

HICKS, BOYD, CHANDLER & FALCONER, LLP

RECEIVED AUG 25 2004

ATTORNEYS AT LAW
SUITE 200
825 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
TELECOPIER: (907) 274-3698
hbcf@hbcf.net

197616

August 24, 2004

NE NPR-A Amendment Planning Team
Bureau of Land Management
Alaska State Office (930)
222 West 7th Avenue
Anchorage, AK 99513-7599

Re: Letter Commenting on the Draft Amended
Northeast NPR-A EIS/IAP (w/corrected header)

Dear Ms. Childs:

Thank you for pointing out that the header on the letter from Kuukpik Corporation, the City of Nuiqsut, the Native Village of Nuiqsut, and KSOP commenting on the Draft Amended Northeast NPR-A EIS/IAP has an incorrect header. A copy of the letter with the correct header is enclosed. In addition, I have enclosed a copy of the signature page with the incorrect header crossed out, and the correct header filled in.

Sincerely,

HICKS, BOYD, CHANDLER &
FALCONER, LLP

By 

Brent Edwards

BE\hf

Enclosure

cc: Lanston Chinn (w/o encs)
Isaac Nukipagak (w/o encs)

lfbe.kuukpik.childs.ltr.082404f



Incorporated April 19, 1973

KUUKPIK
corporation

002 (Cont'd)
Purpose

August 23, 2003

FAX (907) 271-5479

NE NPR-A Amendment Planning Team
Bureau of Land Management
Alaska State Office (930)
222 West 7th Avenue
Anchorage, AK 99513-7599

Attention: Susan Childs
Project Manager

**Re: Comments on the Amended Draft
Northeast NPR-A EIS/IAP**

Dear Ms. Childs,

I. Introduction

1 These are comments from Kuukpiik Corporation, the Native Village of Nuiqsut, the City of Nuiqsut, and the Kuukpikmuit Subsistence Oversight Panel ("KSOP") on the Draft Northeast National Petroleum Reserve Alaska Amended Integrated Activity Plan/Environmental Impact Statement ("Amended Draft EIS"). We are the economic, tribal, governmental, and cultural organizations for the community of Nuiqsut. Together we submitted a scoping comment letter for the BLM's proposed amendment on October 31, 2003 ("NE NPR-A Scoping Letter"). On pages 2 through 7 of that letter we described our organizations and the interests of the Nuiqsut community that we represent, and that discussion is incorporated by reference to avoid repetition. Suffice it to say that we represent the community and the organizations that would be most impacted by the proposed amendment of the Northeast NPR-A Final Integrated Activity Plan/Environmental Impact Statement ("1998 NE NPR-A EIS/IAP") and by changes in the 1998 Northeast NPR-A Record of Decision ("1998 NE NPR-A ROD").

002 Purpose

At different times, BLM has stated that it is amending the 1998 NE NPR-A EIS/IAP and ROD because of (1) the Environmental Policy and Conservation Act, (2) a recommendation from the President's National Energy Policy Development Group to consider additional leasing in the Northeast NPR-A, (3) new studies and information, and (4) better technology. The BLM cannot reasonably rely on any of these as a purpose or a need for

Letter to the BLM Commenting
on the Amended Draft NE NPR-A EIS/IAP
Page 2 of 54

002 (Cont'd)
Purpose

amending the 1998 NE NPR-A EIS/IAP. As we will see, the Energy Policy and Conservation Act instructs BLM to generate an inventory within two years of restrictions and impediments to the development of resources. It is implicit in Congress asking for an inventory that Congress would then consider passing legislation to remove those restrictions or impediments that Congress determined should be removed. BLM has put the cart before the horse and assumed a role for itself that Congress did not intend. Instead of generating the inventory, as has been done elsewhere in the country, the BLM in Alaska has taken it upon itself to remove what it feels are restrictions and impediments. The recommendation of the President's National Policy Energy Development Group is, well, a recommendation.

003
Purpose

Even if the recommendation could be a reason for the BLM to act (we think it cannot), amending the 1998 NE NPR-A EIS/IAP is unnecessary because that 1998 EIS already had recently considered additional leasing in the Northeast Planning Area and determined that it was not appropriate under the applicable statutory mandates. Also, this "recommendation" by an advisory group cannot legally override the reasoned choices that the BLM made in the 1998 NE NPR-A ROD.

004
Basic

The Amended Draft EIS does not incorporate the new studies or the new technology that we were led to believe would be forthcoming during the scoping process for this Amended Draft EIS. The unspoken but real motivation driving BLM's actions here is a change in Presidential policy.

005
Purpose

Presidential policy alone is not a legally sustainable or sufficient reason to amend the 1998 NE NPR-A EIS/IAP or the 1998 ROD, particularly in light of Congress's intent to reserve those choices for itself.

6

We hope that the BLM will end this amendment process and wait until there are valid reasons to amend or supplement the management of the Northeast NPR-A. No one wants to believe that the BLM is willing to make changes to the management of the Northeast NPR-A that are not sustainable or make choices that will cause an insurmountable rift between it and the people who live in the NPR-A. The wheels are set in motion, though, so we doubt that this amendment process will end with our comments. That being the case, these are also our comments on the substance of the Amended Draft EIS.

007
Alternatives

The Amended Draft EIS itself has many deficiencies. Reasonable alternatives are left out of the Amended Draft EIS simply because they do not comport with the policy goals that the BLM is trying to implement through this amendment process. Additional alternatives need to be considered so that the BLM can fully consider the impacts of the alternative it has already decided to choose. The Amended Draft EIS repeatedly states that the same level of protection to surface resources is provided by the 1998 NE NPR-A ROD and the performance-based mitigation measures that the BLM is pushing. This is demonstrably not true, and until the analysis reflects the true impacts, the Amended Draft EIS cannot meet NEPA standards.

8

009
Impact

The impacts of additional leasing and increased surface occupancy in the Teshekpuk Lake Special Area are also not fully considered in the Amended Draft EIS. This is an area that is recognized for its importance to caribou, waterfowl and subsistence users. Impacts to these surface resources and resource users need to be adequately analyzed. Finally the

010
Impact

sociocultural and socioeconomic impacts on the community of Nuiqsut from the proposed changes are not adequately described or considered.

011
NEPA
Process

The deficiencies are so extensive that if the BLM insists on pressing forward with this NEPA process, it should correct the deficiencies in the Amended Draft EIS and make a revised Amended Draft EIS available for public comment. The version of the Amended Draft EIS that we are commenting on is simply too incomplete for the public to provide meaningful comments.

II. The Lack of Legal Authority for Amending the 1998 NE NPR-A EIS and ROD.

012
Purpose

The BLM has asserted that this amendment process is necessary; (1) because Congress amended the Energy Policy and Conservation Act in 2000; (2) to implement the recommendations of the President's National Energy Policy Development Group; and (3) because of what the BLM has learned since the 1998 NE NPR-A EIS/IAP was finalized. When the reasons given by the BLM for this amendment process are put to the test, they all prove hollow. So, what is driving the BLM's amendment of the NE NPR-A EIS/IAP and ROD? It all boils down to policy. Policy alone is not a legally sufficient reason to amend the 1998 NE NPR-A EIS/IAP and ROD.

(a) The Amendment to the Energy Policy and Conservation Act.

013
Purpose

Let's start by looking at the Energy Policy and Conservation Act ("EPCA"). The amendment to EPCA passed by Congress in 2000 calls for inventorying oil and gas assets, not for changing recently and properly adopted surface use restrictions. Our research has not shown any other area of the country where an EPCA process has involved the type of wholesale changes to land use provisions that are proposed here. As we will see, EPCA provides no authority for the proposed changes.

14

The BLM identifies the amendment to Section 604 of EPCA in the "Purpose and Need" section of the Amended Draft EIS as a reason for amending the 1998 NE NPR-A EIS/IAP.¹ This amendment to EPCA provides:

¹ Amended Draft EIS p. 1-5.

(a) In General.--The Secretary of the Interior, in consultation with the Secretaries of Agriculture and Energy, shall conduct an inventory of all onshore Federal lands. The inventory shall identify--

(1) the United States Geological Survey reserve estimates of the oil and gas resources underlying these lands; and

(2) the extent and nature of any restrictions or impediments to the development of such resources.²

(emphasis added) Presentation of the inventory to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate is required within 2 years of this amendment (i.e. 2002).³

015
Purpose

In giving this instruction, Congress was asking for information on restrictions and impediments so that it could decide whether to pass legislation in particular instances that would make development easier. “Restriction” and “impediment” are neutral terms. A provision barring oil drilling on the White House lawn is a restriction or an impediment, but that doesn’t by itself mean that removing that restriction is the right or appropriate thing to do.⁴ Instead of giving Congress the information that it requested about restrictions and impediments to development in Alaska, the BLM is proceeding on its own to decide what is and isn’t appropriate. The fact that national energy policy legislation is deadlocked in Congress doesn’t change the fact that EPCA does not give the BLM any authority to do what it is doing. In fact the BLM hasn’t even done what EPCA does require, namely generating that inventory (which has been done elsewhere in the country).

016
Purpose

Identifying the extent and nature of any restrictions on the development of the oil and gas resources beneath the NPR-A can be done by reading the 1998 NE NPR-A ROD,⁵ then

² 42 USCA 6217, Amended Draft EIS p. 1-5.

³ 42 USCA 6217(c). There is no mention of this requirement in the Amended Draft EIS.

⁴ It’s hard to see how land use provisions recently adopted as part of a valid NEPA process constitute “impediments”, but the analysis is no different even if such a provisions are considered an impediment.

⁵ Understanding what the potential resource is the first part of the EPCA process, and the United States Geological Service (“USGS”) has performed its part of the work mandated by EPCA by updating its estimate of oil and natural gas beneath the NPR-A.
<http://pubs.usgs.gov/of/2003/of03-044/text.htm#sum>.

016 (Cont'd)
Purpose

submitting a report to the appropriate Congressional subcommittees. The process here is not consistent with how the BLM is applying EPCA elsewhere in the United States. When the BLM conducted its EPCA review for five oil and gas producing basins in the Rocky Mountains region all it did was identify restrictions in the existing leases.⁶ That inventory did not purport to change the management of those basins or amend the existing leases. As discussed in Footnote 49 below, the President's own National Energy Policy Development Group (the very group on whose recommendations the BLM relies to justify this process) has issued a policy recommendation to President Bush that demonstrates that it, too, believes that EPCA authorizes only study of restrictions on development, not executive action.

017
Purpose

Absolutely nothing in EPCA directs the BLM to amend the 1998 NE NPR-A EIS/IAP or ROD. This fact is born out by the BLM's past practice which shows that it has not interpreted EPCA as requiring anything more than a report. We find it interesting then that EPCA was not identified as authority for amending the management of the Northeast NPR-A until after the scoping comment period had ended.⁷ If EPCA was truly one of the reasons for the BLM's decision to amend the 1998 NE NPR-A EIS/IAP and ROD, BLM would not have waited until months after the amendment process had started to cite EPCA for the first time as a justification for the process. Our organizations' scoping comments of last October challenged the BLM's authority to amend the 1998 NE NPR-A EIS/IAP and ROD.⁸ The sudden appearance of EPCA as a justification after the close of scoping sounds a lot like BLM recognized it was on weak ground and was grasping for any support it could find elsewhere. EPCA, however, doesn't provide that support.

018
Purpose

After we first heard that the BLM was relying on EPCA as a reason to amend the 1998 NE NPR-A EIS/IAP and ROD, we thought that perhaps the community was missing something in its analysis. So, we asked the BLM in a letter to explain how EPCA could constitute the need or purpose for amending the management of the Northeast NPR-A. (See letter dated January 6, 2004 attached hereto as document No. 1). We never received a response.⁹

⁶ See <http://www.doi.gov/epca/>.

⁷ EPCA was first mentioned to representatives from the community of Nuiqsut at a meeting with the BLM and other agencies on December 4th, 2003. This supposed purpose and need for the proposed amendment should have been disclosed during scoping in order to give participants in the scoping process an opportunity to help the agency define the scope of this NEPA process.

⁸ NE NPR-A Scoping Letter pp. 15-21.

⁹ We do not think that our request for an explanation was unreasonable. After all, the City of Nuiqsut is a governmental entity, the Native Village of Nuiqsut is a federally recognized tribe,

There is something more going on here, as we will see shortly.

(b) The NEPDG's Recommendation That Additional Leasing in the Northeast NPR-A be Considered.

19 BLM also claims that it is amending the 1998 NE NPR-A EIS/IAP and ROD because of the National Energy Policy Development Group's ("NEPDG's") recommendation that President George W. Bush direct the Secretary of the Interior to:

consider additional environmentally responsible oil and gas development based on sound science and the best available technology, through further lease sales in the National Petroleum Reserve - Alaska . . . [S]uch considerations should include areas not currently leased within the northeast corner of the National Petroleum Reserve - Alaska

020 Purpose Like EPCA, this is identified in the "Purpose and Needs" section of the Amended Draft EIS.¹⁰ Unlike EPCA this was an excuse for the amendment of the NE NPR-A EIS/IAP and ROD that was advanced during scoping. But wait a minute, this is just a recommendation. How does a recommendation from an *ad hoc* advisory group provide legal authority to amend a recent Record of Decision? It doesn't. Nowhere does the Amended Draft EIS claim that the President has directed the consideration of additional leasing in the Northeast NPR-A. In the same letter that we asked the BLM to explain how EPCA led to its decision to amend the NE NPR-A EIS/IAP and ROD, we asked it to explain how this recommendation to the President amounted to anything. As we have already said, the BLM did not respond. Even if the President had directed that this recommendation be followed, a valid administrative action cannot be changed without "a satisfactory explanation for [the] action including a rational connection between the facts found and the choices made."¹¹ In addition, under federal regulations, "Environmental impact

and Kuukpik Corporation owns the only large tracts of private land in the Northeast NPR-A and will own another 22,000 acres in the Northeast NPR-A once it has completed its ANCSA selections.

¹⁰ Amended Draft EIS p. 1-5.

¹¹ International Snowmobile Manufacturers Assoc. v. State of Wyoming, 2004 U.S. LEXIS 1796 (D.Wyo. Feb. 10, 2004), Quoting Motor Vehicle Mfrs. Assoc. v. State Farm Mutual Auto Co., 463 U.S. 29, 43 (1983). The flip flopping on management decisions in order to implement a policy choice made by a current administration (which is exactly what the BLM is proposing to do when all the camouflage is stripped away), is disfavored by the courts. See e.g. The Fund for Animals v. Norton, Civ. Action No. 02-2367 (EGS) (D.C. 2003); International Snowmobile Manufacturers Assoc. v. State of Wyoming, 2004 U.S. LEXIS 1796 (D.Wyo. Feb.

statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.”¹²

021
Purpose

The fact that the 1998 NE NPR-A EIS/IAP and ROD were so recent, only about four years old, at the point in time that this amendment process was announced, makes it that much harder to show that satisfactory explanation and the type of new or additional facts that would justify such changes. The very decision being proposed here, opening up the area around Teshekpuk Lake, was considered only four years before, in the 1998 NE NPR-A EIS/IAP. In that document, Alternative D considered leasing 73% of the area in the Northeast NPR-A with a high potential for oil and gas (as opposed to the total acreage in the Northeast NPR-A).¹³ This Alternative looks nearly identical to the leasing scenario in Alternative B of the Amended Draft EIS which makes only 7% more of the area with a high potential for oil and gas available for leasing.¹⁴ Alternative E in the 1998 NE NPR-A EIS/IAP considered leasing all of the Northeast NPR-A.¹⁵ Alternative C in the Amended Draft EIS also considers leasing all of the Northeast NPR-A.¹⁶ So, leasing of additional areas in the Northeast NPR-A has already been recently considered in form and substance virtually unchanged from what is now being proposed - and not adopted.

22

As we will see, the new or additional facts that are necessary to justify amending the 1998 NE NPR-A EIS/IAP do not exist.

(c) What the BLM has Learned Since 1998.

023
Purpose

Finally, BLM initially claimed (prior to and during scoping) that amendment of the 1998 NE NPR-A EIS/IAP is appropriate because it had “learned a lot during the last four

10, 2004)(granting preliminary injunction on a Record of Decision in part because the National Park Service never fully explained the reasons for changes from existing to proposed to final management plan.) See additional Discussion at II (d), below.

¹² 40 CFR 1502.1.

¹³ 1998 NE NPR-A EIS/IAP p. II-22 and II-27.

¹⁴ Amended Draft EIS p. 2-3, 4-165, Map 2-2.

¹⁵ 1998 NE NPR-A EIS/IAP p. II-22 and Map II-28.

¹⁶ Amended Draft EIS p. 2-8 and Map 2-3.

023 (Cont'd)
Purpose

years.”¹⁷ We were told during scoping meetings and in press releases that the BLM now had better information from new studies.¹⁸ In our NE NPR-A Scoping Letter we showed that the “studies” that we were told justified the amendment of the 1998 NE NPR-A EIS/IAP were either incomplete or did not support the changes to the management of the Northeast NPR-A that the BLM wanted to consider in this amendment process.¹⁹ We were not the only ones who did not find substance in the BLM’s claim that what it had learned could justify amending the 1998 NE NPR-A EIS/IAP and ROD. The North Slope Borough said in its scoping letter that it was not aware of significant new data that justified amending the surface resource protections that are already in place. Representatives from other federal agencies had also informally agreed that no new studies changed the basic information that was discussed in the 1998 NE NPR-A EIS/IAP or that led to the management of the Northeast NPR-A as adopted in the 1998 NE NPR-A ROD.²⁰ Those scoping comments apparently caused the BLM to re-evaluate whether the proffered reasons withstood scrutiny. The BLM apparently concluded that they did not, since the BLM has now dropped those claims. The “Purpose and Need” section in the Amended Draft EIS does not identify new or better information as a justification for this process. We have completely reviewed the Amended Draft EIS and can tell that this is not an accident because, simply put, the BLM has not learned a lot in the years since the 1998 NE NPR-A EIS/IAP became final.²¹ The studies that the BLM told us that it was relying on during scoping seem to no longer be driving it to amend the 1998 NE NPR-A EIS/IAP or ROD.

