR-A from the wilderness study area and interim management requirements of ANILCA Secs. 1001 and 1004. Likewise, ANILCA Section 1320 relies on FLPMA Section 202 authority, which as BLM acknowledges, does not apply in the Reserve. While FLPMA Sec. 201 gives BLM authority to inventory resources and other values, it is not within BLM's authority to implement land use planning direction into rulemaking from which the NPR-A is specifically exempt. The NPRPA specifically identifies the surface values that are to be considered and protected through the NPR-A planning process as "environmental, fish and wildlife, and historical and scenic values," 42 U.S.C. §6503(b) and "subsistence, recreational, fish and wildlife, or historical or scenic value." 42 U.S.C. §6504(a). The NPRPA implementing regulations further identify the specific surface resources afforded protection under the Act, are protected consistent with the primary purpose of the Reserve which is exploration and development for oil and gas. Wilderness characteristics and values were not included. We request special values be consistent with those identified in NPRPA.

Section 2361.40	ANILCA Team	The NPRPA Section 104(a) is clear that in Special Areas maximum protection of "surface values is to be carried out to the extent consistent with the requirements of this Act for the exploration of the reserve." BLM cannot flip statutory direction to make "[a]ssuring maximum protection of significant resource values the management priority for Special Areas." Please revise.
Section 2361.50(b)	ANILCA Team	The BLM is required to provide reasonable access to and within Special Areas for subsistence use of subsistence resources under ANILCA Section 811. Please add reference to ANILCA access provisions. The NPRPA as well as its current regulation do address the interplay between the federal and State subsistence programs in providing maximum protection measures in Special Areas for subsistence values. ANILCA Title VIII provides for Subsistence Management and use. ADF&G supports recognition of the importance of subsistence uses and resources to local, rural residents. However, the proposed regulations provide that "the authorized officer may limit, restrict, or prohibit use of and access to lands with the Reserve, including Special Areas." Regarding subsistence uses and resources, the BLM only has limited, delegated authority under certain circumstances as specified by the Federal Subsistence Board (FSB). The BLM does not have broad delegated authority to manage subsistence opportunities. Additionally, the term "rural resident" is not defined in 50 CFR 100.4; it is found in ANILCA Title VIII. As 50 CFR Part 100 implements ANILCA Title VIII, please make reference to ANILCA Title VIII in this Section.
Preamble, pg. 62038; National Environmental Policy Act	ANILCA Team	The proposed rule would revise the process for designating lands in the NPR-A with "significant resource values" as Special Areas, and would adopt a new standard to remove lands from Special Areas, but would incorporate **aspects** of the NPR-A Integrated Activity Plan (IAP) approved in April 2022. Only portions of the proposed rule found in NPR-A IAP have received any NEPA analysis. It is unclear in the rule how the BLM has determined the environmental impacts of the proposed rule designed to "revise the framework" for managing "significant resource values." Additional NEPA analysis beyond a Categorical Exclusion is needed prior to finalizing the proposed rule as the proposed rule itself states it will have "significant resource values." NEPA does not limit its review

