



VIA EMAIL AND CERTIFIED MAIL (PRIORITY), RETURN RECEIPT REQUESTED

January 28, 2026

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RE: 60-Day Notice of Intent to Sue Regarding Violations of the Endangered Species Act  
Related to the Integrated Activity Plan for the National Petroleum Reserve-Alaska

Dear Sirs,

This letter serves as a 60-day notice on behalf of the Center for Biological Diversity and Friends of the Earth of their intent to sue the Bureau of Land Management (BLM) and Secretary of the Interior Doug Burgum for violating the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, by failing to ensure that the Integrated Activity Plan (“IAP” or “Plan”) for the National Petroleum Reserve-Alaska (“Reserve”) BLM approved in December 2025 is not likely to jeopardize the continued existence of polar bears or result in the destruction or adverse modification of their critical habitat. The government acknowledges that the Plan is likely to disturb threatened polar bears, scare them away from their dens, and result in the death of cubs. Nevertheless, it concludes—based on faulty analysis—that the Plan’s effect on the bears will be negligible. This letter is provided pursuant to the 60-day notice requirement of the ESA’s citizen-suit provision, 16 U.S.C. § 1540(g).

## I. Legal Framework

Under Section 7 of the ESA, before taking any action that may affect a listed species, “[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary [of the Interior], insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary . . . to be critical . . . .” 16 U.S.C. § 1536(a)(2). To comply with Section 7’s substantive mandate, federal agencies must consult with the relevant wildlife agency whenever an agency action may affect a listed species. *Id.*; 50 C.F.R. § 402.14(a). The Secretary has delegated to the Fish and Wildlife Service (Service) the authority to provide ESA consultation to agencies taking actions that may affect the polar bear. Both the action agency (here BLM) and the consulting agency (here the Service), must use “the best scientific and commercial data available” to fulfill their Section 7 duties. 16 U.S.C. § 1536(a)(2). At the conclusion of the consultation, the consulting agency issues a biological opinion detailing how the action is expected to affect the listed species and its habitat.

The biological opinion includes a determination from the consulting agency on whether a proposed action is “[l]ikely to jeopardize” or “[n]ot likely to jeopardize . . . the continued existence of a listed species or result in the destruction or adverse modification of critical habitat.” 50 C.F.R. § 402.14(h)(iv). If the consulting agency concludes that a proposed action will jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat, the biological opinion must include “reasonable and prudent alternatives” to avoid jeopardy or adverse modification. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(2).

ESA regulations define “[j]eopardize the continued existence of” as “to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02. A jeopardy analysis requires the agency to consider the aggregate effect of past and ongoing human activities that affect the current status of the species and its habitat (“environmental baseline”); all consequences of the proposed action to listed species or critical habitat, including those that occur later in time (“effects of the action”); and the effects of future state and private activities that are reasonably certain to occur (“cumulative effects”). *Id.* §§ 402.14(g), 402.02. An agency must consider all of these factors in context of the current status of the species and its habitat. *Id.* § 402.14(g).

Section 9 of the ESA prohibits the “take” of any endangered species without special exemption. 16 U.S.C. § 1538. “Take” is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.* § 1532(19). If, during consultation, the consulting agency concludes that an action is reasonably certain to take listed members of the population but will not jeopardize the continued existence of the species, the biological opinion must include an incidental take statement that specifies the impact of the action, generally by setting a numeric limit on take and identifying “reasonable and prudent measures” that will minimize the impact of that take, among other requirements. *Id.* § 1536(b)(4)(C). The take of a listed species in compliance with the terms of a valid incidental

take statement is not prohibited under Section 9 of the ESA. *Id.* § 1536(o)(2); 50 C.F.R. § 402.14(i)(6).

