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4331-29

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 2360**

**[BLM\_HQ\_FRN\_MO4500177994]**

**RIN 1004-AE95**

**Management and Protection of the National Petroleum Reserve in Alaska**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule governs the management of surface resources and Special Areas in the National Petroleum Reserve in Alaska (Reserve or NPR-A). The Bureau of Land Management (BLM) manages the NPR-A consistent with its duties under the Naval Petroleum Reserves Production Act, as amended (NPRPA), Federal Land Policy and Management Act, as amended, (FLPMA), and other authorities. The rule revises the framework for designating and assuring maximum protection of Special Areas' significant resource values and protects and enhances access for subsistence activities throughout the NPR-A. It also incorporates aspects of the NPR-A Integrated Activity Plan (IAP) approved in April 2022.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** James Tichenor, Advisor - Office of the Director, at 202-573-0536 or [jtichenor@blm.gov](mailto:jtichenor@blm.gov) with a subject line of "RIN 1004-

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AE95.” For questions relating to regulatory process issues, contact Faith Bremner at

*fbremner@blm.gov*.

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#### **SUPPLEMENTARY INFORMATION:**

I. List of Acronyms and Abbreviations

II. Executive Summary

III. Background

IV. Section-by-Section Discussion

V. Procedural Matters

#### **I. List of Acronyms and Abbreviations**

To ease the reading of this preamble and for reference purposes, the following acronyms and abbreviations are used in the preamble:

ANILCA (Alaska National Interest Lands Conservation Act of 1980)

BLM (Bureau of Land Management)

ASRC (Arctic Slope Regional Corporation)

FLPMA (Federal Land Policy and Management Act of 1976)

IAP (Integrated Activity Plan)

ICAS (Iñupiat Community of the Arctic Slope)

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NPR-A or Reserve (National Petroleum Reserve in Alaska)

NPRPA or the Act (Naval Petroleum Reserves Production Act of 1976)

UIC (Ukpeaġvik Iñupiat Corporation)

## **II. Executive Summary**

The Naval Petroleum Reserves Production Act of 1976 (NPRPA) gives the BLM three overarching mandates for managing the Reserve: 1) conduct an oil and gas exploration, leasing, and production program; 2) protect environmental, fish and wildlife, historical, and scenic surface resources from the impacts of that program through mitigation of reasonably foreseeable and significantly adverse effects; and 3) assure maximum protection for significant surface values from the impacts of the oil and gas program, including subsistence use, within Special Areas. Through this rulemaking process, the BLM is developing a more cohesive framework for these three mandates by establishing requirements and procedures for protecting the surface values of the Reserve while conducting the oil and gas program.

The final rule implements the critical components of the statutory framework described above, establishing procedures for the BLM to mitigate reasonably foreseeable and significantly adverse effects of proposed oil and gas activities on the surface resources of the Reserve and to provide maximum protection for surface values within Special Areas for proposed oil and gas activities. The BLM will continue to follow the part 3130 regulations for managing oil and gas leasing and production in the Reserve.

The rule updates the purpose of the subpart 2361 regulations to more accurately and completely reflect the scope of the regulations. The purpose of the updated regulations is to provide standards and procedures to implement 42 U.S.C. 6506a(b),

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which requires the Secretary to ensure that “[a]ctivities undertaken pursuant to this Act include or provide for such conditions, restrictions, and prohibitions as [she] deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [NPR–A],” and to provide standards and procedures to implement 42 U.S.C. 6504(a), under which any exploration in Special Areas “shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the [NPR–A].”

The rule establishes new standards and procedures for managing and protecting surface resources in the Reserve from the reasonably foreseeable and significantly adverse effects of oil and gas activities. It requires the BLM, in each decision concerning oil and gas activity in the Reserve, to adopt measures to mitigate the reasonably foreseeable and significantly adverse effects on surface resources, taking particular care with surface resources that support subsistence. The rule requires the BLM to manage oil and gas activities in accordance with the IAP, enshrining longstanding BLM practice into regulations. In the BLM's experience, the IAP provides an invaluable means of evaluating management options, engaging the public, and guiding decision-making, consistent with the BLM's duties under NPRPA and the National Environmental Policy Act (NEPA).

The rule codifies the five existing Special Areas and their significant resource values and management as currently established in Secretarial decisions and the 2022 IAP, and it establishes a process for designating, amending, and de-designating Special Areas in the future. The rule sets forth standards and procedures for managing oil and gas

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activities within Special Areas, confirming that the management priority within Special Areas is to assure maximum protection of significant resource values consistent with the requirements of the NPRPA for exploration of and production from the Reserve. The procedures detail requirements for analyzing proposed oil and gas leasing, exploration, development, or new infrastructure in Special Areas, including providing opportunities for public participation and consulting with federally recognized Tribes and Alaska Native Claims Settlement Act (ANCSA) corporations that use the affected Special Area for subsistence purposes or have historic, cultural, or economic ties to the Special Area. The BLM must evaluate potential adverse effects on significant resource values and consider measures to avoid, minimize, or otherwise mitigate adverse effects to achieve maximum protection of significant resource values.

The rule requires the BLM to manage Special Areas to protect and support fish and wildlife and their habitats and the associated subsistence use of those areas by rural residents, and it requires the BLM to provide reasonable access to and within Special Areas for subsistence purposes. The rule encourages the BLM to explore co-stewardship opportunities for Special Areas, including co-management, collaborative and cooperative management, and tribally led stewardship, fulfilling the special trust relationship that the Department of the Interior has with Tribes.

### **III. Background**

#### **A. The Need for the Rule**

The BLM is promulgating this final rule because the regulatory framework governing the management and protection of environmental, fish and wildlife, other surface resources, and Special Areas in the Reserve needs updating. Conditions

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throughout the Arctic have changed dramatically since 1977, when the BLM issued the current regulations for management of surface resources and Special Areas in the Reserve. Rapidly changing conditions, including the intensifying impacts of climate change on the Reserve's natural environment and Native communities, make it necessary and appropriate for the BLM to develop new regulations that account for and respond to these changing conditions and that require the BLM to regularly address changing conditions.

In addition, the current regulations do not reflect the full management regime for the Reserve. This rule will provide a framework for management to protect Special Areas and surface resources in the Reserve, which requires a delicate balance between exploration for and development of oil and gas resources and protecting subsistence, recreational, fish and wildlife, historical, scenic, and other values. The applicable legal standards and procedures for management of the Reserve are currently scattered throughout several statutes and BLM regulations, plans, and guidance documents. For example, the existing regulations do not integrate with the BLM's development and use of IAPs, which have been used for more than two decades to guide management of lands within the Reserve. Although the BLM is not required to prepare a resource management plan for the Reserve under FLPMA, see 42 U.S.C. 6506a(c), it has chosen to produce and update the IAP through a public process and supported by analysis in an Environmental Impact Statement (EIS). The IAP allocates land uses in the Reserve and includes oil and gas lease stipulations and infrastructure restrictions that apply to BLM authorizations in Special Areas and other areas throughout the Reserve. The overlay of an updated regulatory regime to govern the Reserve, including the requirement to develop future

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IAPs to direct management of the lands and resources in the Reserve, will enhance consistency and certainty, particularly with respect to protection of surface resources and Special Areas.

Through the NPRPA, as amended, Congress has given the BLM three overarching mandates for managing the Reserve: 1) conduct an oil and gas exploration, leasing and production program; 2) protect environmental, fish and wildlife, historical, and scenic surface resources from the impacts of that program through mitigation of reasonably foreseeable adverse effects; and 3) assure maximum protection for significant surface values from the impacts of the oil and gas program, including subsistence use, within Special Areas. Through this rulemaking process, the BLM is developing a more cohesive framework for these three mandates by establishing requirements and procedures for protecting the surface values of the Reserve while conducting the oil and gas program, as discussed in more detail below.

*1. Conduct an oil and gas leasing, exploration, and production program*

The NPRPA directs the Secretary of the Interior to “conduct an expeditious program of competitive leasing of oil and gas in the Reserve in accordance with this Act.” In response to this mandate, in 1981 the BLM developed regulations establishing the procedures for administering a competitive leasing program for oil and gas within the Reserve. Those regulations are set forth in 43 CFR part 3130, and they are not being amended in this rulemaking process. Following promulgation of the part 3130 regulations, the BLM held two lease sales in the Reserve in 1982 and one each in 1983

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and 1984.<sup>1</sup> After receiving no bids during the 1984 lease sale and determining that the oil and gas industry had “little interest in another lease sale,” the BLM discontinued sales in the Reserve for the next 15 years.<sup>2</sup> The BLM restarted lease sales in 1999 and, over the next 2 decades, held a total of 15 sales for the Reserve. These sales initially generated considerable bonus bid revenue for the Federal Government and the State of Alaska; however, bid revenue dropped off significantly as lands in the Reserve with the highest potential for development were leased. Between 1999 and 2019, the BLM offered nearly 60 million acres of leases in the Reserve but received bids on just 12 percent of that acreage.<sup>3</sup>

The BLM continues to authorize oil and gas leasing and production in the Reserve. The most recent oil and gas lease sale in the Reserve occurred in 2019. Under the 2022 IAP, approximately 11.8 million acres of the Reserve’s subsurface estate are available for oil and gas leasing. In March 2023, the BLM approved the Willow Master Development Plan Project for construction and operation of new infrastructure in the Bear Tooth Unit within the Reserve. The approved Willow project incorporates substantial resource protection measures, such as reducing the number of proposed drill sites, while authorizing the production and transportation to market of Federal oil and gas resources within the Reserve, consistent with the BLM’s statutory directives.

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<sup>1</sup> U.S. Geological Survey, The NPR–A Data Archive 2 (Mar. 2001), *available at* <https://pubs.usgs.gov/fs/fs024-01/fs024-01.pdf>.

<sup>2</sup> BLM, Northeast NPR–A Final IAP/EIS (Aug. 1998), *available at* [https://web.archive.org/web/20001018022001/http://aurora.ak.blm.gov/npra/final/html/contents\\_vol1.html](https://web.archive.org/web/20001018022001/http://aurora.ak.blm.gov/npra/final/html/contents_vol1.html).

<sup>3</sup> BLM, NPR–A Sale Statistics 1999 to Present, *available at* [https://www.blm.gov/sites/blm.gov/files/documents/files/Oil\\_Gas\\_Alaska\\_NPR-A\\_LeaseSale\\_Statistics\\_1999toPresent.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/Oil_Gas_Alaska_NPR-A_LeaseSale_Statistics_1999toPresent.pdf)



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2. *Protect environmental, fish and wildlife, historical, and scenic values*

Under the NPRPA, the Secretary of the Interior assumes all responsibilities for the protection of environmental, fish and wildlife, and historical or scenic values. The Act authorizes the Secretary to “promulgate such rules and regulations as [she] deems necessary and appropriate for the protection of such values within the reserve.” 42 U.S.C. 6503(b). The BLM additionally has a responsibility to “provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects [of oil and gas activities] on the surface resources” throughout the Reserve. 42 U.S.C. 6506a(b). The current regulations, however, provide little detail on the standards and procedures the BLM should use to implement these important requirements. New and revised standards and procedures are needed to ensure that the BLM is fulfilling its statutory duties under the NPRPA, FLPMA, and other authorities to the best of its ability.

The many important surface resources of the Reserve are described in detail in the preamble to the proposed rule. These include extensive calving grounds for the Teshekpuk Caribou Herd and the Western Arctic Caribou Herd; threatened and sensitive bird species and the Qupahuk Flyway Network Site; marine mammals including polar bears, six whale species, spotted seals, and walruses; and abundant fish species including Pacific salmon. Overall, the implications of climate change for wildlife in the Arctic are substantial, particularly for marine mammals that are threatened by continued Arctic warming and the resulting deterioration of sea ice. The final rule better supports the BLM’s ability to manage impacts to surface resources resulting from climate change and to respond to changing conditions more rapidly.

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3. *Assure maximum protection for significant surface values, including subsistence use, within specially designated areas*

The NPRPA requires the BLM to “assure the maximum protection of [significant subsistence, recreational, fish and wildlife, or historical or scenic] values” within Special Areas “to the extent consistent with the requirements of [the NPRPA] for the exploration of the reserve.” 42 U.S.C. 6504(a). This requirement applies to the impacts of all oil and gas activities. 42 U.S.C. 6504(a); 6506a(n)(2). The final rule improves upon the standards and procedures that implement this requirement. For example, the current regulations identify specific measures the BLM may take to assure maximum protection but provide no further guidance on the evaluation and selection of such measures.

The final rule also maintains and enhances access for long-standing subsistence activities in the Reserve. The importance of subsistence harvesting to the Iñupiat people and residents of communities in and around the Reserve is discussed in depth in the preamble to the proposed rule. Impacts on subsistence are occurring on the North Slope with greater frequency as development expands across the region. Nuiqsut, the community closest to current oil and gas development on the North Slope, has experienced the most impacts. Effects on subsistence and concerns for ongoing subsistence activities have also been documented for Point Lay, Wainwright, Utqiagvik, Atkasuk, and Anaktuvuk Pass. Many of these effects are related to oil and gas exploration and development—including seismic activity and oil and gas-related research, pipelines, and traffic—on caribou and other terrestrial species. Provisions of the rule for management of subsistence uses within Special Areas and co-stewardship opportunities

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in management of Special Areas and subsistence fulfill the special trust relationship that the Department of the Interior has with Tribes.

In sum, this rule implements the critical components of the statutory framework described above, establishing procedures for the BLM to mitigate reasonably foreseeable and significantly adverse effects of proposed oil and gas activities on the surface resources of the Reserve and to provide maximum protection for surface values within Special Areas for proposed oil and gas activities, consistent with the requirements of the Act related to conducting oil and gas exploration and production – all as explicitly required by the NPRPA. The BLM will continue to follow the part 3130 regulations for managing oil and gas leasing and production in the Reserve. The BLM will also continue to maintain an IAP for the Reserve per the final rule. The IAP addresses management of the Reserve more broadly than oil and gas activities, whereas this rule and the codification of the 2022 IAP in provisions of this rule apply only to oil and gas activities.

*Public Comments on the Need for the Rule*

During the public comment period, the BLM received approximately 89,000 comments on regulations.gov from Tribes, Alaska Native Corporations, State and local governments, organizations, businesses, and individuals. Among them were comments from the Arctic Slope Regional Corporation, Doyon Limited, Iñupiat Community of the Arctic Slope, Kuukpik, Native Village of Kotzebue, and Village of Wainwright.

This preamble responds to comments in the relevant part of the discussion. For example, the following addresses comments on the need for the rule.

*Comment:* Commenters stated that the Reserve was set aside for the purposes of energy resource development and security in the United States and that they do not think

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that the BLM should promote any regulations that would slow, deter, or counter these purposes.

*BLM Response:* The rule implements express statutory direction in the NPRPA, which requires authorizations for oil and gas activities to “include or provide for such conditions, restrictions, and prohibitions...necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources” throughout the Reserve. The NPRPA also requires the BLM to ensure maximum protection of Special Areas’ significant resource values from oil and gas activities. Please see the Brief Administrative History of the Reserve discussion below for more details.

*Comment:* The BLM received comments requesting that it remove the climate change justification from the Need for the Rule discussion. The BLM also received comments that balancing oil and gas activities with the protection of surface resources is not enough to address the climate change concerns raised in Section II(E), Need for the Rule.

*BLM Response:* Intensifying impacts from climate change are particularly affecting North Slope Iñupiaq communities and creating substantial uncertainty for managing surface resources in the Reserve. Changes in native plant communities, wildlife habitat, and migration corridors, particularly for caribou, are affecting the availability of and access to subsistence resources. Climate change is also affecting things like permafrost stability and creating engineering challenges for infrastructure. Promulgating this rule now provides industry with assurances regarding management of the Reserve and allows it to better plan for future exploration and development. Updating the regulatory framework will improve the BLM’s ability to respond to changing

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conditions in the Arctic while providing transparency in conservation and development decisions.

*Comment:* The BLM received comments espousing the position that there is not a need for additional rules to manage the Reserve because the IAP already provides stringent requirements for environmental protection and designates specific areas for oil and gas development.

*BLM Response:* The 2022 IAP Record of Decision (ROD) provides broad management direction for uses and activities allowed within the Reserve, including requirements for environmentally and socially responsible resource development. The BLM is seeking to codify the 2022 IAP development process and management framework for oil and gas activity into regulations, which currently are over 40 years old and outdated. Additionally, this final rule consolidates the provisions governing the BLM's management of oil and gas activity while mitigating adverse effects on surface resources and managing Special Areas for maximum protection of significant resource values in the Reserve.

*Comment:* Commenters requested that the BLM cite the need to protect wildlife species, including those with declining populations like the Arctic peregrine falcon and caribou, in the Need for the Rule.

*BLM Response:* The concerns raised in this comment are encompassed in the proposed and final rule with references to "protection and control of the environmental, fish and wildlife, and historical and scenic values of the National Petroleum Reserve in Alaska."

## **B. Brief Administrative History of the Reserve**

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Designated by President Warren G. Harding in 1923 as Naval Petroleum Reserve No. 4, Exec. Order 3797–A, the Reserve is one of several naval petroleum reserves established on public land in the early part of the 20<sup>th</sup> Century to serve as an emergency oil reserve for the U.S. Navy. The Reserve extends from the north slope of the Brooks Range to the Arctic Coast and encompasses approximately 23 million acres of public land.

The U.S. Navy explored for oil and gas in the Reserve from 1944 to 1953, resulting in the discovery of two small oil fields (Simpson and Umiat), one prospective oil field (Fish Creek), a gas field (South Barrow), and four prospective gas fields (Meade, Square Lake, Titaluk, and Wolf Creek). The Navy also pioneered numerous methods for oil exploration in the Arctic and collected a tremendous amount of scientific information concerning northern Alaska. By the 1970s, when Congress began debating the role of the naval petroleum reserves in the context of the nation's changing energy needs, the Reserve remained “largely unexplored and almost completely undeveloped.” H.R. Rep. No. 94–156, at 3 (1975). In 1976, Congress passed the NPRPA, which transferred administrative jurisdiction over the Reserve from the Secretary of the Navy to the Secretary of the Interior and redesignated the “Naval Petroleum Reserve Numbered 4, Alaska” as the “National Petroleum Reserve in Alaska” in 1977. Pub. L. 94–258 (1976) (codified at 42 U.S.C. 6502). It also directed the President to prepare a study to “determine the best overall procedures” for exploring, developing, and transporting the reserve's oil and gas resources. *Id.* section 105(b)(1) (codified at 42 U.S.C. 6505(b)).

In the NPRPA, Congress sought to strike a balance between oil and gas exploration and “the protection of environmental, fish and wildlife, and historical or

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scenic values” in the Reserve. It did so by directing the Secretary to “promulgate such rules and regulations as he [or she] deems necessary and appropriate for the protection of such values within the reserve.” 42 U.S.C. 6503(b). The Conference Report explained that the Act would immediately vest responsibility for protection of the Reserve's “natural, fish and wildlife, scenic and historical values . . . in the Secretary of the Interior . . . so that any activities which are or might be detrimental to such values will be carefully controlled.” H.R. Conf. Rep. No. 94–942 (1976). The report stated the Conference Committee's expectation “that the Secretary will take every precaution to avoid unnecessary surface damage and to minimize ecological disturbances throughout the reserve.” *Id.*

Congress further directed that “[a]ny exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.” 42 U.S.C. 6504(a). The Conference Report elaborated that the Act would “immediately authorize the Secretary to require that the exploration activities within these designated areas be conducted in a manner designed to minimize adverse impacts on the values which these areas contain.” H.R. Conf. Rep. No. 94–942 (1976).

To implement the NPRPA, the BLM developed regulations in 1977 to govern management and protection of the Reserve. Those regulations, which have remained unchanged since their original promulgation, are set forth at 43 CFR subpart 2361. The

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regulations provide a purpose and objectives for the protection of the environmental, fish and wildlife, and historical or scenic values of the Reserve and require the BLM to take such action as is necessary to mitigate or avoid unnecessary surface damage and to minimize ecological disturbance throughout the Reserve to the extent consistent with the requirements of the NPRPA for the exploration of the Reserve. Among other provisions, the regulations identify examples of maximum protection measures that may be implemented to protect significant resource values and provide guidance for designating additional Special Areas within the Reserve.

Three years after the BLM developed regulations to govern management of the Reserve, the Department of the Interior Appropriations Act, Fiscal Year 1981, directed the Secretary to “conduct an expeditious program of competitive leasing of oil and gas” in the Reserve, while “provid[ing] for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on . . . surface resources . . . .” Pub. L. 96–514, 94 Stat. 2957 (1980). The BLM subsequently developed a new set of regulations to govern the oil and gas leasing program in the Reserve, which were promulgated in 1981 and are set forth at 43 CFR part 3130. The part 3130 regulations did not amend the subpart 2361 regulations, and, as a result, the BLM currently follows two sets of regulations located in different parts of the code governing management of the Reserve.

The Fiscal Year 1981 Appropriations Act also exempted the Reserve from the requirement to prepare land use plans under section 202 of FLPMA. However, the BLM has found that planning is beneficial to ensure compliance with the statutory and regulatory framework governing the Reserve and since 1998 has maintained an IAP for



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the Reserve. Because planning in the Reserve is exempted from FLPMA section 202, the IAP is not developed as a resource management plan and does not implement multiple use and sustained yield. Instead, the IAP focuses possible future BLM management practices on those uses that are allowable under the NPRPA for the Reserve, and consistent with NEPA regulations at 40 CFR parts 1500 through 1508, the IAP is developed through an EIS process.

The BLM first developed an IAP for the Northeast portion of the Reserve, which was finalized in 1998, and established initial surface protections relevant to the Teshekpuk Lake and Colville River Special Areas. Upon signing the 1998 ROD, the Secretary approved the addition of “much of the Kikiakrorak and Kogosukruk Rivers and an area approximately two miles on either side of these rivers” to the Colville River Special Area, thus increasing its size to 2.44 million acres, and the addition of the Pik Dunes to the Teshekpuk Lake Special Area. 64 FR 16747 (April 6, 1999). The 2003 Northwest NPR-A IAP proposed the new Kasegaluk Lagoon Special Area, which the Secretary approved in a ROD in 2004. See 70 FR 9096 (Feb. 24, 2005). The Kasegaluk Lagoon Special Area is located in the northwestern corner of the Reserve and includes important habitat for marine mammals, among other values.

The BLM developed the first IAP for the full Reserve in 2013. Through the 2013 IAP, the Secretary made several decisions concerning Special Areas. First, the Secretary designated a fifth Special Area: Peard Bay. The 107,000-acre area was designated to “protect haul-out areas and nearshore waters for marine mammals and a high use staging and migration area for shorebirds and waterbirds.” (BLM, NPR–A IAP ROD 4 (Feb. 2013), available at

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[https://eplanning.blm.gov/public\\_projects/nepa/5251/42462/45213/NPR-](https://eplanning.blm.gov/public_projects/nepa/5251/42462/45213/NPR-)

*A\_FINAL\_ROD\_2-21-13.pdf*.) Second, the Secretary expanded the Teshekpuk Lake Special Area by 2 million acres “to encompass all the roughly 30-to-50-mile band of land valuable for bird and caribou habitat between Native-owned lands near Barrow and Native-owned lands near Nuiqsut . . . .” (*Id.* at 19.) Third, the Secretary expanded the Utukok River Uplands Special Area to 7.1 million acres “to more fully encompass prime calving and insect-relief habitat within the NPR–A . . . .” (*Id.* at 4.) Finally, the Secretary broadened the purpose of the Colville River Special Area to include the “protect[ion of] all raptors, rather than the original intent of protection for arctic peregrine falcons.” (*Id.*)

The current IAP, adopted in April 2022, was informed by a Final EIS issued by the agency in 2020. The EIS evaluated a range of alternatives for managing oil and gas activities and resources in the Reserve. (BLM, NPR–A Final IAP/EIS (June 2020), available at <https://eplanning.blm.gov/eplanning-ui/project/117408/570>.) These alternatives were informed and shaped by extensive outreach efforts with the public and stakeholders, including:

- *Scoping*: During the scoping period from November 21, 2018, to February 15, 2019, the BLM held eight public meetings in Alaska and received approximately 56,000 comment submissions, including form letters.
- *Public Review of the Draft IAP/EIS*: During the comment period for the Draft IAP/EIS from November 25, 2019, through February 5, 2020, the BLM held eight public meetings in Alaska and received more than 82,000 comments, including form letters and signed petitions.

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• *Comments received after the Final IAP/EIS was released and prior to the ROD:* In reaching the decision in the 2022 ROD, the BLM reviewed and fully considered comments received after distribution of the Final IAP/EIS on June 26, 2020. The comments did not identify any significant new circumstances or information related to environmental concerns bearing upon the proposed action or its impacts. Instead, they generally reflected concerns already raised by comments submitted during scoping and the public's review of the Draft IAP/EIS.

In addition to the above, the current IAP benefited from suggestions and careful review of the analysis in the IAP/EIS by several cooperating agencies: the Bureau of Ocean Energy Management, Iñupiat Community of the Arctic Slope, National Park Service, North Slope Borough, State of Alaska, and U.S. Fish and Wildlife Service.

During the IAP/EIS process, the BLM consulted with:

- Tribes as required by a Presidential Executive Memorandum dated April 29, 1994;
- Communities, Tribal organizations, and Native corporations on the North Slope;
- The U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration—Fisheries pursuant to the Endangered Species Act; and
- Alaska's State Historic Preservation Office pursuant to the National Historic Preservation Act.

Pursuant to Alaska National Interest Lands Conservation Act (ANILCA) section 810(a)(1) and (2), the BLM also conducted hearings in North Slope communities to gather comments regarding potential impacts to subsistence use resulting from the alternatives considered in the IAP/EIS. Section 3.6 of the 2022 IAP details the BLM's process for evaluating impacts to subsistence use and findings based on that evaluation.

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The 2022 IAP makes approximately 11.8 million acres (52 percent) of the Reserve's subsurface estate available for oil and gas leasing. The remaining approximately 11 million acres (48 percent) of the Reserve, including the majority of lands within Special Areas and much of the coastal area of the Reserve along the Beaufort Sea, are closed to oil and gas leasing to protect and conserve important surface resources and uses in these areas. The majority of the area closed to oil and gas leasing was determined to be medium or low potential for discovery or development of oil and gas resources in the Reasonably Foreseeable Development Scenario in the 2020 NPR-A Final IAP/EIS. (BLM, NPR–A Final IAP/EIS at B-1 (June 2020), *available at*[https://eplanning.blm.gov/public\\_projects/117408/200284263/20020421/250026625/Volume%202\\_Appendices%20B-Y.pdf](https://eplanning.blm.gov/public_projects/117408/200284263/20020421/250026625/Volume%202_Appendices%20B-Y.pdf).) The IAP makes lands available for application for oil and gas infrastructure, including pipelines and other infrastructure necessary for owners of any offshore leases in the State or Federal waters of the Chukchi and Beaufort Seas to bring oil and gas across the Reserve to the Trans-Alaska Pipeline System, while also prohibiting new infrastructure on lands containing habitat of special importance to nesting, breeding, and molting waterfowl as well as those with critical calving and insect relief areas for the Teshekpuk Lake and Western Arctic Caribou Herds. (BLM, NPR-A IAP ROD 1-2 (Apr. 2022)).

### **C. Statutory Authority**

The NPRPA is the primary source of management authority for the Reserve. Under the NPRPA, the Secretary must “assume all responsibilities” for “any activities related to the protection of environmental, fish and wildlife, and historical or scenic

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values” and “promulgate such rules and regulations as he [or she] deems necessary and appropriate for the protection of such values within the reserve.” 42 U.S.C. 6503(b).

Congress has also directed the Secretary to “conduct an expeditious program of competitive leasing of oil and gas” in the NPR–A. *Id.* However, the NPRPA also requires the Secretary to ensure all oil and gas activities within the Reserve “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 surface resources” throughout the NPR–A. *Id.* at 6506a(b).

The NPRPA also authorizes the Secretary to designate Special Areas to protect “significant subsistence, recreational, fish and wildlife, or historical or scenic value[s]” in the NPR–A and provides that any “exploration” in Special Areas “shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.” *Id.* at 6504(a).

Other authorities that guide management of the NPR–A include FLPMA and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Although Congress in 1980 exempted the NPR–A from FLPMA's land use planning and wilderness study requirements, 42 U.S.C. 6506a(c), it did not exempt the NPR–A from FLPMA's other provisions. Hence, the BLM must “take any action necessary to prevent unnecessary or undue degradation” of all BLM-administered public lands, including within the NPR–A. 43 U.S.C. 1732(b).

Similarly, certain portions of ANILCA apply within the Reserve. Of particular importance for this rule, section 810 of ANILCA, which governs subsistence uses within

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the Reserve, requires the BLM to “evaluate the effect” of proposed activities “on subsistence uses and needs . . . .” 16 U.S.C. 3120(a). If such activities will “significantly restrict subsistence uses,” then the BLM must hold hearings in affected communities, limit activities to “the minimal amount of public lands necessary,” and take “reasonable steps . . . to minimize adverse impacts upon subsistence uses and resources . . . .” *Id.*

Fulfilling section 810’s requirements is of crucial importance for the NPR–A, as more than 40 communities utilize its resources for subsistence purposes.

*Public Comments on Statutory Authority*

*Comments:* Some commenters asserted that the proposed rule conflicts with the plain language and congressional intent of the NPRPA, as amended by Pub. L. 96-514 (codified at 42 U.S.C. 6506a). Other commenters raised concerns that the proposed rule ignores that the NPRPA exempted the Reserve from certain provisions of FLPMA. Others commented that the proposed rule violates the plain language and congressional intent of FLPMA and the application in the rule is therefore inappropriate. Commenters further stated that Congress designated the Reserve to be developed in balance with conservation and that the proposed rule aims to align management of the Reserve with FLPMA in a manner that ignores the unique considerations identified in the NPRPA and would inappropriately restrict oil and gas development and decrease domestic oil supply.

*BLM Response:* The BLM disagrees with commenters’ assertions that the rule conflicts with the NPRPA or FLPMA. This rule appropriately implements the statutory framework in the NPRPA, as amended, to provide for oil and gas exploration and development in the Reserve while ensuring the protection of environmental, fish and wildlife, and historical or scenic values across the Reserve; and specifically within

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Special Areas to ensure that any oil and gas activity is undertaken in a manner that provides for the maximum protection of surface values to the extent consistent with the requirements of the NPRPA.

Similarly, this rule appropriately implements the applicable provisions of FLPMA to the management of the Reserve. The Department of the Interior and Related Agencies' Fiscal Year (FY) 1981 Appropriations Act (Pub. L. 96-514) exempted management of the Reserve from only two sections of FLPMA: section 202 (43 U.S.C. 1712), which requires the BLM to prepare resource management plans to guide management of public lands; and section 603 (43 U.S.C. 1782), which required the BLM to complete wilderness reviews and describes the procedures for managing any lands recommended to Congress for wilderness designation pending Congressional action. The BLM is otherwise obligated to manage public lands within the Reserve pursuant to FLPMA, where consistent with the NPRPA, as amended. Under FLPMA, the BLM has broad authority to regulate the use, occupancy, and development of public lands within the Reserve and must take action "to prevent unnecessary or undue degradation of the lands" (43 U.S.C. 1732(b)).

*Comments:* Other comments suggested that the BLM add a specific reference to ANILCA in § 2361.3.

*BLM Response:* The BLM agrees with this suggestion and has added a discussion of ANILCA to that section of the final rule.

#### **D. Public Engagement**

The BLM published the proposed rule in the *Federal Register* on September 8, 2023 (88 FR 62025), for a 60-day comment period ending on November 7, 2023. In

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response to public requests for an extension, the BLM extended the comment period for 10 days (88 FR 72985) and then again for 20 days (88 FR 80237). The resulting 90-day comment period closed on December 7, 2023.

