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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

NORTHERN ALASKA ENVIRONMENTAL CENTER, )  
NATIONAL AUDUBON SOCIETY, )  
THE WILDERNESS SOCIETY, )  
NATURAL RESOURCES DEFENSE COUNCIL, )  
SIERRA CLUB, )  
ALASKA WILDERNESS LEAGUE, and )  
CENTER FOR BIOLOGICAL DIVERSITY, )  
 )  
Plaintiffs, )  
 )  
v. ) Civ. No.  
 )  
GALE NORTON, Secretary of the Interior; )  
HENRI BISSON, Bureau of Land Management State Director; )  
the BUREAU OF LAND MANAGEMENT, )  
and the FISH AND WILDLIFE SERVICE, )  
UNITED STATES DEPARTMENT OF THE INTERIOR, )  
 )  
Defendants. )  
 )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**  
**(5 U.S.C. §§ 702-706; 42 U.S.C. § 4332; 16 U.S.C. § 1536; 42 U.S.C. § 6504(a))**

**INTRODUCTION**

1. This action challenges the defendants' decision to open 8.8 million acres of public land in the National Petroleum Reserve-Alaska (the Reserve) to oil and gas leasing. The

defendants' decision together with the Northwest National Petroleum Reserve-Alaska Final Integrated Activity Plan / Environmental Impact Statement (November 2003) (FEIS) violates the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Petroleum Reserve Production Act (NPRPA) and the Administrative Procedure Act (APA).

2. The FEIS does not constitute an adequate detailed statement addressing the impacts from and alternatives to oil and gas development in the Northwest portion of the National Petroleum Reserve-Alaska (hereinafter referred to as Northwest planning area) as required by NEPA. 42 U.S.C. § 4332(C); 40 C.F.R. § 1500 et seq.

3. The leasing decision also threatens to jeopardize the threatened Steller's and spectacled eiders in violation of the ESA, 16 U.S.C. § 1536(a)(2), because the Fish and Wildlife Service's biological opinion does not fully consider these impacts to the species of the activities authorized by the decision in violation of 16 U.S.C. § 1536(b).

4. The leasing decision violates the prohibition in the NPRPA, 42 U.S.C. § 6504(a), against oil development in the Reserve.

### **JURISDICTION**

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 702-706. Venue is appropriate under 28 U.S.C. § 1391(e).

6. The 1980 appropriations act calling for "an expeditious program" of oil and gas leasing in the Reserve required that an action challenging the adequacy of an EIS for activities authorized by the appropriations act be brought within 60 days after publication of the availability of the FEIS in the Federal Register. 42 U.S.C. § 6508. Though plaintiffs believe this requirement does not apply to the proposed new program of oil and gas leasing in the Reserve, to

preserve plaintiffs' claims under NEPA, this action is nevertheless filed within 60 days of December 19, 2003, the date notice of availability of the FEIS was published in the Federal Register, 68 Fed. Reg. 70,795, 70,796 (December 19, 2003).

### **PLAINTIFFS**

7. The National Audubon Society, founded in 1905, is a not-for-profit corporation organized under the laws of the State of New York, with its headquarters office in New York, New York, and a state office in Anchorage, Alaska. Audubon also has over 500 local chapters around the country, including six chapters in Alaska. Audubon's mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity. Audubon has more than 500,000 members nationwide, including approximately 2,400 members in Alaska. Audubon has been actively involved in advocating for protection of the biological resources in the Western Arctic.

8. The Wilderness Society, founded in 1935, is a national non-profit membership organization devoted to preserving wilderness and wildlife, protecting America's prime forests, parks, rivers, deserts, and shorelines, and fostering an American land ethic. It has approximately 200,000 members nationwide, 675 of whom live in Alaska, and has had a longstanding involvement with the issues surrounding the impacts of oil and gas development on public lands, including lands across Alaska's Arctic and within the Reserve.

9. Natural Resources Defense Council is a non-profit environmental membership organization with more than 550,000 members throughout the United States. It has had a longstanding and active interest in the protection of the environment in Alaska's Arctic, including the wildlife and wilderness values of the Reserve. With its nationwide membership

and a staff of lawyers, scientists, and other environmental specialists, it plays a leading role in a diverse range of land and wildlife management and resource development issues.