		to negative effects. BLM must prepare an environmental impact statement for this regulatory packet.
Preamble, pg. 62026; A. Introduction	ANILCA Team	Contrary to the Introduction, the proposed rule fails to reflect the balance between oil and gas development and the protection of ecological values that is called for in the current law and provided for under ANILCA. We request the rule be rescinded and consultation be initiated with the State.
Section 2361.70; Use authorizations	ANILCA Team	The proposed rule authorizes hunting, fishing, and wildlife observation yet omits trapping. Trapping is a traditional activity, and as such is protected on all public lands by ANILCA (Section 1316). Trapping supports Alaskan livelihoods and culture. The level of trapping conducted by Alaskans does not reach the threshold recognized by BLM as a commercial activity, income equal to 25% of annual income, and needs to be included in the list of recreational uses. In addition, NPR-A should not be managed more restrictively than designated wilderness in Alaska. Congress allowed the use of snow machines, airplanes, motorboats, hovercraft, and airboats and non-motorized surface transportation methods across all Conservation System Units (CSUs) designated under ANILCA, including designated wilderness, to ensure access for traditional activities. The proposal to allow hunting and fishing without authorization is meaningless if the means of access for recreation and state subsistence uses are not protected. These methods of access need to be generally allowed on NPR-A lands for traditional activities such as hunting, fishing, trapping, and wildlife observation. ANILCA Section 1316 provides that on all public lands where the taking of fish and wildlife is permitted, the Secretary shall permit the continuation of existing uses and equipment directly and necessarily related to such activities. The final regulations need to allow the use of snow machines, airplanes, motorboats, hovercrafts and airboats for hunting, fishing, and trapping activities. If the final regulations do not allow for these modes of transportation, the NPR-A lands must be closed in accordance with the John D. Dingell Jr. Act, Subtitle B, Sportsmen's Access to Federal Lands. The closure of NPR-A lands to hunting, fishing, and trapping should be identified on the list BLM is required to provide to Congress. *See* P.L. 116-9 § 4102, 133 Stat. 580 (2019) (Federal land open to hunting, fishing and recreational shooting))

Section 2361.30; Special Areas designation and amendment process	ANILCA Team	Sidestepping the intent of ANILCA's "no more" clause by administratively designating additional Special Areas across the NPR-A will limit Alaska's economic development. While we understand that oil and gas and other development may be permitted in Special Areas, the rule is drafted with the presumption that such activity will not be allowable: "On lands allocated as available for future oil and gas leasing or new infrastructure, the Bureau will presume that those activities should not be permitted unless specific information available to the Bureau clearly demonstrates that those activities can be conducted with no or minimal adverse effects on significant resource values" (proposed rule, Section 2361.40(c)). NPRPA is clear that any conditions, restrictions or prohibitions deemed necessary by the BLM must be associated with actual exploration or development activities. "Activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate..." 42 U.S.C. §6506a(b).
Global	ANILCA Team	Establishment of a Special Area must not interfere with ANILCA Section 1111(a) temporary access provisions.
General	ANILCA Team	The NPRPA requires BLM to make certain reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives (Sec. 104(c)(2) and (3)); please include a new section in the regulations outlining when BLM will prepare and submit these reports. Additionally, as these proposed regulations will substantially amend exploration of the reserve as well as competition, we request these regulations be submitted to the appropriate committees, with the required report from the Attorney General of the United States, and not finalized until 60 days after they have been submitted to such committees.
Section 2361.50	ANILCA Team	We request deletion of this section from the final regulations. ANILCA Section 811 directs that federal agencies shall ensure rural residents engaged in subsistence uses shall have reasonable access to subsistence resources (on public lands as defined in ANILCA Sec. 102) via surface transportation methods traditionally employed for such purposes.
General	All State agencies	The proposed rule seems to have little to no understanding of the overlapping authorities within the NPR-A with regards to the SOA, NSB and other land managers of the NPR-A. BLM has done zero to understand the significant impacts this rule would impose on State, local, and Native