024
Purpose

If it was not new studies or understanding about wildlife in the Northeast NPR-A that the BLM had learned from, could have it learned that there is a better way to explore for or to develop oil and gas that has less impact and would therefore perhaps justify opening areas to development that were judged too sensitive for development just four years before this process began? That can’t be right because the 1998 NE NPR-A EIS/IAP and the Amended Draft EIS

¹⁷ BLM to Hold Public Scoping Meetings for Revised Plan for Northeast National Petroleum Reserve - Alaska, September 5, 2003, Release No. 03-20.

¹⁸ June 23, 2003 Notice of Intent published in the Federal Register says that “the BLM has conducted various scientific studies on the biological resources of the plan area in cooperation with the North Slope Borough, the State of Alaska, and other federal agencies.” FR Vol. 68, No. 120, pp 37173-37174.

¹⁹ NE NPR-A Scoping Letter pp. 16 - 21.

²⁰ NE NPR-A Scoping Letter p. 16.

²¹ Since the 1998 NE NPR-A EIS/IAP was finalized, additional caribou surveys have reinforced the BLM’s decision to not lease the area around Teshekpuk Lake. This letter will return to these caribou surveys in section IV below.

025
Roadless

basically use the same roadless development scenario.²² The industry, which in 1998 touted roadless development as the wave of the future, is now abandoning the concept.²³ This is evidenced by the proposed Alpine Satellite Development plan, in which 4 of the 5 proposed satellites pads, and all of the satellite pads in the NPR-A, would be accessible by a road connected to the Alpine Central Processing Facility (“ACPF”). If the proposed road from the ACPF is built to the CD-6 and CD-7 satellites in the NPR-A, then common sense dictates that it is more likely that the next discovery to the west will be accessed by a road connected to one of these two facilities. The Amended Draft EIS itself acknowledges that reality when it states that development is more likely when it is near existing infrastructure and is less likely to be scattered about using wholly separate facilities.²⁴

026
Roadless

This change in the layout of future development has not been incorporated into the impacts analysis of the Amended Draft EIS. Instead, the analysis of the impacts of potential future development is based on scenarios that, while promising in 1998, are now unlikely. Perhaps the failure of the roadless development concept to live up to its promise is a change in the impacts of oil and gas exploration and development that could justify amending the NE NPR-A EIS/IAP. But, this change would not give the BLM justification to amend the NE NPR-A EIS/IAP to achieve the end results that the BLM apparently seeks from this process. Instead, it could only provide the basis for tightening environmental protections because likely development scenarios will now have greater a footprint, involve more facilities and consequently cause more and greater impacts.

027
Basic

New technology was another reason advanced by the BLM during scoping for the amendment of the 1998 NE NPR-A EIS/IAP and ROD.²⁵ The Amended Draft EIS provides an “update” to the 1998 NE NPR-A EIS/IAP identifying technological advances. Of the 9 advances

²² Amended Draft EIS p. 4-22, 4-234, 4-325. 1998 NE NPR-A EIS/IAP p. IV-A-12.

²³ 1998 NE NPR-A EIS/IAP p. IV-A-12 “This concept of ‘roadless development’ . . . is likely to be the preferred strategy for future fields in the NPR-A for both practicality and cost reasons.” Amended Draft EIS p. 4-30 (Assuming that future development will be roadless.). Compare with 2004 Draft Alpine Satellite Development EIS p. 2-39 (description of proposed action).

²⁴ Amended Draft EIS p. 3-16 “[T]he economics for development are more favorable if existing infrastructure is used. Consequently, new development is likely to expand incrementally from current North Slope infrastructure rather than appear as widely scattered startup projects.”

²⁵ NE NPR-A Scoping Letter p. 17.

027 (Cont'd)
Basic

identified, 7 were also known and listed as advances in the 1998 NE NPR-A EIS.²⁶ The one advance that was not expressly discussed in the 1998 NE NPR-A EIS/IAP, the modification of seismic operation vehicles in order to reduce ground pressure, is a practice that had been used for years before 1998 and is hardly a convincing reason to change the management of the NE NPR-A, much less amend the existing EIS or ROD.²⁷ It has no bearing on opening the area around Teshekpuk Lake to leasing or year-round surface occupancy.

030
Basic

The only other technological advance listed that was not included in the 1998 NPR-A EIS/IAP is the modular drilling platform that was tested on the North Slope by Anadarko.²⁸ We pointed out in our scoping letter that the Anadarko modular drilling platform was more of a technological failure than a technological advancement.²⁹ The modular drilling platform's failure to live up to its promises should have been mentioned in the Amended Draft EIS or mention of the platform should have been left out altogether. Regardless, the existence of the platform was not factored into the development scenario and so the platform's mere existence, probably in a scrap heap somewhere, basically has no bearing on whether it was

²⁶ Compare 1998 NE NPR-A EIS/IAP p. IV-A-9 with Amended Draft EIS p. 4-13.

028
Tundra
Travel

²⁷ We were told during scoping that the criteria for tundra travel opening was being evaluated, and that this was a reason to revisit the 1998 NE NPR-A ROD. In our NE NPR-A Scoping Letter, we pointed out how the evaluation of the criteria for opening tundra travel was not completed and that the evaluation itself appeared to be driven by a goal to increase the number of tundra travel days, which could taint its objectivity. p. 18. Amended Draft EIS p. 4-19 says that based on this evaluation, tundra travel will now be opened by type of equipment. This has apparently led (although it is not at all clear in the Amended Draft EIS) the BLM to propose a change from the 1998 NE NPR-A ROD, Stipulation 24e which requires 12 inches of frost and 6 inches of snow cover to a ROP allowing tundra travel when "frost and snow cover is at sufficient depths to protect the tundra." Amended Draft EIS p. 2-18 and 2-19. However, the Amended Draft EIS does not make note of this change in its analysis of the impacts under Alternatives B and C. See e.g. Amended Draft EIS p. 4-178 discussing the potential for thermokarsting under Alternative B which identifies "the requirement that snow depth would average 6 inches before overland activities could commence" as minimizing damage to tundra. Assuming that there is no additional damage to tundra when tundra travel is opened by vehicle type, this minor change in management does not require the full blown amendment to the Northeast NPR-A EIS/IAP and ROD that we see happening here because it could have been accomplished through an Environmental Assessment followed by a Finding of No Significant Impact.

029
Tundra
Travel

²⁸ For further mention of this drilling platform as an advance see Amended Draft EIS pp. 4-18 & 20.

²⁹ NE NPR-A Scoping Letter p. 22.

appropriate to amend the 1998 NPR-A EIS/IAP.³⁰

032
Well
Drilling

Interestingly, the Amended Draft EIS continues to identify extended reach drilling technology as a technological advance.³¹ During scoping, we were told that extended reach drilling technology had limited application in the Northeast NPR-A due to subsurface geology.³² Supposedly, because this limitation on the use of directional drilling was not discovered until after exploratory drilling in the No-Surface Occupancy zones in the eastern part of the Northeast NPR-A, this limitation was part of the reason for amending the 1998 NE NPR-A EIS/IAP. However, there is no mention of a technical limitation on extended reach drilling in the Amended Draft EIS,³³ and the zones where exploratory drilling has occurred remain intact under both Alternatives B and C (although other No-Surface Occupancy zones would be obliterated.)³⁴ Unless we've missed something, it appears that limitations on extended reach drilling is yet

031
Basic

³⁰ Another advance mentioned in the Amended Draft EIS is the Arctic Millennium Rig, which is modular, lighter, and can be transported over packed snow instead of over ice roads. Amended Draft EIS p. 4-20. We think that this advance in technology may be welcome from an impacts standpoint if in fact it can be so transported without damaging the tundra. But, this only helps “mitigate the constraints” of the ever shortening ice road season. This advance does not mitigate the impacts of exploration or the impacts of development considered in the 1998 NE NPR-A EIS/IAP. By contrast, if this same drill rig or one like it could be used to drill the Alpine Satellites, that could significantly reduce the impacts of the proposed Alpine Satellites which are currently under review because the proposed bridge across the Nigliq Channel would no longer need to accommodate a heavier, less modular, drill rig. We look forward to seeing this advance in technology discussed in the upcoming Alpine Satellites Final EIS.

³¹ Compare 1998 NE NPR-A EIS/IAP p. IV-A-9 with Amended Draft EIS p. 4-13.

³² NE NPR-A Scoping Letter p. 17, 26 - 27.

034
Well
Drilling

³³ Amended Draft EIS p. 4-36 notes that while oil beneath No-Surface Occupancy zones may be technically recoverable, “In most cases, the surface restrictions that would require directional drilling beyond 1 mile would cause economic burdens that would result in bypassed resource recovery or the elimination of marginal projects.” There is nothing indicating that the economic burdens of directional drilling beyond a mile was not known at the time that the 1998 NE NPR-A EIS was finalized.

035
Well
Drilling

³⁴ The No-Surface Occupancy zones that would remain under Alternatives B and C would be subject to an exception clause that erodes the effectiveness of setting such areas aside. This letter will address the exceptions clause proposed for Alternatives B and C in section III below.

another justification for this process which the BLM is no longer advancing.³⁵

033
Basic

37

Since there is no new science in favor of changing the management of the Northeast NPR-A, and there have not been advances in the best available technology, what's to justify the amendment of the 1998 NE NPR-A EIS/IAP and ROD? There are other claimed justifications urged by the BLM, but they are similarly deficient. The Executive Summary and the "Purpose and Need" section of Amended Draft EIS tells the reader that by excluding areas from leasing, the 1998 ROD has made approximately 2 billion barrels of the 3.2 billion barrels of oil in the Northeast NPR-A unavailable for development.³⁶ These numbers are not supported anywhere in the Amended Draft EIS! According to the discussion of "Oil and Gas Exploration and Development Activities" and the discussion of the "Differences in Activity Levels for Leasing Alternatives"³⁷, at most, recovery of 2.488 billion barrels of oil is projected under Alternative C. This drops to 2.054 barrels of oil under Alternative B (the preferred alternative). The estimated recovery of oil under the 1998 NE NPR-A ROD should have been compared to these projections. The fact that this comparison was made in the Executive Summary, probably the only part of the Amended Draft EIS that most people read, makes it is especially misleading and deserving of a very prominent correction (if the BLM chooses to continue the amendment process).

038
Oil
Resources

In addition to the misleading comparison of oil that is not recoverable under the current management plan, the disparity between the projected recoverable oil under the current management of the NE NPR-A and the projected recovery of oil under Alternatives B and C is completely out of whack. Leasing 52% of the area with a high potential for oil leads to a projected recovery of only 600 million barrels of oil. But when about 30% more of this area is made available for leasing (i.e. 80% of the area of high oil potential) the projected amount of oil that can be recovered increases 3.4 times. Leasing that last 20% of the area with high oil potential only yields another projected 434 million barrels of oil of additional oil. These widely varying projections need rational explanation.³⁸

36

³⁵ See also answer to frequently asked question number 14 (<http://nenpra.ensr.com/nenpra/faq.htm>) which does not mention limitations to the use of directional drilling in the Northeast NPR-A.

³⁶ Amended Draft EIS Executive Summary p. 5, p. 1-4 & 5.

³⁷ Amended Draft EIS p. 4-11 and p. 4-34.

039
Oil
Resources

³⁸ Amended Draft EIS p. 4-37 says that the estimated recovery under alternative B is "considerably more optimistic." Part of this optimism is attributed to the increase in the "total resource endowment in the 2002 assessment." There is no mention of the increased resource endowment being applied to Alternative A and we cannot determine from the Amended Draft

040
Basic

In any event, the possibility that there may be more oil that will not be recovered under the current management of the Northeast NPR-A than under an amended plan it simply not relevant. Congress has directed the BLM to manage the NPR-A under such conditions, restrictions, and prohibitions that are necessary to mitigate adverse impact on surface resources, and to provide maximum protection to the Teshekpuk Lake Special Area.³⁹ These:

41

protections efforts are not intended as a prohibition of petroleum and related activities. However, a balance must be achieved to provide opportunities for successful oil and gas operations while providing maximum protection for the environment and local residents.⁴⁰

42

The 1998 NE NPR-A ROD achieved that balance by establishing prescriptive-based stipulations and by determining that a significant part of the Teshekpuk Lake Special Area would not be leased at all. These measures were adopted to protect the environment and the local residents, not to prohibit oil and gas activities.

043
General

We are not saying that the management in the 1998 NE NPR-A ROD is written in stone, but we are saying that focusing on the potential recovery of oil will always make surface protections look like prohibitions on petroleum activity. Congress has directed the BLM to provide these environmental protections, and differing amounts of oil in the area doesn't affect those Congressional mandates.

039 (Cont'd)
Oil
Resources

EIS whether the Alternative A estimate was appropriately adjusted. There is reason to believe that it has not been adjusted. See 1998 NE NPR-A EIS/IAP p. IV-G-1 (Estimate that 600 million barrels of oil could be recovered under the Preferred Alternative.) If the increased resource endowment was not applied to Alternative A, then the estimate of recoverable oil needs to be prominently corrected. Additional reasons for the estimate of oil recoverable under Alternative B are the opening of new areas for leasing and a change to performance-based stipulations. This does not make sense. As noted in the body of this letter, there is no rational proportionality between the area available for leasing and the estimate of recoverable oil. A change in management style also would not rationally lead to such a significant difference in the proportions of recoverable oil under the different alternatives since the BLM has successfully leased tracts in the NPR-A that are controlled by the stipulations that were developed in the 1998 ROD. In other words, industry has not shied away from leases that are controlled by the current management plan, and so it is not rational to conclude that industry interest would be significantly different in leases with performance-based ROPs and stipulations.

³⁹ 42 USCA 6504(b) and 6508(1), Amended Draft EIS p. 1-6. The Teshekpuk Lake Special Area is depicted on Map 1-3 in the Amended Draft EIS.

⁴⁰ Amended Draft EIS p. 2-13.

044
Purpose

The BLM has also tried to justify the amendment of the 1998 NE NPR-A EIS/IAP by urging a supposed need for flexibility that it says is not built into the 1998 NE NPR-A ROD.⁴¹ This reason for amending the 1998 NE NPR-A EIS/IAP and ROD has always rung hollow because the BLM has only had limited experience implementing the 1998 NE NPR-A ROD. As the Amended Draft EIS acknowledges, “the implementation of the 1998 package of prescriptive stipulations has been underway for a relatively short period of time, limiting an empirical assessment of effectiveness.”⁴² Logically, the same short time period also has limited the BLM’s experience from which it can conclude that the 1998 NE NPR-A ROD is too inflexible. The BLM has not cited to any examples of times when the 1998 NE NPR-A ROD was too inflexible. In fact, in the Alpine Satellite planning process the BLM has seemed willing to allow lessees to virtually ignore the stipulations.⁴³ Perhaps what the BLM means to say is that it wants to have different stipulations that will allow lessees to do more. That is not achieved through greater flexibility, but instead is a fundamental change in management which does not provide the same level of protection as the 1998 NE NPR-A ROD.⁴⁴

⁴¹ See e.g. Amended Draft EIS p. 4-146.

⁴² Amended Draft EIS p. 4-145.

⁴³ March 8, 2004 Letter Commenting on the Alpine Satellite Draft EIS pp. 25, n. 50, p. 26, p. 27 n. 62.

045
Stips &
ROPs

⁴⁴ In our NE NPR-A Scoping Letter we gave the BLM multiple reasons why the prescriptive mitigation measures in the NE NPR-A ROD are superior to the performance-based mitigation measure that the BLM has decided to adopt. See NE NPR-A Scoping Letter pp. 10 - 12, pp. 23- 26 and pp. 3 through 7 of the April 2, 2003 letter from Kuukpik and KSOP to Curtis Wilson commenting on the Northwest NPR-A Draft EIS, incorporated into the NE NPR-A Scoping Letter. These were more than just arguments why the BLM should not take the course it has chosen. These were also comments on the proposed change from the 1998 NE NPR-A ROD to the performance-based mitigation measures that basically the entire community of Nuiqsut specifically asked the BLM to consider and to address in the Amended Draft EIS. NE NPR-A Scoping Letter p. 24. The Amended Draft EIS does not address the loss of the advantages of prescriptive-based management that we identified during scoping. However, at page 4-184 the Amended Draft EIS does confirm that greater specificity, one of the advantages of prescriptive-based mitigation measures that we identified, provides greater protection. The BLM should have considered the lost advantage that greater specificity provides to mitigation measures and the other advantages of 1998 NE NPR-A ROD’s stipulations that we identified during scoping as significant issues that needed to be analyzed in depth in the Amended Draft EIS. Since it did not, we specifically incorporate pp. 10-12, pp. 23- 26 of the NE NPR-A Scoping Letter and pp. 3 - 7 of the April 2, 2003 letter from Kuukpik and KSOP to Curtis Wilson commenting on the Northwest NPR-A Draft EIS. We expect the BLM to address the lost advantages of prescriptive-

46

After only 4 years of exploration, and before any development or production had occurred in the Northeast NPR-A, the BLM began to profess that it was ready to change how it manages the Northeast NPR-A so that it resembles its management of the Northwest NPR-A.⁴⁵ When the BLM first said this, it didn't make sense since the Northwest NPR-A management plan was still being formulated and had not been made public.⁴⁶ How could the BLM know that a management plan that was still on the drawing boards would be better than one that had been adopted after extensive consultation with all of the interested parties? Now that the Northwest NPR-A's management plan has been adopted,⁴⁷ it has been effective for only a period of 8 months. Even during the short period of time that the Northwest NPR-A management plan has been in "effect", the BLM has not been able to test it because a lawsuit challenging that plan is pending in Federal Court.⁴⁸

based management in the Final EIS as required by 40 CFR 1503.4.