During the comment period, the BLM hosted a variety of public outreach activities. The BLM held two virtual public meetings on October 6 and November 6, 2023. Presentation slides and video recordings of the virtual meetings were made available on the BLM website for the rulemaking (<https://www.blm.gov/about/laws-and-regulations/NPR-A-Rule>). The BLM held three in-person meetings in Anchorage (October 10, 2023), Nuiqsut (November 1, 2023), and Utqiagvik (November 2, 2023) to provide an overview of the proposed rule and answer questions from the public. The BLM also held one hybrid meeting in Wainwright on December 4, 2023. A court reporter was present at the Nuiqsut and Utqiagvik meetings to transcribe all comments and questions. The hybrid meeting in Wainwright was recorded via the Zoom platform, and those comments were collected by the BLM on behalf of the commenters and submitted as comments to the rulemaking docket on [regulations.gov](https://www.regulations.gov) (<https://www.regulations.gov/docket/BLM-2023-0006>). Additionally, the BLM posted transcripts from the meetings as supporting and related materials to the rulemaking docket on [regulations.gov](https://www.regulations.gov).

The BLM also posted a fact sheet, a frequently-asked-questions document, a side-by-side comparison of the proposed rule with the existing regulation, and other background information on the BLM website to further public understanding of the proposed rule (<https://www.blm.gov/about/laws-and-regulations/NPR-A-Rule>).



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In addition, during the comment period, the BLM conducted external outreach and participated in meetings to discuss the content of the proposed rule, including congressional briefings; meetings with the State of Alaska; and meetings with industry and other stakeholder interest groups.

*Public Comments on Public Engagement*

*Comments on scope of outreach:*

Commenters noted their perception that the BLM did not seek the input of those likely to be affected by the rulemaking prior to issuing the Notice of Intent in the *Federal Register*, as they stated is required by Executive Order (E.O.) 13563. Specifically, commenters stated their position that the BLM did not conduct outreach or engagement with the eight active lessees in the Reserve, State and national trade associations (American Petroleum Institute and Alaska Oil and Gas Association), and numerous Tribal and local government entities including the North Slope Borough, to “seek their views on the scope or merits of the contemplated proposed rulemaking.”

Commenters also provided input on outreach methods. Commenters suggested that the BLM utilize KBRW as local residents often listen to that station for important announcements including meetings. Commenters also suggested that the BLM reach out to local search and rescue offices in villages because those volunteers directly interact with subsistence users. Comments emphasized that many Tribes and allotment owners do not have cell phones, utilize social media, or own computers; many do not have Internet access, and if they do, it is limited and unreliable.

*BLM Response:* The BLM’s intention to initiate this rulemaking was announced in March 2023. On August 25, 2023, the BLM mailed a formal offer for consultation to

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45 Tribes and 30 Alaska Native Corporations to engage in consultation on the proposed rule. The BLM did not receive a response to these invitations from any of the Tribes or Alaska Native Corporations. Since the announcement of the proposed rule on September 8, 2023, the BLM has continued to offer consultation via phone, email, and in-person invitations to Tribes and Alaska Native Corporations that it determined would be most likely to have substantial direct effects from the rule, including the Native Village of Atqasuk; Atqasuk Corporation; Village of Wainwright; Olgoonik Corporation; Native Village of Nuiqsut; Kuupik Corporation; Native Village of Barrow; Ukpeaġvik Iñupiat Corporation (UIC); Arctic Slope Regional Corporation (ASRC); and Iñupiat Community of the Arctic Slope (ICAS). On September 6<sup>th</sup>, 2023, agency staff called State and local governments to ensure they were aware of the upcoming publication of the proposed rule and to offer opportunities to discuss the rule language.

For some proposed rules, the BLM chose to engage with stakeholders about the broader topic earlier in the rulemaking process. In this instance, however, we believed it would be more productive to engage in more in-depth discussion regarding the content of the proposed changes to the rule with the benefit of the actual proposal for review and discussion.

The BLM worked with communities within the Reserve to host in-person public comment meetings, including posting meeting flyers, amplifying meetings on social media, and announcing the meetings on local CB radios. We always appreciate suggestions on outreach methods and how we might better reach audiences. We note the commenters' specific outreach suggestions for future efforts in the North Slope region.

*Comments on timing:*

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Commenters expressed their concerns that the timeline for review of the rule directly conflicted with hunting and fall subsistence whaling activities. Commenters also noted their perception that the BLM is ignoring local circumstances such as the North Slope Borough's mayoral elections, which they stated prevented meaningful input on the proposed rule from North Slope communities. Comments expressed the opinion that the public comment timeline was inadequate, noting that 60 days was insufficient, and that the additional 30 days of extensions still did not allow North Slope organizations to diligently prepare comments on the rule and to weigh-in to the fullest extent possible. Commenters requested additional time to allow the public to have meaningful opportunity to review the necessary information and provide substantive comments.

Commenters expressed concern that the comment period for the rule overlapped with the comment period for the Coastal Plain Oil and Gas Leasing Program Supplemental EIS comment period.

Commenters emphasized the importance of working with the NPR-A Working Group, as the group consists of important local leaders and provides a forum for discussion of the rule including recommendations. Commenters suggested that certain group members (specifically Utqiagvik) did not receive notification of the meetings and that they should be involved in the discussion.

Commenters noted their opinion that the schedule for in-person and virtual public meetings for the rule did not provide sufficient notice to allow the public to meaningfully participate, nor the opportunity to adjust schedules so as to attend in person. Commenters also noted their opinion that the meetings were hastily scheduled, with only a few days' notice, and that meetings were canceled with little or no notice and often not rescheduled.

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Commenters requested additional public meetings and requested that those additional meetings be adequately noticed to facilitate public participation and local engagement.

Commenters noted that there is no reason the proposed rule should have substantially less public participation than other, less significant actions that have dictated management of the Reserve as both have been subject to the Administrative Procedure Act (APA). Commenters noted that the APA ensures that BLM rulemaking is a transparent and regular process.

*BLM Response:* BLM agrees that the timing for the public comment period was difficult and not ideal. Whaling is an incredibly important subsistence activity for North Slope communities, and fall is one of two key times to harvest. While the comment period for the proposed rule was during the fall whaling season, the BLM took steps to ensure that North Slope communities were given the opportunity to provide comments on the proposed rule and engage in the process in a meaningful way. First, the BLM conducted extensive outreach to Reserve communities, holding in-person public meetings in Nuiqsut, Utqiagvik, and Wainwright. Further, we recognize that submitting public comments online or through the mail might pose a challenge to these communities. To facilitate greater participation, we offered opportunities for community members at these sessions to submit their comments for the record through comment cards or through a court reporter. In addition, the agency met with the NPR-A Working Group three times during the public comment period. The NPR-A Working Group is comprised of representatives from North Slope local governments, Alaska Native Corporations, and tribal entities. It is intended to provide a forum for North Slope communities to provide input to management of the Reserve (<https://www.blm.gov/programs/energy-and->

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minerals/oil-and-gas/about/alaska/NPR-A/npr-a\_working\_group). For each meeting in Reserve communities, the BLM coordinated meeting dates, times, and locations with local entities, although some changes still resulted due to unforeseen events or weather. Regarding the comment received specially addressing the November 2 meeting in Utqiagvik, meeting details were finalized in mid-October 2023 and advertised to the community via social media and flyers, in addition to notification to the NPR-A Working Group and posting on the project website.

The BLM received requests to extend the public comment period for the proposed rule; specifically, we were asked to extend the comment period for an additional 90 days, which would have made for a 150-day (5-month) comment period. A 5-month comment period far exceeds the typical duration for rulemaking comment periods. While we were unable to grant the requested extension, the BLM did extend the comment period for 30 days, resulting in a 90-day comment period for the proposed rule. While the comment period for the proposed rule overlapped with the comment period on the Draft Supplemental EIS for the Coastal Plain, the Coastal Plain comment period was 60-days and ended one month before the close of the comment period on the proposed rule.<sup>4</sup> Throughout the comment period and since, the BLM has continued to engage with Reserve region Tribes and Alaska Native Corporations on the rule.

*Comments on meeting format:*

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<sup>4</sup> The Coastal Plain of the Arctic National Wildlife Refuge is approximately 50 miles east of the NPR-A. The 2017 Tax Act (Pub. L. 115-97) directed the BLM to conduct two sales in the Coastal Plain offering at least 400,000 acres of high-potential hydrocarbon lands for bid by 2024. More information on the supplemental environmental impact statement for the Coastal Plain Oil and Gas Leasing Program can be found on that project's website at <https://eplanning.blm.gov/eplanning-ui/project/2015144/570>.

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Commenters provided input on the format of both the in-person and virtual meetings. Commenters noted that public comment and testimony was not part of the meetings, which, in their opinion, confirmed the BLM's "limited intention to actually gather knowledge or data, or to collaborate." Commenters also noted their perception that the BLM limited questions from the public and only answered select written questions submitted in English and then did not read them verbatim but instead paraphrased them. Some commenters stated concern over the format of the virtual meetings and noted that they did not think the meetings were long enough in duration and that they prefer a townhall format over the webinar format that was utilized. Commenters further noted that they would have liked to interact with each other and/or the BLM. Commenters expressed their opinion that the BLM's comment process does not provide special considerations that account for Indigenous groups' understanding of Western institutional public processes, which makes the process less transparent to Indigenous peoples.

Some commenters noted that, in their opinion, the BLM should "reset the process to allow more public engagement and to receive the benefit of comment from informed stakeholders who can contribute to a better and more durable final rule."

*BLM Response:* All members of the public were invited to submit comments to the BLM electronically at Regulations.gov or by mail, personal delivery, or messenger delivery. The BLM uploaded comments received by mail, personal delivery, or messenger delivery to Regulations.gov. As the official repository of comments, Regulations.gov is available to the public, allows the agency to better track and make more effective use of comments, and allows the public to review submissions from other commenters. For public meetings, the agency hosted virtual and in-person informational

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sessions along with in-person public comment meetings for communities located within the Reserve.

The informational sessions were designed to help the interested public understand the proposed rule and provide a forum to answer questions. The BLM communicated with attendees that comments would not be collected at the informational sessions due to the logistical feasibility of accurately and comprehensively recording comments in those venues. Participants were given both the Regulations.gov website and the mailing address for comment submission, and BLM representatives were available to answer questions about how to submit comments. The agency did not receive any questions during information sessions that were not written in English.

The BLM worked with communities within the Reserve to host in-person public comment meetings. We have heard on numerous occasions through other project outreach efforts that submitting public comments online or through the mail often poses a challenge to these communities. To facilitate greater participation, we offered opportunities for community members at these meetings to submit their comments to the record through comment cards or orally through a transcriber.

*Comments on public engagement for the 2022 IAP:*

Commenters expressed their opinion that the BLM incorrectly relied on the public comment process that informed the 2020 IAP ROD and noted that the BLM should have conducted NEPA review for this proposed rule. Commenters noted their opinion that the BLM streamlined the public involvement process and the actual impacts of the rule by claiming that it is administrative in nature, thus dismissing the need for additional stakeholder input. Commenters also noted their opinion that the rule vastly alters major

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Federal planning processes and land management standards that were developed using robust public input and that if the BLM wants to move forward with a rule that alters existing Federal land management, then the agency must acknowledge the public involvement process requirements at a minimum.

The BLM received comments stating that “The State [of Alaska] 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.”

*BLM Response:* The BLM did not rely on the IAP public comment process as the public comment for this rule. Rather, the BLM provided for public comment on the proposed rule as required by the APA. With respect to NEPA compliance for this rulemaking, it is relevant that the current IAP was supported by an extensive NEPA analysis – including preparation of an EIS. The final rule does not alter any current on-the-ground management, and it 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.” Additionally, the final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would preclude the application of the categorical exclusion. As such, the BLM has complied with NEPA by relying on this categorical exclusion.

#### **E. Tribal Consultation**

On August 25, 2023, the BLM invited via mail 45 Tribes and 30 Alaska Native Corporations to engage in consultation regarding the proposed NPR-A rule. Since the announcement of the proposed rule, we have continued to offer consultation to Native



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Village of Atqasuk, Atqasuk Corporation, Village of Wainwright, Olgoonik Corporation, Native Village of Nuiqsut, Kuupik Corporation, Native Village of Barrow, UIC, ICAS, and ASRC. We met with the Mayor of Atqasuk on October 31, Native Village of Nuiqsut on November 1, ICAS on November 3 and February 6, Village of Wainwright on November 21, Olgoonik Corporation on December 19, ASRC on December 21, and Kuupik on February 1. In addition, staff met and discussed the proposed rule with the NPR-A Working Group (consisting of representatives from North Slope local governments, Native corporations, and Tribal entities, [https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about/alaska/NPR-A/npr-a\\_working\\_group](https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about/alaska/NPR-A/npr-a_working_group)) on September 26, October 17, and December 1. We also held in-person public meetings in Nuiqsut, Utqiagvik and Wainwright where verbal comment was recorded, along with three informational sessions – one in Anchorage and two virtual. The BLM will continue to engage in consultation with Tribes and Alaska Native Corporations after the final rule is published.

*Public Comments on Tribal Consultation:*

Commenters expressed their opinion that the Alaska Native Corporations and the federally Recognized Tribes of Alaska were not properly consulted during the rulemaking process. Commenters expressed their opinion that the BLM did not comply with E.O. 13175, Secretary’s Order 3043, President Biden’s “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships” and “Memorandum on Uniform Standards for Tribal Consultation,” and the DOI Policy Manual 512 DM 4 and 5. Comments stated that the BLM letter to Alaska Tribes and Alaska Native Corporations was sent 7 business days before proposed rule’s publication which “fails to meet the

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numerous consultation requirements detailed at length” in the Executive order and Memoranda listed above.

Commenters expressed that because the rule was published during fall whaling season, “What little consultation or public meeting process did occur was hastily convened with little to no opportunity for local communities to receive timely notice.”

Commenters requested that the BLM engage in meaningful communication and consultation with local villages and Tribes to ensure the new regulations meet the needs and concerns of the communities who rely on the Reserve. Comments requested that the BLM consultation be more inclusive than just the federally recognized Tribes and ANSCA corporations. One commenter stated: “Also, the rule seems to treat ANCSA corporations the same as Tribes which needs further clarification.”

Another commenter stated: “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 ASRC, the tribal representatives from the 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.”

*BLM Response:* Please see our response to similar comments in the discussion of Public Engagement above. We understand that some commenters found the public

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comment period dissatisfying. We received very helpful input and our outreach complied fully with applicable law and policy.

In addition, 512 DM 6 (<https://doi.gov/sites/doi.gov/files/elips/documents/512-dm-6.pdf>) outlines requirements for consultation between appropriate ANCSA Corporation officials and Department officials. While not considered government-to-government consultation, it is the policy of the Department to recognize and fulfill its legal obligations to consult with ANCSA Corporations on the same basis as Alaska Native Tribes. To the extent that concerns expressed by a federally recognized Tribe and an ANCSA Corporation substantively differ, officials shall give due consideration to the rights of sovereignty and self-government of the Tribe, and to the unique legal status and rights of the ANCSA Corporation.

In its many years of engaging with North Slope communities, the BLM has gained a deep understanding of the connection those communities have with the NPR-A. For example, for the Iñupiat of the North Slope, “cultural resources are not merely places or things but also provide a link between North Slope history, Iñupiat culture and values, subsistence activities, and the biological and physical environment. These resources have spiritual and cultural importance to residents of the North Slope, and their protection is of utmost importance to the Iñupiat.”<sup>5</sup> Contemporary Iñupiaq values, including respect for nature, hunting traditions, and family and kinship, are “inextricably linked with all facets of Iñupiaq life,” but “none more so than subsistence hunting and harvesting traditions.

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<sup>5</sup> BLM, NPR-A Final IAP/EIS (June 2020), Section 3.4.2., *available at* [https://eplanning.blm.gov/public\\_projects/117408/200284263/20020342/250026546/Volume%201\\_ExecSummary\\_Ch1-3\\_References\\_Glossary.pdf](https://eplanning.blm.gov/public_projects/117408/200284263/20020342/250026546/Volume%201_ExecSummary_Ch1-3_References_Glossary.pdf).

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Maintaining and passing down cultural values, including knowledge of subsistence hunting and harvesting methods, traditions, and places, is of utmost importance to North Slope residents.”<sup>6</sup> “The Iñupiaq people’s relationship to the land is characterized by ... subsistence traditions...; thus, to the Iñupiat, protecting traditional lands and waters and the wild resources that inhabit them is essential to maintaining cultural traditions, knowledge, and identity. Today, the Iñupiat are continuously adapting and responding to various forces of change that challenge their ability to protect these lands and waters and that contribute to social stress within communities.”<sup>7</sup> Among those forces of change is oil and gas development. “Given the historical and unique nature of the economic, social, and cultural value Alaska Natives place on subsistence resources in the planning area and the importance of these resources to the nutritional health and food security of Alaska Natives,” the adverse impacts of oil and gas development are predominately borne by Alaska Natives residing in communities that utilize subsistence resources from the NPR-A.<sup>8</sup>

## **F. General Public Comments**

### *General comments about the rule*

*Comments:* Commenters expressed support that the proposed rule would provide enhanced protection for natural resources for future generations, including wildlife and biodiversity, fragile Arctic environments, and Alaska’s unique ecosystem. Commenters believed that the proposed rule would help the BLM address changing conditions,

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<sup>6</sup> *Id.* Section 3.4.4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* Section 3.4.5.

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including climate change, improve upon standards and procedures to protect surface values and significant resource values, promote transparency and inclusivity, and would overall result in a more comprehensive plan to manage the Reserve.

*BLM Response:* We appreciate the recognition of these goals of the proposed rule, and we agree the proposed rule would advance these outcomes. The BLM made changes in the final rule to strengthen resource protection measures and clarify standards and procedures for implementing the rule with transparency and community engagement.

*Comments:* The BLM received comments expressing concerns that the proposed rule would restrict oil and gas development and could harm local economies that are reliant on oil and gas revenue. Commenters expressed concern that the proposed rule may be contrary to Congressional direction set forth in the NPRPA and may not fulfill the purposes of the Reserve. We appreciate commenters raising these concerns through the rulemaking process, and the final rule incorporates changes to clarify the BLM's statutory mandate under the NPRPA for managing the Reserve.

*BLM Response:* As detailed in discussion and comment responses throughout this preamble to the final rule, the BLM believes managing oil and gas leasing and production under this regulatory framework will best enable the BLM to meet its requirements to ensure protection of environmental, fish and wildlife, historical, and scenic values in the Reserve and will benefit local communities. This rule balances all aspects of the BLM's statutory mandate for managing the NPR-A.

*Comments:* The BLM also received comments generally addressing recreation in the Reserve and requesting more discussion on how recreation activities and experiences would be affected by the rule.

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*BLM Response:* We did not address recreation directly under the framework of the rule because the rule only addresses management of oil and gas activities in the Reserve. As the BLM implements the rule, there may be indirect effects on recreation activities in the Reserve, such as fewer impacts on recreation experiences associated with oil and gas production due to decisions that minimize and mitigate those impacts on surface resources in the Reserve.

*Comments about climate change*

*Comments:* The BLM received comments discussing the impacts of climate change already being realized in the Reserve, such as impacts to wildlife habitat and permafrost and the potential loss of associated subsistence food sources. Commenters urged the development of a comprehensive analysis of the climate impacts of Western Arctic oil and gas production. Commenters recommended that an updated climate analysis should incorporate adaptive management practices, which would allow the BLM to manage the Reserve for improved climate resiliency.

Commenters requested that the BLM ensure decisions are consistent with CEQ guidance, EPA guidance, and Secretarial Order 3399 regarding addressing climate impacts. In particular, commenters recommended that the BLM include a requirement in the rule to analyze the social cost of carbon, consider the reasonably foreseeable effects of climate change on infrastructure, and model greenhouse gas emissions. Commenters proposed various frameworks and approaches for incorporating climate analysis and emissions management into the rule.

*BLM Response:* This rule is focused on impacts to surface values of the Reserve and implementing the BLM's statutory obligation to protect those values when

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authorizing oil and gas leasing and production. Thus, the BLM is not analyzing or specifically considering the climate impacts of oil and gas development as part of the rulemaking process. We recognize that the changing conditions of surface values in the Reserve are being driven in a significant way by climate change and that changes due to climate change are occurring at an accelerated rate in the Arctic compared to other parts of the planet. Because of the dynamic nature of those impacts on surface resources, however, the BLM must consider and address climate impacts during the implementation of the rule. For example, the BLM will analyze the condition of surface resources, including changing conditions caused by climate impacts, when determining when to update the IAP. We further note that the BLM must analyze and consider greenhouse gas emissions, and climate impacts in general, when conducting NEPA analysis for oil and gas leasing and production activities.

*Comments:* Some commenters argued that the NPRPA creates an obligation for the BLM to limit greenhouse gas emissions from activities in the Reserve and expressed concern that the proposed rule fails to “mitigate reasonably foreseeable and significantly adverse effects on the surface resources” by not addressing emissions from recently approved oil and gas leases.

*BLM Response:* The BLM agrees that the provisions of the NPRPA that require the BLM to mitigate reasonably foreseeable and significantly adverse effects on surface resources and to assure maximum protection for significant resource values in Special Areas require the BLM to analyze and consider greenhouse gas emissions when it is considering new oil and gas activity in the Reserve. As described above, such analysis

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and consideration will occur as part of the NEPA process both for any changes to the IAP and for project-level approvals.

*Comments about wildlife*

*Comments:* Commenters provided detailed information about fish and wildlife habitats in the Reserve and the impacts of oil and gas production on specific species and their habitats. In particular, comments documented information about caribou in the Utukok Uplands and their behavioral responses to oil and gas development, as well as polar bear populations within the Reserve and the impacts of oil and gas activities on the species. Commenters recommended the rule include additional protections to build resilient habitats for plants and wildlife, such as establishing connectivity zones between Special Areas. Comments expressed concern that existing mitigation measures do not ensure maximum protection for subsistence of the Teshekpuk Caribou Herd.

*BLM Response:* The BLM appreciates the wealth of information provided by commenters about wildlife species and habitats in the Reserve and impacts occurring from oil and gas activities. While analyzing specific habitat areas or mitigation measures is outside the scope of this rulemaking process, the BLM believes the final rule strengthens provisions that will support the BLM's management of important wildlife habitat and other surface resources in the Reserve. For example, the final rule requires that all Special Area designation and amendment processes will rely on the best available scientific information, including Indigenous Knowledge, as well as the best available information concerning subsistence uses and resources within the Reserve. The final rule also details procedures for the BLM to avoid the adverse effects of proposed oil and gas activities on the significant resource values of Special Areas.



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*Comments about oil and gas production*

*Comments:* The BLM received comments stating that the proposed rule disregards Congressional intent that the BLM manage the Reserve for oil and gas production, including the NPRPA's requirement that the BLM conduct an expeditious program of competitive leasing of oil and gas in the Reserve. Commenters cited the U.S. Court of Appeals for the Ninth Circuit, which commenters assert has held that the NPRPA did not give the Secretary the discretion not to lease, but rather that the Secretary is given the discretion to provide rules and regulations under which leasing would be conducted.

*BLM Response:* We believe the final rule appropriately reflects the BLM's mandates in the NPRPA to conduct an oil and gas leasing and production program in the Reserve while protecting environmental, fish and wildlife, and historical and scenic values within the Reserve. In the same section that establishes an oil and gas leasing program in the Reserve, the NPRPA explicitly directs the BLM to "provide for such conditions, restrictions, and prohibitions as... necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources" of the Reserve when conducting the oil and gas program (42 U.S.C. 6506a(b)). Further the BLM updated § 2361.40 in the final rule to specifically reference the BLM's mandate under the NPRPA to assure maximum protection of significant resource values in Special Areas "consistent with the requirements of the NPRPA for exploration and production of the Reserve." This is consistent with *Northern. Alaska Environmental. Center v. Kempthorne*, 457 F.3d 969 (9th Cir. 2006), which states only that the government could not forbid *all* oil and gas leasing throughout the Reserve, not that it lacks discretion not to

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lease in some areas. Indeed, in that case, the court upheld an IAP that deferred leasing in a significant portion of the NPR-A.

*Comments:* The BLM received comments discussing the maximum protection requirements in the proposed rule and the context of the statutory language. Commenters stated that the maximum protection requirement in the NPRPA was not intended to create a presumption against oil and gas activities, but rather to ensure that exploration operations would be conducted to minimize adverse impacts on the environment. Commenters argued that the maximum protection provisions in the proposed rule are contrary to the plain language of the NPRPA, Congressional intent and the 1981 Appropriations Act.

*BLM Response:* The NPRPA requires the BLM to conduct oil and gas activities in Special Areas “in a manner which will assure the maximum protection of [any significant subsistence, recreational, fish and wildlife, or historical or scenic] values to the extent consistent with the requirements of this Act.” The Conference Report on the NPRPA elaborated that the Act would “immediately authorize the Secretary to require that the exploration activities within these designated areas be conducted in a manner designed to minimize adverse impacts on the values which these areas contain.” H.R. Conf. Rep. No. 94–942 (1976). The provisions of the rule implementing this requirement enable the agency to fulfill its statutory duty to protect Special Areas. We note that maximum protection measures are not an objective standard but rather are established in the context of resource needs and other uses, including valid existing rights and ongoing oil and gas production in the Reserve. As established in the existing regulation and carried forward to the final rule, maximum protection measures can include limiting types of vehicles and

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aircraft, requiring use of alternative routes, and rescheduling activities. They can also include restrictions on oil and gas infrastructure or closures to certain oil and gas activities, consistent with prescriptions for the Special Areas and existing leases. Maximum protection measures are and will continue to be developed through public processes with opportunities for public input and consultation with Tribes, ANCSA corporations, and local governments.

*Comments:* Commenters requested a more detailed explanation of how the rule would apply to and affect existing leases, operations, and activities. Commenters expressed concerns that the rule would adversely affect future proposals for development activities and impermissibly conflict with existing leases, by which the BLM has granted a right to build infrastructure and produce oil. Commenters acknowledged existing leases can be subject to reasonable regulations but argued that the proposed rule is not a reasonable restriction because it would create uncertainty about permit approval. Commenters suggested that leases may expire while the BLM delays action to document uncertainty or denies a permit on the grounds that the proposed infrastructure is not practicable or essential. Other comments discussed that the BLM has authority to take actions it determines are necessary to protect the environment in the Reserve, including through regulatory actions, and that this is acknowledged in the standard language in BLM leases.

*BLM Response:* The rule includes specific protections for valid existing rights. For example, the final rule allows for new permanent infrastructure on lands within Special Areas that are allocated as unavailable to new infrastructure if necessary to comport with the terms of a valid existing lease. The final rule similarly makes clear that

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the presumption against new oil and gas activities in Special Areas would be overcome by the need to comport with the terms of a valid existing lease.

At the same time, we note that, while the terms of an existing lease and approved development project or permit will not be affected by the rule, a valid lease does not entitle the leaseholder the unfettered right to drill wherever it chooses or categorically preclude the BLM from considering alternative development scenarios within leased areas, nor does it give the leaseholder the right to produce all economically recoverable oil and gas on the lease. Further, the BLM can condition permits for drilling on implementation of environmentally protective measures and could even deny a specific application altogether if it were to propose development in a particularly sensitive area, and where mitigation measures would not be effective. Future development of an existing lease, by its terms, could be subject to additional terms and conditions. For example, the standard lease for activities in the Reserve states, “An oil and gas lease does not in itself authorize any on-the-ground activity” and notes that more restrictive stipulations may be added. Similarly, a standard lease stipulation entitled “Conservation of Surface Values for NPR-A Planning Area Land” provides: “Operational procedures designed to protect resource values will be developed during Surface Use Plan preparation, and additional protective measures may be required beyond the general and special stipulations identified in the above-referenced documents.”

*Comments:* The BLM received comments expressing concern that oil and gas activities in the Reserve cause negative effects on the environment and wildlife, such as land degradation, air pollution, and threats to ecosystems, all of which affect biodiversity and human health. Commenters recommended the BLM develop a comprehensive

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cumulative effects analysis and whole Arctic conservation strategy, referencing a 2003

National Research Council report on cumulative effects of oil and gas activities on

Alaska's North Slope. Commenters requested that the BLM implement consistent

monitoring practices to ensure it has comprehensive data to use in decision-making,

which would enable more effective management of oil and gas activities in the Reserve.

*BLM Response:* The BLM believes the final rule supports decision-making that will provide meaningful protections for environmental and wildlife values in the Reserve from the impacts of oil and gas exploration and production, consistent with the agency's statutory obligation to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the Reserve. In doing so, the rule will support the BLM's ability to manage for ecosystem services, and particularly their contributions to subsistence use, as the agency makes management decisions under the framework of the rule. (See, e.g., Guidance For Assessing Changes In Environmental And Ecosystem Services In Benefit-Cost Analysis, Office of Management and Budget (Feb. 2024), available at <https://www.whitehouse.gov/wp-content/uploads/2024/02/ESGuidance.pdf>.)

The final rule establishes that in managing both the significant resource values of Special Areas and the surface resources of the Reserve broadly, the BLM will adopt conditions, restrictions, or prohibitions that may involve conditioning, delaying action on, or denying some or all aspects of future and proposed oil and gas activities. For example, the BLM might condition or deny development if an operator proposes infrastructure along the Colville River if it is feasible to locate the infrastructure outside of the area closed to protect wildlife and subsistence activities, even if the operator would prefer the location closer to the river. It is not within the scope of this rulemaking process to develop a

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cumulative effects analysis or establish monitoring protocols, which are better suited to an IAP amendment process.

## **G. Summary of Changes in the Final Rule**

The following paragraphs summarize changes the BLM made from the proposed rule to the final rule. More detailed explanations for the changes are found in the responses to comments and the description of the final rule in Section IV of this preamble to the final rule.

### *§ 2361.3 Authority.*

The BLM added references to FLPMA and ANILCA in the Authorities section in the final rule, including the caveat that the land use planning and wilderness study requirements of FLPMA do not apply to lands within the Reserve, pursuant to 42 U.S.C. 6506a(c).

### *§ 2361.5 Definitions.*

The BLM revised the definition of “infrastructure” in the final rule to clarify that the term means, “a permanent or semi-permanent structure or improvement that is built to support commercial oil and gas activities on BLM-administered lands within the Reserve, such as pipelines, gravel drilling pads, man camps, and other structures or improvements.” The revised definition further clarifies that “infrastructure” does not include structures or improvements that will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve.

The BLM clarified in the final rule that the term “significant resource values” refers to surface values that the BLM identifies as significant, in order to ensure consistency with the language in the NPRPA. Similarly, the BLM made minor

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clarifications in the definition of the term “Special Areas” to ensure consistency with the language in the NPRPA. The final rule defines “Special Areas” as: “areas within the Reserve identified by the Secretary or by statute as having significant resource values and that are managed to assure maximum protection of such surface values, to the extent consistent with the requirements of the Act for the exploration and production of the Reserve.”

The final rule incorporates the definition for the term “co-stewardship” that is used in BLM Permanent Instruction Memorandum No. 2022-011 (Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary’s Order 3403).

*§ 2361.10 Protection of surface resources.*

The BLM added “oil and gas” before the word “activities” throughout the section to clarify that the requirements of this rule only apply to oil and gas activities. The final rule replaces “Bureau” with “authorized officer” to provide clarity about the BLM official responsible for implementing requirements in the rule.

The BLM removed proposed paragraph (b)(3) from the final rule because it is duplicative of environmental analysis requirements under NEPA. The paragraph had required: “In assessing effects of a decision concerning proposed activity in the Reserve, the Bureau will identify and evaluate any reasonably foreseeable effects of its decision, including effects that are later in time or farther removed in distance, and effects that result from the incremental effects of the proposed activities when added to the effects of other past, present, and reasonably foreseeable actions.”

*§ 2361.20 Existing Special Areas.*

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The BLM did not amend the final rule in response to specific comments regarding the significant resource values, boundaries, or management of existing Special Areas.

The rule merely codifies the existing Special Areas and their significant resource values and management as currently established in Secretarial decisions and the 2022 IAP. The final rule establishes a process in § 2361.30 for designating, amending, and de-designating Special Areas that will be followed to make changes to Special Areas.

*§ 2361.30 Special Areas designation and amendment process.*

The BLM reorganized § 2361.30 in the final rule, with a new paragraph (a) that outlines requirements applicable to all processes that will designate, de-designate, or otherwise change boundaries or management of Special Areas. These provisions require that the BLM: 1) rely on the best available scientific information, including Indigenous Knowledge; 2) provide the public and interested stakeholders with meaningful opportunities to participate in the evaluation process; 3) consult with any federally recognized Tribes and ANCSA corporations that use the affected Special Area for subsistence purposes or have historic, cultural or economic ties to the Special Area; and 4) base decisions solely on the presence or absence of significant resource values. This new paragraph will provide more consistency to all decision-making processes for Special Areas.