10. Sierra Club is a national non-profit organization having approximately 750,000 members dedicated to the exploration, enjoyment, and preservation of the scenic and natural resources of the United States, including Alaska. The Sierra Club works towards educating and enlisting the public to protect and restore the quality of the natural environment. The Sierra Club's interests encompass a wide range of environmental issues, including wildlife conservation, public lands and waters, endangered species, clean water and clean air. The Sierra Club has long been active in issues relating to the impacts of oil and gas leasing and development in America's Arctic, including the Reserve.

11. Alaska Wilderness League is a non-profit organization with approximately 10,000 members and activists. It was founded in 1993 to advocate for protection of Alaska's public lands that are threatened with environmental degradation. Since its inception, it has taken an active role on issues related to oil and gas development in Alaska.

12. Northern Alaska Environmental Center is an Alaska non-profit environmental advocacy and educational organization with 1300 members. It has empowered citizens to take an active role in protecting natural habitats and wild places in arctic and interior Alaska since 1971. It advocates for Arctic wilderness, wildlife, and traditional ways-of-life, transportation and infrastructure alternatives that minimize impacts on wild lands, and clean water and wild rivers to protect health, fish, and recreational opportunities. It has been actively involved in efforts to protect the key values of the Reserve from the threats of oil and gas development.

13. The Center for Biological Diversity (the Center) is a non-profit organization based in Tucson, Arizona with a regional office in Sitka, Alaska. The Center works to protect wild places

and their inhabitants. The Center believes that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked. The Center has been actively involved in protecting Alaska's wildlife since the early 1990s, including various efforts to protect wildlife found in the Reserve and its adjoining marine environment. These efforts include working on critical habitat designation for the spectacled and Steller's eiders and a variety of work to protect the endangered bowhead whale. The Center has 9,000 members including some who live in Alaska.

14. Members of the plaintiff groups reside near, visit or otherwise use and enjoy the Northwest planning area for recreation, wildlife viewing, education, research, photography, or aesthetic and spiritual enjoyment, or enjoy or otherwise use migratory wildlife from the Northwest planning area. The oil and gas leasing activities proposed for the Northwest planning area will directly and irreparably injure these interests.

15. The defendants' unlawful actions adversely affect each plaintiff's organizational interests and its members' use and enjoyment of the public lands in and resources of the Northwest planning area. The oil and gas leasing activities proposed for the Northwest planning area will directly and irreparably injure these interests.

16. Each of the plaintiffs submitted comments to BLM on the draft EIS and FEIS for the Northwest planning area. Each of the plaintiff groups monitors the use of public lands and compliance with the law respecting these lands, educates its members and the public concerning the management of these lands, and advocates policies and practices that protect the natural value and sustainable resources of these lands. It is impossible to achieve these organizational purposes fully without adequate information and public participation in the processes required by law for the management of these public lands. The interests and organizational purposes of the

plaintiffs will be directly and irreparably injured by defendants' violations of law as described in this complaint.

### **DEFENDANTS**

17. Defendant Gale Norton is sued in her official capacity as Secretary of the Department of the Interior.

18. Defendant Henri Bisson is sued in his official capacity as the Bureau of Land Management State Director for Alaska.

19. Defendant Bureau of Land Management (BLM) is an agency of the United States Department of the Interior entrusted with the conservation and management of resources within the Northwest planning area.

20. Defendant Fish and Wildlife Service is an agency of the United States Department of Interior charged with implementation of the Endangered Species Act for listed species in the Northwest planning area.

### **FACTS**

#### **The Northwest Planning Area**

21. The Reserve covers 23.5 million acres of public land on Alaska's North Slope, making it the largest single unit of public land in the nation. The Reserve stretches from the Colville River delta in the east to the Chukchi Sea in the west and from the Arctic Ocean in the north to the Brooks Range in the south. Several Native communities are inside the Reserve's borders. The Reserve has high values for many species of fish and wildlife, including Alaska's largest caribou herd, large carnivores, marine mammals, millions of migratory birds, and one of the densest populations of nesting birds of prey in the world.

22. The Northwest planning area consists of 8.8 million acres, including all of the central and western coastal area of the Reserve and the majority of its central wetlands regions. The preferred alternative makes 100% of this planning area available for oil and gas leasing.