		authorities. Please explain BLM's understanding of SOA authorities (and others) within NPR-A. Then please explain how this rule would impact, direct, or limit those authorities. Suggestion: Stop rushing this process and work with resources and land managers to develop a rule that sincerely considers other entities authorities and co-managed resources within the NPR-A. BLM's current process, or lack thereof, is disrespectful to all resource and land managers of the NPR-A and continues to show this administration's disregard for all stakeholders of the NPR-A.
Section 2361.30 Special Areas designation and amendment process	DNR	Opening up the NPR-A for surface management renewal with "significant public involvement" (as stated in Anchorage) opens up the NPR-A to be managed by outside interest groups and deludes Native communities and local stakeholders' ability to manage lands for their needs and forces those stakeholders to hope that BLM listens to them over lower 48 special interest groups. The process for expanding Special Use Areas should be eliminated and a process that better fits the needs of the NPR-A communities and resources. At a minimum this process should be limited to the people and organizations of the region and should not be directed by special interest groups or people in the lower 48. Suggest eliminating this process, or completely revaluated in coordination with State of Alaska resource managers, local subject matter experts, and NPR-A community leadership.
Section 2361.30 Special Areas designation and amendment process	DNR	The discussion around more robust public notice requirements and the "public" nomination process to expand Special Areas is obviously more geared toward special interest groups in the lower 48 than the Native and Indigenous people of the NPR-A. If this rule is passed BLM will essentially create a disconnected and paternalistic relationship with the Native communities and residents of the NPR-A where these communities ultimately end up answering to lower 48 special interest groups and BLM who seem solely focused on conservation at the expense of the people and cultures of the NPR-A.
Preamble, pg. 62028	DNR	Suggest removing subjective and suggestive language that leads reader. This tone is throughout the document and should be removed or limited throughout the document. All the highlighted text is unnecessary and is the authors subjective interpretation of the data associated with this information. BLM should limit unnecessary and subjective language which intentionally or

		unintentionally imposes the authors/BLM's belief system. It is better to let the data, numbers, and process speak to itself and let the reader make their own conclusions. *These sales initially generated ~~considerable~~ bonus bid revenue for the Federal government and the State of Alaska, as the BLM collected an average of $74 million in bonus bids at sales held in 1999, 2002, and 2004.*[12] *~~However~~, bid revenue ~~dropped off significantly~~ (suggestion - rather than stating your opinion on the bid revenue just use the actual numbers or percentages and the reader can decide if that is significant or not) as lands in the NPR-A with the highest potential for development were leased. Between 2006 and 2019, the BLM received an average of ~~just~~ $6 million in bonus bids per sale, and millions of acres offered for lease went unsold. Between 1999 and 2019, the BLM offered nearly 60 million acres of leases in the NPR-A but received bids on ~~just~~ 12 percent of that acreage.* *In any event, it would make little sense for Congress to require maximum protection of surface values from exploration while requiring lesser protection from the greater impacts of oil and gas development.*
Preamble, pg. 62030	DNR	Concerning that the author of this section is not aware of whale harvest and subsistence activities of this region and how they contribute to subsistence activities. To claim that all, or nearly all subsistence resources are harvest from NPR-A is an oversight that is only possible when excluding local stakeholders and shows the disconnect this process with the people and stakeholders of this region. Is BLM aware of how whaling contributes to subsistence activities and harvests in this region? If so please explain the disconnect between the proposed rule and its understanding of subsistence resources in this region. This might also explain why BLM published this rule in the Federal Register during some of the most essential whaling activities as was voiced during the public meeting on October 6, 2023 and continues to ignore the request of the Native Alaskans who depend on this resource. *Over 40 communities harvest subsistence resources from the NPR-A, including many of the resources described earlier. Six communities in particular – Anaktuvuk Pass, Atqasuk, Nuiqsut, Point Lay, Utqiagvik, and Wainwright – harvest **all or nearly all of their subsistence** resources from the NPR-A.*