The final rule changes the Special Area evaluation period from 5 to 10 years, while specifying that the BLM may conduct the evaluation sooner if the authorized officer determines that changing conditions warrant earlier review. For example, the BLM may decide to conduct an evaluation in less than 10 years upon receiving nominations or recommendations for Special Area changes. The BLM believes this



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change addresses concerns about agency and community capacity while ensuring regular reviews occur to maintain an inventory of resource conditions and make management changes as appropriate. The final rule specifies that as part of the evaluation, the BLM will determine whether to require additional measures or strengthen existing measures to assure maximum protection of significant resource values within existing Special Areas.

The BLM also revised the final rule to provide more clarity and certainty around the interim measures provision. The final rule clarifies that interim measures may be implemented at any time after BLM receives a recommendation to designate or modify a Special Area. The final rule also clarifies that any interim measures must be consistent with the governing management prescriptions in the IAP, and the BLM is required to provide public notice that interim measures are in place and reassess such measures to determine if they are still needed if they remain in place for more than 5 years.

*§ 2361.40 Management of oil and gas activities in Special Areas.*

Section 2361.40 is revised in the final rule to state the management priority within Special Areas is to assure maximum protection of significant resource values, “consistent with the requirements of the NPRPA for exploration [and production] of the Reserve.” The BLM believes this clarification addresses public comments requesting additional consistency with the language of the NPRPA and reflects the BLM’s statutory mandate for managing the Reserve.

The final rule clarifies that the BLM will identify and adopt maximum protection measures for each significant resource value that is present in a Special Area when Special Areas are designated. The BLM will also update maximum protection measures as appropriate thereafter, including in the IAP, lease terms, and permits to conduct oil and

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gas activities. The final rule also includes maximum protection measures that are identified in the existing regulation but had been eliminated in the proposed rule, as well as additional examples of categories of measures.

On lands within Special Areas that are allocated as closed to leasing or unavailable to new infrastructure, the final rule allows for the BLM to approve new permanent infrastructure related to existing oil and gas leases only if such infrastructure is necessary to comport with the terms of a valid existing lease. This provision removes language in the proposed rule that further specified that the infrastructure must be essential for exploration or development activities and no practicable alternatives exist which will have less adverse impact on significant resource values of the Special Area.

The final rule provides clarity around how the presumption against new leasing and new infrastructure on lands within Special Areas that are allocated as open for those activities will be addressed through the environmental review process. The rule provides that as part of the environmental analysis, the BLM will document a justification for overcoming the presumption, such as if the proposed infrastructure is necessary to comport with the terms of a valid existing lease, or if it will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve, and the proposal has been conditioned to avoid, minimize, or otherwise mitigate adverse effects. The public will have an opportunity to review and comment on any justification for overcoming the presumption.

The BLM reorganized § 2361.40 to clarify the requirements for preparing an environmental analysis of proposed leasing, exploration, development, or new infrastructure in Special Areas, and reaching a final decision. These procedures are set

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forth in a revised § 2361.40(g). The BLM must provide meaningful opportunities for public participation, including responding to comments, and consult with federally recognized Tribes and ANCSA corporations that use the affected Special Area for subsistence purposes or have historic, cultural, or economic ties to the Special Area. The BLM must evaluate potential adverse effects on significant resource values and consider measures to avoid, minimize, or otherwise mitigate adverse effects to achieve maximum protection of significant resource values. The BLM must also document and consider uncertainty about potential adverse effects on significant resource values, and account for any uncertainty when taking actions taken to avoid, minimize, or mitigate adverse effects.

If the BLM determines through the environmental analysis that the proposal cannot avoid adverse effects on significant resource values in a Special Area, then the BLM must prepare a Statement of Adverse Effect. The requirement to prepare a Statement of Adverse Effect was included in the proposed rule, but the final rule provides more clarity around how it fits within the environmental review process. The Statement of Adverse Effect will be incorporated into the environmental analysis and provided to the public for review and comment.

Lastly, the BLM updated the maps for the final rule so that they show the boundaries of the existing Special Areas on the maps from the 2022 IAP showing the current allocations for oil and gas leasing and infrastructure. The maps depict the exact data from the IAP ROD, and do not change any designations or allocations from the 2022 IAP.

*§ 2361.50 Management of subsistence uses within Special Areas.*

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The final rule removes the phrase “to the extent consistent with assuring maximum protection of all significant resource values that are found in such areas” from this section, so paragraph (b) now simply reads: “The Bureau will provide reasonable access to and within Special Areas for subsistence purposes.” This phrase was causing confusion and was unnecessary because § 2361.30 requires the BLM to adopt measures to assure maximum protection of significant resource values when designating Special Areas.

The BLM also revised the language in this section to refer to “reasonable access” instead of “appropriate access” for consistency with the language in section 811 of ANILCA.

*§ 2361.60 Co-stewardship opportunities in management of Special Areas and subsistence.*

In the final rule, the title of this section is revised from “Co-stewardship opportunities in Special Areas.” The first sentence is also revised to add “and subsistence resources throughout the Reserve.” Those revisions reflect that the BLM will seek co-stewardship opportunities not just in managing Special Areas, but also in managing subsistence resources more broadly.

The first sentence is also revised to add “federally recognized” to clarify that the BLM engages in co-stewardship only with federally recognized Tribes. Separately, the Bureau may partner with Alaska Native Claims Settlement Act corporations, local governments, or organizations as provided by law, which will not be co-stewardship arrangements but a different type of partnership. The text of the rule has been revised to make this distinction clearer.

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#### **IV. Section-by-Section Discussion and Response to Comments on Individual Provisions**

##### **Section 2361.1 – Purpose.**

###### *Existing and Proposed Regulations*

Existing § 2361.0–1 is redesignated to § 2361.1 in the final rule. The existing provision states that the purpose of the regulations is “to provide procedures for the protection and control of environmental, fish and wildlife, and historical or scenic values” in the Reserve. The BLM proposed to revise § 2361.1 to establish a two-part purpose for the rule to more accurately and completely reflect the scope of the regulations. The first purpose was to provide standards and procedures to implement 42 U.S.C. 6506a(b), which requires the Secretary to ensure that “[a]ctivities undertaken pursuant to this Act include or provide for such conditions, restrictions, and prohibitions as [she] deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [Reserve].”

The second purpose outlined in the proposed rule was to provide standards and procedures to implement 42 U.S.C. 6504(a), under which any exploration in Special Areas “shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.” The standards and procedures to implement these two provisions will also fulfill the BLM’s mandate to take action necessary to prevent unnecessary or undue degradation under FLPMA, 43 U.S.C. 1732(b).

###### *Public Comments on § 2361.1*

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Commenters expressed support for the proposed revisions to § 2361.1 to provide needed clarity, purpose, and priority for the protection and management of Special Areas. We agree that the changes will help.

Commenters recommended that the BLM include oil and gas leasing and production as a purpose of the regulations. We decline this suggestion. Regulations for oil and gas leasing and production within the Reserve are covered in 43 CFR part 3130.

Commenters requested that the BLM revert to the purpose in the original version of § 2361.1. We decline this request. The existing regulations do not reflect the full scope of the BLM's statutory obligations or the scope of this rule. Proposed § 2361.1 accurately and completely reflected that scope.

Commenters requested that the Purpose section include language that is in the current version of 42 U.S.C. 2361.0-2, which recites that the objective of the regulations is to provide environmental protection “to the extent consistent with the requirements of the Act.” We believe that is unnecessary. The proposed rule includes language in the Purpose section which states that the regulation is “pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*)”

The BLM received comments requesting that the rule explicitly state that the purpose of the regulations is to provide standards and procedures to cease any new oil and gas activities in the Reserve and execute a phase down of all existing oil and gas extraction. The comments suggest that including this language would allow the BLM to meet its statutory requirement to ensure mitigation of reasonably foreseeable and significantly adverse effects and prevent unnecessary or undue degradation. This

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comment's recommendation would not be consistent with the NPRPA, which directs the Secretary to implement an oil and gas leasing program in the Reserve.

#### *Description of the Final Rule*

The BLM did not change this section of the proposed rule in the final rule. The final rule states the purpose of the regulations is to: "Provide procedures for protection and control of the environmental, fish and wildlife, and historical and scenic values of the National Petroleum Reserve in Alaska, including mitigating the significantly adverse effects of oil and gas activities on the surface resources of the Reserve and assuring maximum protection of significant resource values in Special Areas pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*), Alaska National Interest Lands Conservation Act (94 Stat. 2371, 16 U.S.C. 3101 *et seq.*), and other applicable authorities."

#### **Section 2361.0-2 – Objectives.**

##### *Existing and Proposed Regulations*

The existing § 2361.0-2 states the objectives of the regulations. The BLM proposed to remove this section because the proposed revision of § 2361.1 would make it redundant.

##### *Public Comments on existing § 2361.0-2*

The BLM received comments requesting that it not amend the Objectives section because the original Objectives section clarified that environmental protections are designed to control exploration and production activities. Commenters expressed the opinion that the existing provision appropriately states the objective of the NPRPA and implements regulations based on Congress's intent to provide for the protection of the

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environmental and other surface values consistent with the exploration and development of oil and gas resources within the Reserve. Commenters suggested the proposed changes to the Objectives section disregard the BLM's primary purpose under the NPRPA of expeditious leasing, exploration, and development of the Reserve. Commenters recommended the Objectives include the clause: "...maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve" in accordance with the BLM's obligations under the NPRPA and associated law.

*BLM Response:* We did not make changes in response to these comments. The existing § 2361.0–2 was removed because the proposed rule's revision of § 2361.1 made it redundant. The proposed rule included language in the Purpose section stating that the regulation is "pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*)."

#### *Description of the Final Rule*

The BLM did not change this section of the proposed rule in the final rule. The final rule removes § 2361.0–2 from the regulations.

#### **Section 2361.3 – Authority.**

##### *Existing and Proposed Regulations*

Existing § 2361.0–3 is redesignated to § 2361.3 in the final rule. The existing rule identifies the NPRPA as the only statutory authority for the regulations. In the proposed rule, the BLM included the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514), which amended the NPRPA and instructed the Secretary to mitigate reasonably foreseeable and significantly adverse effects on the surface resources in the Reserve (codified at 43 U.S.C. 6506a).



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*Public Comments on § 2361.3*

Commenters recommended the rule include ANILCA as an authority for the rule, in part because section 810 of ANILCA governs subsistence use on public lands in Alaska. Commenters also pointed out that FLPMA generally applies to public land management in Alaska, rather than section 202. We agree that referring to ANILCA is helpful. Other than the land use planning provisions of section 202 and the wilderness inventory requirements in section 603, FLPMA applies to lands within the Reserve.

*Description of the Final Rule*

The BLM changed the final rule in response to comments, adding references to FLPMA and ANILCA in the Authorities section in the final rule, including the caveat that the land use planning and wilderness study requirements of FLPMA do not apply to lands within the Reserve, pursuant to 42 U.S.C. 6506a(c).

**Section 2361.4 – Responsibility.**

*Existing and Proposed Regulations*

Existing § 2361.0–4 is redesignated to § 2361.4 in the final rule.

The BLM proposed to modify the statement in the existing regulations that, under the NPRPA, the BLM is responsible for managing surface resources in the Reserve to add that BLM is also responsible for managing the subsurface mineral resources in the Reserve. The proposed rule also added that the BLM is responsible for assuring maximum protection of Special Areas' significant resource values. The proposed rule deleted paragraph (b) because the U.S. Geological Survey is no longer responsible for managing exploration in the Reserve. Secretarial Order 3071, 47 FR 4751 (Feb. 2, 1982); Secretarial Order 3087, 48 FR 8982–83 (Mar. 2, 1983).

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*Public Comments on § 2361.4*

*Comment:* The BLM received a comment stating that the BLM is responsible for managing subsurface resources, and therefore the commenter requested that the rule include a plan for periodic mineral surveys of the Reserve so the BLM can more effectively govern subsurface resources beyond just oil, gas, and coal.

*BLM Response:* We decline this suggestion because it goes beyond the scope of this rule. In addition, even if mineral surveys were within the scope of BLM's typical activities, they would be inappropriate here. The NPRPA withdrew the Reserve from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, with the only exception being certain gravel sales. The 1981 Appropriations Act amended the NPRPA to allow for the oil and gas leasing program (42 U.S.C. 6502).

*Comment:* Commenters recommended removing the term "environmental degradation" from the section but did not provide an explanation for the change.

*BLM Response:* The BLM declines to make this change. The current regulation at § 2361.0-4 uses the term "environmental degradation," and the use of this term in § 2361.0-4 is consistent with the BLM's duties and obligations under applicable laws, including the NPRPA, FLPMA, and ANILCA.

*Comment:* Commenters recommended that because the proposed changes to the section discuss the BLM's responsibility for assuring maximum protection of Special Areas' significant resource values, then the section should also discuss the need to balance resource protection with the responsibility to develop the Reserve's oil and natural gas resources.

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*BLM Response:* While the BLM must “conduct an expeditious program of competitive leasing of oil and gas” in the Reserve, oil and gas leasing within the Reserve is addressed in 43 CFR part 3130. Hence, it is not necessary to include that in the Responsibility section for this rule.

*Description of the Final Rule*

The BLM did not change this section of the proposed rule in the final rule. Section 2361.4 in the final rule states that the BLM is responsible for the surface and subsurface management of the Reserve, including protecting surface resources from environmental degradation and assuring maximum protection of significant resource values in Special Areas.

**Section 2361.5 – Definitions.**

*Existing and Proposed Regulations*

Existing § 2361.0–5 is redesignated to § 2361.5 in the final rule.

The BLM proposed to update the definition for “exploration” to ensure consistency with NPRPA’s definition of “petroleum” (42 U.S.C. 6501); update the definition of “Special Areas” for consistency with other proposed changes to the regulations; and incorporate a definition for “Indigenous Knowledge,” consistent with the guidance set forth in the Memorandum issued by the Council on Environmental Quality (CEQ) and the Office of Science and Technology Policy (OSTP) on November 30, 2022. The BLM also proposed to add new definitions for “Integrated Activity Plan,” “infrastructure,” and “significant resource value.”

*Public Comments on § 2361.5*

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*Comment:* Commenters provided a general statement of support for § 2361.6 and the new definition for “Indigenous Knowledge,” consistent with the guidance set forth in the Memorandum issued by CEQ and OSTP on November 30, 2022.

*BLM Response:* We agree that the new definition will provide useful direction for the BLM in taking into account Indigenous Knowledge and add consistency in implementing CEQ and OSTP guidance.

*Comment:* Comments included a recommendation that the proposed processes for collecting and utilizing Indigenous Knowledge properly includes Alaska Native Corporations. Commenters stated that Alaska Native Corporations have a unique congressional mandate to manage Alaska Native lands for the benefit of their Alaska Native owners and Alaska Native Corporations regularly utilize Indigenous Knowledge to manage Indigenous-owned lands in Alaska. Furthermore, Alaska Native Corporations employ Indigenous Knowledge holders who understand the unique aspects of managing these traditional lands.

*BLM Response:* We decline this suggestion because the proposed rule’s definition of Indigenous Knowledge already encompasses all Alaska Native peoples, including Alaska Native Corporations and other Alaska Native entities, by specifying that it “is developed by Indigenous Peoples including, but not limited to, Tribal Nations, American Indians, and Alaska Natives.” Consistent with Departmental policy found in 512 DM 6, the BLM recognizes and respects the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between Alaska Native Corporations and the Federal Government.

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*Comment:* Commenters recommended that the BLM consider the following definition of Indigenous Knowledge: “Indigenous Knowledge means a body of observations, oral and written knowledge, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, spiritual, and cultural systems. Indigenous Knowledge can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact and long-term contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation and acquired through multigenerational observations, lessons, and skills over time. Indigenous Knowledge is developed by Indigenous Peoples including, but not limited to, Tribal Nations, American Indians, and Alaska Natives”.

*BLM Response:* We decline this edit as it does not meaningfully change or improve the definition and would not be consistent with the definition being used by other Federal agencies.

*Comment:* Commenters requested the BLM clarify the definition of “Indigenous Knowledge” or how Indigenous Knowledge would be used in the Reserve. Commenters stated that the proposed definition could be interpreted to mean that any person or entity simply deemed “Indigenous” would have a claim to have Indigenous Knowledge and that this proposed definition diminishes the knowledge of those who actually live in the area as opposed to those who do not.

*BLM Response:* We decline this suggestion. The proposed rule’s definition of Indigenous Knowledge encompasses all Alaska Native peoples, including members of

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Alaska Native Corporations and other Alaska Native entities, by specifying that it “is developed by Indigenous Peoples including, but not limited to, Tribal Nations, American Indians, and Alaska Natives.” In the final rule, Indigenous Knowledge, as well as best available information on subsistence resources and uses, will be considered in designating, de-designating and modifying boundaries or management of Special Areas. As a result, the Indigenous Knowledge will need to be specific to the areas and uses at issue, which will necessarily be focused on those informed about resources and uses on the ground, i.e., members of local communities and Tribes.

*Comment:* Commenters requested the BLM clarify in the proposed rule how traditional knowledge will be used in conjunction with recognized scientific practices and standards of the North Slope Borough and the State of Alaska, particularly as those standards relate to the development in the Arctic and the Reserve.

*BLM Response:* We decline this suggestion. As the proposed rule states in § 2361.30, Indigenous Knowledge is included as a part of best available scientific information.

*Comment:* Commenters expressed general support for the reasoning stated for the proposed definition of “infrastructure.”

*BLM Response:* The BLM appreciates public support for the proposed approach.

*Comment:* Commenters recommended amending the definition of “infrastructure” by omitting clauses: “and that is not ephemeral, such as snow or ice roads” and “but it does not include exploratory wells that are drilled in a single season.” The commenter thought these revisions would strengthen the definition.

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*BLM Response:* We decline this suggestion. This definition is based on the framework set out in the IAP to identify which types of new infrastructure are subject to prohibitions within certain areas of the Reserve. Section 1.2 of the 2022 IAP excludes single season snow and ice infrastructure as well as exploratory wells that are drilled in a single season. Based on comments received, the BLM clarified the definition to provide additional detail about what qualifies as infrastructure and what types of structures or improvements are not considered infrastructure for the purposes of this rule.

*Comment:* Some commenters stated their opinion that the definition of “infrastructure” may violate valid existing lease rights where a new oil and gas location for commercial development would be infrastructure and is restricted in multiple provisions, but exploratory wells drilled in a single season would not be infrastructure nor under the same restrictions.

*BLM Response:* The BLM disagrees with commenters’ assertion. The rule is incorporating the allocations for infrastructure from the IAP and using a similar definition that focuses on permanent or semi-permanent structures. Further, the final rule makes clear that new infrastructure will not be restricted if the location of the proposed structures or improvements is necessary to comport with the terms of a valid existing lease.

*Comment:* Commenters stated that the proposed definition of “infrastructure” creates an arbitrary division between types of infrastructure. Commenters noted that infrastructure built to support science and public safety could have the same characteristics and features as infrastructure built to support commercial oil and gas activities and could support oil and gas activities, or vice versa. In addition, commenters

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stated that infrastructure associated with oil and gas development often includes new roads and local facilities that benefit the community. On the North Slope, access to subsistence areas and connectivity provided by roads is considered a benefit by many residents. For example, roads associated with industrial development near the Native villages of Utqiagvik and Nuiqsut have improved the ability of residents to pursue subsistence opportunities.

*BLM Response:* The definition of infrastructure in the final rule applies to permanent or semi-permanent structures or improvements that support oil and gas activities, and does not apply to other, non-oil and gas structures or improvements, because that term is used specifically to implement the Special Area provision of the NPRPA, 42 U.S.C. 6504(a) (as amended), which by its terms applies only to oil and gas exploration and production activities. Although the general mitigation provision of this rule (§ 2361.10) applies only to oil and gas activities, it is not the only tool available to the BLM for requiring mitigation in the Reserve. The BLM has explicit and ample authority under the NPRPA to apply mitigation requirements within the reserve, as well as under NEPA to evaluate potential mitigation measures as part of the analysis for proposed actions. Mitigation for other types of activities, such as siting and construction of infrastructure for scientific research or public safety, may be addressed through other means, such as implementing requirements of the IAP for non-oil and gas infrastructure or as determined through the analysis in project-specific decisions. With regard to infrastructure that benefits communities within the Reserve, § 2361.10 of the final rule provides that, when identifying conditions, restrictions, and prohibitions necessary or appropriate to mitigate the reasonably foreseeable and significantly adverse effects of



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proposed oil and gas activities in the portions of the Reserve outside Special Areas, the Bureau will fully consider community access and other infrastructure needs.

Additionally, in response to comments, the BLM revised the restrictions on new infrastructure in § 2361.40 of the final rule to clarify that within Special Areas, infrastructure that will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve may be allowed provided that appropriate measures are adopted to assure maximum protection of significant resource values.

*Comment:* Commenters stated that the definition of “infrastructure” would allow for the authorization of temporary infrastructure for exploration, but would delay or prevent the BLM from authorizing infrastructure to support commercial development on existing leases. Comments further stated that this definition may result in a regulatory “taking” claim.

*BLM Response:* The final rule expressly allows for the authorization of new infrastructure, as defined in § 2361.5, that is necessary to honor the terms of a valid existing lease. The final rule will therefore not deprive a leaseholder of its rights under an existing lease.

*Comment:* Commenters expressed the opinion that defining “infrastructure” as “essentially limited to structures or improvements in support of commercial oil and gas activities” raises concerns about what types of infrastructure could be allowed within Special Areas and other sensitive regions. For example, “Lease Stipulation K-1 does not apply to intercommunity roads or other permanent roads constructed with public funds for general transportation purposes. While the presence and use of such roads would have an effect on caribou and other significant resource values, it is not clear to what extent

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such infrastructure would fall within the proposed definition and thus come under the purview of maximum protection provisions.” Commenters also stated that additional clarity is needed on “where access and infrastructure could be allowed and how maximum protection will be assured in such areas.”

*BLM Response:* The BLM revised the definition of “infrastructure” in the final rule to clarify what structures or improvements are regulated by this rule. The final rule defines the term as, “a permanent or semi-permanent structure or improvement that is built to support commercial oil and gas activities on BLM-administered lands within the Reserve, such as pipelines, gravel drilling pads, man camps, and other structures or improvements.” The revised definition further clarifies that “infrastructure” does not include structures or improvements that will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve. In addition, the rule is incorporating the IAP’s prescriptions on infrastructure, and is not prescribing specific new measures for management of Special Areas.

*Comment:* Commenters recommended that defining the term “Integrated Activity Plan” is not necessary, as the requirement under section 202 of the FLPMA to prepare land use plans does not apply to the Reserve and, therefore, the IAP should not be defined as a land management plan. Commenters suggested the IAP is unique to the Reserve and it should remain that way.

*BLM Response:* The BLM agrees that it does not develop IAPs to comply with section 202 of FLPMA, though it prepares IAPs to provide a framework for managing the Reserve. The BLM believes that the final rule should define the term “IAP” to accurately

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describe the relationship the requirements in the rule and IAPs and to assist the BLM when preparing future IAPs.

*Comment:* Commenters suggested that the BLM revise its proposed new definition of “significant resource value” to be consistent with 42 U.S.C. 6504(a) and state “any significant subsistence, recreational, fish and wildlife, historical, or scenic value identified by the BLM as supporting the designation of a Special Area.” Commenters noted that omitting the word “significant” in the definition in the proposed rule is outside of BLM statutory authority and “incorrectly lowers the requirements for designation of Special Areas” to have significant resource values.

*BLM Response:* The BLM believes that including the word “significant” in the definition of “significant resource value” is redundant and circular. The definition makes clear that the value supports designation of a Special Area, which makes it significant. This definition is consistent with the NPRPA. To provide additional clarity and consistency with the NPRPA, the final rule specifies that the term “significant resource values” refers to surface values.

*Comment:* Commenters requested a more precise definition of “significant resource value” 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.” The comment stated that “this is an inadequate and circular definition.”

*BLM Response:* The BLM declines this request. The significant resource values that BLM is required to assure maximum protection for are specifically listed in section 104(b) the NPRPA (42 U.S.C. 6504), and this rule is implementing the NPRPA.

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*Comment:* Commenters suggested the BLM revise the definition of “significant resource value” because the proposed definition is “vague and would allow BLM to designate lands as having surface resources to support a special area designation if there are any subsistence, recreational, fish and wildlife, historical, or scenic values contained in the near vicinity.”

*BLM Response:* The BLM declines this request. The definition comes from the plain language of the NPRPA.

*Comment:* Commenters believe that the proposed definition of “significant resource value” is contrary to statutory authority and should be revised since it is “contrary to the requirements that Congress established for the designation of Special Areas.” The comment states that when the definitions for “Special Areas” and “significant resource value” are considered collectively, the proposed rule could be interpreted to remove the statutory requirement that “restricts the designation of Special Areas to those areas containing certain significant values.”

*BLM Response:* The BLM disagrees with the comment’s interpretation of the two definitions. The definition of “significant resource value” recites the specific surface values listed in the NPRPA that may warrant designation and management of a Special Area by the Secretary of the Interior. The definition of “Special Area” makes clear those areas must have significant resource values. These definitions, and the rest of the regulation, do not provide for or imply that the BLM would designate Special Areas in the absence of significant resource values.

*Comment:* A commenter suggested adopting the definition of “Areas of Critical Environmental Concern” as a substitute for the definition of “Special Areas.”

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*BLM Response:* We decline that suggestion. The NPRPA provides a specific definition of what would be considered a Special Area, which differs from the definition of an Area of Critical Environmental Concern as defined in FLPMA.

*Comment:* Commenters requested the BLM include oil and gas resources as a “significant resource value” given that the economic opportunity and revenue generated by oil and gas production provides significant value to the residents of the North Slope in the form of health and emergency services and other basic needs.

*BLM Response:* We decline that suggestion. Section 104(b) of the NPRPA (42 U.S.C. 6504) specifically lists the surface resource values that should be considered — “containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value” — and oil and gas is not one of them.

*Comment:* Commenters opined that the revised definition of “significant resource value” exceeds statutory authority in providing that such designated areas would be protected to a maximum standard. Commenters suggested the definition implies that Special Areas are held to a higher standard and that reasonable impacts associated with oil and gas development are not allowed. Commenters also opined that the proposed rule expands the definition of “Special Areas” beyond the scope of law. The definition would “impede development of a competitive leasing and development program” in the Reserve, as intended by Congress.

*BLM Response:* We disagree. The definition in the proposed rule is consistent with the NPRPA, which explicitly states, “to assure the maximum protection of such surface values to the extent consistent with the requirements of this Act.”

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*Comment:* Commenters recommended the definition of “significant resource value” explicitly exclude future oil and gas leasing, exploration, and development. Commenters believe that allowing leasing, exploration, and development within Special Areas is “contrary to the goal of establishing Special Areas.”

*BLM Response:* The BLM does not agree with this comment. Allowing some leasing, exploration, and development in Special Areas is not automatically inconsistent with the goal of Special Areas, which Congress specifically provided should be given maximum protection for their significant resource values consistent with the requirements of the Act for the exploration and production of oil and gas in the Reserve. This rule does not close areas to any activities beyond the closures already adopted by the IAP and leaves additional protective measures for area-specific analysis, subject to the processes described in this rule.

*Comment:* The BLM requested comments on whether to include the definition of “permanent oil and gas facilities” as defined in the 2022 IAP ROD. Commenters recommended removing the exclusions in the IAP definition because exploration wellheads and seasonal facilities such as ice roads and ice pads can be designed for use in successive winters and therefore should not be excluded. Commenters recommended that the BLM expand this definition to clearly encompass all permanent oil and gas facilities at any stage, including exploration and delineation, development, production, transportation, and decommissioning. Commenters encouraged the addition of water reservoirs and trenching done at any stage to be added to the definitions because these activities have long lasting effects on multiple resources. Commenters suggested that the definition include any development that permanently alters the surface resources or

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ecological values. Commenters recommended removing “materials sites such as sand and gravel” from the definition as they are not necessarily oil and gas related and they can be reclaimed.

*BLM Response:* Based on the feedback received, the BLM is not including a definition for “permanent facilities” in the final rule. We believe that the revised definition of “infrastructure” in the final rule adequately encompasses this subject by clarifying that for the purposes of this rule “infrastructure” includes permanent and semi-permanent structures and improvements, and by providing explanation and examples of those structures and improvements.

*Comment:* The BLM requested comments on whether to incorporate a proposed definition of “essential” that resembles provisions of Lease Stipulation K–12 from the 2022 IAP ROD. In response to this request, some commenters stated that defining “essential” would provide clarity, and that the language of “no other feasible and prudent option is available” is good as a constraining description. Commenters suggested making the definition prioritize resource protection over production. Other commenters opined that the definition of “essential” as written in the proposed rule is sufficient and is in line with the purpose of providing maximum protection to Special Areas.

Commenters pointed out that they believe the definition of “essential” in the 2022 IAP ROD differs slightly from the definition of essential in § 2361.40(d)(3).

*BLM Response:* The BLM is not including a definition for “essential” in the final rule. After assessing public comment and the structure of the rule, the BLM instead eliminated the provision in the proposed rule that limited new permanent infrastructure related to existing oil and gas leases to that which is “essential for exploration or

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development activities and no practicable alternatives exist...” on lands within Special Areas that are allocated as unavailable to new infrastructure. Therefore, the term “essential” does not appear in the final rule. The provisions in the IAP, including the definition of the word “essential” in the stipulations, will apply.

*Comment:* Commenters recommended defining the terms “reasonably foreseeable” and “significantly adverse effects.” Commenters also recommended defining the term “effects” to clarify that effects include effects on environmental, fish and wildlife, and historical or scenic values.

*BLM Response:* We decline this request. These terms have standard accepted meanings and have been further clarified through their use in NEPA. The term “effects” is used throughout this rule in reference to environmental analysis that will occur and be documented under NEPA, and so defining the term separately here would create confusion.

*Comment:* Commenters recommended that since “rural resident” is not defined in 50 Code of Federal Regulations (CFR) 100.4 but is defined in ANILCA Title VIII, the proposed rule should not reference 50 CFR 100.4.

*BLM Response:* The regulations in 50 CFR part 100 implement the Federal Subsistence Management Program on public lands within the State of Alaska pursuant to the authority in Title VIII of ANILCA. While the term “rural resident” is used throughout ANILCA, it is not specifically defined; however, 50 CFR 100.4 defines the term “rural” and the term “resident” and then uses those terms in the definition of “subsistence uses.” The BLM will retain this citation.



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*Comment:* Commenters recommending defining the term “ecological integrity” in the rule because protecting surface resources requires maintaining the ecological integrity of surface resources. The scientific meaning of “ecological integrity” is the capability of supporting and maintaining a balanced, integrated, adaptive community of organisms having a species composition and functional organization comparable to that of the natural habitat of the region.

*BLM Response:* The BLM did not include the term “ecological integrity” in the final rule, and therefore it is not defined in this section of the final rule.

*Comment:* The BLM received a comment that the phrase “minimize the disruption of natural flow patterns and changes to water quality” should be replaced with “maintain natural flow regimes and the ecological integrity of lotic and lentic ecosystems.” “Natural flow regime” could be defined as the magnitude, frequency, duration, timing, and rate of change of flow events that characterize the hydrology of a natural river environment.

*BLM Response:* This phrase is used in the 2022 IAP to describe the objectives of restrictions that the IAP applies to new oil and gas leases and infrastructure. The proposed rule and final rule incorporate the phrase to explain restrictions in the 2022 IAP that are codified by the rule. Because the rule is using language that is used in the 2022 IAP, the BLM declines to change the wording here, which would create confusion.

*Comment:* Commenters recommended defining the following terms in the regulation:

- *Financial readiness* means the lessee’s financial capability to honor its contractual obligations;

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- *U.S. energy needs* means the projected energy consumption of the United States of America in a given year, which comes from different sources such as nuclear power, natural gas, petroleum, renewable energy, and coal.

- *Financial projection* means the lessee’s financial planning to estimate expected revenues, expenses, and cash flows which are normally used to build a company budget.

- *Financial stress* means a financial method designed to simulate the lessee’s finances under adversarial situations.

- *Financial balances* means all the financial statements prepared by the lessee for cooperative reasons or to report to other U.S. agencies.

*BLM Response:* These terms do not appear in the rule text and thus need not be defined in this rule.

