

**Statement of
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U.S. Department of the Interior, Bureau of Land Management,
Senate Energy and Natural Resources Committee
S. 3203, Alaska Economic Development and Access to Resources Act
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Thank you for the opportunity to discuss the views of the Department of the Interior (Department) on S. 3203, the Alaska Economic Development and Access to Resources Act.

Among its measures, S. 3203 would increase Federal oil and gas production requirements in the State of Alaska; mandate additional offshore lease sales within the Alaska portion of the Outer Continental Shelf (OCS); and lift the prohibition of oil and gas leasing and production in the Arctic National Wildlife Refuge. The bill also would potentially exclude any mining claims that predate a withdrawal from any law, regulation, or Federal action, and revoke the designation of all Areas of Critical Environmental Concern within the State. The Department strongly opposes S. 3203 for the reasons outlined below.

Background

The DOI manages 500 million acres of lands, primarily located in the Western states, and 1.7 billion offshore acres on the OCS. The DOI's broad mission responsibilities include the management of these diverse Federal lands, waters, wildlife, and fishery resources. The resources administered by each of the DOI's agencies are managed for many purposes, primarily related to preservation, recreation, and development of natural resources, yet each of these agencies has distinct responsibilities.

Bureau of Land Management (BLM)

The BLM is responsible for managing more than 10 percent of the Nation's surface and nearly a third of its minerals. The BLM manages this large portfolio on behalf of the American people under the dual framework of multiple use and sustained yield. The BLM administers public lands for a broad range of uses, including renewable and conventional energy development, livestock grazing, timber production, hunting, fishing, recreation, and conservation.

With respect to conventional energy development, the BLM takes seriously its responsibility to manage the Federal government's onshore oil and gas resources in an environmentally sound and responsible manner. The Mineral Leasing Act of 1920 (MLA), as amended, directs the Secretary of the Interior to lease Federal oil and gas resources, and to regulate oil and gas operations on those leases. The BLM has used this authority to develop regulations governing all aspects of oil and gas operations, including requirements related to pre-leasing, surface-disturbing activities,

well construction, and production measurement. The Indian Mineral Leasing Act extends this regulatory authority and the resultant rules to Indian oil and gas leases on trust lands (except those lands specifically excluded by statute). Finally, the Federal Land Policy and Management Act of 1976 (FLPMA) directs the BLM to manage the public lands using the principles of multiple use and sustained yield and to take any action necessary to prevent unnecessary or undue degradation. In fulfilling these objectives, FLPMA requires the BLM to manage public lands in a manner that protects the quality of their resources, including ecological, environmental, and water resources. Cumulatively, this statutory regime requires the BLM to balance responsible development with protection of the environment and public safety. The BLM works hard to ensure the appropriate balance is maintained and that the applicable regulation and requirements are applied and enforced fairly and consistently across all the lands where the BLM has oversight responsibilities.

Onshore Oil & Gas Leasing in Alaska

Oil and gas leasing on Alaska's Federal lands onshore is concentrated in two regions: the Cook Inlet Region and the National Petroleum Reserve in Alaska (NPR-A). Exploration and production in the Cook Inlet Region began in the 1950s and continues to contribute to Alaska's economy and energy needs. The NPR-A is a 22.8-million-acre area on Alaska's North Slope. In 1923, President Harding set aside this area as an emergency oil supply for the U.S. Navy. In 1976, in accordance with the Naval Petroleum Reserves Production Act, the administration of the reserve was transferred to the Department of the Interior, more specifically the BLM.

Bureau of Ocean Energy Management (BOEM)

BOEM manages the development of the OCS energy and mineral resources, including approximately 1.7 billion acres containing 3,800 active leases. The Outer Continental Shelf Lands Act (OCSLA) authorizes the Secretary of the Interior to grant mineral leases and to prescribe regulations governing oil and natural gas activities on OCS lands, while protecting the human, marine, and coastal environments through advanced science and technology research. Among its duties, BOEM oversees assessments of the oil, gas, and other mineral resource potential of the OCS; inventories oil and gas reserves; develops production projections; and conducts economic evaluations that ensure the receipt of fair market value by U.S. taxpayers for OCS leases.