Preamble, pg. 62030	DNR	BLM mentions 40 communities harvest subsistence resources from the NPR-A. Did BLM notify all the 40 communities of the proposed rule. Please list the 40 communities BLM has identified and which communities BLM has reached out to before publishing the rule and which communities BLM will be including in their public outreach/meetings/hearings. If BLM is not intending to reach out to these communities during the public process please list each community and explain why that community was not included even after BLM has identified them as an impacted community. Please do not batch your answers as each community should be considered individually?
Preamble, pg. 62029	DNR	The State has had countless complaints about BLM's process and why this administration is promising to collaborate and is now disregarding those commitments. These calls are coming to the State because BLM has strategically limited the voices and opportunities to have a dialog with BLM about this rule and process.
Preamble, pg. 62031	DNR	The rule is confusing and complex and does not clarify management in the NPR-A. BLM's limited process and limiting meetings in Anchorage to only taking writing questions has only added to the confusion and sentiment that BLM simply does not care about meaningful engagement with the people and stakeholders of the NPR-A and is manipulating the public process to advance agenda to is unconcerned with the State or Alaskan Natives. While BLM claims this rule is intended to clarify the multiple management authorities/tools it most certainly does not do that. This rule does not clarify the multiple management authorities in the NPR-A, it simply adds a conservation tool/process that is intended to supersede any past or future authorities and limit "adaptive management" in the NPR-A to only expanding Special Areas/conservation. The proposed rule is confusing and complex because BLM cannot be sincere about their actual intention of creating an unbalanced plan which focuses on expanding conversation. Simply saying BLM has created a proposed rule that focuses on shutting down economic development opportunities through expansion of conservation would violate multiple existing NPR-A laws and authorities that require BLM to develop balanced management plan and limits BLM conservation expansion to a more robust and defined process.
General	DNR	The State manages (or co-manages) a wide variety of resources and authorities in the NPR-A and shares the responsibility of managing the NPR-A with BLM, the North Slope Borough, and many other land and subsurface owners. To date no collaboration has happened with the State (or

		others) to understand our authorities and the significant impacts on those authorities/resources from this proposed rule. This rule will have a direct impact on the State and potentially other landowners/managers authorities and responsibilities.
Preamble, pg. 62039 NEPA	DNR	Considering the significant impacts this rule will impose on the State and local economics, small business, State and Borough authorities and relations and responsibilities, NPR-A communities, Native Villages, Native Corporations BLM should at a minimum require a thorough and in-depth analysis of the true impacts of this proposed law. Simply saying there are no impacts with no supporting data and requiring Alaskans and the public to trust BLM with no backup would not be acceptable for any other effort of this nature. This rule triggers multiple circumstances listed in 43 CFR 46.215 that does not allow for a categorical exclusion and require an environmental impact statement. BLM appears to have done no meaningful analysis on the circumstances described in 43 CFR 46.215 and it can only be assumed it is because it would require meaningful analysis and stakeholder engagement with Alaskans which would not align with BLM's predetermined outcomes and timeline.
Section 2361.40	DNR	Proposed rules that restricts or drastically changes the intent of the NPR-A by expanding Special Areas and enforcing "maximum protections" as a management standard and regardless of activity is the creation of conservation system units.
Section 2361.40	DNR	Maximum protections should be relative to the activity in the NPR-A and not a management standard regardless of activity. "Maximum protections" as intended means something very different when considering oil and gas exploration versus development. Maximum protections is an important threshold any activity should be held to. It is impossible to allow for these activities to occur and require all activities to be held to the same level of maximum protections. It is concerning that while maximum protections is mentioned nearly 60 times BLM tries to mask and sweep this plan language under the rug. BLM has convoluted this definition rather than clearly explaining it in a way that everyone can understand with certainty. The proposed rule does not clearly explain the full extent or impacts of "maximum protections" within ever expanding Special Areas. It appears that this rule is intentionally vague in this area so that BLM could streamline a rule that will be used to completely change the management intent of the NPR-A by shutting down all resource and economic opportunity in the NPR-A.