23. The Northwest planning area includes diverse areas, from the foothills of the Brooks Range to coastal lagoons and inlets. The area contains vast wetlands and includes many lakes and rivers. Wildlife that depend on the area for habitat include polar bears (*Ursus maritimus*), grizzly bears (*Ursus arctos*), wolves (*Canis lupus*), caribou (*Rangifer tarandus*), shore birds, raptors, and a multitude of migratory waterbirds. The Northwest planning area is within the breeding ranges of spectacled and Steller's eiders, both listed as threatened under the Endangered Species Act, and provides habitat for other rare species of concern, including the yellow-billed loon and buff-breasted sandpiper. There are also three communities located within the planning area—Wainwright, Atkasuk, and Barrow. The majority of the residents of these communities are Inupiat Alaskans who practice subsistence lifestyles and rely upon resources within the planning area.

24. In 1977, the Secretary of the Interior designated the Utukok River Uplands, Teshekpuk Lake and the Colville River as Special Areas within the Reserve. 42 Fed. Reg. 28,723 (1977). Portions of the Teshekpuk Lake Special Area and the Colville River Special Area are within the Northwest planning area.

25. Two small portions of the Teshekpuk Lake Special Area extend across the Ikpikuk River into the Northwest planning area and encompass 116,000 acres. Both portions have high fish and wildlife habitat values, particularly for high-density waterbird nesting, including rare yellow-billed loons (*Gavia adamsii*). The area also has value as insect-relief habitat for caribou (*Rangifer tarandus*) from the Teshekpuk Caribou Herd.

26. Adjacent to and west of the Teshekpuk Lake Special Area is the Dease Inlet-Meade River area. This area provides important wetland habitat for waterfowl, loons, and shorebirds. Species nesting here in high densities include yellow-billed and red-throated loons (*Gavia stellata*), brant (*branta bernicla*), greater white-fronted geese (*Anser albifrons*), king eider (*Somateria spectabilis*), and the threatened spectacled eider (*Somateria fischeri*). Dease Inlet includes an important haul out for spotted seals (*Phoca largha*) and both sides of the outer inlet are used by polar bears (*Ursus maritimus*) for onshore denning. The outer coast, including Elson Lagoon, includes a seabird colony. Caribou use the area east of Dease Inlet as insect-relief habitat. The area also includes numerous deep-water lakes.

27. Located east of Wainwright and west of Atkasuk, Peard Bay and the adjacent wetlands to the south constitute another important wildlife area. The area is characterized by lowland wet and moist tundra vegetation. Peard Bay provides high-density shorebird and waterfowl habitat and includes abundant high-density nesting areas for the threatened spectacled eider. Peard Bay also is a known denning area for polar bears.

28. The northern portion of Kasegaluk Lagoon, which is just east of the Reserve's western boundary and within the Northwest planning area, provides important marine mammal habitat, particularly for beluga whale (*Delphinapterus leucas*) summer concentrations and spotted seal haul outs. Grizzly and polar bears that seasonally feed on marine mammals also use the area. Kasegaluk Lagoon has the richest avian diversity of any coastal lagoon system in Arctic Alaska, providing important habitat for waterfowl and shorebirds. The lagoon is particularly important to Pacific black brant for molting and fall staging. Kasegaluk Lagoon is also an important subsistence area for the communities of Point Lay and Wainwright.

29. The southern Ikpikpuk River and adjacent wetlands also have high values for fish and wildlife. The area southeast of the headwaters of Ikpikpuk River has high densities of nesting peregrine falcons (*Falco peregrinus*).

30. The Colville River is the largest of Alaska's rivers that flow to the Arctic Ocean. The river and its tributaries provide important habitat for moose, brown bears, wolves, wolverines and at least twenty species of anadromous and freshwater fish. The central portion (441,148 acres) of the Colville River Special Area occurs within the Northwest planning area. The Colville River is one of the most important raptor nesting areas in Alaska and in the world. The Colville and its tributaries also provide diverse and abundant habitats for songbirds, ungulates, and large carnivores, including wolves (*Canis lupus*) and grizzly bears (*Ursus arctos*). In addition to possessing wildlife and subsistence values, the Colville River watershed includes several proposed national natural landmarks and important archeological sites. It is a vital source of subsistence resources for area residents and is a spectacularly scenic area with substantial recreation values and potential for remote, wilderness experiences.