Offshore Oil & Gas Leasing in Alaska

BOEM's Alaska OCS Region oversees more than one billion acres on the OCS located offshore more than 6,000 miles of coastline. As part of this management, BOEM's Alaska OCS Region implements the Department's 2012-2017 and forthcoming 2017-2022 Outer Continental Shelf Oil and Gas Leasing Five-Year Programs within the bounds of the Alaska OCS Region. The

Alaska OCS encompasses the Beaufort and Chukchi Seas, the Bering Sea, Cook Inlet, and the Gulf of Alaska.

U.S. Fish and Wildlife Service (FWS)

The mission of the FWS is working with others to conserve, protect, and enhance fish, wildlife, and plant and their habitats for the continuing benefit of the American people. Among the many statutes and programs administered by the FWS is the National Wildlife Refuge System Administration Act, which codified a mission for the National Wildlife Refuge System. That mission is to administer a network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats for the benefit of present and future generations. The FWS administers 89.1 million acres of Federal land in the Nation, of which 76.7 million acres are in Alaska. The National Wildlife Refuge System includes more than 565 refuges, 38 wetland management districts, 5 marine national monuments and other protected areas encompassing approximately 836 million acres of land and water across the United States that are part of the National Wildlife Refuge System. With respect to Alaska, the FWS manages 16 refuges, including the Arctic National Wildlife Refuge (NWR) in northeastern Alaska.

Arctic NWR

In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA). ANILCA designated most of the original Arctic National Wildlife Range as Wilderness except for approximately 1.5 million acres on the Refuge's coastal plain. Section 1002 of ANILCA required that studies be performed to provide to Congress a comprehensive inventory and assessment of fish and wildlife resources, an analysis of potential impacts of oil and gas exploration and development on those resources, and a delineation of the extent and amount of potential petroleum resources. Information gathered from the biological, seismic, and geological studies was used to complete the 1987 Coastal Plain Resource Assessment and Legislative Environmental Impact Statement. Referring to this area of the coastal plain, Congress declared in Section 1003 of ANILCA that the “production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the [Refuge] shall be undertaken until authorized by an act of Congress.”

S. 3203, the Alaska Economic Development and Access to Resources Act

S. 3203 concerns lands administered by the Secretary of the Interior and lands in the National Forest System administered by the U.S. Department of Agriculture (USDA). The Department defers to the U.S. Forest Service on provisions affecting National Forest System lands, which includes *Title V – Forestry*. Additionally, the Department defers to the Department of Energy on *Title IV – Mining*, Sec. 401, which concerns programs administered by that Department.

Title 1 – Fill “TAPS”

Title 1 directs the Secretary of the Interior to develop a plan within one year of the bill’s enactment to increase oil production on Federal land in Alaska by 500,000 barrels per day by 2026. If the plan is not developed within the one-year timeframe, the Secretary is required to increase by 1.0 million acres the amount of acreage to which the State of Alaska is entitled under the Alaska Statehood Act and other applicable Federal law. For each additional year the deadline is not met, Title 1 directs the Secretary to increase the acreage entitlement by an additional 1.0 million acres.

Analysis

The Department’s primary role in establishing oil and gas production on Federal land is to provide access to private entities that wish to develop the oil and gas resources owned by the public. On BLM-managed lands, consideration of the eligibility of a particular parcel for oil and gas leasing begins well before the lease sale. The BLM’s Resource Management Plans (RMPs) establish the foundation for its land management decisions, containing general resource allocations and other decisions that reflect the BLM’s effort to balance the many competing uses within a planning area and fulfill the agency’s mandate of multiple use and sustained yield. Through the RMPs, major resource conflicts are considered such as balancing important wildlife habitat needs with energy development. For purposes of oil and gas leasing, lands within a planning area are identified as fitting in one of three categories: lands open under standard lease terms, lands open with restrictions, and lands closed to leasing. Many of the lands closed to leasing consist of areas with special designations and other unique and environmentally-sensitive areas such as habitat for special status species.

While the Department determines which lands are open to leasing, it does not play a role in the actual exploration, drilling, and development of oil and gas resources, nor does it dictate production quotas. Market forces drive industry investment and resulting oil and gas production. For example, economic factors such as the price of oil and the capital cost of rigs and other infrastructure may dictate that developing oil in Alaska is uneconomic, or at least less favorable, relative to developing other oil field prospects outside of the state.

The Department does not have, and does not desire to have, the authority to direct private entities to develop oil and gas resources on public lands.

For these reasons, the Department strongly opposes the Title 1 requirement to convey 1 million acres of public lands to the State of Alaska for every year that the 500,000 barrel-per-day production plan is not developed.