Preamble, pgs. 62027–28	DNR	The State strongly opposes and finds it disingenuous for BLM to consider and describe stakeholder engagement during the NPR-A IAP relevant stakeholder engagement and as justification for the need of the proposed rule. The same groups listed in the proposed rule have, and continue to, adamantinely oppose BLM's process, assumptions, and conclusions and continue to be an afterthought by BLM. Additionally, BLM effectively selected the no action alternative in the NPR-A IAP Record of Decision. By BLM selecting the no action alternative BLM essentially threw out and disregarding all the time, effort and hard work the cooperating agencies, NPR-A leaders, and communities but towards developing those alternatives.
General	DNR	While we understand it is contrary to the current administration's beliefs continuing responsible resource development in the NPR-A is one of the single most effective things the federal government and BLM can do to provide economic benefits to North Slope communities, small business, and promote an autonomous and self-sustaining future that reduces "environmental justice" impacts. Not allowing development, as intended in the NPR-A PA, moving forward would be the biggest "environmental justice" impact of all to communities, local/small businesses, and Native Village Corporations. Stopping oil and gas production in the NPR-A would deprive NPR-A communities of the long-promised partnership in the benefits of resource production (through the NPR-A Impact Mitigation Fund). Continued responsible development in the NPR-A is the answer to mitigating a host of "environmental justice" impacts to NPR-A communities and residents, but without the production royalties from future NPR-A developments the NPR-A Impact Mitigation Fund will not be able to generate revenue and fund necessary mitigation projects as promised by BLM Alaska and the federal government.
Preamble, pgs. 62037–38	DNR	It is unclear how BLM economic analysis considered the "Reasonably Foreseeable Development Scenario" (Appendix B of the NPR-A IAP). The proposed rule and continues expansion of Special Areas would not allow for the scenarios described in the IAP but does not discuss the economic impacts from those changes/restrictions. Is BLM assuming that under this proposed rule that there would be no change to the reasonably foreseeable development scenario and that the proposed rule would allow for each of the development scenarios described in NPR-A IAP appendix B? If not, than potential impacts from each development scenario should be fully evaluated.

Preamble, pgs. 62037–38	DNR	The economic analysis seems to have advantageously left out references to the economic benefit of oil and gas development to communities in and around the NPR-A. Strategically BLM does not mention the NPR-A Mitigation Impact Fund and the benefits it brings to the numerous disadvantaged and disproportionally served communities and economic opportunities it brings to small businesses within the region. This is concerning because assumptions were made that most businesses and small local businesses and Native Corporations operate solely in the Oil and Gas industry or would not be impacted. The NPR-A Impact Mitigation Fund reduces impacts to NPR-A communities and supporting small/local businesses (and residents) through contracts and jobs while sumptuously enhancing and maintaining cultural values, mitigating impacts to subsistence activities, enhancing health and safety conditions, and improving community resiliency. This fund is solely supported by revenue generated for oil and gas exploration and development in the NPR-A. BLM conveniently forgets to mention this fund when mentioning "sales initially generated considerable bonus bid revenue for the Federal government and the State of Alaska". This proposed rule and BLM Alaska continue to take every opportunity to manipulate or ignore data, dismiss impacts altogether, and excludes stakeholders if they do not support BLM's predetermined outcomes to create expanding conservation units that enforce maximum protections regardless of activity ("Special Areas").
Section 2361.40	DNR	Community Infrastructure exception. Should not use the word "primarily" as it is subject and does not add clarity as BLM seeking. Community infrastructure language and exception should be allowed if it has community benefit and is owned, operated, or managed by the appropriate Community or Native entity, the NSB, or the State of Alaska. BLM should not be in the business determine if something has enough community benefit to move forward (i.e. "primarily benefits community".) Suggestion: work with communities, NSB, and the State, as was done on every other IAP, to develop language that better describes this exception and adds clarity and certainty to this rule and does not leave it up to BLM's interpretation of "primarily".
Preamble, pg. 62029	ADF&G	The text states that the Western Arctic Caribou Herd population "now stands at 164,000 animals." The most recent (2023) population estimate is 152,000 animals.
Section 2361.30	ADF&G	This section would require the BLM to evaluate lands in the NPR-A, at least every 5 years, for significant resource values and designate new Special Areas or update existing Special Areas by expanding their boundaries, recognizing the presence of additional significant resource values, or