*Comment:* Some commenters recommending eliminating the new definitions for Indigenous Knowledge, Integrated Activity Plan, infrastructure, and significant resource values.

*BLM Response:* We decline those suggestions. These definitions are needed to ensure clarity and consistency in the implementation of the proposed rule.

#### *Description of the Final Rule*

In response to comments, the BLM revised the definition of “infrastructure” in the final rule to clarify that the term means, “a permanent or semi-permanent structure or improvement that is built to support commercial oil and gas activities on BLM-administered lands within the Reserve, such as pipelines, gravel drilling pads, man camps, and other structures or improvements.” The revised definition further clarifies that “infrastructure” does not include structures or improvements that will primarily be used

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by and provide a benefit to communities located within or in close proximity to the Reserve.

The BLM also clarified in the final rule that the term “significant resource values” refers to surface values, in order to ensure consistency with the language in the NPRPA. Similarly, the BLM made minor clarifications in the definition of the term “Special Areas” to ensure consistency with the language in the NPRPA. The final rule defines “Special Areas” as: “areas within the Reserve identified by the Secretary or by statute as having significant resource values and that are managed to assure maximum protection of such surface values, to the extent consistent with the requirements of the Act for the exploration and production of the Reserve.”

The final rule incorporates the definition for the term “co-stewardship” that is used in BLM Permanent Instruction Memorandum No. 2022-011 (Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary’s Order 3403). This definition was added in response to comments on § 2361.60.

All other definitions included in the proposed rule are carried forward to the final rule without change.

## **Section 2361.6 – Effect of law.**

### *Existing and Proposed Regulations*

Existing § 2361.0–7 is redesignated to § 2361.6 in the final rule. The BLM proposed to update this section to conform to existing legal authorities, including adding provisions to implement the Department of the Interior Appropriations Act, Fiscal Year 1981, Pub. L. 96–514 (Dec. 12, 1980), 94 Stat. 2957, 2964, in revised paragraph (a), and

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the Barrow Gas Field Transfer Act of 1984, Pub. L. 98–366 (July 17, 1984), 98 Stat.

468, 470, in new paragraph (b)(4).

*Public Comments on § 2361.6*

Commenters supported the provision included at proposed § 2361.6(b)(4) authorizing the Secretary to grant such rights-of-way to the North Slope Borough as may be necessary to permit the North Slope Borough to provide energy supplies to villages on the North Slope. We agree with these comments.

Commenters recommended that this section state that the rule does not apply to oil and gas leases issued prior to the effective date of the rule. The BLM addresses the rule's application to existing oil and gas leases in responses to comments in Section III(E) earlier in this preamble to the final rule (General Public Comments, Comments about oil and gas production).

*Description of the Final Rule*

The BLM did not change this section of the proposed rule in the final rule.

**Section 2361.7 – Severability.**

*Existing and Proposed Regulations*

The BLM proposed this new section to establish that if any provision of part 2360 is invalidated, then all remaining provisions would remain in effect.

*Public Comments on § 2361.7*

Commenters recommended the BLM remove this section from the final rule because they see it as unnecessary or uncharacteristic for a rulemaking. The BLM decided to retain this section as proposed in the final rule because the various components

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of the rule are distinct and may operate independently. As such, they should be considered separately by a reviewing court, and if any portion of the rule were to be invalidated, the remaining provisions could continue to provide the BLM with necessary tools to manage oil and gas activity and protect important resources in the Reserve.

Many of the provisions simply update the regulations to bring them more into line with the BLM's statutory duties. Those updates would function independently of the rest of the rule. The procedural requirements in § 2361.10(b) for protecting surface resources in the Reserve also would stand alone, as would the codification of existing Special Areas in § 2361.20, the procedural requirements in § 2361.30, the specific requirements for new infrastructure in § 2361.40, and other provisions.

Further, the paragraphs within specific sections may also function independently of each other. For example, the final rule's provisions pertaining to the management of oil and gas activities in Special Areas in § 2361.40 describe how the authorized officer will assure maximum protection for significant resource values while allowing for exploration and production within the Reserve. Within that section, each paragraph serves a separate function, such as requiring the authorized officer to avoid the adverse effects of proposed oil and gas activities on the significant resource values of Special Areas; directing the authorized officer to identify, adopt, and update maximum protection measures; prescribing requirements for considering the authorization of new leases or infrastructure proposed in areas allocated as closed to leasing or unavailable to new infrastructure; prescribing different requirements for considering the authorization of new leases or infrastructure proposed in areas allocated as available for future oil and gas leasing or new infrastructure; and providing the framework for considering new oil and

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gas activities through a NEPA process. Hence, if a court prevents any provision of one part of this rule from taking effect, that should not affect the other parts of the rule. The remaining provisions would remain in force.

*Description of the Final Rule*

The BLM did not change this section of the proposed rule in the final rule.

**Section 2361.10 — Protection of surface resources.**

*Existing and Proposed Regulations*

Existing § 2361.1 is redesignated to § 2361.10 in the final rule, and the title is changed from “protection of the environment” to “protection of surface resources” to more closely track with the BLM’s statutory authority under 42 U.S.C. 6506a(b), which directs the BLM to “provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [Reserve].”

The BLM proposed to establish new standards and procedures for managing and protecting surface resources in the Reserve from the reasonably foreseeable and significantly adverse effects of oil and gas activities. In 1980, Congress authorized the Secretary to mitigate those effects through “necessary or appropriate” “conditions, restrictions, and prohibitions.” 42 U.S.C. 6506a(b). Existing paragraph (a) requires the authorized officer to take action “to mitigate or avoid unnecessary surface damage and to minimize ecological disturbance throughout the reserve to the extent consistent with the requirements of the Act for the exploration of the reserve.” The BLM proposed to amend paragraph (a) to mirror the statutory language. As amended, paragraph (a) also provided further clarification by recognizing that, in some circumstances, the BLM may delay or

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deny proposed activities that would cause reasonably foreseeable and significantly adverse effects on surface resources.

The proposed rule deleted existing paragraph (b). It concerns coordination between the BLM and the U.S. Geological Survey, which is no longer relevant because the Geological Survey is no longer responsible for managing exploration in the Reserve. Paragraph (b) in the proposed rule spelled out new procedures for protecting surface resources in the Reserve. As explained above, Congress assigned the BLM the duty to protect the surface resources in the Reserve, but BLM regulations do not fully explain the scope of that duty. The proposed rule was drafted to provide direction to the agency and the public in complying with Congress's mandate.

In paragraph (b)(1), the proposed rule directed the BLM to manage oil and gas activities in accordance with the IAP. In doing so, the proposed rule enshrined longstanding BLM practice into regulations. As explained above, in the 1980 Amendments to the NPRPA Congress chose to exempt the Reserve from FLPMA's planning requirements (42 U.S.C. 6506a(c)). Nonetheless, since 1998, the BLM has prepared several IAPs to primarily govern oil and gas activities in the Reserve. The IAP is a form of land use plan that "addresses a narrower range of multiple use management than a resource management plan." 2013 NPR-A IAP ROD at 17. In the BLM's experience, the IAP provides an invaluable means of evaluating management options, engaging the public, and guiding decision-making, consistent with the BLM's responsibilities under applicable Federal laws, including NPRPA and NEPA. Accordingly, the proposed rule required the BLM to maintain an IAP, which would provide predictability to industry and North Slope communities and help guide BLM use

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authorizations in the Reserve but would give way to the regulations in the event of a conflict.

Paragraph (b)(2) of the proposed rule required the BLM, in each decision concerning oil and gas activity in the Reserve, to adopt measures to mitigate the reasonably foreseeable and significantly adverse effects on surface resources, taking particular care with surface resources that support subsistence. The BLM would do so by documenting for each decision its consideration of effects and how those effects informed the choice of mitigation measures. Paragraphs (b)(3) and (4) specified that the BLM's effects analysis would include any reasonably foreseeable effects, including indirect effects (those that are "later in time or farther removed in distance"), cumulative effects (those "that result from the incremental effects of proposed activities when added to the effects of other past, present, and reasonably foreseeable actions"), and "any uncertainty concerning the nature, scope, and duration of potential effects." For example, if the BLM determined that a proposed lease sale's effects on subsistence resources—when added to the effects of other past, present, and reasonably foreseeable actions—could be significantly adverse, then under this proposed section, the BLM would need to adopt measures to mitigate those effects.

The proposed rule deleted existing paragraphs (c) and (d). Existing paragraph (c) requires the BLM to take maximum protection measures on all actions within Special Areas and identify the boundaries of Special Areas on maps. It also describes some requirements that may constitute "maximum protection measures." Existing paragraph (d) concerns designation of new Special Areas. The proposed rule moved this content to §§ 2361.20, 2361.30, and 2361.40, as most appropriate. Moving this material to those



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new sections would provide clarification by focusing § 2361.10 on protection of surface resources throughout the Reserve.

Proposed new paragraph (c) clarified that for surface resources in Special Areas, the BLM also would have to comply with the provisions governing Special Areas in §§ 2361.20 through 2361.60. Moving the provisions concerning Special Areas to different sections makes that cross-reference necessary.

Proposed new paragraph (d) required the BLM to include in each oil- and gas-related decision or authorization, “such terms and conditions that provide the Bureau with sufficient authority to fully implement the requirements of this subpart.” That provision would ensure that the BLM incorporates into decision documents whatever language is necessary to enable it to implement any final rule.

Existing paragraph (e)(1) provides that “the authorized officer may limit, restrict, or prohibit use of and access to lands within the Reserve, including special areas.” The existing rule conditions that authority by requiring it to be exercised “consistent with the requirements of the Act and after consultation with appropriate Federal, State, and local agencies and Native organizations.” The proposed rule specified that the authorized officer has that authority “regardless of any existing authorization.” That added language would clarify that existing authorizations would not prevent the BLM from limiting, restricting, or prohibiting access to the Reserve consistent with the requirements of the Act. The proposed rule retained the condition that exercises of that authority must be consistent with the NPRPA, and it added “and applicable law” to clarify that the authorized officer cannot contradict other legal requirements. Instead of requiring the authorized officer to consult with “Native organizations,” the proposed rule provided

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more specificity by requiring consultation with federally recognized Tribes and Alaska

Native Claims Settlement Act corporations. Consistent with the BLM's duty under

NPRPA and ANILCA, the proposed rule also amended paragraph (e)(1) to allow the

authorized officer to limit, restrict, or prohibit use of and access to the Reserve to protect

subsistence uses and resources.

The proposed rule amended existing paragraph (f) to recognize the breadth of

Federal laws that apply to the management and protection of historical, cultural, and

paleontological resources in the Reserve.

*Public Comments on § 2361.10*

*Comment:* Commenters supported “protection of surface resources” and establishing new standards and procedures for managing and protecting surface resources in the Reserve from the foreseeable and significantly adverse effects of oil and gas activities.

*BLM Response:* The BLM appreciates commenters acknowledging the intention of the regulations.

*Comment:* Commenters recommended changing the title of this section to “Protection of environmental values, including surface resources,” to reflect the NPRPA which speaks to “protection of environmental . . . values” broadly. 42 U.S.C. 6503(b).

*BLM Response:* The reference to surface resources is consistent with the NPRPA, which provides: “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

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surface resources of the National Petroleum Reserve in Alaska.” 43 U.S.C. 6506a(b). The BLM did not change the title of this section in the final rule.

*Comment:* Commenters recommended revising proposed § 2361.10 to emphasize the overarching purpose of the Reserve for oil and gas production by clarifying that the NPRPA requires resource protection “to the extent consistent with the requirements of this Act for the exploration of the reserve.” Other commenters recommended revising proposed § 2361.10 to emphasize the overarching purpose of the Reserve for environmental protection by clarifying that the NPRPA requires protection of environmental values, including, but not limited to, surface resources.

*BLM Response:* The BLM believes § 2361.10 appropriately reflects the mandates in the NPRPA to conduct an oil and gas leasing and production program in the Reserve while protecting environmental, fish and wildlife, and historical and scenic values within the Reserve. The NPRPA specifically directs the BLM to mitigate adverse effects on the surface resources of the Reserve when conducting the oil and gas program. The BLM added the phrase “oil and gas” to modify “activities” throughout this section of the final rule to clarify that these regulations are specific to the BLM’s implementation of its oil and gas program in the Reserve.

We also note that the final rule in § 2361.40 references the BLM’s mandate under the NPRPA to assure maximum protection of significant resource values in Special Areas “consistent with the requirements of the NPRPA for exploration and production of the Reserve.”

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*Comment:* Commenters recommended that the BLM develop and explain the criteria it will use to determine the scope of effects that are both “reasonably foreseeable” and “significantly adverse” to provide transparency and promote regulatory certainty.

*BLM Response:* We decline that suggestion. These terms have a generally accepted meaning, including as a part of any NEPA analysis, and are also covered in the NEPA regulations in 40 CFR part 1500. Providing additional definitions in the rule would not add more clarity.

*Comment:* Commenters recommended the rule should articulate that continued oil and gas activities at any scale in the Reserve will cause reasonably foreseeable and significantly adverse effects on surface resources in the Reserve and prohibit new leasing and production throughout the Reserve, as well as require delaying or denying proposed activities that would hinder the protection of surface resources.

*BLM Response:* The BLM does not accept these recommendations. The requirements of the rule are consistent with the plain language of the NPRPA that requires all oil and gas activities in the Reserve be subject to “such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects.” Further, § 2361.10(a) specifically provides for the BLM to condition, delay, or deny some or all proposed activities as may be necessary to fulfill these requirements.

*Comment:* The BLM received comments stating that, while the preamble states that the Reserve’s standards related to the protection of surface values would also fulfill the BLM’s mandate to take action necessary to prevent unnecessary or undue degradation, there is no mention of this obligation in the proposed rule. Commenters

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requested that the BLM add provisions that expressly reference and incorporate unnecessary or undue degradation standards or include cross references to those standards in §§ 2361.10 and 2361.40.

*BLM Response:* The BLM declines the request to expressly reference FLPMA's unnecessary or undue degradation provision in the rule. FLPMA requires the BLM to prevent unnecessary or undue degradation on all BLM-managed public land. This mandate applies to a broader range of uses within the Reserve than are being addressed in this rule and the BLM will prevent unnecessary and undue environmental degradation within the Reserve whether or not it is specifically identified in §§ 2361.10 and 2361.40. Nevertheless, the BLM did add FLPMA to the Authorities section of the rule.

*Comment:* The BLM received comments stating that the NPRPA requires mitigation, but commenters expressed concern that the rule focuses on prevention.

*BLM Response:* The BLM follows a mitigation hierarchy that generally includes avoidance as the first step in mitigating adverse effects on public land resources and values, consistent with the CEQ regulations implementing NEPA, particularly 40 CFR 1508.1(s). In pursuit of the BLM's mandate under the NPRPA to "provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [Reserve]", the rule draws on all steps of the mitigation hierarchy, including preventing impacts entirely through avoidance where appropriate. For example, § 2361.10(a) requires the Bureau to protect surface resources by adopting appropriate measures to mitigate reasonably foreseeable and significantly adverse effects of proposed oil and gas activities; § 2361.10(b)(2) requires the authorized officer to adopt

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measures to mitigate reasonably foreseeable and significantly adverse effects on surface resources, particularly with regard to those resources that support subsistence use and needs; and § 2361.40(g) requires the authorized officer to evaluate and require mitigation measures to address adverse effects on significant resource values when considering authorizing oil and gas leasing or new infrastructure in a Special Area.

*Comment:* The BLM received comments concerning the phrase, “delaying action on, or denying some or all aspects of proposed activities” in proposed § 2361.10(a). Some commenters suggested that the BLM lacks the statutory authority to delay or deny activities in the Reserve. Other commenters supported the provision in the proposed rule and recommended the BLM describe circumstances that would warrant denying proposed activities. Commenters recommended this provision should discuss mitigating reasonably foreseeable and significantly adverse effects to the climate. Commenters requested the final rule specifically provide that if differences in caribou behavior, distribution, or harvests are detected, BLM will prohibit additional development.

*BLM Response:* The NPRPA provides the BLM with the authority to “provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigation reasonably foreseeable and significantly adverse effects on the surface resources of the [Reserve].” Additionally, the BLM’s oil and gas lease forms for leases issued in the Reserve include terms that enable the BLM to require measures deemed necessary to minimize adverse impacts to the land, air, and water; to cultural, biological, visual, and other resources; and to other land uses or users. Examples of how the BLM might exercise this authority would be to reduce the number of drill pads or density of roads in a development proposal to protect caribou calving, restrict timing on

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drilling activities to protect subsistence activities, or phase project components to limit the amount of habitat being impacted at a given time.

Analyzing climate impacts of oil and gas development is not part of this rule, which is focused on impacts to surface values of special areas and surface resources broadly. Climate change impacts the surface values that the BLM is required to protect, including subsistence resources, fish and wildlife habitat, and recreation opportunities, and those impacts will be analyzed and addressed through NEPA processes when evaluating potential projects. Similarly, the BLM is not addressing specific resource values such as caribou in the rule; however, caribou habitat will be considered as a significant resource value where appropriate as the BLM implements the rule.

*Comment:* Commenters stated concerns that proposed § 2361.10(a) will result in violations of valid existing lease rights, and that the BLM should provide clear assurance that the government will not withhold approval for reasonable proposals for infrastructure, such as roads and pipelines, necessary to bring valid existing leases into production.

*BLM Response:* We do not agree with these assertions. The BLM will implement § 2361.10(a) consistent with valid existing lease rights. As discussed in more detail in Section III(E) above, while the rule will not affect the terms of an existing lease or approved development project or permit, future development of an existing lease may be subject to additional terms and conditions if necessary to ensure that the BLM's decision is consistent with its statutory responsibility to mitigate reasonably foreseeable adverse effects of oil and gas activity on the surface resources as required by the NPRPA. For example, the Willow Master Development Plan includes numerous lease stipulations,

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required operating procedures, and mitigation measures intended to avoid, minimize, or otherwise mitigate the effects of oil and gas production on surface resources.

*Comment:* The BLM received comments stating that the proposed rule is not adaptive as it only requires future leases to comply with lease stipulations and “by exempting all the currently authorized activities, the BLM constrains its ability to adapt its resource management strategy in response to climate change.” The BLM also received comments stating that “concerns about breach-of-contract claims against the Federal Government are ill-founded as BLM has reserved the right—in the lease itself—to set the rate of production.” The commenters state that the BLM can use the authority granted in the lease language to create regulations that deny or prohibit additional oil and gas exploration and development as well as suspend operations and production of current drilling. Comments express that the NPRPA gives BLM authority to restrict or suspend activities in the Reserve and state that the BLM “can do so ‘in the interest of conservation of natural resources’ or to ‘mitigate reasonably foreseeable and significantly adverse effects on surface resources.’”

*BLM Response:* The rule will apply to existing leases to the extent it is compatible with the terms of those leases. The BLM is not exempting all currently authorized activities but is constrained by valid existing rights.

*Comment:* Commenters recommended that the BLM state that its ability to impose mitigation is only related to activities specifically undertaken pursuant to the NPRPA, and that for mitigation to apply, the NPRPA activity must cause effects ‘on the surface resources’ of the Reserve.



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Commenters requested that the BLM make commitments related to mitigation measures for the ecosystems and species affected by oil and gas development, as well as design and adopt a comprehensive mitigation plan for impacts to threatened or endangered species in the Reserve. The BLM received comments requesting the BLM supplement its 2022 IAP with additional mitigation measures that address the impacts of all permitted activities in the Reserve as well as the cumulative impacts of actions outside of agency control.

*BLM Response:* As discussed above, the BLM has authority to require mitigation of impacts to public lands resources from authorizations and other Federal actions in the Reserve, consistent with the NPRPA and FLPMA. For example, the NPRPA requires that oil and gas authorizations include provisions to mitigate reasonably foreseeable and significantly adverse effects on surface resources. The rule is clear that the mitigation requirements in § 2361.10(b)(2) apply to adverse effects on surface resources of the Reserve, and the final rule specifies in paragraph (b) that the requirements in the section apply to proposed oil and gas activities. The BLM further notes that although this rule would only apply to oil and gas activities, protection of surface resources from other actions may be addressed through other means, such as the IAP and site-specific authorizations. The BLM is not developing mitigation plans or supplementing the 2022 IAP as part of this rulemaking process.

*Comment:* Commenters recommended adding evaluation procedures before proposed § 2361.10(b)(1) that would require the BLM to evaluate the condition of surface resources within the Reserve at least every 5 years, including a climate impacts assessment.

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Commenters recommended adding a new section requiring a commitment to survey and monitor significant surface resources on an on-going basis and to rigorously study changes in and impacts to those resources.

Commenters recommended that the regulations require the BLM to establish baseline data for resources in the Reserve, including specifically caribou distribution and movement, subsistence food contamination, and air quality data.

*BLM Response:* The BLM does not currently have the resources to conduct a full evaluation of all surface resources in the Reserve every 5 years. Under § 2361.30, the BLM will evaluate the Reserve for significant resource values every 10 years, which will provide important resource inventory and monitoring information at regular intervals and enable the BLM to study changes to those resources over time, including the impacts from a changing climate. Additionally, under § 2361.10(b)(1), the BLM will maintain an IAP addressing management of all BLM-administered lands and minerals throughout the Reserve. The IAP amendment process will provide opportunities for the BLM to evaluate all surface resources within the Reserve on a regular basis and update baseline data for those resources.

*Comment:* Commenters stated that the BLM must ensure an appropriate framework for IAP development that is consistent with Federal law and follows NEPA's process for public participation. The BLM received a comment requesting that the language in the proposed rule requiring the BLM to maintain an IAP for the Reserve be removed from the rule as it could prematurely restrict the BLM's ability to make informed decisions with respect to future IAPs.

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*BLM Response:* The BLM has been preparing IAPs since 1998 through a NEPA process and is incorporating this requirement into the rule to ensure ongoing, robust public participation in preparation of these management plans. Merely requiring the BLM to maintain an IAP for the Reserve does not restrict decision-making space for future IAP amendments.

*Comment:* Commenters discussed integrating the 2022 IAP into the rule; some commenters were concerned that the IAP would not address long-term impacts from resource extraction and asked the BLM to perform a comprehensive review of the plan. Other comments requested the BLM support and align with the IAP as it is a system that already works and is “highly protective of surface resources in the NPR-A, but it does not preclude oil and gas development.”

*BLM Response:* The 2022 IAP was based on a previous, multi-year environmental analysis and public engagement process. The BLM is not reviewing the plan at this time. The rule aligns with the 2022 IAP and codifies portions of it related to Special Area designation and management.

*Comment:* Commenters recommended the rule require measures to mitigate reasonably foreseeable and significantly adverse effects on carbon storage, an ecosystem service that is currently provided by boreal peatlands and permafrost. Commenters recommended the rule require measures to mitigate reasonably foreseeable and significantly adverse effects on caribou and their habitat.

*BLM Response:* The NPRPA requires that oil and gas authorizations including provisions to mitigate reasonably foreseeable and significantly adverse effects on surface resources. The rule is clear that the mitigation requirements in § 2361.10(b)(2) apply to

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adverse effects on surface resources of the Reserve, and the final rule specifies in paragraph (b) that the requirements in the section apply to proposed oil and gas activities. In addition, the BLM has authority to mitigate impacts to public lands resources from authorizations and other Federal actions in the Reserve, consistent with the NPRPA and FLPMA. The BLM is not developing mitigation measures for specific resources as part of this rulemaking process.

*Comment:* Commenters suggested that the requirement in proposed § 2361.10(b)(3) to consider any reasonably foreseeable effects, including indirect effects and cumulative effects, unnecessarily duplicates the BLM's existing obligations under NEPA. Other commenters recommended that the BLM clarify in proposed § 2361.10(b)(3) that reasonably foreseeable effects include effects from activities that have not yet been proposed but that are induced by the proposed activity. The BLM received comments stating that the NPRPA does not authorize the BLM to consider incremental effects of proposed activities when authorizing activities in the NPRPA nor does it allow the BLM to condition, restrict, or prohibit activities because of potential effects from activities outside of the Reserve.

*BLM Response:* The BLM removed § 2361.10(b)(3) from the final rule because it was duplicative of the agency's obligations under NEPA and potentially confusing to restate in the rule. We note that NEPA obligates the BLM to analyze direct, indirect, and cumulative impacts, including to consideration of the impacts of reasonably foreseeable future actions, when making decisions about authorizing activities.

*Comment:* The BLM received comments regarding proposed § 2361.10(b)(4), specifically the use, meaning, and implication of the phrase "any uncertainty concerning

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the nature, scope, and duration of potential effects” in the proposed rule. Some commenters suggested that the BLM lacks the statutory authority to consider “any uncertainty” in potential effects and then implement restrictions on proposed activities that “account for and reflect such uncertainty” for any impacts. Other commenters supported the requirement in the proposed rule for the BLM to account for uncertainty regarding potential impacts of proposed development and recommended the final rule include more specificity about what qualifies as uncertainty and how it can be considered in decisions.

*BLM Response:* We decline these suggestions. Considering uncertainty is a standard practice for any Federal agency that completes NEPA analysis. Agencies are required to use high quality information and science and data when conducting their analysis. To the extent there are uncertainties, current regulations in 40 CFR 1502.21(a) address incomplete or unavailable information in analysis and state that “When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement, and there is incomplete or unavailable information, the agency shall make clear that such information is lacking.” The text in the regulation builds on the language in the NEPA regulations to require more specific discussion of how the BLM is taking uncertainties into account in making decisions, which is within the BLM’s authority and beneficial in light of the rapidly changing conditions in the Arctic.

*Comment:* Commenters recommended § 2361.10(b)(4) explicitly state that the BLM must base its decisions on the best available science and will not rely solely on the

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lack of scientific certainty when declining to impose any conditions, restrictions, or prohibitions.

*BLM Response:* The BLM declines this request. Including this language would be duplicative of the requirements of the NEPA process and other aspects of the regulation.

*Comment:* Commenters recommended adding a new § 2361.10(b)(5) that states: In assessing effects of a decision concerning proposed activity in the Reserve, the Bureau will identify and evaluate any significantly adverse effects of its decision, including any effects on environmental, fish and wildlife, and historical or scenic values that are individually or collectively significant and any impacts associated with greenhouse gas emissions.

*BLM Response:* The BLM declines this request. The first part of the proposed requirement is duplicative with the BLM's NEPA process and the requirement in the NPRPA to mitigate significantly adverse effects. Further, analyzing the climate impacts of oil and gas development is not part of this rule, which is focused on addressing impacts to significant resource values of Special Areas and surface resources in the Reserve. The BLM analyzes climate impacts as part of NEPA analysis when evaluating potential projects, including leasing and development decisions.

*Comment:* Commenters expressed concern with limiting consultation in paragraph (e)(1) to federally recognized Tribes and ANCSA corporations and requested that BLM consultation be more inclusive than just those two groups. Commenters requested the BLM add a requirement to engage in meaningful communication and consultation with local villages and Tribes to ensure the new regulations meet the needs and concerns of the communities who rely on the Reserve.

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*BLM Response:* The BLM did not consider a broader approach to consultation in the proposed rule, and so the final rule does not adopt such an approach. The BLM works closely with local communities when making management decisions for the Reserve and will continue to engage and communicate with local communities in implementing the rule, independent of formal consultation efforts.

While not considered government-to-government consultation, per 512 DM 6, it is the policy of the Department to recognize and fulfill its legal obligations to consult with ANCSA Corporations on the same basis as Alaska Native Tribes. Native organizations are always invited to participate in the public-involvement periods of NEPA projects and lend their voices to management actions within the Reserve or on any BLM-managed public lands.

*Comment:* Commenters recommended the BLM define the role of the North Slope Science Initiative (NSSI) with respect to surveys and monitoring, the evaluation of effects, recommendations for modified protections and restrictions, and mitigation measures.

*BLM Response:* The NSSI is an advisory body that is intended to coordinate inventories, monitoring, and research for a better understanding of terrestrial, aquatic, and marine ecosystems of the North Slope of Alaska, and was established by the Secretary pursuant to section 348 of the Energy Policy Act of 2005, 109 Pub. L. 58, 119 Stat. 594, 708 (2005) (codified at 42 U.S.C. 15906). While the NSSI provides valuable information, the BLM does not believe it is appropriate for these regulations that apply only to BLM-managed public lands in the Reserve to define NSSI's role. The NSSI is a

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body that coordinates scientific efforts between agencies and provides guidance and recommendations to the Secretary, the BLM, and other agencies within the Department.

*Comment:* Commenters recommended the BLM include a presumption against all oil and gas activities in § 2361.10 similar to the presumption proposed in § 2361.40(c) to ensure protection against significantly adverse effects.

*BLM Response:* A presumption against all oil and gas activities in the Reserve would not be consistent with the NPRPA, which requires the BLM to conduct an oil and gas leasing program in the Reserve. The NPRPA imposes special requirements on the BLM to protect significant resource values within Special Areas, which is why the presumption is only included in § 2361.40. We note the final rule provides opportunities for the BLM to avoid and mitigate adverse impacts on surface resources generally. For example, § 2361.10(a) requires the BLM to protect surface resources by adopting whatever conditions, restrictions, and prohibitions it deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects of proposed oil and gas activities, including conditioning, delaying action on, or denying some or all aspects of proposed oil and gas activities.

*Comment:* Commenters recommended the final rule stipulate that the BLM will not waive lease stipulations or mitigation provided by Required Operating Procedures (ROPs) unless the threats to the resources that supported the ROPs no longer exist.

*BLM Response:* We decline that suggestion. ROPs are a standard practice across the BLM and describe the protective measures that the BLM will impose on applicants during the permitting process. Similar to lease stipulations, the objective of a ROP must be met in order for exceptions, modifications, or waivers to be granted under the 2022



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IAP. At the permitting stage, the BLM authorized officer will not include those ROPs that, because of their location or other inapplicability, are not relevant to a specific permit application. We also note that at the permit stage, the BLM may establish additional requirements as warranted to protect the land, resources, and uses in accordance with the BLM's responsibilities under relevant laws and regulations.

*Comment:* Commenters recommended the rule require the BLM to consider and adopt as necessary measures to specify the rates of development and production in the public interest. Commenters recommended the rule include a provision that the BLM may specify the rate of production and limit or suspend activity on leases. Commenters also requested that the rule update the pricing of bonds or schemes that standardize financial health requirements for lessees (such as those found in the Surface Mining Control and Reclamation Act) and reflect the true cost of development and the increased risk of abandonment for oil and gas projects in the Reserve.

*BLM Response:* The BLM declines this request. Regulations for oil and gas leasing and production within the Reserve are covered in 43 CFR part 3130, which the BLM is not revising in this rule. The standard lease terms and conditions also provide for the BLM to provide conditions on production.

*Comment:* Commenters recommended the BLM recognize and enforce water quality standards identified by Native landowners near Utqiagvik and Nuiqsut to protect watersheds that extend beyond Special Areas.

*BLM Response:* We decline that suggestion. While the BLM requires compliance with applicable laws, this addition would be outside the scope of this rulemaking.

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*Comment:* Commenters asked for clarification in § 2361.10 about subsistence use under ANILCA section 811, and recreational shooting under the Dingell Act.

*BLM Response:* We decline that suggestion. The proposed rule addresses oil and gas activities and does not limit subsistence use access or preclude recreational shooting.

*Comment:* Commenters requested increased protections for vegetation, as regeneration of vegetation is dependent on environmental conditions.

*BLM Response:* We decline this suggestion. Vegetation is included because it is encompassed by “the environmental, fish and wildlife, and historical and scenic values of the National Petroleum Reserve in Alaska.”

*Comment:* Commenters expressed concern about the ability to challenge the BLM’s oil and gas related decisions.

*BLM Response:* The regulation does not change procedural requirements for public participation in the BLM’s decision-making processes.

*Comment:* Commenters asked the BLM to include burying pipelines in lease requirements.

*BLM Response:* This issue is addressed at the project level, as a mitigation measure or design feature associated with a specific development proposal. The BLM declines to include this requirement in this regulation.

*Comment:* Commenters expressed support for the BLM’s integration of the IAP into the proposed rule, including in sections pertaining to protection of surface resources and designation and management of Special Areas, regarding the obligation that the BLM must consult specifically with “federally recognized Tribes” not “Native organizations.”

*BLM Response:* We appreciate the support.

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*Comment:* Commenters requested that the BLM analyze future development on a case-by-case basis prioritizing consultation and coordination with those people who are directly impacted.