### **National Petroleum Reserve-Alaska History**

31. In 1923, President Warren G. Harding set aside 23.5 million acres in northern Alaska as the Naval Petroleum Reserve Numbered 4, to be administered by the Navy as an assured future oil supply for defense purposes.

32. In 1976, President Gerald Ford signed the Naval Petroleum Reserves Production Act (NPRPA). Pub. L. 94-258, 90 Stat. 303 (1976). Among other things, the NPRPA transferred jurisdiction over Naval Petroleum Reserve Numbered 4 from the Secretary of the Navy to the Secretary of the Interior and renamed it the National Petroleum Reserve-Alaska. In making the transfer, Congress expressly recognized that the protection of the unique natural, fish and

wildlife, scenic and historical values of the Reserve would better be evaluated and managed under the authority of the Secretary of the Interior. Though authorizing exploration in the Reserve, the NPRPA expressly prohibits production of petroleum from the Reserve or development leading to production of petroleum unless authorized by Congress. 90 Stat. 304 (1976), 42 U.S.C. § 6504.

33. In 1980, Congress passed an appropriations bill for fiscal year 1981 that, among other things, included a provision directing the Secretary of the Interior to carry out “an expeditious program” of oil and gas leasing in the NPR-A. Act Making Appropriations for the Department of the Interior and Related Agencies, Title I, 94 Stat. 2957, 2964 (1980), 42 U.S.C. 6508. Pursuant to this appropriations rider, the Secretary undertook a leasing program. BLM completed the program in 1983. All leases issued under this program have expired, and no oil development occurred as a result of it.

34. In 1997, in response to renewed oil industry interest in the Reserve and to a request from Alaska’s Governor Tony Knowles, BLM undertook an analysis to determine whether to conduct oil and gas lease sales in a 4.6 million acre area located in the northeast corner of the Reserve.

35. This analysis resulted in a final EIS that was published and made available on August 7, 1998. 63 Fed. Reg. 42,431. The preferred alternative proposed opening 87% of the 4.6 million acre northeast planning area to oil and gas leasing. Under the preferred alternative, a 589,000-acre portion of the Teshekpuk Lake Special Area was made unavailable for leasing.

36. On October 7, 1998, Secretary of Interior Bruce Babbitt issued a final record of decision adopting the preferred alternative presented in the final EIS with minor changes.

37. This decision is the subject of an ongoing legal challenge by several conservation organizations. The Wilderness Society v. Norton, No. 98-2395 (D.D.C. filed Oct. 5, 1998).

38. The Secretary has since conducted two lease sales and winter exploration has been proceeding in portions of the leased area. The BLM is now in the process of considering a proposal for full-field development on some of these leases in the Northeast area.

39. Secretary of Interior Gale Norton has recently proposed to amend the Northeast plan and is considering changing current prescriptive lease stipulations that it considers “inappropriately or needlessly restrictive” and opening additional areas that were closed to leasing in 1998.

#### **The Northwest Planning Area Process**

40. In January 2003, BLM published a draft environmental impact statement and integrated activity plan for the Northwest planning area. The purpose and need for this statement was to determine the appropriate multiple-use management of the planning area.

41. The draft environmental impact statement contained four alternatives, but did not identify a preferred alternative. Alternative A would make 100% of the planning area immediately available for oil and gas leasing. Alternative B would make 96% of the planning area immediately available for oil and gas leasing. Under Alternative B, a Kasegaluk Lagoon special area was proposed and would be unavailable for leasing. Alternative C would make 47% of the land area available to oil and gas leasing, including less than 2% of the high oil potential areas available for leasing. The fourth alternative was the no action alternative, which NEPA requires agencies to consider as a baseline.

42. Of the action alternatives, only Alternative C included recommended wilderness, and wild and scenic rivers. Alternative C was also the only alternative that contained enforceable mitigation measures in the form of lease stipulations, rather than required operating procedures.

43. All of the action alternatives contained considerably fewer stipulations and required operating procedures than were imposed in the preferred alternative selected for the Northeast planning area. In the Northeast, lease activities are governed by 79 stipulations. In the Northwest draft EIS, the Alternatives A, B and C feature 30, 31, and 37 stipulations and required operating procedures respectively.