## II. Background

On December 22, 2025, BLM released a record of decision adopting Alternative E from the 2020 IAP Environmental Impact Statement (“2020 IAP EIS”), opening 18.6 million acres of the Reserve to oil and gas leasing, including areas that have been protected for decades. *See* BLM, U.S. Department of the Interior, DOI-BLM-AK-R000-2019-0001-EIS / DOI-BLM-AK-0000-2025-0005-EA, *Integrated Activity Plan Record of Decision* at 3 (Dec. 2025) (“2025 ROD”). The decision allows for leasing in areas occupied by threatened Chukchi Sea and Southern Beaufort Sea (SBS) polar bears, as well as their designated critical habitat. *See* Northern Alaska Fish and Wildlife Field Office, U.S. Fish and Wildlife Service, *Programmatic Biological Opinion for the National Petroleum Reserve-Alaska (NPR-A) Integrated Activity Plan* at 121, 126 (Dec. 2025) (“BiOp”). The 2025 ROD purports to rely on both the 2020 IAP EIS and the 2025 IAP environmental assessment (“2025 IAP EA”). *See* 2025 ROD at 3.

Onshore denning habitat is becoming increasingly important for polar bears as climate change reduces the availability of sea ice habitat and forces bears to den on land. *See, e.g.*, BiOp at 75. 141. The BiOp acknowledges that the Plan could result in the direct loss or alteration of denning habitat. *Id.* at 75, 206, 300-01. Seismic activities, in particular, could result in “disturbance to females at den sites before cubs are born (i.e., early denning period), which could force the female to search for an alternate site; or, premature den or den site abandonment after cubs are born (i.e., late denning period), which could cause the imminent death of cubs or reduced probability of their survival over time.” *Id.* at 169. Seismic vehicles could also crush mother bears and their cubs in their dens as they move across the plain. *See id.* at 171. All 3,465 square kilometers of polar bear terrestrial denning habitat in the Reserve is open to leasing and may be subject to impacts from seismic surveys. *Id.* at 169.

BLM consulted with the Service, and the Service issued the BiOp for the IAP on July 31, 2025. In the BiOp, the Service concluded—based on a series of faulty assumptions—that the Plan is not likely to result in jeopardy to polar bears or appreciably diminish the value of their critical habitat. *See* BiOp at 302. The Service did not include an incidental take statement with the BiOp.

## III. The 2025 Biological Opinion

The action at issue here is BLM’s adoption of “Alternative E as described and analyzed in the 2020 IAP/EIS and the 2025 IAP EA,” which designates areas “for oil and gas leasing, for pipelines and other infrastructure and for special protections” in the Reserve. 2025 ROD at 3. In adopting the 2025 ROD, BLM violated the ESA because it relied on a legally insufficient BiOp. The BiOp BLM relied on is flawed because it: (1) fails to include an incidental take statement; (2) fails to analyze the effects of the entire Plan using the best available science and data; and (3) arbitrarily and unlawfully relies on ineffective and nonbinding mitigation measures to conclude that polar bears will not face jeopardy as a result of the Plan. These flaws are discussed in more detail below.

#### ***A. No incidental take statement***

Despite indicating that the Plan would likely result in substantial take of polar bears, including mortality of cubs, *see, e.g.*, BiOp at 176-177, 290, the BiOp does not include an incidental take statement for the Plan. While Service regulations sometimes allow the agency to skip an incidental take statement for a programmatic consultation, it could not do so where—as here—the take at issue is “reasonably certain to occur.” 50 C.F.R. § 402.14(g)(7).

#### ***B. Improper jeopardy analysis***

A biological opinion must aggregate environmental baseline, the effects of the proposed action, and the cumulative effects in light of the status of the species to determine whether they collectively are likely to jeopardize the species’ continued existence. *See id.* § 402.14(g)(4), (h). In that assessment, the question “is not the proportional share of responsibility the federal agency bears for the decline in the species, but what jeopardy might result from the agency’s proposed actions in the present and future human and natural contexts.” *Pac. Coast Fed’n of Fishermen’s Ass ’ns v. U.S. Bureau of Reclamation*, 426 F.3d 1082, 1093 (9th Cir. 2005).

The jeopardy analysis here does not account for two key factors affecting whether the Plan will jeopardize the continued existence of polar bears: (1) that polar bear populations, especially the SBS subpopulation, are expected to decline precipitously over the period of the 70-year timeframe of the Plan; and (2) that terrestrial denning in the Reserve is likely to increase over that same period, increasing the chances for disturbance.