*BLM Response:* The BLM analyzes specific development proposals on a case-by-case basis through the NEPA process, and that process is unchanged by this regulation. The BLM will continue to consult with appropriate Federal, State, and local agencies, and with federally recognized Tribes, and Alaska Native Claims Settlement Act corporations as required by laws, regulations, and policies governing government-to-government consultation. The BLM also made minor edits to the language of this section for clarity. The BLM will also continue to engage stakeholders, local communities, and the general public in decision-making processes for development projects.

*Description of the Final Rule*

In response to comments, the BLM removed paragraph (b)(3) from the final rule because it is duplicative of environmental analysis requirements under NEPA. The BLM also added “oil and gas” before the word “activities” throughout the section to clarify that the requirements of this rule only apply to oil and gas activities. The final rule clarifies that new use authorizations must conform to any designation or modifications of Special Areas that have occurred outside of the IAP.

The final rule replaces “Bureau” with “authorized officer” to provide clarity about the BLM official responsible for implementing requirements in the rule. The final rule defines authorized officer as “any employee of the Bureau of Land Management who has been delegated the authority to perform the duties of this subpart.” This term refers to an employee that carries out duties that are carefully circumscribed by this rule, other

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relevant regulations, and Bureau policy, such as the BLM delegation of authority manual.

This employee's duties are also subject to the control or direction of other executives including the BLM Director, the Assistant Secretary for Land and Minerals Management, the Deputy Secretary, and the Secretary, all of whom are officers of the United States, appointed by the President and confirmed by the Senate. The remainder of the section is unchanged from the proposed rule.

### **Section 2361.20 – Existing Special Areas.**

#### *Existing and Proposed Regulations*

The existing regulations only identify the Colville River, Teshekpuk Lake, and Utukok River Uplands Special Areas by name (§ 2361.1(c)); they do not account for the Kasegaluk Lagoon and Peard Bay Special Areas. Further, the current regulations do not identify or describe the significant resource values associated with each Special Area. Under the NPRPA, the BLM must assure maximum protection of each of these values consistent with exploration of the Reserve. In pursuit of that obligation, the proposed rule established new § 2361.20 to incorporate all five of the existing Special Areas into part 2360 and identify the significant subsistence, recreational, fish and wildlife, historical, and scenic values that are associated with each of them.

The proposed rule required any lands designated as a Special Area to continue to be managed as such for the already-identified values and any additional values identified through the process set forth in new § 2361.30. The existing regulations (§ 2361.1(c)) require the boundaries of the Special Areas to be depicted on maps available for public inspection in the BLM's Fairbanks District Office. Proposed § 2361.20 specified that a map of each Special Area would be available at the Arctic District Office, which is now

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the BLM office that oversees the Reserve. The BLM would also publish and maintain copies of these maps on its website.

*Public Comments on § 2361.20*

*Comment:* The BLM received comments expressing support of the existing Special Areas section, stating appreciation for proposing to recognize all five of the existing Special Areas and their significant resource values in regulations. Commenters believe that this establishes management priorities against which development proposals can be evaluated and mitigated.

*BLM Response:* We agree recognizing all existing Special Areas in the regulation will provide increased transparency and clarity for managing these areas and their significant resource values.

*Comment:* Commenters recommended changes to management of existing Special Areas, such as by closing them to oil and gas leasing and development and strengthening prohibitions against oil and gas infrastructure or development impacts.

*BLM Response:* The BLM is not changing the specific management prescriptions for existing Special Areas as part of this rulemaking process, as those decisions were most recently identified in the 2022 IAP. The rule codifies the existing Special Areas and their significant resource values as currently established in Secretarial decisions. The final rule establishes a process in § 2361.30 for designating, amending, and de-designating Special Areas. Changes to management of existing Special Areas will follow that process.

*Comment:* Commenters recommended changes to the boundaries of existing Special Areas and specified additional values associated with existing Special Areas and

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recommended the BLM add those values to the final rule. Comments specific to the

Teshekpuk Lake Special Area include:

- Polar bears have begun inhabiting the Teshekpuk Lake area due to the receding sea ice and should be identified as a significant resource value;

- Pik Dunes has unique geologic character, insect-relief habitat for caribou, rare endemic plant populations, use by various water and shorebirds, and scenic and recreational value, and should be closed to fluid mineral leasing, new infrastructure, and other activities including sand and gravel mining;

- The Special Area should be expanded to include the area between the Teshekpuk Lake Special Area western boundary and the village of Atqasuk, which has high density of Yellow-billed loons, Redthroated Loons, King Eider, raptor nests, and caribou calving sites;

- The Qupaluk Flyway Network Site be reviewed to ensure that it is not available for leasing or infrastructure; and

- The Special Area is unnecessarily large, and the BLM should re-analyze the Teshekpuk Lake Special Area boundaries before finalizing the rule.

Comments specific to the Colville River Special Area include:

- The final rule should be updated to reflect the following special resource values are present in the Special Area: caribou summer range, winter range, and migratory connectivity; suitable Wild and Scenic Rivers; Yellow-billed loons; raptors; and moose;

- The Colville River Delta is particularly important for birds and should be closed to all to oil and gas leasing;

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- The Arctic peregrine falcon has been delisted, so the Special Area should be decreased or eliminated;

- The Special Area should be considered critical habitat for the Arctic peregrine falcon; and

- Parts of the Special Area, specifically Ocean Point, are important for subsistence, yet heavy traffic and long-term impacts from development threaten caribou migration and subsistence hunting.

Comments specific to the Kasegaluk Lagoon Special Area include:

- The Special Area is important for brants, shorebird migration, Red-throated and Yellow-billed loons, and the significant resource values for the Special Area should include high-use staging and migration area for waterfowl, shorebirds, loons, and other waterbirds.

Comments specific to the Utukok River Uplands Special Area include:

- The final rule should be updated to reflect that suitable Wild and Scenic Rivers are special resource values in the Special Area;

- The final rule should designate an area north and west of the Kokolik River near the west boundary of the Reserve as part of the Utukok River Uplands Special Area to help avoid river crossings of the Kokolik River to access potential development areas and better protect the Kokolik River; and

- The final rule should move the northern border of the area unavailable for leasing and new infrastructure to cover all of the Utukok River Upland Special Area as this area was not included in the area made unavailable for leasing and infrastructure in the 2013 IAP. Commenters state that the reasons for excluding it no longer exist and

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failing to make this area unavailable for leasing infrastructure may lead to Western Arctic Caribou Herd calving habitat loss under possible future developments.

*BLM Response:* The BLM did not amend the rule in response to specific comments regarding the significant resource values or boundaries of existing Special Areas. The rule merely codifies the existing Special Areas and their significant resource values as currently identified by Secretarial decisions designating or amending the Special Areas. The final rule establishes a process in § 2361.30 for designating, amending, and de-designating Special Areas. Changes to existing Special Areas, including identifying additional values and changing management, will follow that process, recognizing that the BLM may not remove lands from the Teshekpuk Lake and Utukok River Uplands Special Areas unless directed to do so by statute. The protections for a surface value in a Special Area are not limited to those protections in the IAP or other Secretarial decisions relating to the establishment of Special Areas. For example, polar bears are protected by the Marine Mammal Protection Act, 16 U.S.C. 1531 *et seq.*, and the Endangered Species Act, 16 U.S.C. 1531-1544. Indeed, as shown in the 2013 IAP map 3.3.8-6, a significant portion of polar bear denning critical habitat in the Reserve and a number of identified dens are located within the Teshekpuk Lake Special Area, which provides an additional layer of protection for that species.

*Description of the Final Rule*

The BLM did not change this section of the proposed rule in the final rule. The following existing Special Areas are codified in the final rule:

- Colville River Special Area, which has important habitat for raptor and other bird species, including the Arctic peregrine falcon; important habitat for moose;



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important habitat for fish; important subsistence activities; important recreational activities; world-class paleontological deposits; and significant cultural resources;

- Kasegaluk Lagoon Special Area, which has important habitat for marine mammals; unique ecosystem for the Arctic Coast; opportunities for primitive recreational experiences; important habitat for migratory birds; and important subsistence activities;

- Peard Bay Special Area, which has haul-out areas and nearshore waters for marine mammals; and high-use staging and migration areas for shorebirds and waterbirds;

- Teshekpuk Lake Special Area, which has important habitat for a large number of migratory and other waterbirds; important caribou habitat; important shorebird habitat; subsistence hunting and fishing activities; Pik Dunes; and overwintering habitat for fish; and

- Utukok River Uplands Special Area, which has important habitat for the Western Arctic Caribou Herd; subsistence hunting activities; grizzly bear habitat; and important wilderness values.

Additional details on the significant resource values of each Special Area are found in the preamble to the proposed rule.

### **Section 2361.30 – Special Areas designation and amendment process.**

#### *Existing and Proposed Regulations*

The existing regulations provide general direction for recommending and considering additional Special Areas in § 2361.1(d). In the past, the BLM has typically designated Special Areas, and received Special Area recommendations from the public and stakeholders, through the IAP revision and amendment process. Enumerating

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procedures for designating and amending Special Areas in the regulations will provide clarity for stakeholders and ensure that the BLM fulfills its statutory obligation to assure maximum protection of Special Areas' significant resource values.

The proposed rule added a new section to provide standards and procedures for designating and amending Special Areas. Paragraph (a) required the BLM, at least once every 5 years, to evaluate lands in the Reserve 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. Paragraph (a)(2) allowed, but did not require, the BLM to conduct this evaluation through the IAP amendment process. Paragraph (a)(3) required the BLM to rely on the best available scientific information, including Indigenous Knowledge, and the best available information concerning subsistence uses and resources.

Paragraph (a)(4) required the BLM to provide meaningful opportunities for public participation in the evaluation process, including review and comment periods and, as appropriate, public meetings. Existing § 2361.1(d) concerns the submission, content, and public review of recommendations for additional Special Areas. Proposed paragraph (a)(4) retained the basic contours of that provision but provided additional specificity. The proposed language allowed the public to participate in the evaluation process, including by recommending new Special Areas, new significant resource values for existing Special Areas, and measures to assure maximum protection of Special Areas' significant resource values. The proposed rule required the BLM to evaluate and respond to such recommendations. Similar to existing § 2361.1, proposed paragraph (a)(4)

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specified that Special Area recommendations should describe the size and location of the lands, significant resource values, and measures necessary to assure maximum protection of those values.

Proposed paragraph (a)(5) allowed the authorized officer to implement interim measures to assure maximum protection of significant resource values in lands under consideration for designation as a Special Area. This provision was designed to assist the BLM in fulfilling its statutory duty to protect Special Areas.

Paragraph (a)(6) required that the BLM base decisions to designate Special Areas solely on whether significant resource values are present and prohibited the BLM from considering the existence of measures to protect or otherwise administer those values. For example, if lands not within a Special Area contained important caribou calving habitat and those lands were already subject to certain protections under the IAP, the BLM would not be permitted to consider those protections during the decision-making process for the proposed designation or update. The proposed rule explained that this change is needed to align the regulations with the NPRPA, which authorizes the Secretary to designate Special Areas based on the presence of “any significant subsistence, recreational, fish and wildlife, or historical or scenic value . . .” 42 U.S.C. 6504(a).

Proposed paragraph (a)(7) required the BLM, when designating a Special Area or recognizing the presence of additional significant resource values in an existing Special Area, to adopt measures to assure maximum protection of significant resource values. That provision mirrors the BLM’s statutory responsibility under the NPRPA. 42 U.S.C. 6504(a). Paragraph (a)(7) was designed to provide needed clarification by specifying that those measures would supersede any inconsistent provisions in the IAP.

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Proposed paragraph (a)(8) incorporated the requirement of existing § 2361.1(c) that the BLM publish in the *Federal Register* a legal description of any new Special Area. The proposed rule also required the BLM to publish in the *Federal Register* a summary of the significant resource values supporting the Special Area designation. Rather than requiring publication in local newspapers as the current regulations require, the proposed rule required the BLM to maintain maps of the Special Areas on its website. Those proposals were designed to provide more effective public notice.

Proposed § 2361.30(b) established a framework for removing lands from Special Area designations. Because Congress identified the Utukok River Uplands and Teshekpuk Lake Special Areas in the NPRPA and required them to be managed to protect surface resources, the BLM cannot remove lands from those Special Area designations absent statutory authorization. See Pub. L. 94–258, sec. 104(b), 90 Stat. 304 (1976). For other Special Areas, the proposed rule permitted the BLM to remove lands from a Special Area designation only when the significant resource values that supported the designation are no longer present (*e.g.*, if important wildlife habitat that supported the designation was no longer present). That provision is consistent with the BLM’s statutory duty to “assure the maximum protection of such surface values consistent with the requirements of [the NPRPA] for the exploration of the reserve.” *Id.*

Before removing lands from a Special Area designation, proposed paragraph (b) required the BLM to provide the public with the opportunity to review and comment on its proposed decision and consult with federally recognized Tribes and Alaska Native Claims Settlement Act corporations. Finally, the proposed rule required the BLM to

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document its consideration of those comments. Those requirements would assure public participation in the de-designation process.

*Public Comments on § 2361.30*

*Comment:* Commenters requested the BLM explain how new and additional procedural requirements would integrate with the environmental analysis that the BLM already conducts under NEPA for proposed Federal actions. Commenters recommended the BLM ensure the new procedures are not duplicative of NEPA obligations. Commenters expressed their concern that if they are separate and distinct from each other, it could increase the number of procedural steps, time, and risk for proposed activities in the Reserve.

Commenters recommended that the BLM continue to use the IAP for management of the Reserve including adding, revising, or removing Special Areas. Commenters suggested that requiring a separate 5-year cycle for Special Area review and evaluation may establish a different management framework applicable only to Special Areas which would be separate from the review and management of the entire Reserve through IAP/EIS processes.

Commenters expressed concern that mechanisms provided in the proposed rule that could be used to manage lands as Special Areas could preclude a rigorous public process pursuant to NEPA.

Commenters expressed concern that there is an over-reliance on public participation in the contraction and expansion processes outlined in the proposed rule, and suggested this may allow the Reserve to be managed by outside interest groups instead of prioritizing Native communities and local stakeholders.

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*BLM Response:* The new procedures outlined in § 2361.30 are intended to ensure that the BLM regularly reviews the surface values and environmental conditions in the Reserve specifically for the purpose of managing Special Areas with significant subsistence, recreational, fish and wildlife, historical, and scenic values to assure their maximum protection, as directed by the NPRPA. These procedures will support other NEPA processes by ensuring the BLM has up-to-date baseline conditions for surface values within the Reserve and will specifically support oil- and gas-related NEPA analyses by ensuring necessary measures are in place to protect important resources. It is anticipated that the BLM will often incorporate these procedures into IAP revisions and amendments; however, rapidly changing conditions in the Arctic require that the BLM has the ability to conduct this review and decision-making process outside of an IAP process when necessary.

The final rule has been updated from the proposed rule to ensure that robust public participation is a mandated component of all processes to designate, amend, and de-designate Special Areas. The BLM is required to include and consider input from all members of the public in making decisions governing the public lands. The BLM will continue to work closely with Native communities and local stakeholders when making decisions regarding management of the Reserve.

*Comment:* Commenters expressed concern that the BLM may not have included a regulatory consultation obligation for expanding Special Areas or increasing protective measures in Special Areas.

*BLM Response:* We agree with this comment that clarification on consultation would be helpful. We have reorganized § 2361.30 in the final rule, with a new paragraph

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(a) that outlines requirements applicable to all processes that would designate, de-designate, or otherwise change boundaries or management of Special Areas. In all processes, including those resulting in de-designation or removal of lands from a Special Area, the BLM is required to provide the public and interested stakeholders with meaningful opportunities to participate in the evaluation process, and consult with any federally recognized Tribes and Alaska Native Claims Settlement Act corporations that use the affected Special Area for subsistence purposes or have historic, cultural, or economic ties to the Special Area.

*Comment:* Commenters expressed the opinion that the requirements in § 2361.30(a)(1) are duplicative of FLPMA section 201 and should be eliminated from the final rule.

*BLM Response:* FLPMA section 201 requires that the BLM maintain on a continuing basis an inventory of all public lands and their resource and other values, and to keep the inventory current so as to reflect changes in conditions and to identify new and emerging resource and other values. Consistent with FLPMA and the NPRPA, proposed § 2361.30(a)(1) specifies that the BLM must maintain a current inventory of the significant subsistence, recreation, fish and wildlife, historical, and scenic values within the Reserve. This requirement is not duplicative of FLPMA but rather expounds on it by detailing the very specific public lands values that the NPRPA requires the BLM to evaluate and manage for protection in the Reserve.

*Comment:* Commenters recommended that the process for designating and removing Special Areas should be identical, balanced, reasonable and should include consultation and environmental analysis to support decision-making. Commenters

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recommended that Indigenous Knowledge be included in all Special Area designation decisions to fully capture the expertise about resources, such as permafrost, and to appropriately assess impacts to those resources.

*BLM Response:* The BLM revised the final rule to create a new paragraph (a) that outlines requirements applicable to all processes that would designate, de-designate, or otherwise change boundaries or management of Special Areas. These requirements include relying on the best available scientific information, including Indigenous Knowledge, as well as the best available information concerning subsistence uses and resources within the Reserve. This new paragraph will provide more consistency to all decision-making processes for Special Areas.

*Comment:* The BLM received multiple comments discussing the timing of the Special Areas review, including:

- Commenters believe that the timing of the Special Area review should be more frequent than the 5 years proposed to account for rapidly changing conditions;
- Commenters expressed support for the 5-year review interval;
- Commenters believe that the 5-year review is restrictive and unfounded in law;
- Commenters suggested including an additional mid-way report to help ensure agency accountability;
- Commenters requested the BLM remove the 5-year review requirement and allow for changes to be made when best available information demonstrates that such changes are necessary;



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- Commenters recommended a 10-year interval for Special Area evaluation and suggested that the BLM conduct evaluations in the context of preparing a holistic IAP.

Comments suggest that this would bring stability to managing the Reserve and help reduce the needed frequency for stakeholder engagement during large-scale planning efforts;

- Commenters expressed concern that the BLM lacks the staff and resources to engage in 5-year reviews;

- Commenters expressed concern that 5-year interval reviews would place a heavy burden on local communities and preclude or limit local input on the public process; and

- Commenters recommended that at every 5-year period, the BLM should consider removing and decreasing Special Areas, not only creating or expanding Special Areas.

*BLM Response:* The final rule changes the review period to 10 years, while specifying the BLM may conduct the review sooner if the authorized officer determines that changing conditions warrant. This requirement is limited to identifying additional or expanding existing Special Areas, additional special values, and additional protective measures in order to address the risks associated with changing circumstances on the ground, which may require additional protections. The BLM believes this change addresses concerns about agency and community capacity while ensuring regular reviews occur to maintain an inventory of resource conditions and make management changes as appropriate.

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The NPRPA requires the BLM to manage areas designated by the Secretary to have significant resource values in a manner that assures the maximum protection of those values consistent with exploration and production of the Reserve. Once those values have been identified and designated, they must continue to be managed for protection consistent with the Act. The BLM will only remove Special Area designations when the significant resource values are no longer present. Therefore, the rule does not require the BLM to regularly evaluate eliminating or reducing Special Area designations. The BLM will evaluate the presence or absence of significant resource values in existing Special Areas when updating the IAP, and through that process the public can provide information to BLM regarding the absence of significant resource values to inform de-designation decisions.

*Comment:* Commenters requested that the proposed rule clarify that the BLM is required not only to identify and adopt new maximum protection measures during the 5-year review, but also evaluate existing measures and strengthen them as needed.

*BLM Response:* The final rule specifies that as part of the review, the BLM will determine whether to require additional measures or strengthen existing measures to assure maximum protection of significant resource values within existing Special Areas.

*Comment:* Commenters recommend that during the review process, the BLM should conduct an assessment to determine if Significant Resource Values continue to exist and whether maximum protection is necessary.

*BLM Response:* The BLM declines this request. The public can submit information regarding the status of significant resource values during the review process, and that information would be taken into account in a future planning process and as

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applicable in decision-making as part of the NEPA process, i.e., if it is significant new information. The reason for the required regular review is to address risks associated with needing additional protections in light of changing circumstances on the ground.

*Comment:* Commenters recommended the final rule state that the BLM will designate Special Areas in a manner that maintains the ecological integrity necessary to sustain such values.

*BLM Response:* The BLM believes this is unnecessary because the final rule requires the BLM to rely on the best available scientific information when making management decisions for Special Areas and maintaining ecological integrity is consistent with adoption and implementation of maximum protective measures.

*Comment:* Commenters recommended the BLM enable adoption of permanent maximum protection measures in the rule.

*BLM Response:* Including permanent maximum protection measures is not within the regulatory framework of the rule, which establishes administrative processes by which the BLM will adopt and may change maximum protection measures for significant resource values in Special Areas. The overarching requirement to adopt measures for maximum protection of significant resource values in Special Values continues to apply.

*Comment:* Commenters requested more explanation of the standards that would be used to determine a resource is significant.

*BLM Response:* The BLM declines this suggestion. The definitions in the rule and the Special Areas identified in the NPRPA and IAP provide sufficient clarity for the use of this term in the rule. Ultimately, determinations about the significance of subsistence, recreational, fish and wildlife, historical, and scenic values will be at the discretion of the

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BLM. As stated in the definition of Significant Resource Value in the final rule, it is a surface value “that the Bureau identifies as significant and supports the designation of a Special Area.” This evaluation will necessarily be determined in the context of site-specific resources, with input from Tribes, scientific experts, other government agencies, and the public. Therefore, a more specific definition could be overly prescriptive and would not necessarily add more clarity.

*Comment:* Commenters asked why Indigenous Knowledge is only included in § 2361.30 and not throughout the rest of the proposed rule.

*BLM Response:* Best available scientific information, including Indigenous Knowledge, is discussed in the context of evaluating resources for designation, de-designation, and management of Special Areas. The BLM expects Indigenous Knowledge would also be part of consultations, which are required throughout all aspects of the rule.

*Comment:* The BLM received comments expressing the opinion that the NPRPA’s maximum protection clause expressly applies only to Special Areas designated by the Secretary of the Interior and should not apply to areas under consideration, therefore proposed § 2361.30(a)(5) regarding interim measures exceeds the BLM’s statutory authority. Other commenters expressed the opinion that § 2361.30(a)(5) conflicts with FLPMA section 201. Commenters also generally recommended that § 2361.30(a)(5) be eliminated because areas shouldn’t be managed as Special Areas until they are designated as such.

Commenters requested more clarity around the process for implementing interim measures in lands under consideration for designation as a Special Area.

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*BLM Response:* The NPRPA provides the BLM with the direction and authority to provide for such conditions, restrictions, and prohibitions as deemed necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the Reserve. These conditions, restrictions, and prohibitions may include interim measures to protect surface resources within Special Areas under consideration for designation.

The option for the authorized officer to apply interim measures is not inconsistent with the requirement of 42 U.S.C. 6504 to ensure maximum protection of significant resource values to the extent consistent with the requirements of the NPRPA. Rather, this discretion supports the BLM's ability to fulfill this obligation as part of a formal designation of a new Special Area while ensuring any interim management is consistent with both the requirements of the NPRPA and the specific provisions of the current IAP.

The BLM revised the final rule to provide more clarity and certainty around the interim measures provision. The final rule clarifies that interim measures may be implemented at any time after the BLM receives an internal or external recommendation to designate or modify a Special Area. The final rule also clarifies that any interim measures must be consistent with the governing management prescriptions in the IAP, and the BLM is required to provide public notice that interim measures are in place and reassess such measures to determine if they are still needed if they remain in place for more than 5 years.

*Comment:* Commenters expressed the opinion that the requirement in § 2361.30(a)(6) to designate Special Areas solely on the basis of the presence of significant resource values is an improper interpretation of 42 U.S.C. 6504. Commenters also

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recommended the BLM should consider effectiveness of mitigation measures and other management when determining whether to designate Special Areas and suggested that if the values can be managed with existing measures, then a Special Area may not be required.

Other commenters supported the recognition that Special Area designations and expansions be based solely on the presence of significant resource values without regard to the administration of measures to protect the values.

*BLM Response:* The NPRPA provides for the Secretary to designate Special Areas that contain significant subsistence, recreational, fish and wildlife, or historical or scenic values, and requires the Secretary to assure the maximum protection of those values when authorizing oil and gas activities, to the extent consistent with the requirements of the Act. The NPRPA does not place contingencies on either of those directives, such as considering other management decisions in place that may affect the risk to the resources or the likely effectiveness of mitigation measures to address the impacts of oil and gas activities. Furthermore, management decisions may change over time, and so relying on current overlapping management is not adequate to ensure appropriate protection for significant resource values. Therefore, the BLM believes the most appropriate way to fulfill the Congressional directives set forth in the NPRPA is to designate Special Areas where the identified significant resource values exist regardless of other management that may be in place, and to implement maximum protection measures that specifically target those resource values.

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*Comment:* Commenters recommended that the rule should require that Special Areas and areas under consideration for Special Area designation be closed to oil and gas leasing.

*BLM Response:* Management decisions for Special Areas, including oil and gas allocations, are made through the IAP process and/or the separate Special Area designation process described in the rule. These regulations implement the NPRPA, which requires the BLM to provide maximum protection for significant surface values in Special Areas in the context of conducting an oil and gas leasing and production program in the Reserve. The rule incorporates this directive through a presumption that leasing and production in Special Areas will not be consistent with this standard, while also ensuring consistency with the requirements of the NPRPA and valid existing rights.

*Comment:* Commenters expressed the opinion that the BLM is not prohibited from removing lands from Teshekpuk Lake and Utukok River Uplands because the NPRPA does not specify a geographic boundary for these areas nor does it make these current designations permanent.

*BLM Response:* Section 104(b) of the NPRPA (42 U.S.C. 6504) identifies the Utukok River and Teshekpuk Lake areas as special areas containing significant subsistence, recreational, fish and wildlife, or historical or scenic values that are subject to the “maximum protection” standard. Congress specifically identified these two Special Areas by naming them in the NPRPA. The BLM does not believe it has the authority to de-designate some or all of the Special Area designations for Teshekpuk Lake and Utukok River Uplands that were explicitly included in the NPRPA, because Congress has expressly directed that the BLM apply the maximum protection standard in those areas.

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*Comment:* Commenters recommended that the BLM not allow for land to be removed from Special Areas where wildlife habitat values are no longer present because the land is no longer inhabitable by the species or because species populations are declining. Commenters suggested that the BLM should not allow for further development and degradation of the land in those circumstances.

*BLM Response:* This issue is best addressed in the Special Area amendment process, because it is dependent on site-specific circumstances. The regulations are designed to implement the NPRPA, which directs the BLM to designate and manage Special Areas to provide maximum protection for significant resource values. While the rule provides that an authorized officer may only remove areas from Special Area designation if the significant resources values are no longer present, any such decision would be conducted through site-specific processes, with opportunity for public input and consultation regarding the appropriate decisions on types of habitats and desired future conditions.

*Comment:* Commenters requested more clarity regarding the process by which a resource value will be determined to be sufficiently absent to warrant de-designation of a Special Area.

Commenters recommended that the rule should require the BLM to use the best scientific data available when determining whether the significant resource values that support the designation are no longer present.

*BLM Response:* The BLM revised the final rule to create a new paragraph (a) that outlines requirements applicable to all processes that will designate, de-designate, or otherwise change boundaries or management of Special Areas. In all processes, including



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those resulting in de-designation or removal of lands from a Special Area, the BLM is required to rely on the best available scientific information, including Indigenous Knowledge, as well as the best available information concerning subsistence uses and resources within the Reserve. The BLM must also provide the public and interested stakeholders with notice of, and meaningful opportunities to participate in, the evaluation process, and consult with any federally recognized Tribes and Alaska Native Claims Settlement Act corporations that use the affected Special Area for subsistence purposes or have historic, cultural, or economic ties to the Special Area. These requirements will ensure opportunities for public and Tribal input and participation in any evaluation of whether all of the significant resource values that support a Special Area designation are no longer present.

*Comment:* Commenters suggested establishing an overlay of Indigenous Ancestral Homeland Preservation Special Areas within the NPR-A to protect significant subsistence values.

*BLM Response:* The BLM would appreciate this information being provided as part of decisions on managing surface values in the Reserve. Specifying this overlay is beyond the current scope of the regulation.

*Comment:* Commenters expressed concerns that the proposed rule does not quantify the economic impacts of the process of designating new Special Areas nor the economic impacts of limitations on exploration and development within Special Areas and recommended that an economic impact analysis should accompany each decision.

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*BLM Response:* The NPRPA requires the maximum protection of significant resources values in Special Areas subject to the requirements of the Act. Economic impacts are part of NEPA analysis and will be disclosed as part of any such analysis.

*Comment:* Commenters requested clarity that Special Area designation will not interfere with the ANILCA section 1111(a) temporary access provisions.

*BLM Response:* Section 1111(a) of ANILCA requires the Secretary to authorize and permit temporary access by the State or a private landowner to or across certain lands in Alaska that have been designated to specific uses, including the Reserve, but only if such access will not result in permanent harm to the resources of such unit, area, Reserve or lands. This rule is consistent with that provision of ANILCA and would not alter the BLM's implementation.

*Description of the Final Rule*

Section 2361.30 is reorganized in the final rule, with a new paragraph (a) that outlines requirements applicable to all processes that will designate, de-designate, or otherwise change boundaries or management of Special Areas. In all processes, including those resulting in de-designation or removal of lands from a Special Area, the BLM is required to rely on the best available scientific information, including Indigenous Knowledge, as well as the best available information concerning subsistence uses and resources within the Reserve. The BLM must provide the public and interested stakeholders with meaningful opportunities to participate in the evaluation process and consult with any federally recognized Tribes and Alaska Native Claims Settlement Act corporations that use the affected Special Area for subsistence purposes or have historic, cultural, or economic ties to the Special Area. The BLM must also base decisions solely

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on the presence or absence of significant resource values and not the existence of measures that have been or may be adopted to protect or otherwise administer those values.

Section 2361.30(b) requires the BLM to evaluate all public lands within the Reserve for the presence of significant subsistence, recreational, fish and wildlife, historical, or scenic values every 10 years, or sooner if the authorized officer determines that changing conditions warrant. As part of this evaluation, the BLM will consider designating new Special Areas, expanding existing Special Areas, recognizing the presence of additional significant resource values in existing Special Areas, and requiring additional measures or strengthening existing measures to assure maximum protection of significant resource values within existing Special Areas. The evaluation may occur through an IAP amendment process but can occur separately.

The BLM is required to consider and respond to recommendations from the public and interested stakeholders in the evaluation process regarding lands that should be considered for designation as a Special Area, significant resource values that should be recognized in Special Areas, and measures that should be required to assure maximum protection of significant resource values within Special Areas. The rule lists information that should be submitted by the public to ensure the BLM can adequately review recommendations, including the size and location of the recommended lands, significant resource values that are present within or supported by the recommended lands, and measures that may be necessary to assure maximum protection of those values.

Section 2361.30(b)(4) provides that the BLM may implement interim measures to protect significant resource values while the agency is considering Special Area

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designations and changes to management. The BLM could implement interim measures at any point after receiving a recommendation for a new or modified Special Area. These measures must be consistent with the governing management prescriptions in the IAP. The BLM must provide public notice that interim measures are in place and such measures will be reassessed to determine if they are still needed if they remain in place for more than 5 years.

When the BLM decides to designate lands as a Special Area or recognizes the presence of additional significant resource values in a Special Area, the BLM must adopt measures to assure maximum protection of the significant resource values. These measures are not constrained by the provisions of the current IAP. Once adopted, these measures supersede inconsistent provisions of the IAP then in effect for the Reserve and will be incorporated into the IAP during the next revision or amendment. When the BLM designates lands as a Special Area, the agency must publish a legal description of those lands in the *Federal Register*, along with a concise summary of the significant resource values that support the designation. The BLM will maintain up-to-date maps of all designated Special Areas on its website and make maps available for public inspection at the Arctic District Office.

Section 2361.30(c) provides procedures for removing lands from or de-designating a Special Area. Lands may only be removed from Special Area designation when all of the significant resource values that support the designation are no longer present. In making such a determination, the BLM must prepare a summary of its proposed determination, including the underlying factual findings, and provide a public comment opportunity on the proposed determination. The BLM must also comply with

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all of the requirements in § 2361.30(a). The BLM's final determination must document how the views and information provided by the public, federally recognized Tribes, Alaska Native Claims Settlement Act corporations, federally qualified subsistence users, and other interested stakeholders have been considered. The BLM may not remove lands from the Teshekpuk Lake and Utukok River Uplands Special Areas unless directed to do so by statute.