44. After BLM published the draft EIS, the final results of a study by the National Research Council on the cumulative effects of oil development in Arctic Alaska was published. This study concluded that oil development has caused serious impacts to some resources and that there are significant information gaps in existing knowledge about the impacts of oil development in the Arctic.

45. In December 2002, Audubon Alaska (the Alaska State Office of the National Audubon Society) published a report making conservation recommendations for the Northwest planning area. In particular, Audubon recommended creation of four new special areas in the vicinities of Dease Inlet-Meade River, Peard Bay, Kasegaluk Lagoon, and the southern Ikpikpuk River and adjacent wetlands. Audubon's recommendation was to make most of the land in these special areas no-lease zones and to apply conservation stipulations in other areas. Audubon submitted its recommendation as a wildlife habitat alternative along with its comments on the draft environmental impact statement.

46. Implementation of the Audubon wildlife alternative would leave 65% of the high oil potential areas, as identified by BLM, open to leasing.

47. All of the plaintiff groups commented on the draft environmental impact statement. These groups advocated that BLM consider the Audubon wildlife alternative, or a similar alternative, that would put the most sensitive, biologically rich areas off limits, while allowing oil leasing in other areas.

48. The Environmental Protection Agency also recommended that BLM consider an alternative that balanced oil and gas exploration and development activities and the protection of natural and cultural resources, noting that the existing alternatives failed to provide the public and the decision maker with a full range of reasonable options.

49. The BLM published a final environmental impact statement in December of 2003. In it, the BLM considered five alternatives—the same four considered in the draft environmental impact statement and a preferred alternative.

50. Under the preferred alternative all of the planning area would be opened to oil and gas leasing, but lease sales for the westernmost portion of the area (totaling about 17% of the planning area) would be deferred for 10 years. Kasegaluk Lagoon itself (approximately 102,000 acres) would be designated a special area, but would be available for leasing.

51. The preferred alternative includes a set of 43 mitigation measures that are mainly in the form of required operating procedures, rather than prescriptive lease stipulations.

52. Unlike the preferred alternative chosen in the Northeast planning area, the preferred alternative for the Northwest does not prohibit permanent roads connecting future oil developments in the Reserve to the road system outside. Moreover, the preferred alternative even permits construction of permanent roads to support winter exploration.

53. BLM did not analyze the Audubon wildlife habitat alternative, or any other alternative that would provide protection to the most important wildlife habitat areas while

allowing a viable oil-leasing program. The Audubon wildlife habitat alternative is one of the alternatives BLM eliminated from detailed analysis.

54. In the final EIS, to analyze the impacts of its decision to authorize leasing, BLM analyzed a general hypothetical development scenario. This hypothetical development scenario did not project where activities were likely to take place. BLM based its analysis on the assumption that development would proceed without permanent roads connecting oil and gas fields to the coast of the planning area or to infrastructure outside the planning area.

55. In a record of decision signed January 22, 2004, Gale Norton selected the preferred alternative with minor modifications.

56. Based on the final EIS and record of decision, the BLM intends, without any further process, to offer leases that grant the lessee “the exclusive right to drill for, mine, extract, remove and dispose of all the oil and gas . . . in the lands” leased.

57. BLM intends to conduct the first lease sale in June of 2004.

### **The Biological Opinion**

58. Because the Northwest planning area contains habitat of the Steller’s and spectacled eiders, both of which are listed as threatened under the ESA, BLM requested Fish and Wildlife Service consultation on the plan.

59. On or about May 7, 2003 the Fish and Wildlife Service forwarded a final biological opinion to BLM. This opinion considered only leasing, exploration and delineation.

60. On or about October 2, 2003, BLM formally reinitiated consultation.

61. As a basis for the reinitiated consultation, BLM provided the Fish and Wildlife Service with a biological assessment that contained a development scenario that assumed two

anchor fields with six satellite fields would be developed in the high oil potential area and that this development would be “roadless.”

