

**Testimony before the U.S. House of Representatives
Subcommittee on Fisheries, Wildlife, Oceans and
Insular Affairs**

“Oil and Gas Activities within Our Nation’s National Wildlife Refuge System”

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Submitted by:

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On Behalf of:

The State of Alaska

I. Introduction

Chairman Fleming, Ranking Member Sablan, and members of the House Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs – for the record I am Kip C. Knudson, Director of State/Federal Relations for the State of Alaska (the State). On behalf of Governor Sean Parnell, I thank the Subcommittee for this opportunity to testify and express our support for your work to ensure that the natural values of our National Wildlife Refuges continue to be preserved for the public benefit while allowing for the responsible development of natural resources within their boundaries consistent with law. We appreciate your leadership in striking and maintaining this balance.

In particular, I thank you for the opportunity to bring to your attention the unique aspects – and successes – of oil and gas development in the National Wildlife Refuges in Alaska. In addition to the National Wildlife Refuge System Administration Act¹ and other broadly applicable laws, we have a unique framework of existing Federal law – primarily the Alaska Native Claims Settlement Act of 1971 (ANCSA)² and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA)³ – which

¹ 16 U.S.C. §§ 668dd-668ee.

² 43 U.S.C. §§ 1601 et. seq.

³ 16 U.S.C. §§ 3101 et. seq.

provide for the management of oil and gas activity within refuges and maintain a workable balance in Alaska's unique environment.

The State's interests in this activity are significant. For example, oil and gas exploration and development occurring today in the KNWR is essential for providing natural gas to heat and power the homes and businesses in much of the Southcentral region of Alaska, including the major population centers of Anchorage, the Kenai Peninsula, and the Matanuska-Susitna Valley. Oil from these fields is also refined in Alaska to meet motor-vehicle demand throughout the State. We welcome Congress's oversight of the proposed United States Fish and Wildlife Service (USFWS) rulemaking – which may affect the livelihoods and energy security of many Alaskans.

Overview of Today's Testimony

My primary message is that there is a robust framework of existing state and federal law that rigorously regulates oil and gas development within the boundaries of the National Wildlife Refuges in Alaska. This framework is *unique to Alaska* and was specifically tailored by Congress to provide for the national interest and the economic and social needs of Alaskans. A cohesive and long-standing suite of Alaska laws, regulations and policies have been developed consistent with this framework and have proven, in practice, to be a testament to Congress' foresight. For this reason, the USFWS should provide, at a minimum, a categorical exemption from the proposed rulemaking for the Refuges located in Alaska.

Any changes to national-level USFWS regulations must not, and under law cannot, avoid very explicitly acknowledging the balance Congress has already struck in Alaska, and should not upset or duplicate it. While the refuge lands in Alaska contain a huge portion – approximately 50% – of the National Wildlife Refuge System's total acreage, Alaska is home to only 16 of the over 550 National Wildlife Refuges throughout the country. In this context, it could be said the USFWS administers two sets of Refuge lands – the sixteen expansive Alaska Refuges and the other, much smaller 535 refuges. The most efficient way to acknowledge and respect Alaska's unique circumstances and functioning management structure in the context of the current proposed regulations is for the USFWS to include an unambiguous and categorical exemption for the 16 Alaska refuges.

As I will detail below, Congress has already spoken on this issue in 1980 by providing clear instructions to the USFWS for managing Alaska's Refuge network under ANILCA and ANCSA. Ethan Schutt, Executive Vice President of Cook Inlet Region, Incorporated will speak in much greater detail on ANCSA and how it guides the federal management of oil and gas activities in Alaska refuges. The State appreciates Congressional oversight to ensure that the USFWS understands and adheres to the spirit and letter of these existing laws.

I also want to again emphasize the importance of continuing oil and gas exploration and development within Alaskan Refuges to the Americans who reside in Alaska. Gas produced in the Cook Inlet area, including gas from fields within the Kenai National Wildlife Refuge (KNWR), is the primary source of both heat and electricity for over half the state's population, and the reserves in the Cook Inlet

area provide for the energy security critical to sustaining our livelihoods into the future. Without these stable local supplies and reserves, the high costs of living that Alaskans face would be dramatically exacerbated.

Please note that the State has already submitted formal comments to the USFWS on the topic we are discussing today pursuant to the Federal Register Advanced Notice of Proposed Rulemaking (ANPR). These comments are consistent with the testimony I am providing and are attached to my written testimony, for the record.