Title II – Outer Continental Shelf

Section 201 amends OCSLA to require that BOEM provide lessees acquiring or holding Alaska OCS oil and gas leases with an eight-month suspension of the primary lease term for each year of the lease. Since Alaska OCS lease terms are for ten years, the mandate could significantly extend those lease terms with no requirement for a lessee to explore or produce from a lease. This is a significant departure from longstanding leasing requirements for all OCS oil and gas leases and is counterproductive to BOEM's efforts to promote diligence in the development and production of offshore oil and gas leases. BOEM recognizes that the Arctic environment presents unique development challenges, which is why the 10-year primary lease term is longer than that offered in the more established Gulf of Mexico region, with the exception of deepwater leases. In addition, BOEM already provides a process for companies to apply for a suspension of their lease terms if a lessee affirmatively demonstrates that it is moving forward with developing the lease.

Section 201 also allows current lessees to opt into the yearly lease term suspension. This would be a substantial departure from the terms on which the leases were offered in a competitive process, and on which basis the lessees entered signed lease agreements. Under the existing terms, current leases will expire if not timely developed within the original term, and the lease areas will be available to all potential bidders in a sale in which all lease terms—including lease duration—are publicly disclosed.

BOEM opposes the requirements of Section 201, but would be willing to work with the Committee to review lease terms in relation to the challenges facing developers on the Arctic OCS.

Section 202 amends OCSLA to mandate additional lease sales in the Beaufort Sea, Chukchi Sea, and Cook Inlet planning areas in specific years. OCSLA provides for a well-understood process for the Secretary to establish a lease sale schedule in consultation with affected states, while ensuring appropriate environmental reviews. The proposed 2017 – 2022 Five Year Oil and Gas Leasing Program provides for potential lease sales in the Beaufort Sea in 2020, Cook Inlet in 2021, and the Chukchi Sea in 2022. The placement of the sales later in the program allows for thorough consultation with stakeholders and extensive environmental review. Inclusion of additional sales in earlier years of the next program would not allow for this critical collaboration and the corresponding analyses. Moreover, BOEM's current Five Year Program already calls for a lease sale in Cook Inlet in 2017. Scheduled sales in the Beaufort Sea and Chukchi Sea planning areas, scheduled for 2017 and 2016 respectively, were cancelled due to a lack of industry interest and market conditions. BOEM's current and proposed Five Year Programs provide for a leasing schedule that balances the needs of all stakeholders on the Alaska OCS. The BOEM does not support the requirements of Section 202 because it does not provide this balance and would not provide the time needed to complete appropriate environmental and socioeconomic impact reviews for the additional mandated sales.

Title III – Federal Onshore

Subtitle A – Authorizing Alaska Production

Sections 301 through 306 of the bill repeal Section 1003 of the ANILCA, thereby, lifting the prohibition on leasing, production, or other developments leading to production from the Arctic NWR. Under the bill, the Secretary is directed to establish a leasing and development program specific to a 375,000-acre area in the coastal plain of the Arctic NWR. The bill defines this area as the “Undeformed Area of the Coastal Plain,” and authorizes it as being open to oil and gas exploration, leasing, development, production, and transportation. S. 3203 implements a competitive lease sale process in the coastal plain of Arctic NWR, as well as, directives for and constraints on environmental analyses, consultation requirements, and environmental protection and remediation standards.

Sections 307 through 310 of the bill permit the establishment of rights-of-way and easements in connection with the development within the Arctic NWR, clarify Arctic NWR boundaries, and establish the “Undeformed Area of the Coastal Plain Local Government Impact Aid Assistance Fund.”

Analysis

Sections 1002 and 1003 of ANILCA prohibit leasing, development and production of oil and gas within the Arctic NWR unless specifically authorized by an Act of Congress. Section 304(g) of ANILCA directs the Secretary of the Interior to prepare, and from time to time, revise a comprehensive conservation plan (CCP) for each refuge in Alaska. The CCP is based on guidance found in ANILCA; the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997; the National Environmental Policy Act of 1969 (NEPA), as amended; other Federal laws, and Fish and Wildlife Service Planning Policy (602 FW 1-3). Consistent with this direction, the FWS completed the Revised CCP and Final Environmental Impact Statement (EIS) for Arctic NWR in 2015.