⁴⁵ BLM Plans to Revise Plan for Northeast National Petroleum Reserve-Alaska, BLM Press Release, April 15, 2003, <http://aurora.ak.blm.gov/NPR-A/news.html#feb03mtg>; BLM to Hold Public Scoping Meetings for Revised Plan for Northeast National Petroleum Reserve - Alaska, BLM, News Release No. 03-20, September 5, 2003.

47

⁴⁶ Amended Draft EIS p. 2-11 says that during "scoping, several respondents expressed concern that the mitigation measures developed for the Northwest [NPR-A] IAP/EIS . . . would not be as effective" as the mitigation measures adopted in the 1998 NE NPR-A ROD. This is a little misleading since scoping for this amendment closed before the Northwest NPR-A FEIS/IAP and ROD were finished. At that time we pointed out that we were expected to provide scoping comments on whether the 1998 NE NPR-A should be amended to look more like the management plan in the Northwest NPR-A when the final Northwest NPR-A EIS/IAP was not even published. It was unreasonable to not extend the period for scoping comments in order to allow commenters time to review the actual model plan. NE NPR-A Scoping Letter p. 10.

⁴⁷ January 22, 2004, BLM press release, Interior Finalizes Plan for NW National Petroleum-Alaska, Designates More than 100,000 acres as Kasegaluk Lagoon Special Area. Available at <http://www.ak.blm.gov/affairs/press/pr2003/pr012204.html>.

48

⁴⁸ Northern Alaska Center for the Environment et. al. v. Norton et. al., Case No. J04-0006 CV (JKS). The Amended Draft EIS says that "[t]his package has been in effect long [sic] for only a short while in the Northwest National Petroleum Reserve - Alaska, its effectiveness cannot yet be empirically evaluated." p. 4-314. Basically the same statement is used to describe the 1998 NE NPR-A ROD (see Amended Draft EIS p. 4-145) but, since only the Northeast NPR-A ROD management style has actually been used, the BLM has gained experience from that plan. It has gained no experience from the Northwest NPR-A management plan.

049
Purpose

BLM also has suggested that there's some great merit to having consistency between the management standards of the Northeast NPR-A and the Northwest NPR-A that would justify sweeping the entire 1998 process and the consensus that was reached out of the way. Nonsense. The Northeast NPR-A alone contains over 4.6 million acres, an area larger than many entire States. The concept that those areas cannot be readily managed under somewhat different regimes is ludicrous. Any loss of convenience is far outweighed by the fact that the hard-won consensus of 1998 is being blown off by the BLM. Any administrative convenience for BLM is far outweighed by the fact that there is no consensus as to the proposed action and that BLM is cramming a program which is universally and vehemently opposed by the residents of the area down their throats. This is indeed a long way from the consensus approach of 1998, to which the oil industry itself was a party.

50

(d) Changes in Presidential Policy

51

As shown above, none of the proffered reasons for amending the 1998 NE NPR-A EIS/IAP and ROD stand up to scrutiny or provide the necessary authority. So what is really going on?

52

The only rational conclusion is that this whole EIS amendment process boils down to policy directives from the current Presidential administration. It is no secret that President Bush has taken a more pro-development stance than the Clinton administration (which was in office during the time leading up to the 1998 NE NPR-A EIS/IAP and ROD.) We did a little extra digging and found the NEPDG's policy recommendation to President Bush that he:

53

[D]irect the Secretary of the Interior to examine land status and lease stipulation impediments to federal oil and gas leasing, and review and modify those where opportunities exist (consistent with the law, good environmental practice, and balanced use of other resources).

54

- Expedite the ongoing Energy Policy and Conservation Act study⁴⁹ of impediments to federal oil and gas exploration and development.

55

- Review public lands withdrawals and lease stipulations, with full public consultation, especially with the people in the region, to consider modifications where appropriate.⁵⁰

⁴⁹ Note that the NEPDG's own analysis was that EPCA only authorized study of existing restrictions and impediments, not executive branch action.

⁵⁰ <http://www.whitehouse.gov/energy/summaries.pdf>.

56

(Emphasis supplied.) Reviewing and modifying the 1998 NE NPR-A ROD is exactly what the BLM is doing in the Amended Draft EIS, although we think that this is not being done consistent with the law, or in furtherance of good environmental practice and balanced use of resources.⁵¹ The BLM did not mention this NEPDG recommendation anywhere in the Amended Draft EIS, in its press releases, or on the project web site. We find this misleading.

57

The BLM has not been at all candid about policy differences being the reason why it has decided to amend the NE NPR-A EIS/IAP and ROD. For example, during an interview with an Anchorage Daily News Reporter about the BLM's plans to amend the management of the Northeast NPR-A, Rebecca Watson, Assistant Secretary of the Interior (the federal department overseeing the BLM), responded to the statement:

58

Some people have accused the Bush administration of rolling back sensible restrictions imposed under the prior administration.

by saying:

60

Look back to what happened in 2000 when President Clinton was there. He signed the Energy Policy and Conservation Act. The EPCA study was done at the direction of Congress and President Clinton signed it. It directed the Bureau of Land Management and other agencies to look at the impediments to producing our oil and gas. What are the constraints? What are the other resource values we're trying to protect that may impede production of energy, and is there a smarter, better way to do it instead of simply saying, No, its off limits? (Emphasis added.)⁵²

61

Nowhere does EPCA's inventory of stipulations and impediments requirement mention that the Clinton administration or Congress wanted the BLM to look at whether there is

059
Purpose

⁵¹ We found Information Memorandum ("IM") 2003-233 on the internet. This is a directive from the Secretary of the Interior to the state heads in the rocky mountain states where the BLM inventoried lease stipulations and impediments to take steps to reduce or eliminate these. http://www.blm.gov/nhp/news/releases/pages/2003/pr030807_EPCA.htm. This directive applies only to those areas where the EPCA inventory has been completed, and on its face does not appear to apply to Alaska, although it is certainly instructive of the BLM's general attitude towards existing environmental protections. IM 2003-233 references an IM 2003-137 that is also related to the "integration" of the EPCA inventory into land use planning. We could not find this IM, but we think that it is part of, or should be part of the BLM's administrative record for this amendment process.

⁵² NPR-A Development Can Be Win-Win, Watson Says, Anchorage Daily News, June 27, 2004.

a “smarter” way to protect resource values without impeding the production of oil. That comes straight from the NEPDG and maybe from President Bush if he adopted the NEPDG’s recommendation. Again, the BLM is taking on a role Congress intended to perform itself.

62

Remember what Henry Bisson, State of Alaska Director for the BLM, said in the September 5, 2003 press release announcing public scoping meetings for the amendment of the 1998 NPR-A EIS/IAP and ROD:

We’ve learned a lot during the past four years, . . . We know that we can safely explore this area without significant impact to sensitive wildlife and subsistence resources. We also believe that we can develop critical hydrocarbon resources in a manner that protects these same values.⁵³

63

As noted in our joint scoping letter, amending an EIS or an ROD is not about approving what the BLM has already decided to do.⁵⁴

064
NEPA
Process

In addition, this focus on justifications which have since been dropped, while others have been added, improperly distorts the NEPA process. The justifications urged by the BLM are what people focused on during the scoping process, not the policy recommendations from the NEPDG. We certainly took Mr. Bisson’s statement and ones similar to it seriously in our scoping letter and in this letter. We examined and addressed every justification and authority urged by BLM in our scoping letter⁵⁵ and in this letter. We and most other individuals and organizations commenting during this process do not have full time staff available for these issues. To the extent that this misdirection wastes limited resources, it improperly harms both the efficiency and the effectiveness of the public process that is at the very core of NEPA.⁵⁶

⁵³ BLM to Hold Public Scoping Meetings for Revised Plan for Northeast National Petroleum Reserve - Alaska, September 5, 2003, Release No. 03-20.

⁵⁴ NE NPR-A Scoping Letter, pp. 14-15.

⁵⁵ NE NPR-A Scoping Letter pp. 16 - 27.

065
Timing

⁵⁶ The extent and scope of the administrative processes which the Bush administration has unleashed on the people of the North Slope and Nuiqsut in particular over the past two years could hardly have been better designed if its intent had been to stifle and diffuse effective comment by the Inupiat people of Nuiqsut and the North Slope. Not only has there been the lengthy and complex EIS proceedings for the Northwest NPR-A and this process for amending the applicable management practices for the Northeast NPR-A, but we have also been faced with an EIS for the Alpine Satellites which we and most of the reviewing agencies, including EPA under its Clean Water Act rating system, considered seriously and extensively inadequate. All

66

So, to the heart of the matter. A change in policy within the Executive Branch, standing alone (although it was not identified as a purpose or need in the Amended Draft EIS) is not a legally sustainable purpose or need for amending the management of Northeast NPR-A.

This is because the BLM had been directed by Congress to manage the NPR-A with such restrictions and prohibitions as are necessary to mitigate adverse impact on surface resources and to provide “maximum protection” to the Teshekpuk Lake Special Area.⁵⁷ Congress also made clear that it is this nation’s policy to manage federal lands in a manner that sustains the subsistence opportunities of Alaska’s rural residents.⁵⁸ The BLM was following these directives from Congress in 1998 when it established the current management plan for the Northeast NPR-A.⁵⁹ Thus, in order to change that decision, the BLM “must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.”(Emphasis supplied.)⁶⁰

What we are seeing here is that the choice to change the stipulations in the 1998 NE NPR-A ROD and to open more of the Northeast NPR-A has already been made. The BLM has been trying, maybe even struggling, to find a legal or factual justification for that choice. But its legal and factual reasons for amending the 1998 NE NPR-A EIS/IAP and ROD have no substance. In effect, the BLM is seeking to replace the rational decisions that it has previously made in response to directives from Congress with the

three of these agency actions seriously impact or threaten the community of Nuiqsut and our culture and way of life. Between these three EIS documents, we have had to review and comment on well over 5,000 pages of complex, difficult materials, which does not even count the additional materials involved in multiple drafts or the effort involved in scoping and public hearings. The shifting justifications in the amendment process here and the sheer volume of materials thrown at our people, for many of whom English is not their native tongue, denies us and other Inupiat on the North Slope the fair treatment and meaningful involvement that environmental justice requires. EO 12898. Nor has consultation been particularly useful in light of the hollowness of the reasons for amending the NE NPR-A EIS/IAP and ROD that were discussed during consultations.

⁵⁷ 42 USCA 6504(b); Amended Draft EIS p. 1-6.

⁵⁸ 16 USCA 3101(c) & 3112.

⁵⁹ Amended Draft EIS p. 1-6. 1998 NE NPR-A ROD p. v, see Amended Draft EIS Appendix A.

⁶⁰ International Snowmobile Manufacturers Assoc. v. State of Wyoming, 2004 U.S. LEXIS 1796 (D.Wyo. Feb. 10, 2004), Quoting Motor Vehicle Mfrs. Assoc. v. State Farm Mutual Auto Co., 463 U.S. 29, 43 (1983).

067
Special
Designation

068
Purpose

065 (Cont'd)
Timing

policy choices of the current Presidential administration.⁶¹ In the absence of substantial new facts or information, the BLM cannot do this without effecting a change that is arbitrary and capricious. Such an arbitrary and capricious action does not meet the standard required of actions taken by a federal agency.⁶²

69

Another legal flaw stems from the requirement that the BLM present a purpose and need for the amendment of the 1998 NE NPR-A EIS/IAP.⁶³ As discussed above, no purpose or need has been identified that would pass even the most deferential standard of review.

70

Amending the 1998 NE NPR-A EIS/IAP and ROD based solely on policy recommendations made by the NEPDG or on directives handed down from the President is also an error because it would lead to a major, long term breakdown of the relationship between the BLM and the community of Nuiqsut (and, we think, the other communities of the North Slope as well.) That this is likely to happen does not seem to be of concern to the BLM, which summarized the position it has put itself in by saying:

Considerable changes to the decisions in the 1998 NE NPR-A IAP/EIS ROD without the consensus of local communities, governments, and agencies could create an insurmountable rift between the people of the North Slope and the federal government, especially if their Inupiat way of life was threatened.⁶⁴

That statement pretty well hits the nail on the head.

It is very clear that the opposition of the Inupiat people and the local residents of Nuiqsut and the North Slope to the BLM's proposals is virtually unanimous. In our local

071
NEPA
Process

⁶¹ The flip flopping on management decisions in order to implement a policy choice made by a current administration, which is exactly what the BLM is proposing to do, has not been looked upon favorably by the courts. See e.g. The Fund for Animals v. Norton, Civ. Action No. 02-2367 (EGS) (D.C. 2003); International Snowmobile Manufacturers Assoc. v. State of Wyoming, 2004 U.S. LEXIS 1796 (D.Wyo. Feb. 10, 2004)(granting preliminary injunction on a Record of Decision in part because the National Park Service never fully explained the reasons for changes from existing to proposed to final management plan.)

⁶² 5 USCA 706(2)(A).

⁶³ 42 USCA 4332; 40 CFR 1502.13 "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

⁶⁴ Amended Draft EIS, Appendix B (ANILCA Section 810 Analysis), p. B-9 and B-11.

071 (Cont'd)
NEPA
Process

discussions, it would be hard to find a single resident of Nuiqsut who supports what BLM is proposing to do. The BLM seems determined to ignore the opposition of the people whose lives and culture are most connected with the lands involved and who would be most affected by these actions. That the lands that BLM is so managing are entirely lands that are the birthright and heritage of our people and provide us our daily sustenance makes these actions even more offensive to us. This approach is even more inexplicable after the generally positive experiences that the community had dealing with the BLM during the collaborative process used to reach the current management plan.⁶⁵

III. The Required Range of Alternatives Is Not Considered in the Amended Draft EIS

072
Alternatives

While we question the legal basis of this amendment process, we are also commenting on the deficiencies in the Amended Draft EIS. One prominent deficiency is the failure to consider other reasonable alternatives. The consideration of a reasonable range of alternatives in an EIS is one of the basic tenants of NEPA, and so the failure to consider reasonable alternatives must be corrected. This failure is manifested in several ways.

073
Alternatives

First, the BLM has announced from the beginning of this process that the stipulations adopted in the 1998 NE NPR-A ROD are going to change,⁶⁶ yet there is really only one alternative that is consistent with the BLM's already-made decision. In other words, Alternative A was out the window from the first press release (and even earlier, according to stories in Petroleum News Alaska and other oil industry-related publications). Alternative C is equally a no-hoper because it would open up every last acre of the Northeast Planning Area, and such an extreme position simply could not withstand challenge in light of the critical habitat areas involved and Congress' mandate that our subsistence way of life be protected. That leaves everyone wishing to comment with just Alternative B to choose from. Yet when it comes to opening some portion, but not all, of a previously restricted area of over 589,000 acres to leasing, having only one alternative presented or analyzed gives short shrift indeed to the variety and complexity of the areas, the habitat and the resources involved. While brevity is nice, it shouldn't come at the expense of a fair and thorough look at a realistic range of alternatives.

⁶⁵ The collaborative process is noted throughout the Amended Draft EIS, see e.g. pp. 4-146, 4-313.

⁶⁶ BLM to Hold Public Scoping Meetings for Revised Plan for Northeast National Petroleum Reserve-Alaska, BLM News Release No. 03-20, September 5, 2003: see also BLM Plans to Revise Plan for Northeast National Petroleum Reserve-Alaska, BLM Press release, April 15, 2003, http://aurora.ak.blm.gov/NPR_A/news.html#feb03mtg. See also a copy of a portion of BLM's website as it existed on January 13, 2004, a copy of which is attached to this letter and could be found unchanged at the time this letter was prepared at <http://69.20.72.207/nenpra/default.html>.

074
Alternatives

With that summary in mind, let's take a more detailed look. The Amended Draft EIS has three "alternative" packages of mitigation measures. Alternative A is the No Action Alternative which maintains the "prescriptive based" stipulations that were adopted in the 1998 ROD. And then there are Alternatives B and C, both of which include the exact same "performance-based" stipulations (with the exception of the set back for the Tingmiaksiqvik river, identified on USGS maps as the Ublutuoch River, which is only included in Alternative B).⁶⁷ At the outset, it would appear that we have been presented with basically only two "alternative" mitigation measure packages and that our comments here will help the BLM pick and choose between the two alternatives. But, this appearance is only an illusion, since before the Amended Draft EIS was even published we were told by the BLM's Northeast NPR-A website:

75

The BLM will reformat current prescriptive stipulations that apply to the Northeast National Petroleum Reserve - Alaska into a mixture of prescriptive and performance-based stipulations similar to those developed for the Northwest portion of the Reserve. (Emphasis supplied.)⁶⁸

076
Alternatives

Agency representatives also told us that the BLM had already decided that performance based ROPs will be adopted in the end.⁶⁹ The pre-ordained outcome of this NEPA process is only confirmed in the Amended Draft EIS which states that this planning process will:

Develop performance-based measures to protect important surface resources from the impacts of oil and gas activities, similar to those developed for the Northwest National Petroleum Reserve - Alaska.⁷⁰

⁶⁷ Amended Draft EIS p. 2-28.