### **Section 2361.40 – Management of oil and gas activities in Special Areas.**

#### *Existing and Proposed Regulations*

The current regulations paraphrase the maximum protection requirement of the NPRPA and provide examples of measures that the BLM could potentially take to assure maximum protection. See § 2361.1(c). Proposed new § 2361.40 enhanced the specificity of the current regulations on the mechanisms for assuring maximum protection of significant resource values in Special Areas by establishing 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. Of note, this section affirmatively established that assuring maximum protection of significant resource values is the management priority for Special Areas. Under proposed paragraph (a), the BLM needed to comply with this standard and adopt maximum protection measures for each significant resource value associated with a Special Area. Proposed paragraph (b) required the BLM take such steps to avoid the adverse effects of proposed oil and gas activities on the significant resource values of Special Areas, including by conditioning, delaying action on, or denying proposals for activities.

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Proposed paragraph (c) of this section required oil and gas leasing and new infrastructure to conform to the land use allocations and restrictions identified on maps 2 and 4 of the 2022 IAP ROD, unless the BLM makes revisions in accordance with § 2361.30 of these regulations. Map 2 shows the areas of the Reserve that are open and closed to oil and gas leasing. The map reflects that approximately 11.8 million acres are open to leasing subject to the terms and conditions detailed in the IAP, while approximately 11 million acres are closed, including most of the Teshekpuk Lake and Utukok River Uplands Special Areas. The map also shows areas that are open to leasing but subject to no surface occupancy, and areas that are outside the BLM's subsurface authority.

Map 4 shows the areas of the Reserve that are available and unavailable for new infrastructure. The map shows that new infrastructure is prohibited on approximately 8.3 million acres of the Reserve, limited to “essential” infrastructure on approximately 3.3 million acres, and permitted on approximately 10.8 million acres.

The proposed purpose of requiring leasing and infrastructure in Special Areas to conform to IAP maps 2 and 4 was to codify the existing protections and restrictions from the 2022 IAP ROD. The BLM developed that land use plan through a lengthy public planning process involving all stakeholders, which stretches back to the development of the 2013 IAP ROD. The 2022 IAP ROD, which is based in large part on the framework set forth in the 2013 IAP ROD, incorporates aspects of the 2020 IAP ROD, and reflects now-settled expectations about the use of the Reserve. It also reflects what the BLM views as the floor of protections for the Reserve that grew out of the public planning process. By incorporating the two maps into the rule, the BLM intended to incorporate

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the land use allocations, restrictions, and stipulations from the 2022 IAP ROD into the rule without reprinting lengthy text.

Proposed paragraph (c) also established a presumption against leasing and new infrastructure on lands in Special Areas that are allocated as available for those activities. That presumption could have been overcome if specific information is available to the BLM that clearly demonstrates that those activities can be conducted with no or minimal adverse effects on the significant resource values of the Special Area. The intensive process that led to the IAP resulted in a comprehensive plan for protection of the Special Areas in the Reserve. To fulfill the BLM's statutory duty to assure maximum protection for those areas' significant resource values, the BLM believed that plan should be treated as a regulatory floor, and additional activities should only be allowed when maximum protection is assured.

The proposed definition of “infrastructure” in § 2361.5(g) excluded “exploratory wells that are drilled in a single season; infrastructure in support of science and public safety; and construction, renovation, or replacement of facilities on existing gravel pads at previously disturbed sites where the facilities will promote safety and environmental protection.” These exceptions were specifically analyzed and adopted in the 2022 IAP ROD. Proposed § 2361.40(d) established three additional exceptions to the oil and gas leasing and new infrastructure prohibitions in paragraph (c). The first exception permitted leasing and infrastructure solely to address drainage of Federal oil and gas resources. Drainage occurs “when a well that is drilled or is in production adjacent to Federal or Indian leases or unleased lands is potentially draining Federal or Indian oil and gas resources.” BLM MS–3160, Drainage Protection Manual 1-1 (2015), *available at*

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*[https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanual3160.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual3160.pdf).*

The proposed rule prohibited surface disturbing activities on any lease tract issued for this purpose. The exception for drainage of Federal oil and gas resources was included because the regulations expressly provide for leasing of tracts that are subject to drainage in order to prevent loss of United States oil and gas resources and potential royalties. See 43 CFR 3130.3. No-surface-occupancy leases are an option the BLM may elect to use when the surface management agency has determined that surface oil and gas facilities and operations would pose an unacceptable risk to the surface resources. The second exception permitted the construction of new infrastructure, including roads, transmission lines, and pipelines, that would primarily benefit communities in and around the Reserve or would support subsistence activities. The BLM proposed to include that exception because communities in and around the Reserve must have some infrastructure to survive and thrive. The third exception allowed the BLM to approve new infrastructure if essential to support exploration or development of a valid existing lease and no practicable alternatives exist that would have less adverse impact on significant resource values of the Special Area. That exception was necessary to accommodate the rights of current leaseholders.

Proposed paragraph (e) required the BLM to document and consider any uncertainty regarding potential adverse effects on Special Areas and ensure that its actions account for such uncertainty. That provision was drafted to help the BLM fulfill its statutory mandate to assure maximum protection for Special Areas' significant resource values.



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Proposed paragraph (f) required the BLM to prepare a Statement of Adverse Effect whenever it cannot avoid adverse effects on a Special Area. In each statement, the BLM was required to describe the significant resource values that may be affected; the nature, scope, and duration of the effects; measures the BLM evaluated to avoid those effects; a justification for not requiring those measures; and measures it would require to minimize and mitigate the adverse effects on significant resource values. Measures the BLM could require under this provision include compensatory mitigation. Such measures would be developed, evaluated, and, as necessary, adopted in project-specific analyses. Proposed paragraphs (g) and (h) required the BLM to provide the public with an opportunity to review and comment on any Statement of Adverse Effect and consult with federally recognized Tribes and Alaska Native Claims Settlement Act corporations that have ties to the area.

Finally, proposed paragraph (i) required the BLM to include in each oil- and gas-related decision or authorization “terms and conditions that provide the Bureau with sufficient authority to fully implement the requirements of this section.” That provision ensured that the BLM incorporates into decision documents the necessary language to implement any final rule.

*Public Comments on § 2361.40*

*Comment:* The BLM received comments generally supporting § 2361.40, particularly for reasons of reducing climate change and protecting areas that are important for wildlife habitat and subsistence use.

*BLM Response:* We agree the rule will help the BLM address these important issues.

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*Comment:* Commenters stated that maximum protection in the proposed rule is being used as a management standard and a baseline to disqualify any resource development activity from proceeding contrary to Congressional intent and the NPRPA.

*BLM Response:* The NPRPA specifically requires that oil and gas activities within Special Areas be “conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act.” The regulation is implementing this direction from Congress to balance resource development with resource protection, by requiring the application of maximum protection measures to significant resource values in Special Areas when conducting oil and gas activities. The regulations will not prohibit oil and gas activities but rather ensure they proceed according to the intent of the NPRPA.

*Comment:* Commenters requested the rule clarify the process for identifying and adopting maximum protection measures for each significant resource value that is present in a Special Area. Commenters also recommended that the BLM be required to evaluate existing measures in addition to identifying new ones, and that this process rely on best available scientific information including Indigenous Knowledge.

Commenters requested the BLM discuss significant resource values and include clear definitions of the measures necessary to ensure maximum protection for each. Comments contained suggestions that the denial or reduction of proposed drilling sites, prohibition of roads, restrictions on sand and gravel extraction and water withdrawals, suspension of activities, and specified rates of development and production should be specifically listed as potential maximum protection measures.

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*BLM Response:* The final rule clarifies that the BLM will identify and adopt maximum protection measures for each significant resource value that is present in a Special Area when Special Areas are designated. The BLM will also update maximum protection measures as appropriate thereafter, including in the IAP, lease terms, and permits to conduct oil and gas activities. The final rule also includes maximum protection measures that are identified in the existing regulation but had been eliminated in the proposed rule, as well as some additional categories of measures that may be included, such as limiting infrastructure and use of roads and restricting use of sand, gravel, and water. The BLM is not analyzing existing measures or adopting new ones for significant resource values in this rulemaking process. The rule provides informative categories of measures that could be applied, subject to existing management prescriptions for each Special Area and the terms of existing leases, and sets forth the process by which measures will be adopted moving forward.

*Comment:* Commenters expressed concern that the presumption against leasing and new infrastructure on lands within Special Areas that are allocated as open for those activities would affect valid existing rights and could constitute a breach of contract or regulatory taking. Commenters recommended that the rule be revised to expressly state that it does not apply to any existing leases or future activities carried out pursuant to the terms of those leases.

Commenters suggested that the presumption against new leasing and new infrastructure on lands within Special Areas that are allocated as open to those activities is contrary to the NPRPA and ANILCA section 1326.

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*BLM Response:* The provisions of this section are consistent with the BLM's obligations to manage Special Areas to provide maximum protection for significant resource values, subject to the other directives in the NPRPA regarding conducting exploration, leasing, and development. The rule includes specific protections for valid existing rights. At the same time, we note that, while the terms of an existing lease and approved development project or permit would not be affected by the rule, a valid lease does not entitle the leaseholder the unfettered right to drill wherever it chooses or categorically preclude the BLM from considering alternative development scenarios within leased areas, nor does it give the leaseholder the right to produce all economically recoverable oil and gas on the lease. Future development of an existing lease is, by its terms, subject to additional terms and conditions. For example, the standard lease for activities in the Reserve states, "An oil and gas lease does not in itself authorize any on-the-ground activity" and notes that more restrictive stipulations may be added. Similarly, a standard lease stipulation entitled "Conservation of Surface Values for NPR-A Planning Area Land" provides: "Operational procedures designed to protect resource values will be developed during Surface Use Plan preparation, and additional protective measures may be required beyond the general and special stipulations identified in the above-referenced documents."

*Comment:* Commenters recommended § 2361.40(c) be revised to eliminate the phrase "or minimal" so that the presumption would only be overcome if it can be demonstrated that there will be no adverse effects on significant resource values.

*BLM Response:* The BLM included the term "minimal" to address situations where it is not possible to eliminate all adverse effects, and in recognition of the

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NPRPA's direction to apply the maximum protection standard consistent with exploration and production of the Reserve. However, the remainder of the process set out in this updated section will ensure thorough consideration, opportunity for review and comments, and documentation of how adverse effects have been avoided.

*Comment:* Commenters recommended the BLM provide a path for an applicant to overcome the presumption against new leasing and new infrastructure on lands within Special Areas that are allocated as open for those activities, such as requiring the applicant to explain why it cannot avoid locating new infrastructure in the Special Area and to provide maximum protection for resource values and subsistence users.

*BLM Response:* The final rule provides clarity around how the presumption against new leasing and new infrastructure on lands within Special Areas that are allocated as open for those activities would be overcome through the environmental review process. The rule provides that as part of the environmental analysis, the BLM may document justification for overcoming the presumption in § 2361.40(f), such as if the proposed infrastructure is necessary to comport with the terms of a valid existing lease, or if it will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve, and the proposal has been conditioned to avoid, minimize, or otherwise mitigate adverse effects.

*Comment:* Commenters recommended that § 2361.40(d)(1) be revised to clarify that seismic exploration is considered a "surface-disturbing oil and gas activit[y]" and that restrictions on new infrastructure would not be waived under this provision.

*BLM Response:* This rule maintains the current approach in the IAP that does not include geophysical exploration as surface occupancy to maintain consistency and

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because any changes to that approach should be made through the IAP process with associated NEPA analysis. This rule does not address waiver of limitations on infrastructure. However, as discussed above, waivers, exceptions, and modifications are subject to the conditions set out in the IAP.

*Comment:* Commenters recommended that the community infrastructure exception be clarified that it only applies if it has community benefit and is owned, operated, or managed by the appropriate community or Native entity, the North Slope Borough, of the State of Alaska.

*BLM Response:* The definition of the term “infrastructure” in the final rule has been revised to state that “infrastructure” does not include infrastructure that will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve.

*Comment:* Commenters urged the BLM to provide greater limits on “essential infrastructure” such as allowing permanent infrastructure if it can occur with no adverse impacts on significant resource values, rather than if no practicable alternatives exist that would have less adverse impact.

The BLM received comments stating that limiting infrastructure to that which is essential and for which no practicable alternatives exist would establish an implied presumption that no infrastructure can be installed in Special Areas, which violates the NPRPA and the terms of existing leases.

*BLM Response:* The BLM is not revising the approach to addressing infrastructure, which is consistent with the provisions of the IAP and the directive in the

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NPRPA to provide for maximum protection of significant resource values in Special Areas subject to the other purposes of the Act.

*Comment:* Commenters recommended that the final rule adopt a requirement based on precautionary principles in instances of significant uncertainty, which may mean requiring additional information from applicants or lessees or delaying action until relevant effects are better known.

*BLM Response:* The BLM believes the language in the rule is adequate for the agency to address uncertainty. The final rule requires the BLM to document and consider uncertainty concerning potential adverse effects on significant resource values of Special Areas and ensure that uncertainty is accounted for when taking actions to avoid, minimize, or mitigate adverse effects. The BLM has the authority under the regulations to delay action on activities where necessary to avoid adverse effects on significant resource values.

*Comment:* The BLM received comments about the requirement to mitigate residual effects that cannot be avoided or minimized, including:

- Commenters recommended the rule include provisions that authorize the BLM to review and modify mitigation measures as needed after oil and gas operations have commenced.
- Commenters suggested that the BLM lacks statutory authority to require compensatory mitigation, and none is provided in the NPRPA, FLPMA, or ANILCA.
- Commenters expressed concern that despite BLM mitigation and environmental review efforts, impacts to Nuiqsut from oil and gas activities have gotten worse.

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Commenters state that the current mitigation process requires stakeholders to advocate for mitigation measures, which places an unfair burden on the stakeholder, including Native villages. Commenters recommend the BLM include a regular process for identifying new mitigation measures and updating existing mitigation measures similar to the process for evaluating Special Areas in the proposed rule. Commenters also recommended that the rule include a requirement for establishing baseline data and monitoring of impacts.

*BLM Response:* The BLM has authority to require appropriate mitigation under a variety of authorities, including the NPRPA and FLPMA. Mitigation measures can continue to be regularly identified and updated through IAP and/or Special Area amendment processes and are also identified at the leasing and permitting stages of development. Similarly, baseline data and monitoring plans are established in NEPA analyses conducted to support amendments or revisions to the IAP and approval of other activities in the Reserve.

*Comment:* The BLM received comments regarding reclamation and bonding for oil and gas activities, including: the rule should include assessment methods to gauge the financial stability of oil and gas companies and bankruptcy risk before companies are allowed to purchase leases; the rule should require up-front payments to cover costs of damages due to climate change, loss of habitat, spills or accidents, and reclaiming development sites; and the rule should require all development activities to have comprehensive plans for reclamation and remediation.



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Commenters requested that the proposed rule revise leasing program operations regarding water withdrawal to address the concern that lake water withdrawals for ice roads are leading to low stream water levels.

*BLM Response:* The BLM's oil and gas leasing program for the Reserve is governed by regulations at 43 CFR part 3130, which are not being revised in this rule, and additional aspects of operations are addressed in the current IAP. Impacts from water withdrawals for ice roads would be addressed as part of the analysis to permit construction of ice roads.

*Comment:* Commenters recommended that traditional transportation corridors be considered in the rule and requested clarity on how the proposed rule might affect local community winter access to trail rights-of-way.

*BLM Response:* The rule would not affect traditional transportation corridors or local community access. The BLM has clarified the definition of infrastructure to limit it to oil and gas activities and to include an exception for community access and projects. In addition, the rule requires consideration of impacts on community access in the development of management measures to protect surface resources.

*Comment:* Commenters proposed adding a legal mandate that allows the BLM to refrain from authorizing new leases in the Reserve if the U.S. is projected to meet its energy needs as the NPRPA's mandate to meet the energy needs of the nation is being fulfilled by other sources.

*BLM Response:* This comment is not within the regulatory framework of the rule, which is focused on protecting surface resources in the Reserve as the BLM carries out

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its oil and gas program. This regulation is not revising 43 CFR part 3130, which are the regulations governing the oil and gas program for the Reserve.

*Comment:* The BLM received comments regarding the proposal to include two of the 2022 IAP maps in the rule and require that oil and gas leasing and authorization of new infrastructure in Special Areas will conform to those maps. Comments and responses follow.

- Commenters expressed concern that the maps do not provide sufficient information to the public to identify and protect significant resource values, and maps can be misinterpreted. The BLM updated the maps for the final rule by adding the boundaries of the existing Special Areas to the maps from the 2022 IAP that show the current allocations for oil and gas leasing and infrastructure. We believe this addresses concerns that the maps contained in the IAP do not provide sufficient information to identify significant resource values. The maps included with this final rule depict the exact data from the IAP ROD, and do not change any designations or allocations from the 2022 IAP. The BLM believes including maps with the final rule will assist with public understanding of and agency implementation of the regulations, and we do not believe that benefit is outweighed by potential misinterpretation of maps.

- Commenters requested clarity on whether reliance on the maps means the ability to waive, except, and modify the stipulations otherwise applicable under the IAP would still apply. Inclusion of the maps in the final rule does not change the criteria for waivers, exceptions, and modifications adopted in the IAP.

- Commenters noted that Maps 2 and 4 do not include the boundaries of the Special Areas themselves and therefore do not provide sufficient information.

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Commenters recommended that the BLM produce a map that shows the Special Areas along with the land allocations and restrictions. We agree with this comment. The BLM updated the maps for the final rule by adding the boundaries of the existing Special Areas to the maps from the 2022 IAP that show the current allocations for oil and gas leasing and infrastructure. The maps depict the exact data from the IAP ROD, and do not change any designations or allocations from the 2022 IAP.

- Commenters requested clarity on whether the land use allocations and restrictions in the IAP maps are being considered as maximum protection measures. The allocations and restrictions in the 2022 IAP maps may be considered maximum protection measures, but they do not necessarily represent the full extent of maximum protection measures that may ultimately be required as a result of this rule. The final rule, in § 2361.30(b)(5), requires the BLM to adopt measures to assure maximum protection of significant resource values when designating lands as Special Areas or recognizing the presence of additional significant resource values in existing Special Areas. Once adopted, these measures become part of and supersede inconsistent provisions of the IAP then in effect for the Reserve. The final rule, in § 2361.40(b), also directs the BLM to update maximum protection measures as appropriate thereafter, including in the IAP, lease terms, and other approvals to conduct oil and gas activities.

- Commenters requested clarification on why K-4 areas, such as lagoons, inlets, and associated islands, that are otherwise unavailable for new infrastructure, allow essential pipeline crossings. The IAP decision to allow for essential pipeline crossings in these areas was to ensure that the prohibition on new infrastructure did not completely

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block development on neighboring Outer Continental Shelf or State Lands. The BLM is not reevaluating IAP decisions as part of this rulemaking process.

- Commenters stated that the Colville River Special Area is much larger than the land use allocations and restricted areas depicted on the maps, and it is not apparent from the proposed rule what maximum protection measures are needed in addition to those depicted on Maps 2 and 4 to adequately protect the entire Special Area. Commenters are correct that there are additional protection measures for the Colville River Special Area which are in the Colville River Special Area management plan, which is a separate document from the IAP. The BLM is not adopting or changing management of Special Areas through this rulemaking process. Additional maximum protection measures that may be needed for the Colville River Special Area would be considered and adopted through a Special Area planning process, and/or through a project-level NEPA process for proposed development in the Colville River Special Area.

- Commenters requested that the BLM update the maps to show the level of activities and infrastructure currently in place in the NPR–A. Commenters also suggested that the maps be updated to explain why essential pipeline corridors, which were suggested in the 2020 IAP, are not available. Commenters further recommended the maps be updated to state that the BLM welcomes public participation to designate or expand Special Areas. The BLM declined to change the maps by showing existing levels of activities and infrastructure, discuss essential pipeline corridors, or state that public participation is welcome in Special Area designation decisions because those data are not germane to decisions made in the rule. The BLM’s intention with providing maps is to display and help the public understand decisions codified in the rule, which include

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existing Special Area designations and leasing and infrastructure allocations adopted in the 2022 IAP. The rule does not make decisions regarding existing infrastructure, essential pipeline corridors, or future Special Area designation decisions.

*Description of the Final Rule*

Section 2361.40 affirms that the management priority within Special Areas is to assure maximum protection of significant resource values, consistent with the requirements of the NPRPA for exploration and production of the Reserve. The section sets forth procedures for fulfilling this duty at each stage in the decision-making process for oil and gas activities in the Reserve.

Section 2361.40(a) requires that the BLM must, to the extent consistent with the NPRPA, take such steps as are necessary to avoid the adverse effects of proposed oil and gas activities on significant resource values in Special Areas. Such steps may include conditioning, delaying action on, or denying proposals for activities.

Section 2361.40(b) directs the BLM to identify and adopt maximum protection measures for each significant resource value that is present in a Special Area when Special Areas are designated, and to update maximum protection measures as appropriate thereafter, including in the IAP, lease terms, and permits to conduct oil and gas activities. Section 2361.40(c) specifies examples of maximum protection measures, including rescheduling activities and use of alternative routes; limiting new infrastructure and roads; limiting extraction of sand and gravel or withdrawal of water; limiting types of vehicles and loadings; limiting types of aircraft in combination with minimum flight altitudes and distances from identified places; and applying special fuel handling procedures.

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Section 2361.40(c) provides that oil and gas leasing and authorization of new infrastructure in Special Areas must conform to the land use allocations and restrictions identified on the map published with the final rule, until and unless those allocations are revised by a Special Area designation, amendment, or de-designation process as set forth in § 2361.30. The map shows Special Area designations and oil and gas leasing and new infrastructure allocations adopted in the 2022 IAP. The BLM produced one consolidated map for the final rule that includes multiple data included in the 2022 IAP maps but did not change any of the designations or allocations depicted on the 2022 IAP maps.

The map reflects that approximately 11.8 million acres of the Reserve are open to leasing subject to the terms and conditions detailed in the IAP, while approximately 11 million acres are closed, including most of the Teshekpuk Lake and Utukok River Uplands Special Areas. The map shows that new infrastructure is prohibited on approximately 8.3 million acres of the Reserve, limited to “essential” infrastructure on approximately 3.3 million acres, and permitted on approximately 10.8 million acres.

The restrictions identified on the map that would apply to new oil and gas leases and infrastructure are detailed in the 2022 IAP ROD and summarized in the following table.

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Stipulation	Objective
K-1—River Setbacks	Minimize the disruption of natural flow patterns and changes to water quality; the loss of spawning, rearing, and over-wintering habitat for fish; and impacts to subsistence cabins and campsites, among other purposes.
K-2—Deep Water Lakes	Minimize the disruption of natural flow patterns and changes to water quality; the loss of spawning, rearing or over wintering habitat for fish; and the disruption of subsistence activities, among other purposes.
K-4—Kogru River, Dease Inlet, Admiralty Bay, Elson Lagoon, Peard Bay, Wainwright Inlet/Kuk River, and Kasegaluk Lagoon, and their associated islands	Protect fish and wildlife habitat; preserve air and water quality; and minimize impacts to subsistence activities and historic travel routes on the major coastal waterbodies.

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Stipulation	Objective
K-5—Coastal Setback Areas	Protect coastal waters and their value as fish and wildlife habitat; minimize hindrance or alteration of caribou movement within caribou coastal insect-relief areas; and prevent impacts to subsistence resources and activities, among other purposes.
K-6—Goose Molting Area	Minimize disturbance to molting geese and loss of goose molting habitat in and around lakes in the Goose Molting Area.
K-8—Brant Survey Area	Minimize the loss or alteration of habitat for, or disturbance of, nesting and brood rearing brant in the Brant Survey Area.
K-9— Teshekpuk Lake Caribou Habitat Area	Minimize disturbance and hindrance of caribou, or alteration of caribou movements through portions the Teshekpuk Lake Caribou Habitat Area that are essential for all-season use, including calving and rearing, insect-relief, and migration.
K-10— Teshekpuk Lake Caribou Movement Corridor	Minimize disturbance and hindrance of caribou, or alteration of caribou movements (that are essential for all-season use, including calving and rearing, insect-relief, and migration) in the area extending from the eastern shore of Teshekpuk Lake eastward to the Kogru River.



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Stipulation	Objective
K-11—Southern Caribou Calving Area	Minimize disturbance and hindrance of caribou, or alteration of caribou movements (that are essential for all-season use, including calving and post calving, and insect-relief) in the area south/southeast of Teshekpuk Lake.
K-12—Colville River Special Area	Prevent or minimize loss of raptor foraging habitat.
K-13—Pik Dunes	Retain unique qualities of the Pik Dunes, including geologic and scenic uniqueness, insect-relief habitat for caribou, and habitat for several uncommon plant species.
K-14—Utukok River Uplands Special Area	Minimize disturbance and hindrance of caribou, or alteration of caribou movements through the Utukok River Uplands Special Area that are essential for all-season use, including calving and rearing, insect-relief, and migration.

Section 2361.40(e) provides for limited circumstances in which certain uses may be authorized on lands within Special Areas that are allocated as closed to leasing or unavailable to new infrastructure. The BLM may issue oil and gas leases in areas closed to leasing if drainage is occurring. The BLM may authorize new roads, pipelines, transmission lines, and other types of infrastructure in unavailable areas if the

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infrastructure will primarily be used by and provide a benefit to local communities or will support subsistence activities. In those cases, the BLM must adopt measures to assure maximum protection of significant resource values. These measures, which are required by the NPRPA, would be specific to oil and gas activities and would be designed to limit potential impacts on subsistence use. Consistent with this approach, the BLM revised § 2361.50 to make clear that the BLM will ensure reasonable access to and within Special Areas for subsistence uses. The BLM may authorize new permanent infrastructure related to existing oil and gas leases in unavailable areas only if such infrastructure is necessary to comport with the terms of a valid existing lease.

Section 2361.40(f) directs that on lands within Special Areas that are allocated as available for future oil and gas leasing or new infrastructure, the BLM will presume that proposed oil and gas activities should not be permitted unless it can be clearly demonstrated that those activities can be conducted with no or minimal adverse effects on significant resource values, or unless they are necessary to comport with the terms of a valid existing lease. This provision only applies to designated Special Areas within the Reserve, and implements the obligation placed on the BLM by the NPRPA to assure the maximum protection of surface values to the extent consistent with the requirements of the Act. The presumption is based on the BLM's experience managing oil and gas exploration and development in the Reserve that all permitted oil and gas activities within a Special Area will result in significant adverse impacts to surface resources. Therefore, absent the need to honor the terms of a valid existing lease or a demonstration by the leaseholder that activities can be conducted with no or minimal adverse effect, the maximum protection mandate in the NPRPA requires the BLM to adopt this approach.

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Section 2361.40(g) sets forth procedures that must be followed when the BLM prepares an environmental analysis of proposed oil and gas leasing, development, or new infrastructure within Special Areas in the Reserve. The BLM must provide meaningful opportunities for public participation, including responding to comments, and consult with federally recognized Tribes and Alaska Native Claims Settlement Act corporations that use the affected Special Area for subsistence purposes or have historic, cultural, or economic ties to the Special Area. The BLM must evaluate potential adverse effects on significant resource values and consider measures to avoid, minimize, or otherwise mitigate adverse effects to achieve maximum protection of significant resource values. The BLM must also document and consider uncertainty about potential adverse effects on significant resource values. Actions taken to avoid, minimize, or mitigate adverse effects must account for any uncertainty. These procedures are foundational to all NEPA processes the agency undertakes, with increased attention given to assuring maximum protection and long-term resilience of significant resource values, consistent with the NPRPA.

If the proposed project is on lands in a Special Area that are allocated as closed to leasing or unavailable to new infrastructure, then the BLM must document how the proposal falls within one of the exceptions provided for in § 2361.40(e). If the proposed project is on lands in a Special Area that are allocated as available for future oil and gas leasing or new infrastructure, and the BLM proposes to authorize the project, then the BLM must document the justification for overcoming the presumption in § 2361.40(f). Section 2361.40(g)(4) provides examples of how the presumption might be overcome, such as if the proposed infrastructure is necessary to comport with the terms of a valid

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existing lease, or if it will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve, and the proposal has been conditioned to avoid, minimize, or otherwise mitigate adverse effects.

If the BLM determines through the environmental analysis that the proposal cannot avoid adverse effects on significant resource values in a Special Area, then the BLM must prepare a Statement of Adverse Effect. The Statement of Adverse Effect must describe the significant resource values that may be adversely affected; the nature, scope, and duration of those adverse effects; measures the BLM evaluated to avoid the adverse effects, including whether any practicable alternatives exist that would have less adverse impact on significant resource values of the Special Area; justification for not requiring those measures; measures the BLM will require to minimize adverse effects on significant resource values of the Special Area; and measures the BLM will require to mitigate any residual adverse effects that cannot be avoided or minimized. The Statement of Adverse Effect would be incorporated into the environmental analysis and provided to the public for review and comment.

Section 2361.40(h) requires that each decision and authorization related to oil and gas activity in the Reserve includes terms and conditions that provide the authorized officer with sufficient authority to fully implement the requirements of this section.

#### **Section 2361.50 – Management of subsistence uses within Special Areas.**

##### *Existing and Proposed Regulations*

The BLM proposed this new section to require Special Areas to be managed to protect and support fish and wildlife and their habitats and the associated subsistence use of those areas by rural residents as defined in 50 CFR 100.4, the Department of the

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Interior's subsistence management regulations for public lands in Alaska. The proposed rule also required the BLM to provide appropriate access to and within Special Areas for subsistence purposes, and explicitly referenced assuring maximum protection of the significant resource values of the Special Areas in the context of providing that access.

*Public Comments on § 2361.50*

*Comment:* Commenters expressed concerns about the impacts of oil and gas production in the Reserve on subsistence values and requested the BLM include more information on the collaboration between regulatory agencies, Alaska Native stakeholders, and industry.

*BLM Response:* The BLM believes the final rule provides meaningful and necessary protections for subsistence values from the impacts of oil and gas production, consistent with the Department of the Interior's subsistence management regulations for public lands in Alaska. For example, the final rule specifies that all Special Area designation and amendment decisions will rely on Indigenous Knowledge and the best available information concerning subsistence uses and resources within the Reserve. It also details procedures for the BLM to avoid the adverse effects of proposed oil and gas activities on the significant resource values of Special Areas, which include subsistence values. The final rule requires the BLM to ensure that Special Areas are managed to protect and support fish and wildlife and fish and wildlife habitat and associated subsistence use, and to provide appropriate access to and within Special Areas for subsistence purposes.

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*Comment:* Commenters recommended the rule protect and enhance access for subsistence activities for local communities and ensure these activities do not harm the fragile ecosystem.

*BLM Response:* The BLM believes the regulations adequately address this comment. The final rule requires the BLM to ensure that Special Areas are managed to protect and support subsistence use of fish and wildlife and their habitats. It further requires that the BLM will provide appropriate access to and within Special Areas for subsistence purposes.

*Comment:* Comments noted that ANILCA section 811 requires the BLM to provide reasonable access to and within Special Areas for subsistence use of subsistence resources and recommended the final rule reference these provisions. Other commenters recommended that the BLM eliminate paragraph (b) because it is duplicative of ANILCA section 811.

Commenters requested the BLM clarify the differences between “appropriate access” as used in the proposed rule versus “reasonable access” under ANILCA section 811 and ensure the rule is not inconsistent with ANILCA. Commenters recommended that the BLM clarify the type of access anticipated by this provision. Commenters requested the rule be revised to clarify that the BLM’s authority will never be used to restrict access for local subsistence users.

*BLM Response:* The final rule retains a separate section requiring management of Special Areas to both protect resources for subsistence and protect access for subsistence activities, in order to address these concerns. The BLM has revised the language in this

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section to refer to “reasonable access” instead of “appropriate access” for consistency with the language in section 811 of ANILCA.

*Comment:* Commenters recommended the BLM add language in the final rule that expressly recognizes section 810 of ANILCA mandates and ensures that the final rule reinforces BLM’s duties to reduce or eliminate the use of lands that are needed for subsistence.