II. The Unparalleled Size and Scope of National Wildlife Refuges within Alaska

Alaska contains an extensive network of Federal land ownership – approximately 222 of the 640 million acres owned by the Federal Government are located in Alaska. Of these 222 million acres of Federal land, roughly 75 million are in the 16 National Wildlife Refuges distributed throughout the State. This is 75 of the 150 million total acres managed by the USFWS nationwide – roughly 50% of the National Wildlife Refuge System. Alaska includes 14 of the 15 largest wildlife refuges in the country, nine of which contain more than two million acres each. Alaska’s smallest wildlife refuge, the Izembek National Wildlife Refuge, is almost half the size of the State of Rhode Island.

In sheer magnitude alone, Alaska’s Refuge lands are in a distinct category within the Refuge System. Coupled with the unique land ownership issues associated with Alaska’s Statehood entitlement and Alaska Native Corporation (ANC) entitlements under ANCSA, which I will discuss below, Alaska requires a customized approach to refuge management. Fortunately, Congress did exactly that through these two pieces of legislation that direct the management of federal lands and protect private rights in Alaska’s network of refuges.

III. A Brief History of Alaska’s Unique Land Ownership Patterns and Legal Regimes Applicable to Refuges

The Federal policy of retaining land in Federal ownership began in the early 1900s. This resulted in large swaths of public lands being created and maintained in the western states, as I’m sure some of the Subcommittee members can readily attest to. This policy was well established when Alaska became a state in 1959, but there was still much that was not known about Alaska’s varied and abundant natural resources.

When Alaska entered the union, it was apparent that learning more about, and utilizing these natural resources would be critical to the massive state’s economic future, from its abundant fish and game to its mineral and geologic potential. During the transition from territory to state, Congress agreed that a portion of the State – approximately 105 million of 365 million acres – would be transferred to the new state government for management and development under the terms of the Statehood Compact.

However, very serious land management issues were left unresolved by the Compact. First and foremost, Alaska Natives, who had lived in Alaska for thousands of years and, many of whom practiced a

subsistence lifestyle, had important but unaddressed claims to lands. In 1971, Congress, recognizing the need for resolution of these issues, passed ANCSA.

The central result of ANCSA was the creation and capitalization of 12 ANCs. Under the act, Alaska Natives enrolled as shareholders in their respective ANC, and also in smaller Village Corporations representing the communities comprising the larger regional areas. A central part of the act allowed each ANC to own land, generally within its region and surrounding communities, via selection and conveyance. When the conveyance process is completed, the total land entitlement to be transferred to ANCs under these provisions will be approximately 44 million acres. ANCSA provided for the ownership of surface rights, subsurface rights, or both in different scenarios, resulting in areas of split estate ownership throughout the state. ANCs have rights and, in fact, an obligation to develop these lands for the benefit of their shareholders.

To accommodate the negotiations and ultimate resolution of ANCSA, the State's land selection activity was effectively paused during most of the 1960s and early 1970s. At this time, as more people came to Alaska and saw its natural beauty, and as the State's young economy was growing, there was a push to conserve more Federal lands in Alaska.

Alaskans and Congress viewed ANILCA as the "grand compromise" – to achieve "proper balance"⁴ between the use and conservation of Federal land in Alaska. Under the legislation, over 148 million acres of Federal lands were placed into Conservation System Units (CSUs). The CSUs, around 60% of the lands in Federal ownership, were placed off-limits to the State and ANCs for further selection, while also limiting the possibility of future economic development of these lands by Alaskans.

ANILCA created, expanded, and consolidated Alaskan Refuges to establish the current network of 16 refuges, which collectively comprise over 20% of the State. This enormous expansion of the refuge system resulted in considerable State and ANC acreage (both surface and subsurface) suddenly located within or effectively surrounded by a CSU.

This distinctive history has resulted in a very unique and diverse land ownership pattern in Alaska, with enormous amounts of land in federal CSUs, less than one percent in individual private ownership, as well as scattered State and ANC selections and land holdings throughout the State.

ANILCA also provided Alaska with an exclusive framework of controlling federal law. In exchange for setting aside such a substantial percentage of the State in CSUs, ANILCA's "compromise" included numerous provisions to protect Alaskans' interests in access to the State's natural resources, especially those needed for the developing economy and infrastructure. ANCSA and ANILCA contain numerous provisions that promote and guide access to and utilization of Alaska's natural resources, including those resources surrounded by Alaska Refuges.

⁴ See 16 U.S.C. § 3101(d).