⁶⁸ We have attached hereto as document No. 2 a printout of the website maintained for this planning process as it existed on January 13, 2004. The quoted passage continues to be posted on the planning process website. See <http://69.20.72.207/nenpra/default.html>.

⁶⁹ During multi-day meetings with representatives of all of our organizations on December 4th and 5th, 2004, at BLM's Alaska Headquarters in Anchorage, Peter Ditton, former Associate State Director for the BLM made it clear that the BLM was set on changing the existing Northeast NPR-A management plan to incorporate performance-based stipulations.

77

⁷⁰ Amended Draft EIS p. 1-9. Compare Amended Draft EIS p. 2-11 which says that these stipulations "if adopted" would result in similar management in the Northeast NPR-A and the Northwest NPR-A. One or two statements like this in the Amended Draft EIS do not cast doubt on the meaning of the BLM's clear statements that a change to performance-based mitigation measures is going to occur.

078
Alternatives

So, maintaining the stipulations developed in the 1998 NE NPR-A ROD has never been an alternative.⁷¹ The BLM also dismisses the request we made during scoping that it “develop and examine an alternative . . . that strengthens the existing NE NPR-A ROD’s subsistence stipulations” because it does not fall within the realm of the performance based measures that defines the scope of its purpose.⁷²

081
NEPA
Process
ANILCA

NEPA requires the exploration and objective evaluation of reasonable alternatives.⁷³ Section 810 of ANILCA also requires the consideration of alternatives.⁷⁴ That’s alternatives - plural. The BLM has already decided that performance-based measures will be implemented in the Northeast NPR-A, and it has confined its planning process to only developing performance-based measures. How then can there be alternative mitigation packages that are considered and analyzed in the Amended Draft EIS or the Section 810 analysis? Cramming an already-made decision through this process by narrowly defining the decision to be made and then providing only one alternative that is consistent with that decision is not in

079
NEPA
Process

⁷¹ Right off the bat, pre-ordained EIS results such as those demonstrated by these quotes are impermissible under federal law. Under federal regulations, “Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” 40 CFR 1502.1.

080
Alternatives

⁷² NE NPR-A Scoping Letter p. 38; Amended Draft EIS p. 2-10. The BLM should have also considered a program using local residents to monitor industry activities and to check on compliance with the applicable stipulations or ROPs. We brought this up in our Scoping Letter as an alternative that should be considered. NE NPR-A Scoping Letter p. 38-39.

83

⁷³ 42 USCA 4332(C)(iii); 40 CFR 1502.2(g) “Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” 40 CFR 1502.1. EISs shall be “used by Federal officials in conjunction with other relevant material to plan actions and make decisions.”; 40 CFR 1502.14 (the alternatives are the heart of the EIS); 40 CFR 1504.14(d)(shall include the no action alternative.)

084
ANILCA

⁷⁴ Not only is the Section 810 ANILCA analysis of the alternatives worthless because the BLM has a pre-ordained outcome, but that analysis also uses the NEPDG’s recommendation that the President direct the secretary to consider additional leasing in the Northeast NPR-A in its evaluation of the availability of other lands. See e.g. Amended Draft EIS, Appendix B, p. B-9. This is problematic since there are no other lands that meet the purpose, but the BLM still concludes that other lands that it administers are either too remote to develop economically or have a low potential for recoverable oil.

compliance with the letter or the spirit of NEPA or ANILCA.⁷⁵

082
Alternatives

When it comes to opening more land for leasing in the Northeast NPR-A the BLM has 589,000 acres that contains highly sensitive wildlife habitat that it needs to consider. There is no explanation in the Amended Draft EIS why, under Alternative B, 213,000 acres is unavailable for leasing or how the location of the 213,000 acres that are not available for leasing in this scenario were chosen.⁷⁶ Maybe if the 213,000 acres where leasing is not allowed under Alternative B were shifted to different parts of the area around Teshekpuk Lake, the impacts of making the additional acreage available to leasing would be significantly different. Or, what if, in addition to withholding 213,000 from leasing, some additional acreage that is of high value to wildlife is also made unavailable for leasing. These are the types of alternatives that need to be analyzed in order to sharply define the issues and provide the BLM a clear basis for choice among options.⁷⁷ Consideration of other reasonable leasing scenarios is also necessary to determine under Section 810 of ANILCA whether the use, occupancy, or disposition of subsistence lands can be reduced or eliminated.⁷⁸

086
NEPA
Process

A draft EIS is supposed to be as complete as possible. The Amended Draft EIS is clearly not as complete as possible since it effectively writes-off the No Action Alternative just because it is not consistent with the BLM's pre-ordained decision and because alternative leasing scenarios are not explored. When a draft EIS is incomplete and deficient "so as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion."⁷⁹ A failure to include an adequate range of alternatives is precisely the type of deficiency where a second opportunity for public comment should be provided after the revisions are made. Additionally, since the decision to implement performance-based ROPs and stipulations has already been made, the revision of the Amended Draft EIS needs to consider

see
comment
081

⁷⁵ See e.g. State of Wyoming v. United States Department of Agriculture, 277 F.Supp.2d 1197, 1122 (D. Wyo. 2003). See also International Snowmobile Manufacturers Assoc. v. State of Wyoming, 2004 U.S. LEXIS 1796 (D.Wyo. Feb. 10, 2004)(prejudged political decision coupled with the lack of a hard look in the Final EIS leads to the conclusion that there is a substantial likelihood that agency decision is arbitrary and capricious.)

85

⁷⁶ We suspect that the location of the 213,000 acres unavailable for leasing under alternative B was chosen because it contains the most significant goose molting lakes in the Northeast NPR-A. Compare Map 2-2 with Map 3-15.

⁷⁷ 40 CFR 1502.

⁷⁸ 1416 USCA 3120.

⁷⁹ 40 CFR 1502.

more than one performance-based alternative.

IV. The BLM's Proposed Changes in Management Will Not Provide the Same Level of Surface Resource Protections as the 1998 NE NPR-A ROD

087
Alternatives

Another deficiency in the Amended Draft EIS is the systematic failure to consider or analyze the differences between the 1998 NE NPR-A ROD and the mitigation measures proposed for Alternatives B and C. Instead of finding analysis, we find that the Amended Draft EIS repeatedly makes conclusory statements that the package of mitigation measures proposed under Alternatives B and C would provide the same level of protection to surface resources as the stipulations adopted in the 1998 NE NPR-A ROD. For example, page 2-11 says:

In the end, the level of resource protection developed in the Northwest National Petroleum Reserve - Alaska, the Preferred Alternative [Alternative B] and Alternative C of this amendment, is similar to, or even greater than, the level of resource protection provided in the 1998 Northeast IAP/EIS Record of Decision.⁸⁰

088
Stips &
ROPs

The Amended Draft EIS points to a couple of instances (such as the ROP that sets a standard pipeline height of 7 feet measured at the VSMs) where Alternatives B and C would provide more protection than the 1998 NE NPR-A ROD and therefore concludes that the overall level of protection is similar or greater than the 1998 stipulations.⁸¹ Nothing could be farther from the truth.

089
Stips &
ROPs

For instance, the proposed mitigation packages for Alternatives B and C uniformly allow exceptions to their standards with a lesser showing than the 1998 NE NPR-A ROD. The impacts of this difference are not analyzed in the Amended Draft EIS, as they are required to be. The exception clause in the 1998 NE NPR-A ROD provides:

⁸⁰ See also Amended Draft p. 4-231 & 4-312 (the BLM holds that performance based stipulations and Required Operating Procedures will provide equivalent protection [to subsistence].); p. 4-235 & 4-314 (the BLM proposed the new approach to mitigative measures in order to achieve equivalent protection [from sociocultural impacts.]) p. 4-145 "The BLM holds that the new approach will provide equivalent protection with more flexibility."

⁸¹ Amended Draft EIS p. 4-232. See also Amended Draft EIS p. 4-184 (specificity in set back requirements.)

In the event that an exception to a lease or permit stipulation is requested, and before an exception may be granted, the Authorized Officer (AO) shall find that implementation of the stipulation is:

- (1)
 - a) technically not feasible, or
 - b) economically prohibitive, or
 - c) an environmentally preferable alternative is available, and
- (2) the alternative means proposed by the lessee fully satisfies the objective(s) of the stipulation.⁸²

The “and” is underlined in this quote because during the meetings between Nuiqsut’s representatives and the BLM on December 4th and 5th of 2003, some BLM representatives suggested that under the 1998 ROD an exception can be granted if implementation of a stipulation is not technically feasible or is cost prohibitive.⁸³ The placement of the “and” between numbers 1 and 2 of the 1998 exceptions clause is not an accident. It means that the conditions in subparagraphs (1) and (2) of the 1998 exceptions clause must be met before an exception can be granted. In other words, the 1998 ROD requires that the objectives of a stipulation are always met by a lessee.

Now, compare the 1998 NE NPR-A ROD with the exceptions clause proposed for Alternatives B and C which reads:

In the event that an exception to a stipulation or ROP is requested, and before an exception may be granted, the lessee/permittee shall demonstrate to the satisfaction of the AO that implementation of the stipulation or ROP:

- is technically not feasible; or
- is economically prohibitive, or
- has an environmentally preferable alternative and the alternative proposed by the lessee/permittee fully satisfies the objective(s) of the lease stipulation or ROP.⁸⁴

⁸² Amended Draft EIS, Appendix E, p. E-1.

⁸³ Amended Draft EIS p. 4-410 correctly reads the exception clause in the 1998 NE NPR-A ROD as requiring that the alternative proposed by the lessee fully satisfy the objectives of the stipulation.

⁸⁴ Amended Draft EIS p. 2-14.

093
Stips &
ROPs

The difference between the two exception clauses may seem subtle, but it has enormous significance. By changing the exceptions clause so that the objective of a lease stipulation or ROP must only be met when the lessee or permittee is proposing an environmentally preferable alternative, lessees and permittees are no longer required to satisfy the objective of a stipulation or ROP when an exception is needed because meeting the requirements of a stipulation or ROP is technically not feasible or is economically prohibitive. As stated in the 1998 NE NPR-A ROD, “[e]xceptions to stipulations may be granted under strict conditions.”⁸⁵ But strict conditions no longer must be met in order to get an exception under Alternatives B and C.

94

Let’s take a look at a very concrete example of what the difference means. When ConocoPhillips Alaska, Inc. (“CPAI”) proposed to put the pad for CD-6 inside the Fish Creek No-Surface Occupancy zone,⁸⁶ it had to establish that placing CD-6 outside the buffer zone was technically not feasible, economically prohibitive, or that placing CD-6 inside the buffer zone was environmentally preferable, and in addition, CPAI needed to establish that under any of these exceptions, that the objectives of the Fish Creek No-Surface Occupancy zone are still met. Under Alternatives B and C, all CPAI would need to do is show that placing CD-6 outside the Fish Creek No-Surface development zone is technically not feasible or is cost prohibitive. In either of these events, CPAI would not be required to meet the objective of the Fish Creek No-Surface Occupancy zone. Alternatively, under Alternatives B and C, CPAI could get an exception if it shows that developing a gravel pad inside the Fish Creek No-Surface Occupancy zone was environmentally preferable and met the objectives of the No- Surface Occupancy restriction.⁸⁷

96

In our experience, the oil industry always claims that a proposed new development project on the North Slope is pressing the envelope of affordability and the limits of technology.⁸⁸ If the BLM’s AO believes the lessees assertions, then the ROPs and lease

⁸⁵ Amended Draft EIS, Appendix A, p.7.

⁸⁶ 1998 NE NPR-A ROD, stipulation 39(d).

⁸⁷ We note that Alternatives B and C maintain essentially the same river (but not lake) setbacks as stipulation 39 of the 1998 NE NPR-A ROD, and in the case of Alternative B adds the Tingmiaksiqvik (Ubltouch) river to the rivers receiving surface buffer zone protections. Amended Draft EIS p, 2-55 - 2-57. However, these setbacks are substantially weakened under Alternatives B and C since an exception can be granted without meeting the objectives of these setbacks.

⁸⁸ We discussed, and provided examples of this, at page 11 and footnote 16 of our March 8, 2004 letter commenting on the Draft Alpine Satellite EIS. That letter, and in particular the discussion of how the oil industry presents new prospects as marginal, is incorporated into this

095
Stips &
ROPs

stipulations proposed in Alternatives B and C will mean nothing. Compare that to the 1998 NE NPR-A ROD where the lessee also has to prove that the objectives of the stipulation are still met.

097
Stips &
ROPs

098
Stips &
ROPs

While we are being told that the cornerstone of the performance-based ROPs and stipulations proposed in Alternatives B and C is the requirement that industry meet objectives,⁸⁹ we are actually seeing that through application of the exceptions clause, the objectives can be avoided altogether. Protections to surface resources and to subsistence uses in the NPR-A will suffer when exceptions are granted to mitigation measures without meeting the objective of the mitigation measure. This potentially enormous difference in management styles is not even noted in the Amended Draft EIS. Not only is there no analysis of its potential impact, but at least once the Amended Draft EIS incorrectly states that the same exception clause applies to all alternatives discussed.⁹⁰ Had the Amended Draft EIS considered the differences in the exceptions clauses, there is simply no way that it could have rationally concluded that Alternatives B and C provide the same level of protection as the 1998 NE NPR-A ROD. On this fundamental point the Amended Draft EIS has not taken the required hard look at the effectiveness of the mitigation packages proposed in Alternatives B and C, nor has the Amended Draft EIS reasonably compared the effectiveness of Alternative B or C with the 1998 NE NPR-A ROD.

099
Stips &
ROPs

Another sweeping difference in the mitigation measures that cuts across all types of protection (and again that is not considered in the discussion of the impacts of the Preferred Alternative) is the shift in emphasis from enforceable standards to monitoring the effectiveness of new mitigation techniques. The Amended Draft EIS claims that many of the prescriptive “stipulations [in the 1998 NE NPR-A ROD] reflect knowledge gained from past mistakes”.⁹¹ But, as the Amended Draft EIS puts it “[t]he flexibility of the new approach [Alternatives B and C] places greater reliance on on-going monitoring to insure that modified procedures do in fact achieve equivalent protections.”⁹² We call this the “close the door after the cow is out” approach because it assumes that there is not a problem until the harm has occurred. Additional, unnecessary environmental impacts will inevitably result from substituting after-the-fact monitoring for impacts for standards that make a lessee show an acceptable level of impacts before those impacts occur. It is simply not possible that the after-the-fact monitoring proposed as part of the ROPs and stipulations in Alternatives B and C will provide a comparable level of

letter.

⁸⁹ Amended Draft EIS p. 2-11.

⁹⁰ Amended Draft EIS P. 4-312.

⁹¹ Amended Draft EIS p. 4-139.

⁹² Amended Draft EIS p. 4-146.

protection to subsistence resources as now exists.

100
Stips &
ROPs

The BLM may be content to learn from new mistakes in order to push through the current Presidential administration's policy, but it's our culture and way of life that is on the line. We are essentially being told by the BLM to leave it up to their good judgment. But in doing so, we must rely on the BLM to exercise its discretion (our scoping letter discussed extensively the lesser level of protection afforded by a discretionary system such as that proposed here, and that discussion is incorporated by reference.)⁹³ The more discretion that the BLM has in the management of the Northeast NPR-A, the less legal recourse we have to challenge whether those decisions provide an appropriate level of surface resource protections. We are not saying that we think that the best way to manage the Northeast NPR-A is through court injunctions. But when the BLM recognizes that amending the 1998 NE NPR-A ROD will create an "insurmountable rift" between it and the people of the North Slope, and is willing to do it anyway, the protection of our way of life may rest only with higher authority. Reliance on the BLM to exercise its discretion is also not very comforting given the Amended Draft EIS's reliance on justifications that disguise rather than illuminate the real policy-based motivations underlying this process, not to mention the failure of the Amended Draft EIS to adequately disclose or consider the real impacts that would result.

101
Monitoring

We also have our misgivings about whether the BLM will actually perform fully the monitoring activities in the NPR-A that it concedes are necessary to make sure, after the fact, that performance-based mitigation had worked. Sure, the Amended Draft EIS says over and over again that the "BLM is committed to directing the necessary resources to this on-going monitoring requirement."⁹⁴ Of course, Congress, not the BLM decides the level of BLM funding, and in this time of increasing federal budget deficits and with an administration in place that promises smaller, more business-friendly government, the BLM can hardly guarantee that it will receive the additional funding to carry out these blithely offered promises of future increases in monitoring efforts.

102
Reserach

Along these lines, recall as well that in the 1998 NE NPR-A ROD the BLM committed to setting up and funding the Research Monitoring Team ("RMT") to "coordinate research and monitoring projects related to the effectiveness of stipulations and surface resource impacts."⁹⁵ Yet, when the RMT's charter ended two years ago in November of 2002, the BLM

⁹³ NE NPR-A Scoping Letter, pp. 10-12.

⁹⁴ See e.g. Amended Draft EIS p. 4-146, 4-231, 4-235, 4-312, 4-314.

⁹⁵ 1998 NE NPR-A ROD, p. 6, See Amended Draft EIS appendix 1.

did not renew it.⁹⁶

103
Stips &
ROPs

A third sweeping difference between the 1998 Northeast NPR-A ROD and Alternatives B and C that is not analyzed in the Amended Draft EIS is the elimination of what the Amended Draft EIS calls the “redundancy of requirements that already exist in the form of regulation or law.”⁹⁷ We think that redundancy between the 1998 NE NPR-A ROD and existing regulations and laws is important because regulations and laws can change while those contractual protections would remain in place. These redundancies have special significance to Kuukpik and to the people of Nuiqsut because Kuukpik may end up owning a substantial amount of the land that is currently leased subject to these “redundancies.” In the case of future ANCSA selections by Kuukpik of lands subject to these leases, Kuukpik and the Arctic Slope Regional Corporation might well keep such contractual protections in place even if the federal or state law changed.⁹⁸ The Amended Draft EIS needs to consider what happens if the existing law or regulation is eliminated or weakened.