The BiOp does not acknowledge or grapple with the Service’s conclusions elsewhere that polar bear populations in the action area are expected to decline precipitously during the 70-year period the BiOp covers. *See, e.g.*, Northern Alaska Fish and Wildlife Field Office, U.S. Fish and Wildlife Service, *Programmatic Biological Opinion for the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge* at 154-55 (Sep. 2025) (“The [SBS] subpopulation is part of the Polar Basin Divergent Ecoregion which is expected have a 75 percent reduction in the numbers of bears by the end of the century.”). And while the BiOp acknowledges that its estimates of den disturbance may be low because more denning is likely to occur on land in the future, the Service declined to factor increased land-based denning into its jeopardy analysis. *See, e.g.*, BiOp at 292.

Instead, the BiOp found no jeopardy because:

- (1) growth of the [SBS] subpopulation would not be affected because adult female survival, the determining factor for polar bear subpopulation growth, would not be impacted, (2) effects to cubs would primarily result in reduced probability of survival with limited mortality of cubs expected during the early denning period, following early den emergence by the sow, and, (3) cub mortality is expected to affect an extremely small percentage of the [SBS] subpopulation (0.06 percent).

*Id.* at 292. The BiOp also emphasized that the Plan would not “threaten the persistence or recovery of polar bears because the [Plan] would negatively impact extremely small percentages of the [SBS] subpopulation (0.07 percent) and the global population (0.002 percent).” *Id.* at 291.

The Service’s approach failed to consider the broader cumulative decline of polar bears to which the Plan would contribute, leading to an underestimate of impacts and an improper jeopardy analysis. And the Service improperly focused on the (alleged) small annual number of takes attributable to the Plan, violating the ESA’s requirement that “where baseline conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm.” *Turtle Island Restoration Network v. U.S. Dep’t of Com.*, 878 F.3d 725, 737 (9th Cir. 2017) (cleaned up).

### **C. Arbitrary and unlawful reliance on mitigation measures**

The BiOp’s reliance on several mitigation measures for its no-jeopardy finding was arbitrary and unlawful. Mitigation relied upon in a BiOp must be “clear, definite” and “under agency control or otherwise reasonably certain to occur.” *Nat’l Wildlife Fed. v. NMFS*, 524 F.3d 917, 936 & n.17 (9th Cir. 2008); *see also Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 743 (9th Cir. 2020).

The BiOp relies on required operating procedure (ROP) C-1 to ensure a 41% rate of pre-seismic detection for polar bear dens. *See, e.g.*, BiOp at 170-71, 174. The 41% detection rate is based on aerial infrared (“AIR”) surveys. *Id.* But ROP C-1 only requires permittees to “make efforts to locate occupied polar bear dens within and near areas of operation, utilizing den detection techniques approved by the Service”; it does not require the use of AIR surveys. *Id.* at 39-40.

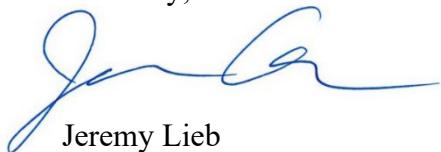
The BiOp fails to grapple with the various conditions that can affect such surveys and the fact that most industry surveys are likely to happen in suboptimal conditions. For example, underlying research found the surveys that “most closely resembled den surveys flown for oil and gas industry” resulted in detection probabilities of 15% and 24%. S.P. Woodruff *et al.*, *Evaluating the efficacy of aerial infrared surveys to detect artificial polar bear dens*, 46(3) WILDLIFE SOC’Y BULLETIN (2022). The BiOp’s reliance on inadequate mitigation measures renders its no jeopardy conclusion arbitrary and unlawful.

## **IV. BLM’s violations of Section 7 of the ESA**

For all the reasons above, the BiOp does not meet the requirements of the ESA. BLM cannot rely on a legally deficient BiOp to meet its obligations under the ESA. This is particularly true in this context, where BLM’s opportunity to remove areas from leasing, or otherwise condition the leases that may be issued, is now, before the first lease sale under the new Plan. In issuing and implementing the 2025 ROD that relies on a legally insufficient BiOp, BLM is violating the ESA.

Center for Biological Diversity and Friends of the Earth intend to sue BLM and Secretary Burgum for these violations at the conclusion of the 60-day notice period, if BLM and the Secretary do not withdraw the 2025 ROD for the Plan and reinitiate consultation by that time.

Sincerely,



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