Most of these provisions explicitly control activity in Alaska notwithstanding any other law. For example, the Refuge System Improvement Act of 1997⁵ includes a specific savings clause to ensure that, in the event of a conflict between any provision of the Act and any provision of ANILCA, the provisions of ANILCA prevail. Because these federal laws only affect Alaska, national policy makers and regulators do not always understand this important point when first approaching Alaska issues. To raise awareness of this framework and to enforce these legal rights, State experts frequently remind Federal officials about the statutory directives to consult with the State on issues affecting CSUs such as Alaska's refuges.

IV. The Compelling Public Interest in Robust Production in Cook Inlet – Including the KNWR

Although not the only refuge with significant oil and gas potential, the only refuge with oil and gas production in Alaska today⁶ is the KNWR, arguably one of the refuge system's most beautiful and frequently-visited. It includes almost two million acres east and south of Cook Inlet on the Kenai Peninsula, with its northern boundary a mere ten air-miles south of Anchorage across the Cook Inlet. The refuge's history stretches back to the Kenai National Moose Range created in 1941 by President Franklin D. Roosevelt.

The entire Cook Inlet area features significant oil and gas potential, and many identified formations are located under the boundaries of the Refuge. The land within the Refuge has seen oil and gas activity for nearly 60 years, beginning with the development of Cook Inlet's first field, Swanson River, in 1956 and 1957. Some have said it was this major oil find that tipped the national balance in favor of accepting Alaska as the 49th State in 1959. Production in Swanson River continues today and is a critical piece of the energy supply for the most populous region of Alaska.

When Alaska's oil and gas production is discussed, many people naturally think of the North Slope oil fields. As some of the largest in the western hemisphere, these fields, including the mammoth fields of Prudhoe Bay and Kuparuk, have produced over 16 billion barrels of crude oil to date. The Trans-Alaska Pipeline System, one of the nation's most impressive infrastructure projects, transports this Arctic oil from the North Slope to Gulf of Alaska tidewater in Valdez and is the backbone of our state's resource economy. But it is Alaska's original oil discoveries in Southcentral Alaska, and the access to the region's abundant natural gas resources that oil production made possible, which continue to be the most important source of domestic energy supplies for a majority of Alaskans.

Extensive oil and gas exploration followed the development of Swanson River in the 1960s, and activity quickly moved to the east and west sides of Cook Inlet as well as off-shore. The natural gas supplies that have been produced from these areas have long been used to generate electricity and provide heat for Alaskans living in the Southcentral region. Today, a majority of Alaska's population is located in this area – due in part to the stable cost of energy Cook Inlet has provided for half of a

⁵ PL 105-57, amending 16 U.S.C. § 668dd.

⁶ There are three producing federal units – Swanson River, Beaver Creek, and Birch Hill – that are within the refuge boundaries.

century. Cook Inlet natural gas has also been used for industrial purposes to support Alaska's economy, as well as for pioneering liquefied natural gas (LNG) exports from the United States' oldest, and for decades, only LNG export facility in Nikiski, Alaska. To date, approximately 11 trillion cubic feet of natural gas have been produced from the Inlet.

Cook Inlet producers continue to provide natural gas to meet Southcentral Alaska's demand for approximately 80 to 90 billion cubic feet per year. Thanks to its significant untapped resource potential and the competitive investment climate fostered by Governor Parnell and the Alaska Legislature, the basin, after over 50 years of sustained activity, is now even experiencing a welcome boom. We call it the Cook Inlet Renaissance. Motivated companies are moving into the Inlet to explore new fields and revitalize existing ones, and residents are benefiting from new reserves being brought online. This includes work-overs in the federal lease areas operating within the KNWR that are facilitated by the extensive existing oil and gas delivery infrastructure which partially lies within the Refuge's boundaries. Industry has also been engaged in USFWS-permitted resource exploration of private lands within Refuge boundaries, which will hopefully contribute to future Cook Inlet production and additional energy security for Alaskans.

While we strongly believe Cook Inlet's available supplies are adequate to meet demand in the near term, it is important to understand the compelling State interest in ensuring robust production from all the resource-rich lands, including Refuge lands, in Cook Inlet. In the past when some entities predicted a downturn in Cook Inlet activity, one of primary proposals to meet the Southcentral region's energy needs involved foreign LNG imports. The energy supplies that come from Cook Inlet, including natural gas being supplied from lands within and adjacent to the Kenai Refuge, cannot be immediately replaced if burdened or impeded by excessive regulation.