62. Based on this scenario, the Fish and Wildlife Service prepared a new final biological opinion, which was attached to the record of decision. The opinion analyzed the effects of the hypothetical development scenario presented in BLM’s Biological Assessment and reached a conclusion of no jeopardy. The Fish and Wildlife Service, however, noted that it was difficult to assess the impacts on eiders because of the large degree of uncertainty involved and that development beyond that described in the hypothetical scenario created a high potential for significant impacts to eiders. The Fish and Wildlife Service also noted that the “most certain way to avoid significant impacts is to exclude development from high-density nesting areas.” Northwest Record of Decision Appendix C-8.

## COUNT I

63. Paragraphs 1 through 62 are re-alleged and incorporated by reference.

64. NEPA requires the preparation of an EIS for all major federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C).

65. An EIS must include “a detailed statement” that analyzes the direct, indirect and cumulative impacts to the environment of the proposed action along with reasonable alternatives to the proposed action. 42 U.S.C. § 4332(C); 40 C.F.R. § 1500 et seq. NEPA requires the agency to take a hard look at all environmental effects of the proposed action. The presentation of incomplete or misleading information in an EIS violates NEPA.

66. The final environmental impact statement does not analyze the decision actually made—to authorize development leases on the entire planning area—instead, it only analyzes the

effects of a general hypothetical development scenario. It does not acknowledge and analyze the extent to which different local geographic areas are differently affected by disturbance or development.

67. The hypothetical development scenario is not a reasonable projection of activities likely to occur as a result of the leasing authorized.

68. The FEIS does not analyze all reasonably foreseeable impacts of the leasing authorized on a site-specific basis. Even where the FEIS does disclose impacts, it reaches arbitrary conclusions that are not supported by the evidence.

69. Defendants' failure to provide an adequate analysis of direct and indirect impacts from oil and gas leasing and development activities in the Northwest planning area violates NEPA and is arbitrary, capricious and not in accordance with law. 42 U.S.C. § 4332(C); 40 C.F.R. § 1500 et seq.; 5 U.S.C. § 706(2)(A).

## COUNT II

70. Paragraphs 1 through 69 are re-alleged and incorporated by reference.

71. NEPA requires that an EIS include an assessment of the cumulative impacts of the proposed action together with the impacts of past, present, and reasonably foreseeable activities. 40 C.F.R. § 1508.7. The agency is also required to disclose areas where there are differences of expert opinion.

72. The FEIS fails to provide an adequate assessment of the environmental impacts caused by past and present oil and gas activities on significant resources in the Arctic region and fails to provide an adequate cumulative assessment of the combined impacts of all past, present, and reasonably foreseeable activities.

73. The FEIS fails to disclose differences of expert opinion regarding the cumulative impacts of oil development in the Arctic.

74. The Secretary's decision to proceed with oil and gas leasing in the Northwest planning area in the absence of an adequate analysis of cumulative impacts to the environment was arbitrary, capricious and not in accordance with law and violated NEPA, 42 U.S.C. § 4332(C), and the Administrative Procedure Act, 5 U.S.C. §§ 702, 706.

### **COUNT III**

75. Paragraphs 1 through 74 are re-alleged and incorporated by reference.

76. Under NEPA, an EIS must objectively evaluate all reasonable alternatives. 40 C.F.R. § 1502.14(a).

77. The FEIS did not analyze a reasonable alternative that would provide long-term protection for key resources and impose protective stipulations while allowing oil and gas leasing to proceed.

78. The Secretary's decision to authorize leasing in the planning area without analyzing reasonable alternatives was arbitrary, capricious and not in accordance with law and violated NEPA, 42 U.S.C. § 4332(C), and the Administrative Procedure Act, 5 U.S.C. §§ 702, 706.

### **COUNT IV**

79. Paragraphs 1 through 78 are re-alleged and incorporated by reference.

80. Under NEPA, an EIS must contain a reasonable discussion of measures to mitigate adverse environmental impacts. 40 C.F.R. §§ 1502.14(f), 1502.16(h).

81. The FEIS does not contain a reasoned analysis of the effectiveness of the proposed mitigating measures.

82. The FEIS does not provide any basis upon which to evaluate the mitigating effects that the stipulations and required operating procedures might have. The FEIS does not explain why the prescriptive lease stipulations used in the Northeast decision have been abandoned or whether the new approach will provide a similar or appropriate level of protection for the resources in the Northwest.