105
Alternatives

In addition to these failures to consider across-the-board differences between the 1998 NE NPR-A ROD and Alternatives B and C, the Amended Draft EIS fails to consider specific differences between the 1998 NE NPR-A ROD and Alternatives B and C. Take, just for example, the many differences that are not considered in the analysis of the impacts to fish under the different alternatives discussed on pages 4-192 to 4-197 of the Amended Draft EIS. These are:

106
Fish

(1) The Amended Draft EIS says that the 1998 NE NPR-A ROD and Alternatives B and C “both prohibit exploratory drilling in rivers and streams . . . and in fish bearing lakes unless the lessee demonstrates, on a site specific basis, that biological impacts would be minimal

104

⁹⁶ http://www.susquehanna-innovations.org/ScanDocs/NewNPR_Ane050703/RestructRMteam050703.pdf. The BLM wants to replace the RMT with a “North Slope Science Strategy” and identifies four bogus reasons why this is “clearly” necessary, many of which did not materialize until after the RMT’s charter ended. See Amended Draft EIS p. 1-15. Id. What is clear is that the BLM has not been using the RMT to monitor the effectiveness of the 1998 NE NPR-A ROD. The Amended Draft EIS needs to consider the impacts of a failure by the BLM to effectively monitor mitigation measures as part of any analysis of their effectiveness. The BLM’s history with the RMT, and its poor excuses for replacing the RMT, make this a possibility that must be acknowledged and considered.

⁹⁷ Amended Draft EIS 2-11.

⁹⁸ Kuukpik is still entitled under ANCSA to select approximately 22,000 acres out of the eastern part of the Northeast NPR-A.

106 (Cont'd)
Fish

or there is no other feasible alternative.”⁹⁹ So, the Amended Draft EIS would have the reader believe that there is nothing here to analyze. But nowhere does the 1998 NE NPR-A ROD allow drilling in rivers, streams and lake beds when impacts are minimal or there is no other feasible alternative. Only Alternatives B and C would allow that.¹⁰⁰ Under the 1998 NE NPR-A ROD, exploratory drilling is not allowed in any lake (compare with Alternatives B and C which has no restriction on non-fish bearing lakes), river or stream. Exceptions to this prohibition can only be granted for shallow lakes that do not support significant fish or bird populations and that are hydrologically isolated, and only when it is environmentally preferable. An additional impact under Alternatives B and C that is not discussed is that only under the leasing scenario presented in these alternatives would exploratory drilling be allowed in Teshekpuk Lake. These are very different mitigation measures and circumstances and they need to be analyzed as such, along with their impacts.

107
Fish

(2) The next subsection in the Amended Draft EIS, discussing the effects of gravel mine sites on fish, also fails to acknowledge the lower level of protection offered by Alternatives B and C. That sections says that both the 1998 NE NPR-A ROD and Alternative B and C are intended to “minimize the effects of gravel mining on fish by limiting gravel mine sites within the active floodplain of any river, stream, or lake unless the action enhances fish habitat.”¹⁰¹ That might be the intent, but the 1998 NE NPR-A ROD is more likely to achieve that intent since under the current management plan gravel mine sites within active flood plains are prohibited unless there is no feasible or prudent alternative or the location of the gravel mine in the flood plain enhances fish habitat. Compare this with Alternative B and C which only requires that the AO “consider . . . [l]ocations outside the active flood plain” and “[p]otential use of the site for enhancing fish and wildlife.”¹⁰² The level of protection to fish in Alternative B and C is clearly less than the level of protection in the 1998 NE NPR-A ROD, but the Amended Draft EIS incorrectly says that they provide an equivalent level of protection.¹⁰³

108
Fish

(3) With regards to the buffer zones around waterbodies, the Amended Draft EIS says “[s]ince the only difference between the two alternatives is the size of the buffer zone around

⁹⁹ Amended Draft EIS p. 4-194.

¹⁰⁰ See Amended Draft EIS p. 2-52 for a side by side comparison of stipulation 29 and Lease Stipulation D-1.

¹⁰¹ Amended Draft EIS p. 4-194.

¹⁰² See Amended Draft EIS p. 2-58 for a side by side comparison of stipulation 40 and ROP E-8.

¹⁰³ Amended Draft EIS p. 4-194.

108 (Cont'd)
Fish

water bodies that do not contain fish, both alternatives would afford similar protection to fish and fish habitat.”¹⁰⁴ But, this is not the only difference between the 1998 NE NPR-A ROD and Alternatives B and C. Alternatives B and C would allow permanent oil and gas facilities closer to fish bearing lakes than the 1998 NE NPR-A ROD if the lessee can demonstrate that impacts to fish would be minimal. A prospective showing that such impact should be minimal is not at all the same thing as those impacts turning out, in fact to be minimal. The protection afforded by the two alternatives is not similar, since only under Alternatives B and C are facilities located closer than 500 feet from a fish bearing waterbody and the associated “minimal impacts” allowed.

109
Alternatives

(4) The Amended Draft EIS says that both alternatives “require extensive ecological mapping of proposed development sites in order to access [SIC] and minimize impacts to sensitive wildlife and fish habitats.”¹⁰⁵ That’s not quite correct either. The 1998 NE NPR-A requires more than just mapping - it also required consultation with federal, state, and NSB regulatory and resource agencies to identify key wetlands (including fish bearing lakes and streams) and for lessees to minimize the impact of industrial development on these wetlands.¹⁰⁶ Minimizing impacts includes avoiding siting facilities in the identified wetlands if feasible. None of this is required in Alternatives B and C.¹⁰⁷

110
Fish

We have found few instances where the Amended Draft EIS accurately identifies differences between the mitigation measures in the 1998 NE NPR-A ROD and Alternatives B and C. We noticed that the differences in the mitigation measures controlling the amount of water that can be withdrawn from lakes are identified in the Amended Draft EIS. The 1998 NE NPR-A ROD allows the withdrawal of from lakes that are less than 7 feet deep that “lack connection to or are not subject to seasonal flooding by a fish bearing stream.”¹⁰⁸ Compare this with Alternatives B and C. These would allow unlimited water withdrawals from lakes less than 5 feet deep regardless of whether the lake is connected to fish habitat.¹⁰⁹ The Amended Draft EIS reaches the conclusion that despite the differences, the impacts to fish are the same because

¹⁰⁴ Amended Draft EIS p. 4-195.

¹⁰⁵ Amended Draft EIS p. 4-195.

¹⁰⁶ See amended Draft EIS p. 2-60 for a comparison of stipulation 46 and ROP E-12.

¹⁰⁷ Id.

¹⁰⁸ 1998 NE NPR-A ROD, Stipulation 20.

¹⁰⁹ Amended Draft EIS p. 2-17, ROP B-2.

110 (Cont'd)
Fish

lakes that are less than 6 feet deep as some times of the year freeze to the bottom.¹¹⁰ What about the biological benefits to fish in the lakes that are hydrologically connected to lakes that are less than 5 feet deep. The withdrawal of unlimited water from such lakes is not permitted in the 1998 NE NPR-A ROD. This makes sense because, logically, unlimited withdrawal from hydrologically connected shallow lakes is going to change water flow characteristics in other, fish-bearing lakes, which could interfere with fish migration and habitat in the lakes that do contain such fish, not only during periods of migration, but at other times.¹¹¹ But all the Amended Draft EIS does is conclude - without analysis - that unlimited withdrawal from five feet deep lakes does not have biological impacts.¹¹² Until there is analysis supporting this conclusion, no one can tell whether the impacts on fish under the different mitigation measures will be the same.

113
Impact

Nowhere in the Amended Draft EIS is there any analysis of the impact of the many lowered levels of protection offered by Alternatives B and C that we have identified in this section. The Amended Draft EIS is incomplete and inadequate if it does not acknowledge and properly analyze the effects of such diminished protections.

114
Impact

Even where the analysis in the Amended Draft EIS of the impacts of Alternatives B and C is not based on a comparison to the 1998 NE NPR-A ROD, it still fails to consider the actual mitigation measures proposed for Alternatives B and C. Take the discussion of impacts of Alternative B on wildlife for example. In this section it says that stipulation D-1 would “prohibit exploratory drilling in lakes streams and floodplains unless impacts to wildlife are minimal.”¹¹³ There is no mention that exploratory drilling in lakes, streams and floodplains would also be allowed if there is no feasible or prudent alternative. The Amended Draft EIS goes on to say that exploratory drilling would be limited to temporary facilities unless the lessee demonstrates that construction of permanent facilities is environmentally preferable.¹¹⁴ There is no mention or

111

¹¹⁰ 1998 NE NPR-A FEIS/IAP p. III-B-6. For some reason, the Amended Draft EIS cites to the 2002 Environmental Evaluation Document prepared for the proposed development of CD-3 and CD-4 as support for this proposition.

112
Water R

¹¹¹ Amended Draft EIS p. 4-194. The Amended Draft EIS, while discussing water resources, says that extensive use of lakes for water withdrawals could have “long term cumulative impacts on the Planning area, despite the restrictions imposed by the stipulations and ROPs.” Amended Draft EIS p. 4-371 (Water resources section).

¹¹² Amended Draft EIS p. 4-193.

¹¹³ Amended Draft EIS p. 4-213.

¹¹⁴ Amended Draft EIS p. 4-213.

discussion in the text of this section of the Amended Draft EIS that permanent facilities could be constructed to support exploration if it would be more economical.¹¹⁵

115
Impact

These conditions severely weaken the effectiveness of these two stipulations as mitigation measures. Until the actual ROPs and lease stipulations proposed for Alternatives B and C are considered, the Amended Draft EIS does not take a hard look at whether the impacts of Alternatives B and C would be the same as those under 1998 NE NPR-A ROD.

116

117

Elsewhere, instead of discussing the impacts under Alternatives B and C, the Amended Draft EIS only identifies the ROP or stipulation proposed for Alternative B and C and merely describes what the BLM intends the stipulation or ROP to do. This is simply repetition, not analysis, and it fails to account for the impacts involved. This repetitive approach is prevalent in the section discussing the impacts of Alternatives B and C on subsistence activities. That section is mostly a list of what the BLM seeks to accomplish with its proposed mitigation measures.¹¹⁶ In this section, actual discussion of how a mitigation measure would reduce impacts, such as the elevating of pipelines to a minimum of 7 feet stands out because it is so rare. With the exception of this and one or two other explanations, there is no analysis of whether the measure would in fact accomplish its goal or how. The supposed hard look at impacts is simply a list. You can call a frog a prince, but until you analyze whether it's a frog or a prince, you'll never know which it is. The Amended Draft EIS needs to discuss how the mitigation packages in the alternatives provide protections, how this differs from the no action alternative, and what the different impacts would be.¹¹⁷ Only then can the BLM say that it considered impacts and only then can the impacts of the proposed changes be understood.

118
Stips &
ROPs

The BLM's repeated assertion that Alternatives B and C would have no greater impacts than the status quo is also not borne out by a comparison of the stipulations themselves. Take for instance the proposed change from stipulation 27 in the 1998 NE NPR-A ROD which prohibits the construction of permanent oil and gas facilities during the exploration phase to lease stipulation D-2 in Alternative B and C which allows a lessee to build permanent exploration facilities if that would allow for more economical exploration.¹¹⁸ This is a potentially radical change that would reverse standards that have prevailed on state and federal lands on the North

¹¹⁵ Amended Draft EIS p. 2-20.

¹¹⁶ Amended Draft EIS p. 4-232 & 4-233. Using the word "seek" 18 times. These pages also say that some ROPs and stipulations minimize or would minimize impacts - without explaining how.

¹¹⁷ See Friends of the Earth v. Hall, 693 F.Supp 904, 939 (W.D. Seattle 1988).

¹¹⁸ See Amended Draft EIS p. 2-52 for a side by side comparison.

Letter to the BLM Commenting
on the Amended Draft NE NPR-A EIS/IAP
Page 35 of 54

118 (Cont;'d)
Stips &
ROPs

Slope since the 1970s. This practice was abandoned because building permanent facilities to support exploration has more impact than ice road supported construction, hands down, end of story.¹¹⁹ So, how could Alternatives B and C that would allow the construction of permanent facilities during the exploration phase provide a level of protection equal to the 1998 NE NPR-A ROD? It can't. The potential that permanent roads may be used for exploration raises a whole host of other issues. Is the AO going to do a Section 810 analysis when a proposal gets made for such a facility? What about public input? The simple answer is that there apparently would be no public input. This provision essentially lets the oil industry say that if they can do something cheaper with a permanent facility, they can do so. What about environmental standards? Apparently cost counts most, since the language is not qualified. How much sense does it make to strictly regulate the size and location of development pads when an oil company can sashay in and get approval for an exploration-related pad or road just by showing that it's cheaper to do it that way? This is outrageous.

119
ANILCA

121
Cabins &
Camps

Another difference between the 1998 NE NPR-A ROD and Alternatives B and C is that only the 1998 ROD prohibits permanent oil and gas facilities within one mile of long term cabins and campsites, except that pipelines and roads would be permitted within 1/4 of a mile of such sites.¹²⁰ There is nothing like this protection in Alternatives B and C despite the fact that these sites are recognized as "a vehicle for transmitting traditional and family history and knowledge to younger generations".¹²¹ The level of protection is just not the same.

124

We have only identified examples of how the Amended Draft EIS fails to analyze the differences between the 1998 NE NPR-A ROD and the mitigation packages for Alternatives B and C, how it fails to analyze the actual stipulation or ROP proposed under Alternatives B and C, and how it fails to consider the effectiveness of the stipulations and ROPs. We could not possibly identify every place in the Amended Draft EIS where these shortcoming occur. But, the point should be clear that repeating the "no greater impacts" mantra will not make it true. The Amended Draft EIS needs to be rewritten to correct these deficiencies everywhere they occur

125
Stips &
ROPs

120
(see
comment 118)

¹¹⁹ Regardless of the likelihood that permanent facilities would be constructed to support exploration, the fact that the BLM is even considering such a radical change from the way that exploration has been done since the earliest days on the North Slope needs explanation in the Amended Draft EIS.

122
Cabins &
Camps

¹²⁰ NE NPR-A ROD Stipulation 47. Special consultation requirements also kick in for any activities within 2 miles of a long term cabin or campsite. NE NPR-A ROD stipulation 23. There is not an equivalent in Alternatives B or C.

123
Socio-
cultural

¹²¹ Amended Draft EIS p. 4-236. The quoted text goes on to say that the "discontinuance of such visits would decrease social cohesion in these communities." This is a pretty dire impact, but we are being told not to worry, the level of protection is the same.

125 (Cont'd)
Stips &
ROPs

before the BLM can meet its obligation to conduct an analysis of the effectiveness of the ROPs and stipulations proposed under Alternatives B and C. Only then can the BLM have made the required comparison of the effectiveness of the new regime with the effectiveness of the stipulations adopted in the 1998 NE NPR-A ROD.¹²² Only then should the public be expected to comment on the impacts of the proposed amendment.¹²³ The public must be given another opportunity to comment when these extensive systematic and serious deficiencies are cured.

126
Alternatives

The plain and simple fact is that after the necessary and required analysis of the mitigation packages proposed for Alternatives B and C is done, the BLM will have to reach the conclusion that less protection to surface resources is provided by these alternatives than under the 1998 NE NPR-A ROD. Our organizations and the community of Nuiqsut are completely and vehemently opposed to any weakening of the protection measures that are currently in place.

IV. Impacts of Amending the Management of the Area Around Teshekpuk Lake

127

In the 1998 NE NPR-A ROD, it was decided that 589,000 acres would not be leased in the Teshekpuk Lake area and that there would be a No-Surface Occupancy strip five to six miles wide along the southern edge of the area that was not leased.¹²⁴ When the surface in this area was set aside (through the No-Surface Occupancy stipulation and the decision to withhold other parts of the area from leasing) the 1998 NE NPR-A ROD noted that this was because it:

128

encompasses important goose molting areas, caribou calving and insect-relief habitat, and all of Teshekpuk Lake. It is of special importance to subsistence users because of the caribou and fish resources in the area and the long-standing subsistence use of the area.¹²⁵

129
ANILCA

¹²² Additionally, the ANILCA Section 810 analysis says that the differences between the 1998 NE NPR-A ROD and Alternative B (other than opening additional areas in the Teshekpuk Lake Area to surface occupancy and leasing) would not reduce the level of protection afforded. This needs to also be corrected and the analysis needs to reflect the differences between the 1998 NE NPR-A ROD and Alternative B. See Amended Draft EIS, Appendix B, p. B-8.

¹²³ 40 CFR 1502.9(a) "If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion."

¹²⁴ Amended Draft EIS, Appendix A, p. 2.

¹²⁵ 1998 NE NPR-A ROD, p. 1. See Amended Draft EIS appendix A. The Amended Draft EIS also recognizes that:

impacts to caribou would be greatly limited [under the No Action Alternative] since permanent oil and gas surface facilities would not be permitted in the

130

The area withheld from leasing and the No-Surface Occupancy strip are within the Teshekpuk Lake Special Area.¹²⁶ The BLM has been directed by Congress to assure maximum protection of subsistence, fish and wildlife surface values in the NPR-A's special areas.¹²⁷

131
General

We feel very strongly that the 1998 NE NPR-A ROD correctly set aside a large part of Northeast NPR-A in the Teshekpuk Lake area from leasing and surface occupancy. We are opposed to any changes that would provide less protection to this area. But, less surface protection to this critical and sensitive area is exactly what the BLM is trying to push through this NEPA process.