The 2015 CCP is the culmination of a multi-year planning and public involvement process, during which more than 800,000 public comments were received. It describes how Arctic NWR will achieve the purposes for which it was established, which include the following: To conserve fish and wildlife populations in their natural diversity; to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; to provide for continued subsistence use by local residents; and to ensure water quality and necessary water quantity within the refuge.

The CCP recommends approximately 12.28 million acres within Arctic NWR (including the approximately 1.5 million acre coastal plain that would be impacted by Title III of the proposed legislation S. 3202) for Wilderness designation by Congress.

After careful review and consideration of the best available information, relevant issues, concerns, and public input received throughout the planning process, and other factors including relevant laws, regulations and policies, the FWS determined that Wilderness designation would best accomplish the Arctic NWR purposes and best achieve the mission of the National Wildlife Refuge System. Wilderness designation ensures long-term protection of fish and wildlife habitat and provides subsistence, recreational and other opportunities in a natural environment while minimizing human caused change.

The FWS manages recommended wilderness in a way that protects the Wilderness character of the area. In the case of Arctic NWR, areas recommended for wilderness designation will continue to be managed under the Minimal Management zoning category, as defined in the revised CCP and final EIS. Refuge uses and on-the-ground management would not incur substantial changes. The legal requirements of the Wilderness Act do not apply unless Congress makes a formal designation.

Arctic NWR exemplifies the wilderness idea and millions find satisfaction, inspiration and even hope in just knowing it exists. The Arctic NWR represents the hope that one of the finest remnants of our national inheritance will be passed on, undiminished for future generations, including for traditional subsistence uses.

The Administration strongly opposes Title III of S. 3203, which would require an oil and gas leasing program for the exploration, development, and production within the Coastal Plain of the Arctic NWR. This area has been recommended by the President to be protected in perpetuity under the Wilderness Act. Title III of S. 3203 would instead damage this nearly pristine, intact ecosystem at the top of the continent - one of the crown jewels of the public's National Wildlife Refuge System.

Subtitle B – National Petroleum Reserve-Alaska

Subtitle B directs the Secretary to offer one or more area-wide oil and gas lease sales in areas within the NPR-A identified as available for oil and gas leasing in the BLM's 1998 Northeast National Petroleum Reserve–Alaska, Integrated Activity Plan (NPR-A IAP)/Environmental Impact Statement Record of Decision.

The bill also directs the Secretary to develop a plan, within 180 days of the bill's enactment, for exploration and evaluation in the NPR-A of gravel sources suitable for the construction of roads and pads necessary for oil and gas development activities. Not later than one year after the date

of enactment, the Secretary, in coordination with the Secretary of Defense, must implement the plan and submit the associated results to Congress.

Analysis

The Department currently offers annual lease sales within the NPR-A in accordance with a 2011 directive from President Obama. The BLM has held 12 oil and gas lease sales within the NPR-A since 1999, with an upcoming sale scheduled for December 2016. This lease sale will include 145 tracts covering approximately 1.4 million acres. There are currently 134 authorized leases in the NPR-A spanning over 895,000 acres. Of the 134 current leases, none is currently in production. However, in October 2015, the BLM approved a drilling permit and offered a right-of-way grant for the Greater Mooses Tooth One project, which is expected to come online in late 2018 with approximately 30,000 barrels of oil per day at peak production. The BLM has also begun analysis of the nearby Greater Mooses Tooth Two project, which if approved, would eventually contain up to 48 individual wells.

The Department does not support Subtitle B as it would reverse BLM oil and gas leasing decisions made in 2013 when the Department approved a new Integrated Activity Plan (IAP) for the entire NPR-A. The 2013 IAP replaced the oil and gas leasing decisions made in the referenced 1998 IAP. The 2013 IAP makes 11.8 million acres available for oil and gas leasing in the NPR-A and identifies lease stipulations and Best Management Practices to be followed by authorized users. By utilizing the map specified in the 1998 IAP, the bill makes an additional 1.28 million acres of land and water available for oil and gas leasing within the Teshekpuk Lake Special Area (TLSA). The 2013 IAP specifically identified these areas as being unavailable for leasing in the TLSA. Based on the National Environmental Policy Act analysis, these areas protect caribou calving grounds and insect-relief areas for caribou herds, as well as waterbird and shorebird breeding, molting, staging, and migration habitats.