*BLM Response:* The BLM added reference to ANILCA in the Authorities section in the final rule, as discussed in more detail in the Statutory Authority section of this preamble.

*Comment:* Commenters recommended this section include a statement recognizing the “traditional and ancestral cultural heritage of the Arctic Indigenous people in and around the NPR–A that continue to rely on critical subsistence resources within the NPR–A for their traditional, cultural, and spiritual way of life.”

*BLM Response:* The BLM believes this comment is reflected in the preamble of the proposed rule, which included the following description:

Subsistence harvesting is the cornerstone of the traditional relationship of the Iñupiat people with their environment. Residents of communities in and around the NPR–A rely on subsistence harvests of plant and animal resources for nutrition and their cultural, economic, and social well-being. Activities associated with subsistence—processing; sharing; redistribution networks; cooperative and individual hunting, fishing, whaling, and gathering; and ceremonial activities—strengthen community and family social ties, reinforce community and individual cultural identity, and provide a link between contemporary Alaska Natives and

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their ancestors. These activities are guided by traditional knowledge based on a long-standing relationship with the environment.

Traditional Iñupiaq values remain strong on the North Slope and include respect for nature, humility, love and respect for elders, cooperation, hunting traditions, knowledge of language, and family and kinship. These values are embedded within all facets of Iñupiaq society, including subsistence hunting and harvesting traditions. The ability to pass on these values through the continuation of traditional subsistence activities in traditional places is critical to maintaining Iñupiat cultural identity. Sharing is one of the core values of Iñupiaq society and culture, which serves to maintain and strengthen familial and social ties both within and between communities on the North Slope. Traditional feasts such as Nalukataq (the spring Whale Festival) and Kivgiq (the Messenger Feast) revolve around the bringing together of communities and the distribution of subsistence foods throughout the community and region. Extensive sharing networks exist between North Slope communities, and between the North Slope and other regions in Alaska. Iñupiaq people continue to identify with the places of their ancestors and return to these places to hunt, fish, camp, gather, and process wild foods. Subsistence activities help maintain the relationship between Iñupiaq people and the land, as do stories, Iñupiaq place names, trails and travel routes, and landmarks. Thus, to the Iñupiat, protection of traditional lands, waters, and the wild resources that inhabit them is essential to maintaining cultural traditions, traditional knowledge, and identity.



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Including the recommended language within the regulatory text is unnecessary as it does not direct specific action the agency must take. However, we appreciate the intent of the comment, and we believe the regulation will benefit subsistence use in the Reserve.

*Comment:* Commenters requested that the BLM assess Special Areas' significant resource values in a manner that assesses use for the intended purpose, as subsistence harvest may require more stringent impact assessment valuation than public use. For example, more stringent metrics may need to be used to consider consumption advisories and harmful levels of contaminants for subsistence users.

*BLM Response:* We appreciate that subsistence harvest may require a different management standard than other uses and protection needs of significant resource values. However, this issue is best addressed in the IAP or other process as provided for in § 2361.30 to address management of Special Areas, so that the BLM can consider and adopt site-specific management decisions to adequately protect subsistence use.

#### *Description of the Final Rule*

The final rule adopts the proposed rule but deletes from paragraph (b) the phrase “to the extent consistent with assuring maximum protection of all significant resource values that are found in such areas.” This phrase was causing confusion and was unnecessary because § 2361.30 requires the BLM to adopt measures to assure maximum protection of significant resource values when designating Special Areas.

### **Section 2361.60 – Co-stewardship opportunities in management of Special Areas and subsistence.**

#### *Existing and Proposed Regulations*

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The BLM proposed this new section to encourage the BLM to explore co-stewardship opportunities for Special Areas, including co-management, collaborative and cooperative management, and tribally led stewardship. The title of this section in the proposed rule was “Co-stewardship opportunities in Special Areas.” This provision was designed to further the Department of the Interior’s trust relationship and obligation to protect Tribal interests and further the Nation-to-Nation relationship with Tribes. It also was designed to advance the Federal government's commitment to strengthening the role of Tribal governments in Federal land management. (Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, January 26, 2021; Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, Order No. 3403, November 15, 2021.)

*Public Comments on § 2361.60*

*Comment:* Commenters generally expressed support for the BLM to maintain and strengthen co-stewardship principles in the final rule.

*BLM Response:* The BLM appreciates commenters’ support for the inclusion of co-stewardship in the rule.

*Comment:* Commenters requested the rule define co-stewardship more clearly.

*BLM Response:* The term co-stewardship includes a broad range of cooperative efforts and is also defined in BLM guidance. The BLM has incorporated the definition that is used in BLM Permanent Instruction Memorandum No. 2022-011 (Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary’s Order 3403).

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*Comment:* Commenters recommended that the rule make clear that it is the Tribe or other partnering entity that determines the appropriate mechanism, such as co-management or co-stewardship.

*BLM Response:* The rule leaves it to the parties to determine the best co-stewardship approach based on their collaborative efforts. There may be limitations on the types of agreements that are available depending on applicable law for specific situations.

*Comment:* Commenters recommended strengthening this section of the rule to mandate co-stewardship and provide details on management models that may be adopted, rather than consider it as a potential management approach. Commenters recommended that meaningful requirements should include specificity and timelines for actions by the BLM.

Commenters supported use of the term “tribally led stewardship.” Commenters recommended strengthening the provision to fully support tribally led stewardship in alignment with the Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters Order 3403.

*BLM Response:* The BLM is committed to fulfilling our trust relationship and the directives in the Joint Secretarial Order.<sup>9</sup> We expanded the section to specify that co-

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<sup>9</sup> The Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters Order 3403 directs the Interior and Agriculture Departments, and their component Bureaus and Offices, to manage Federal lands and waters in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Indian Tribes; that such management is consistent with the nation-to-nation relationship between the United States and federally recognized Indian Tribes; and, that such management fulfills the United States’ unique trust obligation to

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stewardship may be used for management of both Special Areas and subsistence resources.

*Comment:* Commenters requested that the BLM create a Governing Commission with a role for Tribes in decision-making over subsistence harvests and other land use management decisions throughout the NPR–A, that gives Tribal delegates true decision-making authority. Commenters provided detailed recommendations for such a Commission.

Commenters requested that the BLM create Indigenous-led stewardship groups that could perform activities such as monitoring harvests and ensuring permit compliance, collecting data on climate change indicators, invasive species control, collecting Traditional Indigenous Knowledge, and monitoring cultural sites.

Commenters recommended that the BLM establish a “Western Arctic Indigenous Knowledge (IK) Expert Advisory Group” to aid with co-management and co-stewardship.

*BLM Response:* This recommendation is outside the scope of the rule as written. These are very interesting concepts for reaffirming the importance of the Reserve to subsistence and the role of Indigenous Knowledge in management and would not require changes to the rule if implemented. The BLM is interested in further discussions about these ideas as we implement the rule.

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federally recognized Indian Tribes and their citizens. The Order enumerates actions the Departments must undertake, such as collaborating with federally recognized Tribes in the co-stewardship of Federal lands and waters, and principles of implementation. The Order is available online at <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf>.

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*Comment:* Commenters requested the rule distinguish Tribal interests from those of ANCSA corporations. Commenters also recommended that the rule should not authorize co-stewardship with any non-native or non-local organizations.

*BLM Response:* Co-stewardship is only available to Tribes. Separately, the Bureau may partner with ANCSA corporations, local governments, or organizations as provided by law, which would not be co-stewardship arrangements but a different type of partnership. The text of the rule has been revised to make this distinction clearer.

*Comment:* Comments requested that BLM consultation be more inclusive than just federally recognized Tribes and ANCSA corporations. Comments proposed a multi-tiered approach to consultation that provides for additional self-governing bodies or cooperatives to be included in the first tier of consultation alongside the narrower categories of federally recognized Tribes and ANCSA corporations. Second and third tiers of consulting parties would include environmental organizations with close ties to the North Slope and inviting the public to informally comment at any time a consultation occurs.

*BLM Response:* The BLM did not propose a broader approach to consultation in the proposed rule. Rather, it relied on existing law, regulations, and guidance regarding consultation with Tribes and Alaska Native Corporations. Changing those obligations is beyond the scope of this rulemaking, and, because it was not proposed, the final rule cannot adopt such an approach. The BLM works closely with local communities when making management decisions for the Reserve and will continue to engage and communicate with local communities in implementing the rule, independent of formal Tribal consultation efforts.

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*Description of the Final Rule*

In the final rule, the title is revised to read “Co-stewardship opportunities in management of Special Areas and subsistence.” The first sentence is also revised to add “and subsistence resources throughout the NPR-A.” Those revisions reflect that the BLM will seek co-stewardship opportunities not just in managing Special Areas, but also in managing subsistence resources more broadly. The first sentence is also revised to add “federally recognized” to clarify that the BLM engages in co-stewardship with federally recognized Tribes. This section of the final rule fulfills the special trust relationship that the Department of the Interior has with Tribes.

**Section 2361.70 – Use authorizations.**

*Existing and Proposed Regulations*

Existing § 2361.2 is redesignated to § 2361.70 in the final rule. Existing paragraph (a) states that all use authorizations require approval from the authorized officer “[e]xcept for petroleum exploration which has been authorized by the Act.” The proposed rule omitted that exception. The NPRPA of 1976 authorized the Federal Government to conduct exploration activities; those activities did not require approval by an authorized officer. Since the 1980 amendments initiated a competitive oil and gas leasing program, all oil and gas activities are conducted by oil and gas companies and require authorization from a BLM authorized officer.

No substantive changes were proposed to § 2361.70(b).

The proposed rule modified § 2361.70(c) for clarity purposes and updated § 2361.70(d) to recognize the BLM’s duties to protect surface resources and assure maximum protection of Special Areas’ significant resource values in the NPR–A.

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*Public Comments on § 2361.70*

Commenters recommended that the final rule specifically include trapping as a use that does not require a use authorization. Non-commercial trapping would not require a use authorization under the rule. The examples of activities exempted in § 2361.70(b) are not comprehensive, as indicated by “e.g.” preceding the lists. The BLM declined to change the final rule, as trapping for recreation and/or subsistence use is already excepted from requiring a use authorization by this section of the rule.

*Description of the Final Rule*

In paragraph (b), the phrase “pursuant to §§ 2361.1 and 2361.2 or otherwise” is deleted as unnecessary. Otherwise, the final rule adopts the proposed rule without changes.

**Section 2361.80 – Unauthorized use and occupancy.**

*Existing and Proposed Regulations*

Existing § 2361.3 is redesignated to § 2361.80 in the final rule. No substantive changes were proposed to this section.

*Public Comments on § 2361.80*

No substantive comments were received specific to this section.

*Description of the Final Rule*

The final rule adopts the section as proposed, which states: Any person who violates or fails to comply with regulations of this subpart is subject to prosecution, including trespass and liability for damages, pursuant to the appropriate laws.

**V. Procedural Matters**

**Regulatory Planning and Review (Executive Orders (E.O.) 12866, 13563 and 14094)**

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E.O. 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) within the OMB will review all significant regulatory actions. OIRA has determined that this rule is significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

The rule revises the framework for designating and assuring maximum protection of Special Areas and associated values and will protect and enhance access for subsistence activities throughout the NPR-A. It also incorporates aspects of the 2022 IAP. The rule will have no effect on currently authorized oil and gas operations in the NPR-A.

BLM's economic analysis concludes that most of the provisions of the final rule are editorial, administrative, or otherwise could have no quantifiable economic cost or benefit. There are two changes that may generate economic costs or benefits. First, the change requiring evaluation of the NPR--A for new Special Areas and associated values every 10 years (or sooner if the authorized officer determines that changing conditions warrant) could generate time and real costs related to public engagement. These can be



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minimized by combining this process with the existing process for revising the IAP.

Second, the rule establishes the current management strategy governing oil and gas activity in Special Areas of the NPR-A in regulation. The current management strategy is described in the 2022 IAP ROD and is the baseline for the economic analysis. Compared to the baseline, there is either no or minimal change in oil and gas management. Future changes to the framework and process for management of oil and gas activities in relation to Special Areas and surface resources will require regulatory action; changes to management of specific Special Areas or other areas in the NPR-A will be addressed in the process set out in the rule or through an IAP planning revision.

The BLM estimates the annual effect on the economy of the regulatory changes will be less than \$200 million and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. As such, the rule is not significant under section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. Pursuant to E.O. 12866, the BLM is required to conduct an economic analysis in accordance with section 6(a)(3)(B) of that Executive order. The BLM has complied with that directive.

*Public Comments on Regulatory Review*

*Comment:* The BLM received comments that the proposed rule would substantively change the BLM's management of the NPR-A, create uncertainty that may lead to reduced investment and economic opportunities, and does not contain merely administrative and procedural changes. The comment suggests that the BLM failed to

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comply with E.O. 12866, E.O. 13563, and E.O. 13132. The comment requests a full economic analysis, a federalism assessment, and an EIS.

*BLM Response:* As described in the BLM’s economic analysis, this rule incorporates aspects of the 2022 IAP, which is the current management framework for the NPR-A and forms the baseline for the economic analysis. Compared to the baseline, there is either no or minimal change in oil and gas management. The rule will not alter the terms of existing leases and will have no effect on currently authorized oil and gas operations in the NPR--A. The rule establishes a framework for future decision-making processes that would result in management changes, such as requiring the BLM to maintain an IAP, which guides on-the-ground management and which could be updated in the future through a NEPA process, and establishing the process by which Special Areas would be designated, de-designated, and modified in the future. The BLM conducted an economic analysis for the rule consistent with the requirements under E.O. 12866. Comments requesting a federalism assessment and an EIS are responded to in the relevant areas that follow.

*Comment:* The BLM received comments stating: “A proposed regulation is economically significant if it will have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product). For economically significant rules, a more rigorous cost-benefit analysis must be prepared pursuant to section 6(a)(3)(C).”Comments requested BLM provide more background information on how a conclusion of an economic impacts of less than \$200 million per year was reached and requested participation of the NPR-A working group to provide a more rigorous cost benefit analysis.

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*BLM Response:* The BLM reviewed the provisions of the rule and disclosed the potential impacts of the action relative to the existing management framework for the NPR-A. BLM's economic analysis concludes that most of the provisions of the final rule are editorial, administrative, or otherwise could have no quantifiable economic cost or benefit. .

*Comment:* The BLM received comments expressing concern that neither the 2022 NPR-A IAP ROD nor the proposed rule's economic analysis accounted for the likely recoverable oil within the NPR-A and therefore potentially reduced the impact from the rule on the economic outlook from the NPR-A.

*BLM Response:* The 2022 NPR-A IAP ROD incorporates the analysis in the 2020 Final Environmental Impact Statement, which evaluated potential development in detail. The rule's use of the IAP as a baseline did not affect the economic analysis of potential impacts and the overall conclusion that the rule will not have substantial impacts on expected levels of oil and gas development in the NPR-A-.

*Comment:* The BLM received comments stating that the economic analysis provided is "insufficient and omits any analysis of the effects of regulatory provisions that will have economic impacts, such as the proposed presumption against permitting activities in Special Areas." Comments requested that if the BLM decides to proceed with the proposed rule, it must first prepare for public review and comment the proper analysis under section 6(a)(3)(C) of E.O. 12866.

*BLM Response:* The BLM's economic analysis fulfills the requirements of E.O. 12866 as amended. It discusses the incremental effect of the presumption that new leasing and infrastructure should not be permitted unless specific information clearly

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demonstrates they can be conducted with no or minimal adverse effects on significant resource values relative to the statutory mandate to assure maximum protection of Special Areas. Compared to the baseline for the analysis, the rule will not affect management of existing leases or areas identified as closed to leasing or new infrastructure. For a small portion of existing Special Areas that are not leased and are designated as open to leasing or available for new infrastructure, the rule will have a nominal or minimal effect on management of oil and gas activity. The effect will be nominal if the same leasing stipulations are imposed under the rule that would be imposed under the baseline. Even if the stipulations are more restrictive, the effect is expected to be minimal due to the low revealed demand for leasing in these areas. In the event there is a minimal change in leasing stipulations of the areas considered open for leasing, the welfare effects include those associated with the change in oil and gas production as well as the increased protection of the ecological, subsistence, cultural and other significant resource values.

*Comment:* The BLM received comments stating that the presumption that no additional leasing, development, and/or infrastructure within Special Areas will be allowed, paired with the proposed discretion of the authorized officer to establish interim/emergency protections on lands considered for Special Areas, is a significant regulatory action. As such, the economic analysis is insufficient to determine a significant regulatory action described in E.O. 12866 section 3(f)(1), as amended by E.O. 14094. The commenter asserts that the BLM's economic analysis fails to even acknowledge this fact.

*BLM Response:* The BLM's economic analysis discusses the incremental effect of the presumption that new leasing and infrastructure should not be permitted unless

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specific information clearly demonstrates that the resulting activities can be conducted with no or minimal adverse effects on significant resource values relative to the statutory mandate to assure maximum protection of Special Areas. See the BLM's response to a similar comment immediately preceding this one.

*Comment:* The BLM received comments stating that the scale of impacts could exceed the \$200 million threshold of E.O. 12866. Commenters provided information supporting this statement including comparisons to the Greater Mooses Tooth 1 development that they state would likely exceed \$1 billion in today's dollars. They provide further information on costs for Willow and Pikka and state those projects would be in the multi-billion-dollar range. They use these statements to request that the BLM conduct a thorough economic analysis.

*BLM Response:*

The commenters did not provide quantitative information establishing that the rule would increase costs more than \$200 million beyond the costs involved in complying with the existing regulations. The rule will have no effect on currently authorized oil and gas operations in the NPR-A, like Greater Mooses Tooth 1. In addition, it does not affect operations on non-BLM lands or on operations outside of the NPR-A, like Pikka. Currently, the NPR-A is managed according to the 2022 IAP ROD. The rule will alter the procedural steps needed to change management of oil and gas activity within Special Areas in the future, though it will still require a public process, consultation, and appropriate NEPA analysis. The BLM's economic analysis for the rule discusses that incremental change.

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*Comment:* The BLM received comments stating: “It is unclear how BLM economic analysis considered the Reasonably Foreseeable Development Scenario (Appendix B of the NPR-A IAP). The proposed rule and continue[d] 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, then potential impacts from each development scenario should be fully evaluated.”<sup>10</sup>

*BLM Response:* We believe that the commenter is referencing the Final Environmental Impact Statement for the 2020 NPR-A IAP, issued in June 2020, which was the analysis used for the BLM’s 2022 IAP ROD. This rule incorporates aspects of the 2022 IAP ROD. The economic analysis for this rule concludes that most of the provisions of the final rule are editorial, administrative, or otherwise have no economic cost or benefit. The BLM is not required to analyze alternatives that were posed and analyzed in previous planning efforts.

BLM notes that public commenters raised potential distributional impacts to specific communities. BLM expects limited impacts of this rule relative to the 2022 IAP baseline. However, to clarify the impacts to management of these areas when considering future leases or infrastructure, the economic analysis refers to the EIS of the

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<sup>10</sup> The Reasonably Foreseeable Development Scenario is defined in Appendix B of the 2020 Final IAP/EIS, available at [https://eplanning.blm.gov/public\\_projects/117408/200284263/20020421/250026625/Volume%202\\_Appendices%20B-Y.pdf](https://eplanning.blm.gov/public_projects/117408/200284263/20020421/250026625/Volume%202_Appendices%20B-Y.pdf).

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2022 IAP for a high-level summary of potential impacts to those communities from the broader scope of the IAP. That EIS addressed potential incremental effects to Iñupiat residents of the North Slope Borough and other communities of the North Slope. .

*Comment:* The BLM received comments stating the position that the BLM should use the existing regulations rather than the 2022 IAP ROD as the baseline to compare to the proposed rule. They state that “the appropriate baseline for this new Proposed Rule is the rule it replaces. The rule being replaced does not presume that leases or surface infrastructure in Special Areas cannot be permitted. The appropriate baseline for economic analysis is clear when the difference between adopting the Proposed Rule and not adopting the Proposed Rule is considered.”

*BLM Response:* Concerning the commenter’s suggestion that the BLM did not use the appropriate baseline, OMB Circular A-4 (September 17, 2003) states that a baseline “normally will be a ‘no action’ baseline: what the world will be like if the proposed rule is not adopted.” If the BLM did not issue this rule, the 2022 IAP ROD would be the prevailing management framework for the NPR-A.

*Comment:* The BLM received comments stating that while the proposed rule “argues that there is little interest in leasing of the Special Areas, BLM’s own Table 3 in the Economic Analysis summarizes that, since 2011, for 5 out of 9 years, there has been greater leasing in the Special Areas than the rest of the NPRA.” Commenters asserted that a proposed rule that presumes against development would likely result in decreased oil and gas activity, thereby causing economic impacts that should be acknowledged in the Economic Analysis.

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*BLM Response:* There is no clear evidence of large, unmet demand for oil and gas leases inside current Special Areas (SAs). Three Special Areas (Peard Bay SA, Kasegaluk Lagoon SA, and Utukok River Uplands SA) are of low oil and gas potential and far away from existing infrastructure. As a result, these have been unaffected by past oil and gas activity. No leases have ever been offered or issued in the Kasegaluk Lagoon SA. Lease sales in 2013 and 2017 offered parcels in the Utukok River Uplands SA, but none were acquired. In 2004, one lease was acquired that included a very small overlap with the Peard Bay SA. That lease was relinquished in 2010 with no oil and gas activity recorded. In 2016, there were 933 acres inside the Peard Bay SA offered for lease, none were acquired. Meanwhile, two Special Areas (Colville River SA and Teshekpuk Lake SA) have seen substantial interest in oil and gas development, but large portions of those areas have already been leased or have been offered for lease and not acquired. Approximately 52.5 percent (1,282,050 acres) and 90.3 percent (3,292,338 acres) of the Colville River SA and Teshekpuk Lake SA, respectively, have already been offered for lease at least once since creation of the NPR-A. Since 2011, approximately 12.8 percent (313,000 acres) and 9.9 percent (361,000 acres) within the Colville River SA and the Teshekpuk Lake SA, respectively, were leased.

*Comment:* The BLM received comments stating that the economic analysis did not consider concepts that commenters suggested should be considered, such as: restricted production; whether royalty receipts would exceed the risks posed by projected oil and gas development; and what funds would be necessary if an oil and gas company fails to plug the wells or reclaim the land, or to clean up oil spills. Comments also



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suggested that IAPs should incorporate a cost-benefit analysis for future oil and gas leasing.

*BLM Response:* As described in the BLM’s economic analysis, this rule incorporates aspects of the 2022 IAP, which is the current management framework for the NPR-A and forms the baseline for the economic analysis. Compared to the baseline, there is either no or minimal change in oil and gas management. The rule will alter the procedural steps needed to change management of oil and gas activity within Special Areas in the future, though it will still require a public process, consultation, and appropriate NEPA analysis. The rule will not alter the terms of existing leases and will have no effect on currently authorized oil and gas operations in the NPR-A.

Regarding the comments that IAPs should incorporate a cost-benefit analysis, the NEPA process that will occur when changes are made to an IAP does not require formal cost-benefit analysis, but it may examine socio-economic effects of the action, as appropriate. In addition, any future changes to management that require regulatory action are subject to analytical requirements under E.O. 12866.

*Comment:* The BLM received comments stating: “While the SCC [social cost of carbon] was excluded deliberately from the 2020 IAP/EIS, the proposed rule should explicitly implement SCC into its present and future analysis to promote informed, accurate decision making in the NPR-A”. Commenters stated that the 2020 IAP/EIS correctly states that NEPA does not require a cost-benefit analysis and only requires a consideration of economic and social effects but that they “believe both the public and future agency decision makers lack the information that could be provided by a robust cost-benefit analysis to make wise choices in this particularly pristine, remote, and

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vulnerable region. For instance, because the proposed rule does not require the inclusion of SCC in future environmental documents within the NPR-A, it will be difficult to determine the true break-even point of investment. Instead, agency decision makers and the public may miss opportunities to consider how renewable energy alternatives, either in the [NPR-A] or elsewhere, could outcompete the energy output of an oil project, all with minimal SCC.”

*BLM Response:* As discussed in Section III(E) of this preamble above, the rule is focused on addressing impacts to surface values of the Reserve and consolidating and implementing the BLM’s statutory obligations, primarily those in the NPRPA, to protect those values when authorizing oil and gas leasing and production. Thus, this rule does not analyze or specifically consider the climate impacts of oil and gas development in the Reserve, which is more appropriately addressed in the IAP or when conducting NEPA analysis for oil and gas leasing and production activities.

### **Regulatory Flexibility Act**

The Secretary of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The BLM is not required to prepare a Final Regulatory Flexibility Analysis with this final rule.

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. The size standards can be found in 13 CFR 121.201. For a specific industry identified by the North American Industry Classification System (NAICS), small entities are defined by the SBA as an individual, limited

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partnership, or small company considered at “arm’s length” from the control of any parent company, which meet certain size standards.

The final rule is most likely to affect business currently operating in the oil and gas sector in the NPR-A. There are eight active lessees in NPR-A. These eight companies (and information about the companies obtained from the public domain) include: The Aklaq Company, Alaska (an Alaska-registered company); Borealis Alaska Oil, Inc (acquired by Pantheon Resources, a United Kingdom-based oil and gas company); Oil Search Alaska, LLC (a subsidiary of Santos Limited, a large Australian oil company); Armstrong Oil and Gas, Inc (a Colorado-based exploration company); North Slope Exploration, LLC (managed by Armstrong Oil and Gas, Inc.); Repsol E&P USA Inc (a subsidiary of Repsol, a large Spanish oil company); ConocoPhillips Alaska, Inc (a subsidiary of ConocoPhillips, a large American multinational corporation); and Emerald House LLC (owned by XCD Energy Ltd, an Australian-based oil company).

SBA size standards identify small business in the crude petroleum extraction (NAICS 211120) and natural gas extraction (NAICS 211130) industries to be those with 1,250 or fewer employees. Of the companies identified, based on information that BLM was able to obtain from the public domain, the BLM believes that the Aklaq Company Alaska, Borealis Alaska Oil Inc, Armstrong and North Slope Exploration, and Emerald House LLC meet the SBA’s criteria of a small business. The BLM has determined that this is less than a substantial number of small entities potentially affected.

In addition to small business, the RFA also requires consideration of impacts on small governmental jurisdictions. There are four communities within the Reserve that are likely considered small government jurisdictions: Wainwright, Utqiagvik, Atkasuk, and

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Nuiqsut. However, this rule will not override the terms or status of existing leases, will not affect authorized operations, and does not impose direct regulatory cost on any business or community.

Further, this rule does not change management decisions regarding future leasing and oil and gas development in areas outside Special Areas, or within Special Areas where leasing or infrastructure is already restricted. In the remaining areas, the impact on future leasing is uncertain but expected to be nominal or minimal for the reasons identified above. Therefore, this rule will not have significant economic impact on small businesses holding these leases or small government jurisdictions in the Reserve.

*Comment:* The BLM received comments expressing the concern that development of the NPR-A provides a direct economic benefit to the regional government, local villages, and the State of Alaska and that a reduction in production from the NPR-A would mean less revenue to provide services to Alaskans. Commenters stated that the economic analysis fails to consider the impact to local communities of losing future revenues and that they perceive that the analysis does not consider the “social implications of eliminating or dramatically restricting future development in the NPR-A that would remove jobs and a substantial portion of the tax base”.

*BLM Response:* The approval of existing development and the terms of existing leases are not affected by the final rule, nor does the rule eliminate or drastically restrict future development in the NPR-A. As discussed in more detail above and in the economic analysis, the BLM does not anticipate substantial impacts on leasing and development. Future development is already subject to conditions in the IAP, the BLM has not received significant interest in new leasing in response to lands offered in sales,

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and the costs associated with additional protective measures consistent with current lease terms would not impose a significant new cost on operators.

*Comment:* The BLM received comments expressing the opinion that the BLM constrained the economic analysis to eight active lessees in the NPR-A and did not include “small government jurisdictions” or other small entities that operate within the NPR-A. Commenters stated that the North Slope Borough and the four villages located within the NPR-A (Utqiagvik, Wainwright, Atkasuk, and Nuiqsut), and the Inupiat Community of the Arctic Slope all qualify as small government jurisdictions, and they requested these entities be included in the economic analysis. Several of these comments also referenced the benefits it perceives these entities receive from development of the NPR-A, including payments to the Mitigation Grant program, employment opportunities, and development of infrastructure.

*BLM Response:* The BLM recognizes the government jurisdictions should also be considered under the Regulatory Flexibility Act and has updated the economic analysis accordingly. However, while these small entities exist, the rule does not affect existing leases and does not prevent future oil and gas development in the NPR-A. As such, the rule is not expected to significantly affect these communities any differently than the current management of the NPR-A.

### **Congressional Review Act**

Based upon the economic analysis, this final rule does not meet the criteria under 5 U.S.C. 804(2), the Congressional Review Act. This rule will not:

- (a) Have an annual effect on the economy of \$100 million or more.

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(b) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises.

### **Unfunded Mandates Reform Act (UMRA)**

The final rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. The final rule contains no requirements that will apply to State, local, or Tribal governments. The costs that the final rule will impose on the private sector are below the monetary threshold established at 2 U.S.C. 1532(a). A statement containing the information required by UMRA (2 U.S.C. 1531 *et seq.*) is therefore not required for the final rule. This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

### **Takings (E.O. 12630)**

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The rule will not interfere with private property. A takings implication assessment is not required.

### **Federalism (E.O. 13132)**

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Under the criteria in section 3 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required.

The final rule does not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. It does not apply to States or local governments or State or local governmental entities. The final rule will affect the relationship between operators, lessees, and the BLM, but it does not directly impact the States. Therefore, in accordance with E.O. 13132, the BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

*Comment:* Commenters question the BLM’s statement that the rule does not apply to States or local governments and clarifies that the rule only “affects the relationship between operators and lessees in the NPR-A and their relationships with the BLM.” Commenters further believe that the area should be managed in a “joint comprehensive management plan” under the authority granted to Alaska. The commenter stated that Alaska’s resource and regulatory agencies should be “considered superior to any proposed Federal process and have final authority on any changes or rulemaking that would conflict with existing state programs.” Commenters suggest that local counties and cities should have the ultimate decision on what happens on the land. The BLM and other stakeholders should provide input, but the State of Alaska and the residents should make the final decision.

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*BLM Response:* While commenters take issue with the management framework Congress established for the Reserve, this is beyond the BLM's authority to address. Further, as discussed in the Section III(C) above, the BLM did meet with the State of Alaska regarding the rule and will engage with State and local government agencies in the implementation of this rule, particularly during the development of future IAP and project-specific NEPA processes.

*Comment:* The BLM received comments that stated the position the proposed rule warrants preparation of a Federalism Assessment. The commenter recommended that the BLM undertake a Federalism Assessment to evaluate the impact of the proposed rule on the State's powers. For example, § 2361.50(a) of the proposed rule states that the BLM "will ensure that Special Areas are managed to protect and support fish and wildlife." The commenter argued that this "direction conflicts with the State's broad trustee and police powers over fish and wildlife within [its] borders." The commenter opined that the BLM therefore needs to prepare a Federalism Assessment consistent with E.O. 13132. The commenter disagrees with the BLM's assertion that the proposed rule "would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government." Rather, the commenter argued that because the Federal Government is required to pay 50 percent of all receipts from "sales, rentals, bonuses, and royalties on leases" in the NPR-A to the State of Alaska, by revising and creating procedures and requirements for exploration, development, and production in the NPR-A, "the Proposed Rule has a direct impact on these revenues and, thus, the interests of the State and North Slope Borough. Neither the State nor the North Slope Borough were



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consulted on the Proposed Rule as E.O. 13132 requires. BLM should conduct the necessary consultation with States and local governments before proceeding with a revised version of the Proposed Rule.”

*BLM Response:* E.O. 13132 generally prohibits Federal agencies from promulgating rules that might have a substantial direct effect on states or local governments, on the relationship between Federal and State governments, or on the distribution of power and responsibilities among the various levels of government, without meeting certain conditions, such as consulting with elected State and local government officials early in the process to the extent practicable. In particular, administrative rules may not create substantial direct compliance costs for state or local governments that are not otherwise required by statute, and may not expressly or impliedly preempt state law, without Federal agencies undertaking additional processes. While this rule does modify the management approach the BLM will take in the Reserve, the regulations only affect oil and gas activity on Federal public lands; nothing in the rule preempts state law or requires state or local governments to comply with specific provisions. As a result, a federalism summary impact statement is not required. Further, as discussed in the Section III(c) above, the BLM did engage with the State of Alaska and the North Slope Borough during the rulemaking process.