Pursuant to ANCSA and ANILCA, non-Federal surface and subsurface estates also are to be found within the boundaries of other refuges in Alaska. These estates tend to be located in regions of the state where energy costs are orders of magnitude higher than those in Southcentral Alaska. It is imperative that the State and Federal Government work in the smartest, most responsible manner to ensure that those resource-rich lands are not effectively put off limits due to poorly crafted regulation. To sustain the Cook Inlet renaissance, and to allow a similar renaissance to occur in other regions by attracting diligent, responsible companies eager to deploy state-of-the-art, low-impact technologies, Alaska needs to ensure consistent application of rights in ANILCA and ANCSA that support this activity. Federal and State managers, as well as industry leaders, already work within this specifically tailored framework to make responsible decisions regarding Alaska's unique environment.

V. The Role of *Federal* Oil and Gas Development within National Wildlife Refuges to Alaska

Before continuing with the substance of my testimony, I would like to make a brief note about the scope of the proposed rulemaking under review by the Subcommittee today.

As the State understands the USFWS's February 24th Advanced Notice of Proposed Rulemaking (ANPR), the USFWS is gathering information related to *non-Federal* oil and gas development within the boundaries of our National Wildlife Refuge System. The ANPR describes such development as including—

“those activities associated with any private, state, or tribally owned mineral interest where the surface estate is administered by the Service as part of the Refuge system.” The State interprets this to mean the regulations would *not* impact *Federal* oil and gas activities within the Refuge System. There are currently three producing leases within the Kenai Refuge on federal surface and subsurface estate – Beaver Creek, Swanson River, and Birch Hill – that would be considered Federal oil and gas developments. These fields are critical to providing natural gas supplies to many Alaskans, as discussed above.

This would mean that the regulations would *not* change *Federal* oil and gas development, but instead would affect activity related to non-federal surface and subsurface estates and potentially destabilize the careful balance of ANCSA and ANILCA described above.

VI. The Need for a Categorical Exemption for Alaska from the New Rulemaking Regarding Non-Federal Oil and Gas Development.

Turning to those activities the State understands to be the subject of the ANPR, there are four points that I would like to make today that support the USFWS including a categorical exemption for the 16 Alaska Refuges from the potential rulemaking.

The ANPR contemplates adding an unnecessary layer of regulation.

First, the USFWS has Alaska-specific oil and gas rules in place, so adding a new layer has the potential create confusion and delay. Additionally, new rules will necessarily further distract USFWS from executing on the core missions for which regulations are already in place.

The State currently has in place regulatory systems that govern aspects of oil and gas activity from exploration through dismantlement, repair and restoration. Most of this regulation is enforced on an operator regardless of the land status on which the activity occurs. The State prioritizes this regulatory authority, ensures that is funded, and regularly verifies that it is keeping pace with technology and ever-improving environmental practices.

This regulatory expertise, when added to the Alaska-specific laws and rules, guarantees that no certainty will be gained in Alaska. Additionally, the refuge system will be no more protected while the taxpayer will see limited refuge resources squandered. Effectively, USFWS will have misapplied resources at the expense of missions only that agency executes.

A perfect example is the current back-log of Endangered Species Act work USFWS is experiencing. This back-log is currently having a negative impact on the species the ESA intends to protect and has delayed and hampered economic opportunity for Alaskans. The threat of uninformed Section 7 consultations resulting in “preferred alternatives” to remove “Jeopardy” and “Adverse Modifications” findings has had a chilling effect on resource development investments in Alaska. For reference, the extent of these significant impacts is described in the State’s study of potential impacts from the unnecessary listing of polar bear.

The ANPR demonstrates inconsistency with Alaskan land ownership patterns.

The ANPR outlines that the USFWS’s scoping effort will address the perceived lack of a cohesive and sufficiently detailed authorization framework for non-federal oil and gas activities within Refuges. More specifically, the USFWS would like to develop a homogenous means of managing “those activities associated with any private, state, or tribally owned mineral interest where the surface estate is administered by the Service as part of the Refuge system.”

The current regulation used for this purpose similarly focuses on Federal lands overlying private rights which were retained upon the area's conveyance to or acquisition by the government.⁷ As discussed above, there are areas in Alaska with “in-holdings” within a refuge, where an entity, often an ANC, owns both the surface and the subsurface or mineral estate, of a parcel. In these scenarios, the surface land may be administered as part of the refuge but it is held as the property of the ANC. These properties have special rights of access and utilization under ANCSA and ANILCA that would be very different than the scenarios apparently contemplated by the USFWS where a third party owns some portion or reserved right of the subsurface estate. Understandably the language of the ANPR is phrased generally, but this is a threshold example of why an Alaska exemption will provide the most clarity for both the USFWS and the regulated public. Trying to fit Alaska into this rulemaking effort would introduce the need for the USFWS to conduct extensive research and analysis to understand all of Alaska’s unique land ownership scenarios, complicating rather than adding clarity to the rulemaking.