132
Stips &
ROPs

We are being told that maximum protection will still be achieved in spite of leasing 376,000 of the 589,000 acres that were not available for leasing in the 1998 ROD, and eliminating the 5 to 6 mile wide No-Surface Occupancy zone, and replacing these with a modest buffer zone around the shore of Teshekpuk Lake and the coast¹²⁸ and restrictions on surface operations listed in stipulation K-5.¹²⁹ Here's the same disconnect again. We are being told that protection equivalent to the 1998 NE NPR-A ROD will be provided when it clearly won't. Just on the face of the BLM's assertion the disconnect is clear because, if the 1998 NE NPR-A provided maximum protection by eliminating surface impacts, how can maximum protection be achievable by allowing surface occupancy? The two are not equivalent.

135
Alternatives

Digging a little deeper we find that the BLM is actually proposing fewer caribou

Teshekpuk Lake Surface Protection Area.

Amended Draft EIS p. 4-118. See also Amended Draft EIS p. 4-309.

¹²⁶ Amended Draft EIS, Map 1-3.

¹²⁷ 42 USCA 6504(b).

133

¹²⁸ See lease stipulation proposed for Alternatives B and C with a No-Occupancy Zone extending 1/4 mile inland and 3/4 of a mile into the lake itself and 3/4 of a mile from the coast (subject to feasibility and economic considerations). Amended Draft EIS p. 2-29.

134
Stips &
ROPs

¹²⁹ Amended Draft EIS p. 2-31. Amended Draft EIS p. 1-6 indicates proposed lease stipulation K-5 provides maximum protection to the caribou calving in the Teshekpuk Lake Special Area. There is no explanation how the surface occupancy allowed under lease stipulation K-5 provide maximum surface protection as compared to the 1998 NE NPR-A ROD which does not allow any surface occupancy.

135 (Cont'd)
Alternatives

protections in the Teshekpuk Lake Special Area than it did under any alternative in 1998.¹³⁰ Essentially then, we find that we are losing some of even the lowest levels of protections considered in the 1998 NE NPR-A EIS/IAP. This isn't even the "environmentally responsible" leasing that the NEPDG recommended, it looks more like the leasing of additional acreage, pure and simple.

136
Teshekpuk
Lake

This isn't just impacts to the uplands that we are talking about. Alternatives B and C would allow leasing and ultimately development in the waters of Teshekpuk Lake. This represents yet another reversal of the protections provided in the 1998 NE NPR-A ROD. Even the Amended Draft EIS says that allowing drilling in or near Teshekpuk Lake "is less protective of water resources" than the 1998 NE NPR-A ROD because of the risk of an oil spill in the lake is greatly increased.¹³¹ Greatly increased risk of an oil spill reaching the lake, that doesn't sound like maximum protection to us. We are concerned that exploration and development in Teshekpuk Lake will have impacts that are not discussed in the Amended Draft EIS. Would the development of a field in Teshekpuk Lake happen from platforms or bottom founded gravel structures? How would exploratory drilling take place? From the ice? Has that been done before in a confined freshwater lake? What about impacts on the use of the concentration of cabins and campsites that are located all along the shore of Teshekpuk Lake?¹³²

138
Stips &
ROPs

The mitigation measures that are offered in Alternatives B and C for the protection of Teshekpuk Lake (lease stipulation K-3) are also not very reassuring. We are particularly concerned about a blow-out in the lake during broken ice conditions. Alternatives B and C would allow drilling during broken ice conditions, even without demonstrated clean-up capability, if the lessee can show that there is an alternative method to prevent a well blow out. We do not believe that there is an effective method of preventing a well blow out. We do not think that the industry does either since, as we have seen with the Alpine Satellites, ConocoPhillips always wants the capability to bring in a rig to drill a relief well in the event of a

137
Alternatives

¹³⁰ Alternatives D and E in the 1998 NE NPR-A EIS/IAP considered leasing between 73% and 100% of the Teshekpuk Lake Special Area and included surface restrictions that are basically identical to lease stipulations K-5. NE NPR-A ROD Lease Stipulations, 25, 29, 33, 49, 50, 52, 54, 55; 1998 NE NPR-A EIS-IAP pp. II-42 through II-48, Stipulations 24, 31, 37, 50, 53, 55, 56. In addition, more protective mitigation measures were included in stipulation 26 (2 mile buffer along the coast where only critical surface facilities would be permitted) and stipulation 28 applicable to Alternative E only (restrictions on development to the east of Teshekpuk Lake (an area that would not be leased in Alternative D considered in the 1998 NE NRP-A EIS/IAP)). Alternatives B and C do not have equivalent protections.

¹³¹ Amended Draft EIS p. 4-178.

¹³² See Amended Draft EIS Map 3-28.

138 (Cont'd)
Stips &
ROPs

blow out. Surely if it was as simple as employing alternative methods to prevent a blowout, ConocoPhillips would not be as concerned with its capability to respond to a blow out. Not only would there be no effective clean-up capability if there was a blow-out, we have to ask if a relief well would even be possible? Maybe the BLM is willing today to take on the risk that alternative methods to prevent a blowout will not fail, but if this wasn't an environmentally responsible choice in 1998, how can the BLM say that it is an environmentally responsible choice today?

139
Special
Designation

If the BLM is going to purport to consider additional environmentally responsible leasing in the Teshekpuk Lake Special Area, it must actually consider the impacts to the environment. The Amended Draft EIS fails in this task because it does not consider the impacts of additional leasing and development on the TLH and on Nuiqsut's subsistence users.

(a) Impacts on the Teshekpuk Lake Caribou Herd

140
Caribou

The Amended Draft EIS completely misses the boat when it comes to impacts to the TLH from opening up more of the area around Teshekpuk Lake to surface occupancy (i.e by leasing more acreage and by eliminating the 5 to 6 mile No-Surface occupancy buffer zone). It does this by jumping to the conclusion that the TLH will adjust to industrialization in the same way that the CAH has.¹³³ This jump in reasoning is fatally flawed since there is no consideration of the TLH's specific circumstances or the geographic and topographical area involved. For one, the TLH animals have proven to calve less successfully outside the area around Teshekpuk Lake that is closed to leasing and surface occupancy. According to the summer of 1997 Alaska Department of Fish and Game Caribou Survey-Inventory the calving success rate for animals that calved outside the TLH's traditional calving grounds was poor - only 8%. In the same year, calving success for the animals that did calve in the traditional calving grounds was 75%.¹³⁴ This was not a one year occurrence. As the 2003 ADFG Caribou Survey-Inventory noted, 90% of the TLH animals that calved in the area around Teshekpuk lake since 1990 did so successfully whereas the overall calving success rate for TLH caribou calves born outside the Teshekpuk Lake area during this same period drops to 25%.¹³⁵

141
Caribou

Both of these ADFG Caribou Inventory-Surveys are listed in the Bibliography for the Amended Draft EIS - but nowhere does the Amended Draft EIS discuss the evidence of a

¹³³ Amended Draft EIS p. 4-113.

¹³⁴ G.M. Carroll, Management Report of Survey-Inventory Activities, M.V. Hicks (editor). Alaska Department of Fish and Game, 1999, p. 213.

¹³⁵ G.M. Carroll, Management Report of Survey-Inventory Activities, M.V. Hicks (editor). Alaska Department of Fish and Game, 2003, p. 289. Available at http://www.wildlife.alaska.gov/pubs/techpubs/mgt_rpts/ca03mt-north.pdf.

141 (Cont'd)
Caribou

direct correlation between the TLH's calving success and the area around Teshekpuk Lake. The Amended Draft EIS does not analyze or consider the likely impacts on the TLH of deflection of pregnant cows that would be caused by industrial activities in these calving areas. All that the Amended Draft EIS says is that "[c]alving en route to calving grounds could result in reduced calf survival."¹³⁶ Duh! A statement of the obvious is no substitute for an analysis of the likely impact. This does not even begin to capture the significance of this information that the BLM had at its fingertips regarding calf survival! It is oversights like this that makes us doubt whether the BLM will fulfill its obligations under a performance based plan.

142
Caribou

Second, the TLH's calving area seems to be much smaller than the CAH's traditional calving area.¹³⁷ With a smaller core calving area, the TLH may be more sensitive to displacement from facilities than the CAH have exhibited.¹³⁸ This was not considered in the Amended Draft EIS. A third factor, which is related to the second, is the type of habitat selected by the TLH to calve.

143
Vegetation

Studies conducted since 1998 have shown that the TLH calve in areas dominated by Wet Graminoid, Moist Graminoid and Moist Tussock. Compare this with the Western Arctic Caribou Herd ("WAH") which calves in areas where Moist Dwarf-Shrub and Moist Low-Shrub dominate.¹³⁹ We could not find data detailing what vegetation type dominates the area where the CAH calve, but given the geographic similarities between where the WAH and the CAH calve, we think it is likely that they both calve in areas dominated by the same types of vegetation.¹⁴⁰ Until the Amended Draft EIS takes these factors into consideration, conclusory assertions that the TLH can shift its calving grounds without consequence are only wishful thinking.

145
Caribou

A fourth difference between the CAH and the TLH are the relatively narrow strips of land to the east and west sides of the Teshekpuk Lake that are important travel corridors for

¹³⁶ Amended Draft EIS p. 4-111.

¹³⁷ Amended Draft EIS pp. 3-49 & 51, Calving Ground Habitat Selection: Teshekpuk Lake and Western Arctic Caribou Herds, 2001, Figs 10 & 12. Kellyhouse 2001,

¹³⁸ Amended Draft EIS. p. 4-210.

¹³⁹ Calving Ground Habitat Selection: Teshekpuk Lake and Western Arctic Caribou Herds, 2001, Figs 10 & 12. Kellyhouse 2001.

144
Global
Warming

¹⁴⁰ The cumulative impacts section of the Amended Draft EIS says that it is predicted that climate change will increase the abundance of deciduous shrubs. Amended Draft EIS p. 4-390. The Amended Draft EIS says that climate change may cause caribou calving areas to shift, but there is no analysis whether global climate change will obliterate preferred calving habitat or what impacts that will have on caribou calving.

145 (Cont'd)
Caribou

caribou moving between the north and south of the lake.¹⁴¹ These are areas where the entire TLH herd may pass through in large groups. We are not aware of any similar pinch points in the CAH's range, so this makes the TLH unique. How would large numbers of caribou react to infrastructure inside these pinch points? It is simply not enough to say that the conventional wisdom about mitigating impacts of industrialization applies to such areas.¹⁴²

146
Caribou

Finally, animals from the TLH overwinter in on the Arctic Coastal Plain more frequently and in greater numbers than the CAH. This means that animals from the TLH are more likely to encounter winter exploration than the CAH and will encounter permanent facilities year-round. What are the impacts increasing the frequency of winter encounters between caribou and oil and gas activities? What happens if these impact are spread across a significant portion of the TLH herd instead of on the relatively few stragglers from the CAH that remain on the Arctic Coastal Plain all winter?

147

Until the BLM has considered all of these factors, it has not taken a hard look at the impacts on the TLH of opening up more of the area around Teshekpuk Lake to surface occupancy. If the BLM insists on proceeding with this amendment process, the Amended Draft EIS needs to be revised to take these factors into account.¹⁴³

(b) Impacts to Nuiqsut's Subsistence Activities

148
Subsistence

The impacts of leasing additional areas around Teshekpuk Lake and removing the No-Surface Occupancy buffer on our subsistence activities are not considered in the Amended Draft EIS. This is because the Amended Draft EIS mistakenly says that Nuiqsut's residents do not use the Teshekpuk Lake area for subsistence activities.¹⁴⁴ This is inconsistent with Map 3-34¹⁴⁵ which shows that we do harvest caribou from all sides of Teshekpuk Lake except the west

¹⁴¹ Amended Draft EIS p. 4-49.

¹⁴² See Cronin, M.A., W.B. Ballard, J. Truett, and R. Pollard, 1994, p. 8, Mitigation of the Effects of Oil Field Development and Transportation Corridors on Caribou. Unpublished report sponsored by Alaska Oil and Gas Accoc.

¹⁴³ 40 CFR 1502.9(a) "If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion."

¹⁴⁴ See Amended Draft EIS p. 3-83. See also Amended Draft EIS p. 4-229 "Hunters from Barrow and Atqasuk would be affected by development north and west of Teshekpuk Lake, where numerous subsistence camps, cabins and ice cellars are located."

¹⁴⁵ See also 1998 NE NPR-A EIS/IAP p. III-C-26.

148 (Cont'd)
Subsistence

side. It is also inconsistent with what we and the people of Nuiqsut have periodically told the BLM, which is that the area around Teshekpuk Lake is used by Nuiqsut's residents for subsistence activities, and it is inconsistent with the direct personal knowledge and experience of all the signers of this letter.

149
Subsistence

Perhaps, the Amended Draft EIS discounted the importance of the Teshekpuk Lake area to Nuiqsut's hunters because we harvest caribou from this area with less frequency than other areas closer to Nuiqsut.¹⁴⁶ But, that is not a reason to drop impacts to Nuiqsut from the analysis. Areas that are used infrequently for subsistence activities can be "important harvest areas when they are used."¹⁴⁷ As explained in Nuiqsut Paisanich, A Cultural Plan

150
Subsistence

Because of these seasonal and cyclic variations in wild resource patterns (as well as imposed hunting restrictions, Nuiqsut hunters must be flexible. If a primary resource fails, "normal" subsistence rounds may be completely changed, forcing reliance on different geographical areas and animal species. This explains why the hunting landscape must be extensive - in effect, an open range based on biological factors rather than modern land classifications.¹⁴⁸

153
Subsistence

So, it is just plain wrong to say that Nuiqsut's residents harvest few caribou in the Teshekpuk Lake area and so leasing will not impact Nuiqsut's subsistence harvest activities directly.

Not only were we incorrectly cut out of the analysis of the impacts that allowing more surface occupancy in the Teshekpuk Lake Special Area would have on subsistence, the analysis of the impacts to subsistence is also deficient. This is because the impacts of roadless development in this area are not analyzed. All that the Amended Draft EIS says is that:

151
Subsistence

¹⁴⁶ See appendix J, p. J-33 for a comparison of the percentage caribou harvested by Nuiqsut residents broken down by area. This comparison chart also has a large percentage of caribou harvests falling into the "unknown" category and it is not based on the total harvest numbers for Nuiqsut, and so the relatively low percentage of caribou shown as harvested in the Teshekpuk Lake Area is not definitive. We note that there is not a similar break down for the other communities on the North Slope that also rely on the Teshekpuk Lake area for their caribou harvest.

¹⁴⁷ Amended Draft EIS p. 3-71.

¹⁴⁸ Arctic Environmental Information and Data Center-under the auspices of the North Slope Borough-1979. "Paisanich" means "heritage. The North Slope Borough Planning Commission adopted Resolution No. 95-05, endorsing Nuiqsut Paisanich, A Cultural Plan, as the "establishing the guiding principles for Nuiqsut development."

152

154
Subsistence

Nuiqsut subsistence users have repeatedly stated during scoping meetings that air traffic reduces harvest access and success. The opening of the areas north and west of Teshekpuk Lake could increase the amount of aircraft disturbance to subsistence species, relative to the No Action Alternative. . . .¹⁴⁹

155
Traffic

That doesn't really tell us anything. The severity of the impact is a function of the amount of air traffic. Will air traffic increase from one flight a week over the Teshekpuk Lake Special Area to two flights per week, or to 100 flights per week? Other than some discussion in the cumulative impacts section that is based on unsupported and unrealistically low estimates of the number of flights that a roadless facility would require¹⁵⁰ there is no estimate of the number of flights needed to develop and support roadless facilities in the Teshekpuk Lake Special Area. In order to accurately consider the impacts of roadless development in the Teshekpuk Lake Area, or anywhere else in the Northeast NPR-A for that matter, the Amended Draft EIS needs to consider the actual amount of aircraft disturbance and not provide some meaningless statement that aircraft traffic will increase.¹⁵¹

158
Subsistence

The BLM's advances no valid reason for the proposed reversal in the management of the area around Teshekpuk Lake which is not surprising since, as we discussed in section II of this letter, policy, not reason, is driving the BLM to consider additional leasing and to eliminate the No-Surface Occupancy strip in the Teshekpuk Lake Area. We have already explained that satisfying the whims of the current Presidential administration is not a proper basis for the BLM to reverse its current management of the Northeast NPR-A. But, if the BLM insists on proceeding with its plans to amend this management plan, then it must consider the impacts of this change on the TLH and on our subsistence activities in a revised Amended Draft EIS.

¹⁴⁹ Amended Draft EIS p. 4-227 & 228.

156
Traffic

¹⁵⁰ Amended Draft EIS is at page 4-382. This says that if two major roadless developments (2 CPFs, each with 5 satellites) are built at the same time then "approximately 28 to 56 round trips [via aircraft] per month could be required during the development period and 12 to 28 round trips per month could be required during the production period." Based on our direct experience, this estimate is complete and utter nonsense. The development of the Alpine CPF and its satellite at CD-2 required more than 400 round trips during some months, and even after start-up of both the Alpine CPF and CD-2 the Alpine airstrip still received over 125 round trip flights per month. (See footnote 153 below).

156
Traffic

¹⁵¹ Estimates of the number of air craft flight necessary to develop and operate roadless facilities in the NPR-A should be based on actual experiences with the construction and operation of the Alpine development. A partial summary of Alpine's aircraft flights can be found in the June 2002 Colville River Unit Satellite Development Revised EED, p. 2-33 (depicting the number of round trips to Alpine between May 2000 and February 2002.)