83. The Secretary's decision to authorize leasing in the planning area without analyzing the effectiveness of the proposed mitigation measures was arbitrary, capricious and not in accordance with law and violated NEPA, 42 U.S.C. § 4332(C), and the Administrative Procedure Act, 5 U.S.C. §§ 702, 706.

#### **COUNT V**

84. Paragraphs 1 through 83 are re-alleged and incorporated by reference.

85. Pursuant to Section 7 of the ESA, 16 U.S.C. § 1536, each federal agency undertaking an action which might adversely affect a threatened or endangered species must consult with either the Fish and Wildlife Service or the National Marine Fisheries Service to insure that its action is not likely to jeopardize the continued existence of that species.

86. The decision here may affect the spectacled and Steller's eiders, which are listed as threatened under the ESA. Accordingly, BLM was required to consult with the Fish and Wildlife Service.

87. Consultations under the ESA result in biological opinions, in which the consulting agency, here the Fish and Wildlife Service, must adequately address whether jeopardy to the species is likely. 16 U.S.C. § 1536(b).

88. In assessing the potential for jeopardy to the species, including from incidental take of the species, the Fish and Wildlife Service's biological opinion does not consider the potential

for the oil leases actually authorized to jeopardize the Steller's and spectacled eiders, but rather analyzes a narrowly construed hypothetical scenario.

89. The biological opinion does not consider past and present impacts of all federal, state, or private actions that may affect the spectacled and Steller's eiders.

90. The Fish and Wildlife Service's biological opinion on the Steller's and spectacled eider is arbitrary and capricious in violation of the Endangered Species Act, 16 U.S.C. § 1536(b) and the APA, 5 U.S.C. §§ 702, 706.

91. The Secretary's decision to authorize oil and gas leasing in the absence of a valid biological opinion was arbitrary, capricious and not in accordance with law and violated the ESA, 16 U.S.C. § 1536(a), and the Administrative Procedure Act, 5 U.S.C. §§ 702, 706.

#### COUNT VI

92. Paragraphs 1 through 91 are re-alleged and incorporated by reference.

93. The NPRPA expressly prohibits production of petroleum from the Reserve or development leading to production of petroleum unless authorized by Congress. 42 U.S.C. § 6504(a) (1976).

94. The 1980 appropriations rider did not grant the Secretary continuing or permanent authorization to conduct leasing in the NPR-A. In the 1980 rider, Congress granted the Secretary authority to conduct only a limited, interim program of oil and gas leasing in the NPR-A. 94 Stat. 2964 (1980), 42 U.S.C. § 6508. The Secretary's authority to prescribe an "expeditious program" of oil and gas leasing under the 1980 appropriations rider expired at the end of the leasing program in the mid-1980s.

95. The prohibition in the NPRPA on production of petroleum or development leading to production of petroleum from the NPR-A remains controlling. 42 U.S.C. § 6504(a).

96. The Secretary's decision to make the NW NPR-A planning area available for oil and gas leasing without the requisite Congressional authorization was arbitrary, capricious and not in accordance with law and violated the NPRPA, 42 U.S.C. § 6504(a), and the Administrative Procedure Act, 5 U.S.C. §§ 702, 706.

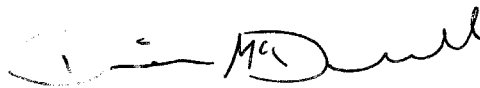
**PRAYER FOR RELIEF**

Therefore, plaintiffs respectfully request that the Court:

1. Declare that defendants have violated NEPA, the ESA, the NPRPA, and the Administrative Procedure Act, and that the actions as set forth above are arbitrary, capricious and not in accordance with law;
2. Enter appropriate injunctive relief to ensure that the defendants comply with NEPA, the ESA, the NPRPA, and the Administrative Procedure Act, and to prevent irreparable harm to the plaintiffs and to the environment until such compliance occurs;
3. Award plaintiffs the costs of this action, including reasonable attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;
4. Grant such other relief as the Court deems just and proper.

Dated this 16th day of February 2004.

Respectfully submitted,



Deirdre McDonnell  
AK Bar # 0111082  
Earthjustice

Attorneys for plaintiffs Northern Alaska  
Environmental Center, National Audubon Society,  
The Wilderness Society, Natural Resources Defense  
Council, Sierra Club, Alaska Wilderness League  
and Center For Biological Diversity