		requiring additional measures to assure maximum protection of significant resource values. This requirement would result in constant codified and required evaluation. It should be eliminated, or this process should be completely revaluated in coordination with State of Alaska resource managers, local subject matter experts, and NPR-A community leadership.
Section 2361.40(c)	ADF&G	Codifying the existing protections and restrictions in the Special Areas from the 2022 IAP ROD as displayed in IAP maps 2 and 4 is not necessary. The 2022 IAP ROD is already referenced in the rule and as the new rule would specify that any new measure adopted would supersede any inconsistent provisions in the IAP, the maps could quickly become obsolete.
Section 2361.6 Definition of "significant resource value"	ADF&G	"Significant resource value" must be more precisely defined, given that the creation and expansion of Special Areas that would subsequently preclude or severely limit oil and gas exploration and development is based on the presence of a significant resource value. Significant resource value is defined in the proposed rule as meaning "any subsistence, recreational, fish and wildlife, historical, or scenic value identified by the Bureau as supporting the designation of a Special Area." This is an inadequate and circular definition.
Preamble, Sections D and E, pgs. 62029–31	ADEC	In Sections D and E of the Federal Register notice, BLM discusses its perspective on the need for the rule. Overall, climate change is used as a justification for the rulemaking, but very little explanation has been provided about the connection of how the individual details in the rulemaking are justified by climate change. **Comment:** Please remove the climate change justification from this discussion, as you have not established a clear connection. The Department of Interior's September 6, 2023, news release specifically ties this regulatory action to the current administration "delivering on the most ambitious climate and conservation agenda in history." This, along with the reference to the Willow Master Development Plan SEIS and record of decision, implies that oil and gas restrictions would result in decreased greenhouse gas emissions globally. Restricting oil and gas development in the NPR-A will do very little to halt the emission of greenhouse gases and climate change. Demand for petroleum products will continue and if not produced in Alaska, crude oil will be developed elsewhere with less stringent environmental standards. Please discontinue these efforts to make Alaska's oil and gas projects responsible for downstream greenhouse gas emissions from combustion of refined petroleum resources. BLM has not demonstrated a direct causal chain, as

		required, between crude oil produced in the NPR-A and the downstream combustion of petroleum-based fuels. Any connection would be remote and speculative. https://www.doi.gov/pressreleases/biden-harris-administration-takes-major-steps-protect-arctic-lands-and-wildlife-alaska https://www.eia.gov/outlooks/aeo/narrative/index.php#ExecutiveSummary

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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November 7, 2023

Mr. Steven Cohn
Alaska State Director – Bureau of Land Management
222 W. 7th Avenue
Anchorage, Alaska 99513

Re: Proposed Rule for the Management and Protection of the NPR-A – State of Alaska request for extension and to schedule meaningful public hearings in Anchorage and other impacted communities

Dear Mr. Cohn,

The State of Alaska ("State") is requesting a 90-day extension to the comment period for the public to review and comment on the Proposed Rule for the "Management and Protection" of the National Petroleum Reserve – Alaska (NPR-A).

The recent 10-day extension is inadequate – to the point of being meaningless – for addressing the multitude of Alaskan stakeholders' concerns that have arisen: completing review during subsistence activities, correcting the deeply flawed economic analysis associated with the rule, being able to incorporate discussions from the hastily and poorly scheduled public meetings into substantive comments, or any of a number of other situations created by the legal and process deficiencies that we have observed to date. We feel these process deficiencies, in the face of consistent requests from so many directly affected stakeholders in Alaska – including numerous organizations representing Alaskans that live within the NPR-A and will be directly affected by the rule – necessitate the extension. The process to date amounts to an almost open disregard for the interests of Alaskans, our way of life, and the indigenous inhabitants of the North Slope – as we try to exercise rights and processes created by federal law and policy.

Despite rhetorical promises of future collaboration, we have seen no such collaboration on this rule – a rule that may be the single most consequential federal rulemaking for our State's future. By report of numerous organizations and communities, this total lack of collaboration, consultation, or even basic information sharing unfortunately extends to many of the Indigenous, Alaskan Native people of the region that this proposed rule directly impacts. Trust is built through collaboration, communication, and keeping promises. Unfortunately, BLM's actions and defective process speak much louder than the empty words of future promises of inclusion and collaboration.