#### **Civil Justice Reform (E.O. 12988)**

This final rule complies with the requirements of E.O. 12988. More specifically, this final rule:

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- a. Meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation; and
- b. Meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

### **Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)**

The BLM endeavors to maintain and strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The BLM evaluated possible effects of the rule on federally recognized Indian Tribes under E.O. 13175, the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and 512 Departmental Manual 2, as part of this rulemaking process and determined that the rule has tribal implications.

In conformance with the Secretary's policy on tribal consultation and 512 Departmental Manual 4-7, on August 25, 2023, the BLM invited via mail 45 Tribes and 30 Alaska Native Corporations to engage in consultation regarding the proposed NPR-A rule. The BLM engaged in Tribal consultation on the decisions and resulting actions related to the IAP, including the 2022 IAP ROD. This regulation incorporates those IAP decisions and also updates a 50-year-old framework to reflect the IAP and lessons learned through preparing IAPs. Prior consultation on the specific procedural changes that were being proposed provided the BLM with valuable feedback on how the regulatory language, in particular, might be improved to better reflect Tribal

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interests. The BLM felt that it would be more productive to seek new feedback after providing the proposal in the form of a proposed regulation, which necessarily differs from the process, content, and form of a management plan.

The BLM has continued to offer consultation to Tribes and Alaska Native Corporations that it determined would be most likely to have substantial direct effects from the rule, including the Native Village of Atqasuk, Atqasuk Corporation, Village of Wainwright, Olgoonik Corporation, Native Village of Nuiqsut, Kuupik Corporation, Native Village of Barrow, UIC, ICAS, and ASRC. BLM Leadership and State and Field Office staff met with the Mayor of Atqasuk on October 31, Native Village of Nuiqsut on November 1, ICAS on November 3 and February 6, Village of Wainwright on November 21, Olgoonik Corporation on December 19, ASRC on December 21, and Kuupik Corporation on February 1. In addition, staff met and discussed the proposed rule with the NPR-A Working Group (consisting of representatives from North Slope local governments, Native corporations, and tribal entities, [https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about/alaska/NPR-A/npr-a\\_working\\_group](https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about/alaska/NPR-A/npr-a_working_group)) on September 26, October 17, and December 1. We also held in-person public meetings in Nuiqsut, Utqiagvik, and Wainwright where verbal comment was recorded, along with three informational sessions – one in Anchorage and two virtual. The BLM will continue to engage in consultation with Tribes and Alaska Native Corporations after the final rule is published.

As detailed in the public engagement section above, the BLM received requests, including from Tribes and Alaska Native Corporations, to extend the 60-day public comment period for the proposed rule for an additional 90 days, which would have

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resulted in a 150-day (5-month) comment period. A 5-month comment period far exceeds the typical duration for rulemaking comment periods. While the BLM was unable to grant the requested extension, we did extend the comment period for an additional 30 days, resulting in a 90-day comment period for the proposed rule. While the comment period for the proposed rule overlapped with the comment period on the Draft Supplemental EIS for the Coastal Plain, the Coastal Plain comment period was 60 days and ended one month before the close of the comment period on the proposed rule.

During consultation, the Tribes and Alaska Native Corporations raised similar concerns as they submitted during the comment period of the rule, which are addressed in the responses to comment above. Notable concerns raised during consultation include the potential for loss of revenue from oil and gas development, the need for protections to sustain tribal members' subsistence way of life, ensuring adequate consultation going forward, and ensuring that the rule allows access for communities and continued economic development opportunities for community members. Changes made in response to this input, include: revising sections of the rule that relate to consultation to clarify that an economic tie to a Special Area is a basis for consultation; ensuring consultation is consistently required throughout the processes for designating, de-designating and modifying Special Areas and evaluating proposed oil and gas activities in Special Areas; adding subsistence as an area for co-stewardship across the Reserve, broadening the language in the section on co-stewardship beyond opportunities in Special Areas; and revising the language in the section on subsistence to provide for reasonable access, to be consistent with ANILCA, rather than using the term "appropriate" access.

**Paperwork Reduction Act (PRA)**

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The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 through 3521) generally provides that an agency may not conduct or sponsor, and notwithstanding any other provision of law a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

This final rule contains an information-collection requirement that is subject to review by OMB under the PRA. This information-collection is located in § 2361.30(a)(4). One of the key principles of the final rule is the inclusion of stakeholder and the public notice and participation in the designation and removal of lands to be included in an SA. To help ensure that the BLM receives the information needed to inform its decision to include lands in an SA, § 2361.30(a)(4) includes a list of criteria that should be addressed when a member of the public recommends lands for such a designation. This information includes the following:

- The size and location of the recommended lands;
- The significant subsistence, recreational, fish and wildlife, historical, or scenic resource values that are present within or supported by the recommended lands;
- Measures that may be necessary to assure maximum protection of those values;
- and
- Any other pertinent information.

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The BLM has submitted a request to OMB for the information-collection requirement contained in this final rule. The estimated burden associated with this information-collection is outlined below.

*OMB Control Number:* 1004-0221.

*Title of Collection:* Management and Protection of the National Petroleum Reserve in Alaska - Recommendations for Special Reserve Areas (§ 2361.30).

*Form Number:* None.

*Type of Review:* New collection (Request for new OMB Control Number).

*Respondents/Affected Public:* Person(s) who wish to recommend lands to be designated as a Special Area in the NPR-A.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* On occasion; every 5 years.

*Number of Respondents:* 100.

*Annual Responses:* 100.

*Estimated Average Response time:* 15 hours.

*Annual Burden Hours:* 1,500.

*Annual Burden Cost:* None.

If you want to comment on the information-collection requirements in this final rule, please send your comments and suggestions on this information-collection request within 30 days of publication of this final rule in the *Federal Register* to OMB by going to [www.reginfo.gov](http://www.reginfo.gov). Click on the link, “Currently under Review - Open for Public Comments.”

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#### **National Environmental Policy Act**

This final rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this final rule is “of an administrative, financial, legal, technical, or procedural nature.” They do not involve any of the extraordinary circumstances listed in 43 CFR 46.215.

*Public Comments on NEPA:* The BLM received a number of comments objected to the BLM’s intent to rely on a categorical exclusion to comply with NEPA and requested that the BLM prepare an environmental analysis, including a range of alternatives for certain aspects of the rule, in order to comply with NEPA.

*BLM Response:* The BLM disagrees with comments that environmental analysis under NEPA is required, or that extraordinary circumstances apply to this rulemaking. The BLM has determined that the categorical exclusion set out at 43 CFR 46.210(i) applies to this rulemaking. That provision excludes from NEPA analysis and review actions that are “of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” That categorical exclusion applies because the final rule sets out a framework for managing oil and gas activity in the Reserve, but is not self-executing, meaning that it does not itself make substantive changes on the ground and does not restrict the BLM’s discretion to undertake or authorize future on-the-ground action without new future decisions that implement the rule. As such, the rule fits within the categorical exclusion for rules, regulations, or policies to establish bureau-wide administrative procedures, program processes, or instructions. This final rule does not

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authorize any project or other on-the-ground activity and therefore will have no significant individual or cumulative effects on the quality of the human environment. The environmental effects of future actions undertaken to implement this rule are too speculative or conjectural to be meaningfully evaluated at this time but will be subject to the appropriate level of NEPA review prior to making a decision. The BLM has also determined that none of the extraordinary circumstances identified at 43 CFR 46.215 apply to this rulemaking. This categorical exclusion documentation is provided in docket BLM-2023-0006 on regulations.gov.

#### **Effects on the Nation’s Energy Supply (E.O. 13211)**

Under E.O. 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This statement is to include a detailed statement of “any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)” for the action and reasonable alternatives and their effects.

Section 4(b) of E.O. 13211 defines a “significant energy action” as “any action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by OIRA as a significant energy action.”

This final rule will not have a significant effect on the Nation’s energy supply. It restates existing statutory standards and establishes a procedural framework for ensuring



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that the BLM meets those standards. It also codifies land use restrictions that already are legally binding in the 2022 IAP ROD. Further, the final rule presumes, in final § 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.” That presumption merely implements the BLM’s existing statutory duty to assure maximum protection of the significant resource values in Special Areas to the extent consistent with the requirements of this Act for the exploration and production of the Reserve. 42 U.S.C. 6504(a). The presumption is consistent with this statutory direction and limited by it, such that the actions that the BLM may take under this framework to assure maximum protection are within the same scope as those that could have been taken without the framework set out in the rule. As discussed in more detail in the RIA, based on the status of existing leases, most recent lease sales, and the fact that the rule will not alter the terms of approved leases or approved development, the BLM does not expect the rule to have a substantial impact on exploration and production from the Reserve. Therefore, the final rule will not change the supply, distribution, or use of energy.

*Public Comments on E.O. 13211*

The BLM received comments that the proposed rule constitutes a significant energy action as it would affect the supply, distribution, and use of energy, and thereby fails to comply with E.O. 13211. One commenter specified that “actions taken to restrict and limit oil and gas development, access to the NPR-A for oil and gas development, and codification of BLM’s authority to restrict, deny, and minimize oil and gas development

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in the NPR-A would logically have an impact on the Nation's energy supply.”

Commenters also asserted that oil production from the NPR-A will extend the economic lifetime of the Trans-Alaska Pipeline and enable domestic oil to reach the rest of the United States. For the reasons stated above, the rule will not change the supply, distribution, or use of energy.

Other commenters cited an estimate from the U.S. Geological Survey that there are 8.7 billion barrels of undiscovered oil in the NPR-A, an important reserve created specifically by Congress for energy production. Commenters added that “...by denying development in the region, BLM is denying the State of Alaska, and the U.S., billions of dollars in revenue.” Furthermore, comments stated that BLM's proposed plan will also deny American consumers affordable and reliable energy at a time of persistently high fuel prices; the rule “undermines the reality that oil produced from the NPR-A can displace imports and will increase the likelihood of imports from less environmentally regulated regions of the world.”

These comments misunderstand the rule; it does not prohibit exploration for and development of oil and gas in the Reserve. Rather, it allows oil- and gas-related activities to continue consistent with the NPRPA by establishing procedures for the BLM to mitigate reasonably foreseeable and significantly adverse effects of proposed oil and gas activities on the surface resources of the Reserve and to provide maximum protection for surface values within Special Areas for proposed oil and gas activities.

The BLM received comments discussing the Russian invasion of Ukraine and the importance of energy security and strengthening the supply chain for the U.S. and its allies. Commenters indicated that “as one of the largest exporters of petroleum in the

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world, the United States' ability to facilitate global diversification from Russian energy can only be enhanced by NPR-A development." Again, these comments misunderstand the rule; it does not prohibit exploration for and development of oil and gas in the Reserve.

This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

**Steven H. Feldgus**

Principal Deputy Assistant Secretary,

Land and Minerals Management

**List of Subjects in**

**43 CFR Part 2360**

Alaska, Oil and gas activity, Protection of surface resources, Tribes, Special Areas.

For the reasons set out in the preamble, the Bureau of Land Management revises 43 CFR part 2360 as follows:

**PART 2360—NATIONAL PETROLEUM RESERVE IN ALASKA**

**Subpart 2361—Management and Protection of the National Petroleum Reserve in**

**Alaska**

Sec.

2361.1 Purpose.

2361.3 Authority.

2361.4 Responsibility.

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2361.5 Definitions.

2361.6 Effect of law.

2361.7 Severability.

2361.10 Protection of surface resources.

2361.20 Existing Special Areas.

2361.30 Special Areas designation and amendment process.

2361.40 Management of oil and gas activities in Special Areas.

2361.50 Management of subsistence uses within Special Areas.

2361.60 Co-stewardship opportunities in management of Special Areas and subsistence.

2361.70 Use authorizations.

2361.80 Unauthorized use and occupancy.

Subpart 2362 [Reserved]

**Authority:** 42 U.S.C. 6501 *et seq.* and 43 U.S.C. 1701 *et seq.*

**§ 2361.1 Purpose.**

The purpose of the regulations in this subpart is to provide procedures for protection and control of the environmental, fish and wildlife, and historical and scenic values of the National Petroleum Reserve in Alaska from significantly adverse effects of oil and gas activities on the surface resources of the Reserve and assuring maximum protection of significant resource values in Special Areas pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*), Alaska National Interest Lands Conservation Act (94 Stat. 2371, 16 U.S.C. 3101 *et seq.*), and other applicable authorities.

**§ 2361.3 Authority.**

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The primary statutory authority for these regulations is the Naval Petroleum Reserves Production Act of 1976, as amended by the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514). Additional authority is provided by the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*)—other than the land use planning and wilderness study requirements, which do not apply to the Reserve under 42 U.S.C. 6506a(c)—and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*).

#### **§ 2361.4 Responsibility.**

The Bureau of Land Management is responsible for the surface and subsurface management of the Reserve, including protecting surface resources from environmental degradation and assuring maximum protection of significant resource values in Special Areas. The Act authorizes the Bureau to prepare rules and regulations necessary to carry out surface management and protection duties.

#### **§ 2361.5 Definitions.**

As used in this subpart, the term:

*Act* means the Naval Petroleum Reserves Production Act of 1976 (as amended and codified at 42 U.S.C. 6501-6508).

*Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties of this subpart.

*Bureau* means the Bureau of Land Management (BLM).

*Co-Stewardship* broadly refers to cooperative and collaborative engagements of Bureau land managers and Tribes related to shared interests in managing, conserving, and preserving natural and cultural resources under the primary responsibility of Federal land

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managers. Such cooperative and collaborative engagements can take a wide variety of forms based on the circumstances and applicable authorities in each case. Forms of co-stewardship may include, among other forms, sharing of technical expertise; combining Tribal and Bureau capabilities to improve resource management and advance the responsibilities and interests of each; and making Tribal knowledge, experience, and perspectives integral to the public's experience of Federal lands.

*Exploration* means activities conducted on the Reserve for the purpose of evaluating petroleum resources, including crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any such resources.

*Indigenous Knowledge (IK)* means a body of observations, oral and written knowledge, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, and cultural systems. IK can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. IK is developed by Indigenous Peoples including, but not limited to, Tribal Nations, American Indians, and Alaska Natives.

*Infrastructure* means a permanent or semi-permanent structure or improvement on BLM-administered lands within the Reserve that is built to support commercial oil and gas activities, such as pipelines, gravel drilling pads, man camps, and other structures or improvements. Infrastructure does not include exploratory wells that are drilled in a

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single season; or construction, renovation, or replacement of facilities on existing gravel pads at previously disturbed sites where the facilities will promote safety and environmental protection. Additionally, infrastructure does not include: structures or improvements intended for use by subsistence hunters, trappers, fishers, berry-pickers, and other subsistence users to facilitate subsistence activities; construction that is ephemeral (such as snow or ice roads); infrastructure constructed in support of science or public safety; or infrastructure that will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve.

*Integrated Activity Plan (IAP)* means a land use management plan that governs the management of all BLM-administered lands and minerals throughout the Reserve.

*Reserve* means those lands within the National Petroleum Reserve in Alaska (prior to June 1, 1977, designated Naval Petroleum Reserve No. 4) which was established by Executive order, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344 (the Naval Arctic Research–Laboratory - surface estate only) dated April 24, 1961.

*Secretary* means the Secretary of the Interior.

*Significant resource value* means any surface value, including subsistence, recreational, fish and wildlife, historical, scenic, or other surface value that the Bureau identifies as significant and supports the designation of a Special Area.

*Special Areas* means areas within the Reserve identified by the Secretary or by statute as having significant resource values and that are managed to assure maximum protection of such surface values, to the extent consistent with the requirements of the Act for the exploration and production of the Reserve.

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*Use authorization* means a written approval of a request for use of land or resources.

**§ 2361.6 Effect of law.**

(a) Subject to valid existing rights, and except as provided by the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), all lands within the exterior boundaries of the Reserve are reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other acts.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Secretary is authorized to:

(1) Make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601), for appropriate use by Alaska Natives and the North Slope Borough.

(2) Make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out the Secretary's responsibilities under the Act.

(3) Convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

(4) Grant such rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*) or section 28 of the Mineral Leasing Act, as amended (30 U.S.C. 185), as may be



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necessary to permit the North Slope Borough to provide energy supplies to villages on the North Slope.

(c) All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Reserve shall remain in full force and effect to the extent not inconsistent with the Act.

(d) To the extent not inconsistent with the Act, all other public land laws are applicable.

#### **§ 2361.7 Severability.**

If a court holds any provision of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these regulations and their applicability to other people or circumstances will remain unaffected.

#### **§ 2361.10 Protection of surface resources.**

(a) In administering the Reserve, the Bureau must protect surface resources by adopting whatever conditions, restrictions, and prohibitions it deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects of proposed oil and gas activities. Such conditions, restrictions, or prohibitions may involve conditioning, delaying action on, or denying some or all aspects of proposed oil and gas activities, and will fully consider community access and other infrastructure needs, after consultation with the North Slope Borough and consistent with § 2361.6.

(b) The Bureau will use the following procedures to protect surface resources from the reasonably foreseeable and significantly adverse effects of proposed oil and gas activities:

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(1) The Bureau will maintain an Integrated Activity Plan (IAP) addressing management of all BLM-administered lands and minerals throughout the Reserve. When issuing a use authorization, the authorization must conform to the IAP and these rules, including any subsequent designation or modifications of Special Areas. To the extent there is any inconsistency between the IAP and these rules, the rules govern;

(2) In each decision concerning proposed activity in the Reserve, the authorized officer will document consideration of, and adopt measures to mitigate, reasonably foreseeable and significantly adverse effects on fish and wildlife, water, cultural, paleontological, scenic, and any other surface resource. The authorized officer will take particular care to account for, and mitigate adverse effects on, surface resources that support subsistence uses and needs; and

(3) In assessing effects of a decision concerning proposed activity in the Reserve, the authorized officer will document consideration of any uncertainty concerning the nature, scope, and duration of potential effects on surface resources of the Reserve and shall ensure that any conditions, restrictions, or prohibitions on proposed oil and gas activities account for and reflect any such uncertainty.

(c) When affected surface resources are located in a Special Area, the authorized officer must comply with the procedures and requirements of §§ 2361.20 through 2361.60.

(d) The authorized officer must include in each decision and authorization related to proposed oil and gas activity in the Reserve such terms and conditions that provide the Bureau with sufficient ability to fully implement the requirements of this subpart.

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(e)(1) To the extent consistent with the requirements of the Act, other applicable law, and the terms of any applicable existing authorization, and after consultation with appropriate Federal, State, and local agencies, federally recognized Tribes, and Alaska Native Claims Settlement Act corporations, the authorized officer may limit, restrict, or prohibit the use of or access to lands within the Reserve, including Special Areas. Upon proper notice, as determined by the authorized officer, such actions may be taken to protect fish and wildlife breeding, nesting, spawning, lambing or calving, or migrations; subsistence uses and resources; and other environmental, scenic, or historic values.

(2) The consultation requirement in paragraph (e)(1) of this section is not required when the authorized officer determines that emergency measures are required.

(f) No site, structure, object, or other values of historical, cultural, or paleontological character, including, but not limited to, historic and prehistoric remains, fossils, and artifacts, shall be injured, altered, destroyed, or collected without authorization under an appropriate Federal permit and without compliance with applicable law governing cultural items, archaeological resources, and historic properties.

#### **§ 2361.20 Existing Special Areas.**

Any lands within the Reserve designated as a Special Area as of [INSERT EFFECTIVE DATE OF THE FINAL RULE], will continue to be managed as a Special Area except as modified pursuant to § 2361.30, including:

(a) *Colville River Special Area.* The Colville River Special Area encompasses the area within the boundaries depicted on maps that are published as of [INSERT EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Colville River Special Area shall be managed to assure

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maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

(1) Important habitat for raptor species, including, but not limited to, the Arctic peregrine falcon;

(2) Important habitat for other bird species, including, but not limited to, neotropical migratory birds, shorebirds, loons, waterfowl, inland dwelling sea birds, and passerines;

(3) Important habitat for moose;

(4) Important habitat for fish;

(5) Important subsistence activities;

(6) Important recreational activities;

(7) World-class paleontological deposits; and

(8) Significant cultural resources, including numerous sites from the prehistoric and historic eras.

(b) *Kasegaluk Lagoon Special Area*. The Kasegaluk Lagoon Special Area encompasses the area within the boundaries depicted on maps that are published as of [INSERT EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Kasegaluk Lagoon Special Area shall be managed to assure maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

(1) Important habitat for marine mammals;

(2) Unique ecosystem for the Arctic Coast;

(3) Opportunities for primitive recreational experiences;

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(4) Important habitat for migratory birds; and

(5) Important subsistence activities.

(c) *Peard Bay Special Area.* The Peard Bay Special Area encompasses the area within the boundaries depicted on maps that are published as of [INSERT EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Peard Bay Special Area shall be managed to assure maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

(1) Haul-out areas and nearshore waters for marine mammals; and

(2) High-use staging and migration areas for shorebirds and waterbirds.

(d) *Teshekpuk Lake Special Area.* The Teshekpuk Lake Special Area encompasses the area within the boundaries depicted on maps that are published as of [INSERT EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Teshekpuk Lake Special Area shall be managed to assure maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

(1) Important nesting, staging, and molting habitat for a large number of migratory and other waterbirds;

(2) Important caribou habitat;

(3) Important shorebird habitat;

(4) Subsistence hunting and fishing activities;

(5) Pik Dunes; and

(6) Overwintering habitat for fish.

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(e) *Utukok River Uplands Special Area*. The Utukok River Uplands Special Area encompasses the area within the boundaries depicted on maps that are published as of [INSERT EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Utukok River Uplands Special Area shall be managed to assure maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

- (1) Important habitat for the Western Arctic Caribou Herd;
- (2) Subsistence hunting activities;
- (3) Grizzly bear habitat; and
- (4) Important wilderness values.

**§ 2361.30 Special Areas designation and amendment process.**

(a) In designating, de-designating or otherwise changing boundaries or management of Special Areas, the authorized officer must:

(1) Rely on the best available scientific information, including Indigenous Knowledge, as well as the best available information concerning subsistence uses and resources within the Reserve;

(2) Provide the public and interested stakeholders with notice of, and meaningful opportunities to participate in, the evaluation process;

(3) Consult with any federally recognized Tribes and Alaska Native Claims Settlement Act corporations that use the affected Special Area for subsistence purposes or have historic, cultural or economic ties to the Special Area; and

(4) In designating, de-designating, or otherwise changing boundaries of Special Areas, base their decisions solely on the presence or absence of significant resource

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values and not the existence of measures that have been or may be adopted to protect or otherwise administer those values.

(b) The Bureau must evaluate lands within the Reserve for the presence of significant subsistence, recreational, fish and wildlife, historical, or scenic values and shall designate lands as Special Areas containing such values in accordance with the following procedures:

(1) Every 10 years, or sooner if the authorized officer determines that changing conditions warrant, the authorized officer must evaluate and determine whether to:

(i) Designate new Special Areas;

(ii) Expand existing Special Areas;

(iii) Recognize the presence of additional significant resource values in existing Special Areas; or

(iv) Require additional measures or strengthen existing measures to assure maximum protection of significant resource values within existing Special Areas.

(2) The authorized officer may, but is not required to, conduct the evaluation and otherwise designate and amend Special Areas through amendment of the IAP.

(3) The authorized officer must provide the public and interested stakeholders with the opportunity to recommend lands that should be considered for designation as a Special Area, significant resource values that the authorized officer should consider recognizing for existing Special Areas, and measures that the authorized officer should consider requiring to assure maximum protection of significant resource values within Special Areas. The authorized officer will evaluate and respond to recommendations that

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are made in completing its evaluation. Such recommendations should identify and describe:

(i) The size and location of the recommended lands;

(ii) The significant resource values that are present within or supported by the recommended lands;

(iii) Measures that may be necessary to assure maximum protection of those values; and

(iv) Any other pertinent information.

(4) If, at any point after receipt of an internal or external recommendation, the authorized officer determines that interim measures are required to assure maximum protection of significant resource values in lands under consideration for designation as a new or modified Special Area, the authorized officer may implement such measures that are consistent with the governing management prescriptions in the IAP during the period for which the lands remain under consideration; provided, however, that the authorized officer will provide public notice that interim measures are in place and such measures will be reassessed to determine if they are still needed if they remain in place for more than 5 years.

(5) When the authorized officer designates lands as Special Areas or recognizes the presence of additional significant resource values in existing Special Areas, the authorized officer must adopt measures to assure maximum protection of significant resource values. Such measures are not constrained by the provisions of the current IAP. Once adopted, these measures supersede inconsistent provisions of the IAP then in effect



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for the Reserve and will be incorporated into the IAP during the next revision or amendment.

(6) For any lands designated as a Special Area, the authorized officer will publish a legal description of those lands in the *Federal Register*, along with a concise summary of the significant resource values that support the designation. The Bureau will also maintain a map of the Special Area on its website and available for public inspection at the Arctic District Office.

(c) The Bureau may not remove lands from the Teshekpuk Lake and Utukok River Uplands Special Areas unless directed to do so by statute. The Bureau may remove lands within other Special Areas only when all of the significant resource values that support the designation are no longer present. When determining whether to remove lands from a Special Area designation, the authorized officer must:

(1) Prepare a summary of its proposed determination, including the underlying factual findings;

(2) Provide the public and interested stakeholders with the opportunity to review and comment on the proposed determination; and

(3) Issue a determination that documents how the views and information provided by the public, federally recognized Tribes, Alaska Native Claims Settlement Act corporations, federally qualified subsistence users, and other interested stakeholders have been considered.

#### **§ 2361.40 Management of oil and gas activities in Special Areas.**

The management priority within Special Areas is to assure maximum protection of significant resource values, consistent with the requirements of the Act for exploration

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and production of the Reserve. The Bureau must fulfill this duty at each stage in the decision-making process for oil and gas activities in the Reserve, and in accordance with the following procedures:

(a) The authorized officer must, to the extent consistent with the Act, take such steps as are necessary to avoid the adverse effects of proposed oil and gas activities on the significant resource values of Special Areas. This includes, but is not limited to, conditioning, delaying action on, or denying proposals for activities, either in whole or in part, and ensuring that leasing and production is approved only subject to the provisions of this section.

(b) The authorized officer will identify and adopt maximum protection measures for each significant resource value that is present in a Special Area when Special Areas are designated. The authorized officer will update maximum protection measures as appropriate thereafter, including in the IAP, lease terms, and permits to conduct oil and gas activities.

(c) Maximum protection may include, but is not limited to, requirements for:

(1) Rescheduling activities, including specifying rates of development, and requiring use of alternative routes;

(2) Limiting new infrastructure and roads;

(3) Limiting extraction of sand and gravel or withdrawal of water;

(4) Limiting types of vehicles and loadings;

(5) Limiting types of aircraft in combination with minimum flight altitudes and distances from identified places; and

(6) Applying special fuel handling procedures.

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(d) Subject to any revisions made pursuant to § 2361.30, oil and gas leasing and authorization of new infrastructure in Special Areas will conform to the land use allocations and restrictions identified on the maps published as of [INSERT EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office.

(e) On lands within Special Areas that are allocated as closed to leasing or unavailable to new infrastructure, certain uses may be authorized under limited circumstances:

(1) The authorized officer may issue oil and gas leases in Special Areas if drainage is occurring. Any lease issued for drainage purposes will include provisions that prohibit surface-disturbing oil and gas activities on the entire lease tract.

(2) The authorized officer may approve new roads, pipelines, transmission lines, and other types of infrastructure in Special Areas provided that:

(i) The infrastructure will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve or will support subsistence activities; and

(ii) Appropriate measures are adopted to assure maximum protection of significant resource values.

(3) The authorized officer may approve new permanent infrastructure related to existing oil and gas leases only if such infrastructure is necessary to comport with the terms of a valid existing lease.

(f) On lands within Special Areas that are allocated as available for future oil and gas leasing or new infrastructure, the authorized officer will presume that proposed oil

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and gas activities should not be permitted unless specific information available to the authorized officer clearly demonstrates that those activities can be conducted with no or minimal adverse effects on significant resource values or unless they are necessary to comport with the terms of a valid existing lease.

(g) When preparing an environmental analysis of proposed leasing, exploration, development, or new infrastructure in Special Areas, and reaching a final decision, the authorized officer will:

(1) Provide the public with a meaningful opportunity to review and comment, and consider and respond to any relevant comment they receive;

(2) Consult with federally recognized Tribes and Alaska Native Claims Settlement Act corporations that use the affected Special Area for subsistence purposes or have historic, cultural, or economic ties to the Special Area;

(3) Evaluate potential adverse effects and measures to avoid, minimize, or otherwise mitigate such effects to achieve maximum protection of significant resource values;

(4) Document how the proposal falls within one of the exceptions in § 2361.40(e) or the justification for overcoming the presumption in § 2361.40(f), such as if the proposed infrastructure is necessary to comport with the terms of a valid existing lease, or if it will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve, and the proposal has been conditioned to avoid, minimize, or otherwise mitigate adverse effects;

(5) Document and consider any uncertainty concerning the nature, scope, and duration of potential adverse effects on significant resource values of Special Areas and

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ensure that any actions taken to avoid, minimize, or mitigate such effects account for and reflect any such uncertainty; and

(6) Prepare a Statement of Adverse Effect, if the authorized officer determines that the proposal cannot avoid adverse effects on significant resource values in a Special Area. The Statement of Adverse Effect will describe the:

(i) Significant resource values that may be adversely affected;

(ii) Nature, scope, and duration of those adverse effects;

(iii) Measures the Bureau evaluated to avoid the adverse effects, including whether any practicable alternatives exist that would have less adverse impact on significant resource values of the Special Area;

(iv) Justification for not requiring those measures;

(v) Measures the authorized officer will require to minimize, to the maximum extent possible, adverse effects on significant resource values of the Special Area; and

(vi) Measures the authorized officer will require to mitigate any residual adverse effects that cannot be avoided or minimized, including compensatory mitigation, along with an explanation of how those measures will assure maximum protection of significant resource values.

(h) The authorized officer must include in each decision and authorization related to oil and gas activity in the Reserve terms and conditions that provide the authorized officer with sufficient authority to fully implement the requirements of this section.

**§ 2361.50 Management of subsistence uses within Special Areas.**

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(a) The Bureau will ensure that Special Areas are managed to protect and support fish and wildlife and fish and wildlife habitat and associated subsistence use of such areas by rural residents as defined in 50 CFR 100.4.

(b) The Bureau will provide reasonable access to and within Special Areas for subsistence purposes.

**§ 2361.60 Co-stewardship opportunities in management of Special Areas and subsistence.**

In accordance with the Bureau's co-stewardship guidance, the Bureau will seek opportunities to engage federally recognized Tribes in co-stewardship for management of Special Areas and subsistence resources throughout the Reserve. Co-stewardship opportunities may include co-management, collaborative and cooperative management, and tribally led stewardship, and can be implemented through cooperative agreements, memoranda of understanding, self-governance agreements, and other mechanisms. The Bureau may also partner with Alaska Native Claims Settlement Act corporations, local governments, or organizations as provided by law.

**§ 2361.70 Use authorizations.**

(a) Use authorizations must be obtained from the authorized officer prior to any use within the Reserve. Only uses that are consistent with the purposes and objectives of the Act and these regulations will be authorized.

(b) Except as may be limited, restricted, or prohibited by the authorized officer, use authorizations are not required for:

(1) Subsistence uses (e.g., hunting, fishing, and berry-picking); and

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(2) Non-commercial recreational uses (e.g., hunting, fishing, backpacking, and wildlife observation).

(c) Applications for use authorizations shall be filed in accordance with applicable regulations in this chapter. In the absence of such regulations, the authorized officer may consider and act upon applications for uses allowed under the Act.

(d) In addition to other statutory or regulatory requirements, approval of applications for use authorizations shall be subject to such terms and conditions as the authorized officer determines to be necessary to protect the environmental, subsistence, recreational, fish and wildlife, historical, and scenic values of the Reserve and to assure maximum protection of significant resource values within Special Areas.

**§ 2361.80 Unauthorized use and occupancy.**

Any person who violates or fails to comply with regulations of this subpart is subject to prosecution, including trespass and liability for damages, pursuant to the appropriate laws.

**Subpart 2362 [Reserved]**