The ANPR addresses issues that are not pertinent to Alaska Refuges due to the Alaska-specific authorization process based in existing Federal law.

My testimony so far has repeated the fact that ANCSA and ANILCA gave Alaskans and ANCs a suite of access rights to and utilization of lands within the State, including in-holdings within the boundaries of Alaska Refuges. This includes rights to support economic development of property interests and to establish infrastructure to further these interests.⁸ Any regulations the USFWS promulgates regarding non-Federal oil and gas development that do apply to Alaska will have to comply with these statutes and valid existing rights.

As the USFWS has stated in the ANPR, one goal of the proposed rulemaking is to eliminate an “uncertain and inconsistent” regulatory environment for oil and gas operators in National Wildlife Refuges.⁹ To apply to Alaska Refuges under the existing federal law, a nationally-applicable rule would require extensive cross-references, exemptions, disclaimers and qualifying statements. This would hardly support clarity or consistency for the regulated public. A clearer approach, which provides a much more effective use of the USFWS’s rule-writing time and resources, would be to include a

⁷ See 50 CFR § 29.32.

⁸ See, e.g., ANILCA § 1101 for the approval of transportation and utility projects, ANILCA § 1109 for all valid rights of access pre-dating ANILCA’s enactment, ANILCA § 1110(b) for the economic use of subsurface rights, ANILCA § 1111(a) for the right of temporary access across federal lands related to non-federally owned lands, etc.

⁹ 79 Fed. Reg. 10080, 10081.

categorical exemption for Alaska which clarifies that any new regulation of non-Federal oil and gas activities does not apply to refuges in Alaska.

It is important to point out that Alaska Refuges have already developed and implemented procedures and standards for the authorization of non-federal oil and gas activities consistent with ANILCA and ANCSA. For example, the USFWS recently issued complex authorizations for high-tech, low-impact seismic activities within the KNWR that will occur over several of the next exploration seasons. Historically, there has also been production from non-federal oil and gas areas. This is in addition to the long-standing federal oil and gas development activities that are in production today that show oil and gas operations can be compatible with Refuge lands that are mentioned above. The evaluation and approval mechanisms the USFWS and Kenai Refuge staff have employed with Alaska's unique legal framework to provide flexibility and maintain consistent expectations for property owners, regulated entities, and the public should not be confused by this national rulemaking.

The ANPR references corollary National Park Service regulations that contain a categorical exemption for Alaska.

Throughout the ANPR, the USFWS asks commenters to consider possible models for the scope and content of the proposed rule. In particular, the ANPR includes a discrete section asking whether National Park Service (NPS) regulations regarding the management of similar activities in National Parks should be used as a model for the USFWS regulations under consideration. In the referenced regulations,¹⁰ the NPS explicitly recognized the role ANILCA plays in managing these activities in Alaska and, for many of the reasons I have noted in my testimony, included a categorical exemption for Alaska parklands from the national regulations.

In this respect, the State finds the NPS regulation provides an ideal model for the proposed rule and requests that it also include such an Alaska-specific categorical exemption.

VII. Conclusion

Consistent with the comments already submitted pursuant to the administrative process, the State strongly believes that the most efficient and effective path forward for the USFWS is to include at a minimum a categorical exemption for Alaskan Refuges due to the complexities of ANILCA and ANCSA. As discussed above, the NPS has taken this approach so that they can move forward with developing regulatory models for the other jurisdictions that are not part of Alaska's unique legal framework.

I also hope that the general narrative information I provided is helpful to the Subcommittee for framing this issue. It has been my purpose to show that the unique legal regimes that control federal activity in Alaska today grew out of Alaska's unique history and environment, including its immense resource potential, unparalleled conservation, and absolute size. When Congress originally enacted

¹⁰ See 36 CFR § 13.15(d)(2).

these laws, it was striking a very careful balance that intended to carve out Alaskans' rights and federal protections.

Finally, I wish to repeat how critical continued oil and gas development in Alaska's National Wildlife Refuges can be – to our citizens' electricity and heat in addition to economic livelihood. This is clearly demonstrated in the KNWR, where over 50 years of oil and gas activity has provided energy supplies for many of the Alaskans in the State. This development serves as an example of both the potential and importance of developing oil and gas in a compatible fashion with National Wildlife Refuges. While I cannot speak to instances in other states, I suspect the long-term success of the Kenai Wildlife Refuge could be found elsewhere.