BLM has chosen to develop this proposed rule behind closed doors with the apparent assumption that stakeholder engagement with the State, Alaskans, and the Native communities and residents of the NPR-A would only detract from BLM's predetermined approach to create purported "management tools" and "frameworks" that are solely focused on expanding conservation and preservation across the NPR-A to the detriment of balanced and responsible local or regional interests. The State has significant concerns that this proposed rule is fundamentally disconsonant with the National Petroleum Reserve *Production* Act which will only be amplified by pushing it through with facially defective process.

As we prepare substantive comments, it is clear the total absence of meaningful collaboration with the State or any local or regional stakeholder(s) in the development or review of this proposed rule has created a "framework" for managing the NPR-A that has significant inaccuracies, incorrect assumptions, counters prior federal reviews and analysis, and fundamentally dismisses the interests of the communities and residents of the NPR-A. This compounds the serious federalism deficiencies raised by ignoring that the State of Alaska and North Slope Borough, respectively, are responsible for a wide variety of authorizations and management actions for resources in the NPR-A that will purported by the proposed rule.

The State of Alaska is not the only critical stakeholder requesting an extension or that finds BLM's process disingenuous. The NPR-A Working Group, which the Department of the Interior created specifically to involve in this type of management effort, also requested an extension after apparently only being notified of this effort on September 26, 2023, nearly 20 days after the proposed rule was published. This group was created to ensure that NPR-A communities and stakeholders are able to incorporate North Slope economics, subsistence concerns, traditional and ecological knowledge in federal actions regarding the NPR-A, and to provide recommendations from local residents. Duties of the Working Group are "to discuss local concerns relevant to project development and implementation of BLM planning decisions with BLM". The Working Group is clearly requesting that it needs time to perform the functions DOI created it to do.

Community members and residents of the NPR-A are also expressing frustrations to our office, and we understand to BLM as well, that this review timeline directly conflicts with fall subsistence whaling activities, of which BLM is either unaware or is choosing to ignore. An additional 10 days does not address this overlap with fall subsistence activities. Nor does it take into consideration the fact that many people in this region just regained internet service after significant infrastructure was damaged and only recently repaired and have had no way of accessing the proposed rule itself or any associated documents or information.

The State would also like to echo concerns brought forth by Inupiat Community of the Arctic Slope (ICAS), the NPR-A Working Group, and others about the need to schedule meaningful public hearing(s) in additional communities directly impacted by this rulemaking – while providing more than a few days' notice before the meeting. In the meetings BLM has held, public comment has not even been taken and questions raised by the public have been cherry-picked for partial answers and paraphrasing. Not allowing the public to speak confirms BLM's limited intention to actually gather knowledge and data, or to collaborate.

BLM has taken every opportunity to rush this process with no explanation, specifically at the expense of the Native, local, and regional stakeholders of the NPR-A. BLM needs to heed the community voices that are saying the new philosophy of "streamlining" NPR-A management efforts while limiting collaboration and stakeholder engagement; and subverting local, regional, and traditional knowledge is inappropriate and contradicts the promises made by BLM and the Biden Administration.

BLM has also made every attempt to ignore the actual impacts of the proposed rule by claiming it is only "administrative" to streamline the process by dismissing the need for additional analysis or stakeholder input. In reality, this rule vastly alters major federal planning processes and land management standards that were developed with robust public input. Public testimony has been offered at every other stage of NPR-A plan development in Anchorage and other impacted communities. If BLM wants to move forward with a rule that alters existing federal land management, then it must acknowledge the concomitant process requirements at a minimum.

For these reasons the State of Alaska is requesting and supporting the numerous other requests that have been submitted, to extend the public comment period for an additional 90 days. This extension is sorely needed to do meaningful engagement with the State of Alaska, Alaska Native communities, local residents, ICAS, the NPR-A Working Group, and other Alaskan stakeholders.

Sincerely,

Ashlee Adoko
Executive Director
State of Alaska
Department of Natural Resources
Office of Project Management and Permitting