V. The Sociocultural Impacts of Amending The Draft EIS

159 Socio-cultural
The essence of our interests in the management of the Northeast NPR-A stems from our concerns about the sociocultural impacts of changes in the management of the Northeast NPR-A. The health and well being of the residents of Nuiqsut is tied closely to subsistence activities that take place throughout our subsistence range. Subsistence provides sustenance to Nuiqsut’s residents.¹⁵² But it’s more than that, as explained in the Nuiqsut Paisanich:

160 Socio-cultural
Today, as in the past, subsistence harvest of wild resources is the central occupation of traditionalist Inupiat. Most of the people in Nuiqsut and other northern Alaska villages are traditionalists. Despite their acceptance of many elements of Euro-American culture, technology and economy, these people continue to participate in and depend on the subsistence way of life, either as hunters or as sponsors and sharers of the hunt. Subsistence provides such necessities as food and clothing, and it organizes the people’s lives seasonally, socially, and ceremonially in the defining patterns of their culture.¹⁵³

161 Socio-cultural
Subsistence activities are the vehicle through which we pass our culture and our values onto the next generation.¹⁵⁴ It is also through the subsistence harvest that successful hunters are able engage in the sharing of meat, a tradition that is a significant part of our culture and that is key to the cohesiveness of families and communities. Because of the connections between sociocultural impacts and impacts to subsistence, these are discussed together in our comments.¹⁵⁵

163 Socio-cultural
So, what impacts on our culture does the Amended Draft EIS acknowledge will occur as a result of amending the management of the Northeast NPR-A? According to the Amended Draft EIS, the impacts of Alternative B “would be greater in intensity, area, and

¹⁵² See Amended Draft EIS p. 3-82 for Nuiqsut’s annual subsistence harvest.

¹⁵³ Nuiqsut Paisanich, p. 25.

162 Socio-cultural
¹⁵⁴ Amended Draft EIS p. 3-87. Somehow, basic statements of fact like this one in the Affected Environment Section are changed into “perceptions” of Nuiqsut’s residents in the Environmental Consequences Section. See e.g. p 4-145 “Nuiqsut residents perceive direct connections between the general well-being of their community and subsistence harvests.” This change from fact to perceptions consistently downplays the impacts of oil and gas development on Nuiqsut.

¹⁵⁵ The ties between the Inupiat’s culture and subsistence is discussed at pages 3-87 through 3-89 of the Amended Draft EIS.

163 (Cont'd)
Socio-cultural

duration” than impacts under the current management of the Northeast NPR-A.¹⁵⁶ This is a pretty bland statement and gives no sense of the degree of difference in impacts, which surely is a significant part of what any decision-maker needs to know in deciding what is required by the “maximum protection” required by Congress for subsistence, fish and wildlife surface values in the Teshekpuk Lake Special Area.¹⁵⁷ Or to decide whether a decision will have the least adverse impact as possible on subsistence uses.¹⁵⁸ Looking on a little further we see that:

164
Subsistence

The roadless development proposed for the Planning Area would require increased staging and overland travel during the winter, and in summer would require increased use of aircraft for supplies, equipment, and crew changes, as compared to the No Action Alternative. In all seasons, noise, lights, personnel, and traffic near oil and gas-related infrastructure could temporarily deflect or divert caribou in areas where activities are occurring; however, gravel pads could attract caribou during some seasons as insect-relief habitat. These effects could change the distribution, timing, and location of the caribou harvest, which could require increased effort and expenditure on the part of subsistence hunters, resulting in sociocultural consequences such as increased stress and a decreased sense of well being. Increased fuel costs and wear and tear on equipment would increase the need for wage labor to support subsistence pursuits and reduce the time available to pursue these activities, which would also result in sociocultural consequences, such as increased stress and a decreased sense of well-being. Increases in the speed, range, and reliability of outboards and snowmachines have facilitated the mixed subsistence and wage economy, but are unable to compensate for continued development and production activities in important subsistence harvest areas. (Emphasis added.)¹⁵⁹

165
Socio-cultural

This is also pretty uninformative. It tells us that increased activity will occur outside the village which may lead to “increased stress” or a “decreased sense of well being.” These are pretty vague concepts and, again, give the decision-maker on the ROD no sense of the difference in impact between the present and the proposed regimes. The impacts of oil development since Prudhoe Bay have been increases in alcoholism, higher levels of suicide and accelerating westernization and acculturation. Talking about those changes and “increased stress” or a “decreased sense of well being” in the same breath practically mocks the impacts that our people and culture are undergoing. Reading the Amended Draft EIS, it almost sounds as though a psychologist and Prozac are suitable mitigation measures. This is nonsense and does not remotely

¹⁵⁶ Amended Draft EIS p. 4-234.

¹⁵⁷ 42 USCA 6504(b).

¹⁵⁸ 16 USCA 3112(1).

¹⁵⁹ Amended Draft EIS p. 4-234.

approach the type of analysis and discussion required by NEPA, particularly in light of the decreased level of protections offered by the Preferred Alternative in many areas, as discussed above.

166
Subsistence

The quoted text does a little better when it comes to economic consequences. It tells us that we may need to travel farther and at an increased cost in order to harvest caribou, but these are statements of the obvious. It does not tell us how much farther and at what extra cost. Nowhere does the text try to grapple with the differences that would be caused by the lower levels of protection to our lands and subsistence resources that would be afforded by Alternative B and C. Given Congress' mandate for "maximum protection,"¹⁶⁰ and the least aversive impacts on subsistence, the BLM's preference for after-the-fact monitoring instead of prescription poses especially great risks. The ROP's "close the door after the cow is out" approach¹⁶¹ poses huge risks for our subsistence resources, our culture, and our people, but this is the low level of the analysis.

167
Stips &
ROPs

168
Socio-
cultural

Unlike the prior uninformative statements in the course of the analysis portion of the sociocultural text, the conclusion of the sociocultural impacts section for Alternative B indicates that there can be impacts on "social cohesion". The conclusion also says that "[a]s harvests decreased, resources would no longer be available in amounts suitable for sharing, resulting in changes in social organization and cultural values."¹⁶² We think that this is more like the sociocultural impacts that we are facing, but these are just conclusions. Where's the analysis to support them? Where in the Amended Draft EIS are we told that we can expect our harvest of subsistence resources to drop? How are we told that social cohesion will unravel?

169
Socio-
cultural

Given the absence of real analysis in the body of the sociocultural analysis, we have to wonder what's going on here. It's certainly a lot easier to slip something controversial into the conclusion than to explain the underlying basis for that conclusion in the main part of the section. After all, in the descriptive and analytical parts of the discussion, people expect to see detail and the type of discussion of information that would actually inform a reader. We understand that this is a rush process, as all of BLM's oil and gas-related work on the North Slope seems to be recently. However, the BLM needs to provide that analysis and description and take into account the very real differences in impacts that we have identified in this letter and in our prior scoping letter.

170
Socio-
cultural

What the Amended Draft EIS needs to analyze is how oil and gas activities

¹⁶⁰ 42 USCA 6504(b).

¹⁶¹ See discussion in section IV, above.

¹⁶² Amended Draft EIS p. 4-236.

170 (Cont'd)
Socio-cultural

outside the village are impacting us and how those impacts would be different under the decreased level of protections and the greater development of areas critical to our subsistence resources. Less undeveloped areas means greater concentration of effort in those areas and the potential for conflict within our community and between Nuiqsut and other communities if development in the Northeast NPR-A eventually becomes even halfway as successful and extensive as it has been in the Kuparuk area, let alone the Prudhoe Bay area. We already know that oil and gas activities impact us directly because we are avoiding permanent facilities while hunting.

171
Subsistence

In the Description of the Affected Environment section, the Amended Draft EIS acknowledges that hunters are avoiding areas occupied by oil and gas infrastructure.¹⁶³ The Amended Draft EIS even attempts to quantify, for the first time that we have seen, the size of the area being avoided. It says that household surveys¹⁶⁴ in 1993 and 1994 showed that Nuiqsut residents harvested 0% of their caribou within industrialized areas, 4% of their caribou within 5 miles of industrialized areas, 17% of their caribou 6 to 15 miles from developed areas and 79% of their caribou 16 miles or more distant from developed areas. More recent household surveys were done between June 1999 and May 2000. These indicate that Nuiqsut residents continue to harvest 0% of their caribou within developed areas, the percent of caribou harvested within 5 miles of developed areas had jumped from 4% to 22%, the remaining 78% were harvested more than 5 miles away from development. The jump in the percentage of caribou harvested less than 5 miles away from development is attributed to the construction of the Alpine facilities in the Colville River Delta, an area where Nuiqsut's residents harvest a substantial number of caribou between June and September.¹⁶⁵ The percentage of caribou harvested within 5 to 16 miles of Alpine was 27%. 51% of the caribou were harvested 16 or more miles away from development.

173
Subsistence

These surveys have their limitations though, since the "development of Alpine is too recent and there is insufficient data available to conclude whether harvesters will increase their distance from development in response to this relatively new facility."¹⁶⁶ Nor were impacts being felt from the development of Meltwater or Tarn, the newest, and now closest developments

¹⁶³ Amended Draft EIS p. 3-85.

172
Subsistence

¹⁶⁴ For reasons explained in March 8, 2004 Letter Commenting on the Alpine Satellites Draft EIS, p. 40, household surveys are not the best way to conduct research into the areas where Nuiqsut's residents are harvesting caribou. We continue think that data gathered through surveys will only lead to underestimates of the impacts.

¹⁶⁵ Amended Draft EIS p. 3-86.

¹⁶⁶ Amended Draft EIS p. 3-86.

to the east of Nuiqsut.¹⁶⁷ So, while the surveys may shed light on the how wide of an area is being avoided, they do not indicate how Nuiqsut's residents have adjusted to Alpine or the other recent development near the village.

174 Subsistence

Unbelievably, these surveys, for what they are worth, were not made a central part of the "analysis" of impacts on subsistence activities in the Amended Draft EIS. Instead, for Alternatives B and C, the Amended Draft EIS only confirms that avoidance is happening and summarizes the avoidance distances noted in 1993-1994 and 1999-2000 surveys.¹⁶⁸ This type of uninformative recital isn't analysis that helps the BLM or anyone else understand the likely impacts under the BLM's proposed performance-based mitigation package or the impacts of the different leasing scenarios under Alternatives B or C. Put as many points as there are expected production drill pads under the three alternatives¹⁶⁹ anywhere on a map of the Northeast NPR-A and shade in an area 16 miles in any direction from those points, and you begin to see the scope of impacts that we are concerned about. The areas potentially affected are enormous and represent potentially a majority of that portion of our subsistence range that is presently undeveloped.

175 Stips & ROPs

Allowing development into the core areas now off-limits at Teshekpuk Lake would dramatically decrease core areas where these kinds of avoidance by definition will not occur. The Draft EIS does not acknowledge these impacts. Nor does it take any account of how avoidance of additional areas as a result of Stipulation D-2, with its permission to develop permanent facilities for exploration (if that is more economical), will impact the sociocultural health of our community. Putting a road into NPR-A, with potential public access into the heart of our remaining traditional range, would have enormous impacts, but one would never have any concept that this was a possibility from the Amended Draft EIS. How about avoidance for 16 miles in any direction from a road stretching far into NPR-A. The calculations are simple enough to do, but apparently the Amended Draft EIS would prefer not to include them because they interfere with the pre-ordained result of imposing these ROPs, opening 487,000 additional acres to leasing and the neat, but fallacious conclusion there's no problem here because the level of protections under the Preferred Alternative is equivalent or greater to that under the present regime.¹⁷⁰ How this type of analysis was not made part of the Amended Draft EIS is completely

¹⁶⁷ Amended Draft EIS p. 3-87.

¹⁶⁸ Amended Draft EIS p. 4-229. "Subsistence users tend to avoid areas of oil infrastructure and activities for the reasons noted in No Action Alternative" See also p. 4-310.

¹⁶⁹ Amended Draft EIS p. 4-35.

177 ¹⁷⁰ Amended Draft pp.2-11, 4-231 & 4-312 (the BLM holds that performance based stipulations and Required Operating Procedures will provide equivalent protection [to

baffling, since we stressed in our scoping letter the significance of hunter avoidance.¹⁷¹

176
Cumulative

All that the Amended Draft EIS has to say about the cumulative impacts of subsistence user avoidance is:

The continued expansion of this activity [oil and gas development] across the Arctic Coastal Plain from Prudhoe Bay westward could increase the area considered off-limits by resource users . . .¹⁷²

178
Cumulative

That's it. This is not analysis. Instead, it is once again stating the obvious, which is that impacts follow from development. Anyone can tell you that the proportion of Nuiqsut's subsistence range that is avoided because it is occupied by oil and gas infrastructure will only get larger, not smaller. But, where is the analysis of the cumulative impacts that have already mounted from Alpine which is only 8 miles from the village and from the extensive development to the east? What about the cumulative impacts from the likely approval and construction of the Alpine Satellites to the north and to the west of Nuiqsut? We think that it should be pretty obvious that areas in our subsistence range where we can harvest caribou without encountering oil and gas infrastructure are increasing in importance and will continue to shrink in size.¹⁷³ It naturally follows that additional leasing in the Teshekpuk Lake area, and removing the No-Surface Occupancy strip to the south of the no leasing zone is going to have a profound impact on how and where we hunt. None of this was considered in the Amended Draft EIS.

179
Cumulative

The avoidance of developed areas by subsistence users has other impacts as well. There is the increased fuel and equipment maintenance costs that hunters incur if they travel farther than normal in order to hunt in an area where oil and gas infrastructure will not be encountered. There is also the time that is taken away from subsistence pursuits to participate in the wage economy in order to pay for these increased costs. These are acknowledged in the Amended Draft EIS as impacts, but there is nothing that even resembles analysis of the increased costs or time taken away from subsistence activities. Such analysis would have to build on a real

subsistence].); p. 4-235 & 4-314 (the BLM proposed the new approach to mitigative measures in order to achieve equivalent protection [from sociocultural impacts.]) p. 4-145 "The BLM holds that the new approach will provide equivalent protection with more flexibility."

¹⁷¹ NE NPR-A Scoping Letter pp. 29-31.

¹⁷² Amended Draft EIS p. 4-402.

¹⁷³ We brought this up in our NE NPR-A Scoping Letter. See p. 6.

analysis of the avoidance problem, but even that first building block is conspicuously absent.¹⁷⁴

180
Cumulative

Avoidance of additional development (including permanent facilities built for exploration because that was more economical) may also impact hunter success. When that happens, impacts on harvest success will be felt first in the institution of sharing. As the Alpine Satellite Draft EIS points out:

The sharing of subsistence foods is essential to the maintenance of family ties, kinship networks and community well being. Disruption of subsistence-harvest patterns could alter these cultural values and affect community social structure. For the system of sharing to operate properly, some households must consistently produce a surplus of subsistence goods. For this reason, the supply of subsistence foods in the sharing network is more sensitive to harvest disruptions than the actual harvest and consumption of these foods by the primary producer. (Emphasis Added.)¹⁷⁵

183
Socio-cultural

There is an apparent recent trend towards reduced sharing of subsistence resources in Nuiqsut. We first saw an indication that this was happening in the “Sociocultural Impacts of the Alpine Field on the Colville River Community of Nuiqsut: An Initial Assessment,” prepared for Phillips (now ConocoPhillips) by Circumpolar Research Associates (“Alpine Sociocultural Impacts Study”).¹⁷⁶ That a decline in the sharing of subsistence resources is happening in Nuiqsut is

181

¹⁷⁴ We identified these as impacts in our NE NPR-A Scoping Letter. See p. 29 -32. We have raised these issues in other comment letters as well. See March 6, 2004 Letter Commenting on the Alpine Satellite Development Plan (CD-3, 4, 5, 6 & 7) Draft EIS, pp. 39-41; Kuukpik and KSOP’s March 31, 2003 Letter Providing Scoping Comments on the Alpine Satellite Development Plan (CD-3, 4, 5, 6 & 7) pp. 7 - 8; March 6, 2002 Letter Commenting on the Alpine Satellite Development Plan (CD 3 and 4) pp. 17 - 18, and 25; Kuukpik and KSOP’s April 2, 2003 Letter Commenting on the Northwest NPR-A Draft EIS pp. 6 - 7.

182
Socio-cultural

¹⁷⁵ Alpine Satellite Draft EIS p. 4A.4-1 to 2. The Amended Draft EIS notes the importance of the sharing of subsistence resources but as a manifestation of the cultural value that we place on kinship and family relations. p. 3-88. We think that the quoted passage from the Alpine Satellite Draft EIS more accurately describes the importance of sharing subsistence resources as one of the practices that leads to family and community cohesion. The Amended Draft EIS does not appear to get the connection and in the Unavoidable Adverse Effects Section it concludes that some “cultural values, such as sharing, could be reinforced by shortages in the short term, but could be strained after several seasons of harvest shortages.” Amended Draft EIS p. 4-423.

¹⁷⁶ The Alpine Sociocultural Impacts Study is attached to our March 6, 2002 satellite comment letter as document number 5. The study was released in 2002.