While the Department does not oppose Subtitle B's provision requiring development of a plan for exploration and evaluation of gravel resources in the NPR-A that are suitable for oil and gas development, we note that additional time would be needed to implement the plan given the short field season within the NPR-A. Providing for exploration and evaluation of gravel sources would be beneficial for future planning and development of the NPR-A. It should be noted that under current mineral material regulations, the cost of this type of work is covered by private companies that are seeking gravel and related materials to support private development of publicly held natural resources.

Title IV – Mining

Section 401 of Title IV provides Department of Energy grants for extraction and purification of rare earth elements. The Department of the Interior defers to the Department of Energy on this provision.

Section 402 exempts from the relevant withdrawal or land management action any existing unpatented lode mining claim, placer claim, mill site, or tunnel site claim that was located prior to a withdrawal, Federal management regulatory action, or other action that withholds an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws for the purpose of affecting mining or mineral activity in order to maintain other public values in the area. The bill provides that such a claim would be considered to be valid for the purposes of mining or mineral activity until such time as the Secretary successfully contests the validity of the claim. Furthermore, any burden of proof or costs would be the responsibility of the Secretary.

Section 403 amends Section 1326 of ANILCA by restricting the Department from making, on any public lands larger than 5,000 acres, as of the date of enactment of S. 3203, a designation that “limits, or has the effect of limiting or impeding, activities and uses allowed on public lands.” The bill provides examples of the application of this provision, including the designation and management of public lands as wilderness study areas, components of the National Wild and Scenic Rivers System, critical habitat under the Endangered Species Act of 1973, or Areas of Critical Environmental Concern (ACECs). Under the bill, such a designation may be made only after providing notice of the designation in the Federal Register and to Congress, along with a joint resolution of approval by Congress. Section 403 also revokes all ACECs that are in existence at the time of enactment.

Analysis

Section 402 appears to exclude any mining claims that predate a withdrawal from any law, regulation, or Federal action applicable to that withdrawal. The Department cannot support this section as it could be read to revise Federal minerals management across all public lands, and to remove pre-existing mineral claims, including areas within designated Wild and Scenic River corridors and rivers under study, from all Federal management.

While the Department does not support the specific proposed revisions to the Mining Law, it is worth noting that the President’s budget includes a legislative proposal for major revisions to the 1872 Mining Law. We are encouraged by the Sponsor’s interest in this issue area and would welcome the opportunity to work with the Sponsor and the Committee on updates to this law, which has not been substantially revised in nearly 150 years.

The Department also strongly opposes the legislative changes proposed in Section 403 of Title IV. This section revokes all ACECs, which would be detrimental to the BLM's land use planning activities, undoing decades of effort and undermining a congressional mandate and public participation that has been honored since the passage of the Federal Land Policy and Management Act forty years ago.

The addition of such requirements for designations that otherwise limit activities and uses on more than 5,000 acre areas would undermine the BLM's federally mandated responsibility (FLPMA Section 202(b)) to develop land use plans, including to: give priority to the designation and protection of ACECs; consider the relative scarcity of the values involved and the availability of alternative means and sites for realization of those values; and weigh long-term benefits to the public against short-term benefits. Further, the BLM already notices special designations in the Federal Register, as they are identified in land use plans, which are published in the Federal Register. ANILCA already requires that withdrawals of 5,000 acres or more be noticed in the Federal Register, reported to Congress, and terminated within one year of notice without a joint resolution of approval of the withdrawal by Congress. S 3203 would similarly undermine the Forest Service's federally mandated responsibility (NFMA Section 6) to develop land use plans and the agency's associated collaborative and public participation processes.

This section would also limit management of Wild and Scenic Rivers under the Wild and Scenic Rivers Act and of wilderness study areas, many of which are managed for wilderness values in fulfillment of the conservation system unit's enabling legislation.

While the examples given in this section are large in scope, Section 403 may also restrict short-term, temporary, and emergency closures, such as trail or backcountry unit closures because of bear activity, closures related to law enforcement investigations, closures due to wildland fire fighting, and related actions. On many occasions, these closures could exceed 5,000 acres. Additionally, within the National Park System, the language may prohibit "activity and use restrictions" developed as part of a concession contract offered after the date of enactment (absent Congressional approval) if those activities were conducted on an area greater than 5,000 acres.

Title V – Forestry

Title V concerns National Forest System lands. The Department defers to the U.S. Forest Service for analysis on this provision.

Conclusion

Thank you for the opportunity to testify. I will be glad to answer any questions you may have.