183 (Cont'd)
Socio-cultural

confirmed in the North Slope Borough's 2003 Economic Profile and Census Report (in press). With a reduced amount of sharing already becoming apparent, casual conclusions that "[a]s harvests decreased, resources would no longer be available in amounts suitable for sharing, resulting in changes in social organization and cultural values" just are not acceptable.¹⁷⁷

184

As the people who are going to feel the impacts of the increased development and decreased surface protections if the 1998 NE NPR-A ROD is changed to look like Alternative B or C, we hoped to see the BLM take mitigation of the impacts to subsistence activities seriously. It's an understatement to say that we have been let down. It is also apparent that amending the management of the Northeast NPR-A to meet Presidential policy goals is overriding Congressional intent that management of federal lands have the "least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands."¹⁷⁸

185

The primary mitigation proposed by the BLM for all of these impacts is consultation with the effected communities, primarily under ROPs H-1 and H-2. The Amended Draft EIS has this to say about how the mitigation proposed for Alternatives B would limit impacts to subsistence activities:

ROPs (e.g. H-1 and H-2) would minimize conflicts between subsistence uses and oil and gas related activities.¹⁷⁹

And

Required operating procedures H-1 and H-2 are subsistence-specific mitigation procedures designed to provide opportunities for participation in planning and decision-making to prevent unreasonable conflicts between subsistence users and oil and gas-related activities including seismic operations.¹⁸⁰

¹⁷⁷ Amended Draft EIS p. 4-236.

¹⁷⁸ 16 U.S.C. 3112(1).

¹⁷⁹ Amended Draft EIS p. 4-231.

¹⁸⁰ Amended Draft EIS p. 4-232 and 233.

186
ANILCA

We see this again in the ANILCA Section 810 analysis where it says:

Stipulation H [SIC]¹⁸¹ and ROPs H-1 and H-2 would be the primary mitigation measures in place to ensure adequate access to traditional hunting areas by the residents of Nuiqsut, Barrow, and Atqasuk in the Teshekpuk Lake Special Area. (Emphasis added).¹⁸²

187
Stips &
ROPs

What besides wishful thinking has brought the BLM to the conclusion that consultation will mitigate the avoidance of oil and gas facilities by subsistence users and the increased impacts caused by opening all of these additional areas to industrialization?¹⁸³ There is no reason to believe that consultation will be as effective a mitigation measure as the BLM says. The effectiveness of a consultation requirement is pretty dubious since the BLM has acknowledged that amending the 1998 NE NPR-A will create an insurmountable rift between it and the people of the North Slope.¹⁸⁴ We've seen a certain amount of consultation with us and the community of Nuiqsut as part of this amendment process, but since the BLM has basically ignored pretty well everything that we've said and gone on and done what it wants to regardless of our protests, it's pretty clear that all the consultation in the world doesn't provide for practical protections or effect. All that "consultation" means is that we'll be better informed about what BLM plans to do to us or allow others to do to us. This process seems more politically motivated and pro-industry than it seems an even-handed, open-minded administrative process. We

¹⁸¹ There is not a "stipulation H". See Amended Draft EIS pp. 2-24 & 25.

¹⁸² Appendix B, pp. B-9 & B-11.

189
Stips &
ROPs

¹⁸³ Maybe it is easy to reach this conclusion because there is basically no analysis of the impacts supposedly being mitigated. It only makes sense though that the impacts need to be understood before the effectiveness of mitigation measures can be evaluated. In fact, we pointed out in our NE NPR-A scoping letter how the consultation requirement in the 1998 NE NPR-A ROD has already suffered significant failures and urged that the consultation requirements be strengthened. NE NPR-A Scoping Letter p. 37. See also Kuukpik and KSOP's April 2, 2003 letter Commenting on the NW NPR-A Draft EIS, pp. 17 - 20.

190
Special
Designation

¹⁸⁴ The Amended Draft EIS says that if such a discovery were to occur in the Teshekpuk Lake Special Area then a compromise might be reached on mitigation. Amended Draft EIS p. 4-35. But that's just it, compromising on mitigation will provide less protection to subsistence species and to our subsistence activities. We aren't going to get back to the same level of protection for the Teshekpuk Lake Special Area that we have today. If this planning process and the planning process that we are currently going through for the Alpine Satellites are any indication of what we can expect in the future, the possibilities are not promising that there will be compromised mitigation measures with the BLM or with the industry that provides the level of protection to subsistence activities that we find acceptable.

certainly are not convinced that consultation gives us anything in substantive terms. The real concerns of the local people affected by the BLM's decisions continue to go unheard.

188

Not only has the BLM unilaterally decided that consultation will be a sufficiently effective way to mitigate impacts on subsistence activities, but Alternatives B and C would also eliminate the requirement in the 1998 NE NPR-A ROD that lessees establish procedures for the entrance to facilities, the use of roads, and the discharge of firearms that would be distributed to the local people.¹⁸⁵ This is a step backwards as far mitigation of impacts to subsistence goes, yet the Amended Draft EIS is telling us, once again, that the mitigation packages for Alternatives B and C are "intended to protect subsistence resources to the same extent as" the 1998 NE NPR-A ROD.¹⁸⁶ If this was true then why is a full blown amendment process even necessary?

191
ANILCA

The Amended Draft EIS almost says enough about sociocultural and subsistence impacts to make it look as though it is analyzing the proposed changes to the management of the Northeast NPR-A. But, when reviewed a little closer, we see that there are conclusions and information, but basically no analysis. This is not the hard look at these impacts that NEPA requires. Additionally, the BLM suggests that it can mitigate impacts to subsistence activities with a consultation requirement. That is just wishful thinking, and the Amended Draft EIS and ANILCA Section 810 Analysis need to be revised to reflect this.

VI. Conclusion.

192
General

We see so many problems with the Amended Draft EIS that we believe that, after revisions, it will need to go out to public comment again if the public is to have the required meaningful opportunity to comment on the proposed action. Given the unspoken industry-friendly policy change driving this process and the pre-ordained result, as well as the enormous gaps in analysis and content that we have demonstrated above, the Amended Draft EIS seems more like an exercise in wishful thinking on the BLM's part than the sort of thorough and objective document contemplated by NEPA. We think that it is grossly deficient, incomplete and unresponsive to the concerns previously expressed by the people of Nuiqsut, who are in the unenviable position of being those who will be most affected by the proposed action.

193

Our feelings are strong. Consultation only has mitigation value when the consulting party has a willingness to actually make changes in response to the information received. Recall the BLM's failure to discuss or even notify the Subsistence Advisory Panel of its plan to initiate this amendment process and you can see how limited is the value of consultation as mitigation in these circumstances. We are disappointed that BLM as a governmental

¹⁸⁵ NE NPR-A ROD Stipulation 60.

¹⁸⁶ Amended Draft EIS p. 4-231.

institution has failed to meet its obligations because it has been biased towards allowing more development. This whole process was doomed to fail from the beginning because of the BLM's pro-oil industry bias. Nevertheless, we wish to acknowledge that the rank and file BLM personnel with whom we have dealt have been courteous throughout and have done their best in a most difficult situation. We thank you for considering our comments.

KUUKPIK CORPORATION

DATE

BY: ISAAC NUKAPIGAK
ITS: PRESIDENT

NATIVE VILLAGE OF NUIQSUT

DATE

BY: BERNICE KAIGELAK
ITS: VICE-PRESIDENT

CITY OF NUIQSUT

DATE

BY: ROSEMARY AHTUANGAUAK
ITS: MAYOR

KUUKPIKMIUT SUBSISTENCE OVERSIGHT PANEL

DATE

BY: LEONARD LAMPE
ITS: VICE-CHAIRMAN

cc: Honorable George Ahmaogak, Sr., Mayor, North Slope Borough Mayor
Mr. Rex Okakok, Sr., North Slope Borough Planning Dept.
Arnold Brower Jr., ICAS

Bureau of Land Management
Alpine Satellite Draft EIS
Page 54 of 54

Letter to the BLM Commenting
on the Amended Draft NE NPRA-A EIS/IAP

institution has failed to meet its obligations because it has been biased towards allowing more development. This whole process was doomed to fail from the beginning because of the BLM's pro-oil industry bias. Nevertheless, we wish to acknowledge that the rank and file BLM personnel with whom we have dealt have been courteous throughout and have done their best in a most difficult situation. We thank you for considering our comments.

KUUKPIK CORPORATION

8/23/04
DATE



BY: ISAAC NUKAPIGAK
ITS: PRESIDENT

NATIVE VILLAGE OF NUIQSUT

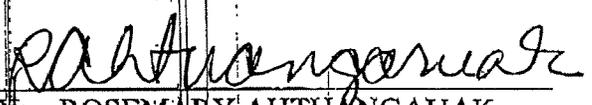
8/23/04
DATE



BY: BERNICE KAIGLAK
ITS: VICE-PRESIDENT

CITY OF NUIQSUT

8/23/04
DATE



BY: ROSEMARY AHTUANGAUAK
ITS: MAYOR

KUUKPIKMIUT SUBSISTENCE OVERSIGHT PANEL

Aug. 23, 2004
DATE



BY: LEONARD LAMPE
ITS: VICE-CHAIRMAN

cc: Honorable George Ahmaogak, Sr., Mayor, North Slope Borough Mayor
Mr. Rex Okakok, Sr., North Slope Borough Planning Dept.
Arnold Brower Jr., ICAS



**KUUKPIK
CORPORATION**

P.O. Box 89187
Nuiqsut, Alaska 99789-0187
TEL: (907) 480-6220
FAX: (907) 480-6126

January 6, 2004

FAX (907) 271-5479

NE NPR-A Amendment Planning Team
Bureau of Land Management
Alaska State Office (930)
222 West 7th Avenue
Anchorage, AK 99513-7599

Attention: Susan Childs and Curtis Wilson
Project Manager

Re: Request for Authority to Amend the 1998 Northeast NPR-A EIS/IAP and ROD

Dear Ms. Childs and Mr. Wilson:

We have complained before, in our October 31 scoping letter that this whole amendment process is being rushed and that it does not give the people of Nuiqsut and our local Nuiqsut organizations adequate time to see the final RODs for the Northwest NPR-A, let alone think through the implications of conforming the requirements for the Northeast Planning Area to the as-yet-unfinalized Northwest RODs. BLM's rush to hold a workshop earlier this month with state and local agencies and organizations before the RODs for the Northwest Planning Area or its Record of Decision were even complete and before anyone had had a chance to review the 2,000 page final Northwest EIS itself seems part of the same pattern. The risk of being in a rush is that issues or concerns will be overlooked. We think that this rush to BLM's goal has obscured to date the fundamental question of whether or not this amendment process is even authorized or proper.

It seems to us that the BLM's proposed amendment of the 1998 Northeast NPR-A EIS/IAP and ROD has no legal authority or precedent. Initially, new studies and a couple of years of exploratory field experience, then the President's National Energy Policy, and, only recently, section 604 of the 2000 amendment to the Energy Policy and Conservation Act ("EPCA", codified at 42 USC 6217) have all been given to us by the BLM as reasons driving this "amendment" process. Our October 31, 2003 scoping letter challenged whether there were sufficient new studies or sufficient field experience to meet the requirements of the first of those standards. The President's National Energy Policy does not itself amend NEPA or provide authority for this process. Only after the challenge in our scoping letter did we hear for the first

Document No. 1
Page 1 of 3

time that EPCA was a basis for this process. Nowhere, however, have we been given an explanation of how these, or any other authorities, authorize the process started by the BLM to amend the 1998 Northeast NPR-A EIS/IAP and ROD.

There are some additional problems raised by the fact that, as far as we can tell, EPCA was used as a reason for amending the Northeast NPR-A EIS/IAP and ROD for the first time at our meeting on December 3rd 2003, a little over one month after the scoping deadline. Accordingly, we, and presumably other agencies and members of the public who are interested in the BLM's management of the NPR-A, were not given the opportunity to provide scoping comments on the relevance of section 604 of the 2000 amendment to EPCA. We think that this is a significant flaw in the BLM's scoping process (although presumably the question of whether BLM has the legal authority to undertake this process at all could be raised at any time).

Putting aside this flaw for the moment, we are particularly puzzled by the BLM's recent citation to EPCA. The plain language of Section 604 of the 2000 amendment to EPCA calls for the "inventory" of restrictions and impediments to the development of resources. We fail to see how this directive to take inventory can be interpreted as a mandate from Congress to change the current management of the Northeast NPR-A. Our reading of EPCA is consistent with the EPCA inventory done by BLM for the oil and gas producing basins in Montana, Wyoming, Colorado and New Mexico.¹ This inventory resulted in a report that could be used to examine land management decisions. No changes to existing land management decisions were made in the report. This is what we think Congress intended when it amended EPCA in 2000.

We don't see any precedent or authority in EPCA, the President's National Energy Policy or anyplace else for the "amendment" process which BLM has undertaken. For these reasons, by this letter we are asking BLM to explain to us and to the community of Nuiqsut on what authority BLM is relying for BLM's proposed amendment of the 1998 Northeast NPR-A EIS/IAP and ROD. It would also help us understand on what authority and precedent the BLM is relying if the BLM would direct us to other available EISs and management plans that were amended under the same authority and under similar circumstances.

¹ <http://momentum.doi.gov/epca/Cover.pdf>

If you have any questions, please contact Brian Boyd or Brent Edwards at
272-8401.

KUUKPIK CORPORATION

1-7-04
DATE

Isaac Nukapigak
BY: ISAAC NUKAPIGAK
ITS: PRESIDENT

NATIVE VILLAGE OF NUIQSUT

1-6-04
DATE

Bernice Kaigelak
BY: BERNICE KAIGELAK
ITS: VICE-CHAIRWOMAN

CITY OF NUIQSUT

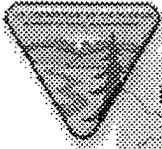
1-6-04
DATE

Rosemary Ahtuanguaruak
BY: ROSEMARY AHTUANGARUAK
ITS: MAYOR

**KUUKPIKMIUT SUBSISTENCE OVERSIGHT
PANEL**

01/06/04
DATE

Leonard Lampe
BY: LEONARD LAMPE
ITS: CHAIRMAN



Northeast
NPR-A

Northeast National Petroleum Reserve Planning Area - Alaska

Integrated Activity Plan/Environmental Impact Statement Amendment

[Home](#) [NPR History](#) [FAQ](#) [Public Participation](#) [News](#) [Documents](#) [Maps & Data](#) [Links](#) [Site Director](#)

Welcome

The BLM believes that this is the ideal time to reevaluate the current plan, established in 1998, for the Northeast portion of the National Petroleum Reserve - Alaska for several reasons: First, the President's National Energy Policy and Section 604 of the Energy Policy and Conservation Act (EPCA) require that all Federal lands be inventoried to identify oil and gas resources underlying Federal lands and to identify the extent and nature of any restrictions or impediments to the development of such resources. Second, the current plan is 5 years old and since it was written, BLM has been gathering data and conducting additional biological studies to help assess the potential impacts of oil and gas exploration and development on biological and cultural resources. BLM is currently reevaluating the potential for exploration in the northeastern part of the Reserve through the NEPA process by writing an amendment to the 1998 Record of Decision EIS. Through the NEPA process, information will be collected and analyzed to ascertain if further exploration and development can in fact occur without significant impact to sensitive wildlife and subsistence resources. Therefore, the decisions made in 1998 must be reviewed to see if they still make sense, and if so, the questions of how the decisions should be changed need to be answered.

It is important to understand that BLM **HAS NOT** made any decisions to:

- Change the meaning or intent of any existing Northeast National Petroleum Reserve-Alaska stipulations;
- Open additional lands for oil and gas leasing; and
- Reduce setbacks and buffer zones.

However, the BLM must go through an amendment process to the 1998 Northeast National Petroleum Reserve-Alaska Integrated Activity Plan/Environmental Impact Statement to evaluate whether the oil and gas resources can be developed, while still protecting the environment.

The BLM will reformat current prescriptive stipulations that apply to the Northeast National Petroleum Reserve - Alaska into a mixture of prescriptive and performance-based stipulations similar to those developed for the Northwest portion of the Reserve. Prescriptive stipulations are very specific and in some cases inappropriately or needlessly restrictive. Performance-based stipulations would accomplish the same goal, as well as add flexibility to increase or decrease mitigation measures accordingly (see example below).

**Last Updated:
January 8th,
2004**

Prescriptive-based versus Performance-based

<p>Prescriptive-based Example from the 1998 Northeast National Petroleum Reserve-Alaska Plan</p>	<p>Performance-based Example that addresses the same issue.</p>
<p style="text-align: center;">Stipulation 37</p> <p>Above ground pipelines shall be elevated at least 5 feet, as measured from the ground to the bottom of the pipe, except when the pipeline intersects a road, pad, or a ramp installed to facilitate wildlife passage and subsistence passage and access. The Authorized Officer, in consultation with appropriate Federal, State, and North Slope Borough regulatory and resource agencies, may make an exception if no feasible and prudent means exist to meet the requirement.</p>	<p style="text-align: center;">Required Operation Procedure</p> <p>Objective: To minimize disruption of caribou movement and subsistence use.</p> <p>Requirement/Standard: Pipelines and roads shall be designed to allow the free movement of caribou and the safe, unimpeded passage of the public while participating in traditional subsistence activities. Listed below are the current accepted design practices:</p> <p>Above ground pipelines shall be elevated at least 5 feet as measured from the ground to the bottom of the pipeline (except where pipelines intersect a road, pad, in transition zones between buried and elevated pipelines or at ramps installed to facilitate wildlife passage and subsistence passage and access).</p>

Since the original plan was completed in 1998, the agency has awarded leases on about 1.4 million acres in the Northeast corner of the reserve and industry has drilled 13 exploratory wells. BLM geologists and petroleum experts believe that areas currently off-limits for exploration in the Reserve may contain more than two billion barrels of technically-recoverable petroleum. Many of these lands, near Teshekpuk Lake, are located within an area where substantial populations of caribou, raptors, and waterfowl occur. This will all be taken into account during the evaluation conducted in the Amendment document.

This page has been created by **ENSR International** for the Northeast National Petroleum Reserve - Alaska IAP/EIS Bureau of Land Management - **Alaska Northern Field Office** - 1150 University Ave. Fairbanks Alaska - 99709 Phone 1-907-474-2200 - If you encounter a problem with this site, please contact the **Webmaster**.