

This is an unofficial prepublication version of this document. The BLM expects that the same or a substantially similar document will be posted in the Federal Register. The final document published in the Federal Register is the only version of the document that may be relied upon.

4331-27

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2360

[BLM_HQ_FRN_MO4500173644]

RIN 1004-AE95

Management and Protection of the National Petroleum Reserve in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing a new rule to govern the management of surface resources and Special Areas in the National Petroleum Reserve in Alaska (NPR-A), consistent with its duties under the Naval Petroleum Reserves Production Act (NPRPA), Federal Land Policy and Management Act (FLPMA), and other authorities. The proposed rule would revise the framework for designating and assuring maximum protection of Special Areas' significant resource values, and would protect and enhance access for subsistence activities throughout the NPR-A. It would also incorporate aspects of the NPR-A Integrated Activity Plan (IAP) approved in April 2022. The proposed rule would have no effect on currently authorized oil and gas operations in the NPR-A. We solicit comments on all aspects of this proposed action.

DATES: Please submit comments on this proposed rule to the BLM on or before

[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL*

REGISTER]. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

Information Collection Requirements: This proposed rule includes existing and a proposed new information-collection requirement that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the information-collection requirements, please note that such comments should be sent directly to the OMB, and that the OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the *Federal Register*. Therefore, a comment to the OMB on the proposed information-collection revisions is best assured of being given full consideration if the OMB receives it by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Mail, personal, or messenger delivery:* U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C St., N.W., Room 5646, Washington, DC 20240, Attention: 1004-AE95.

Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE95 and click the "Search" button. Follow the instructions at this website.

For Comments on Information - Collection Activities

Written comments and suggestions on the information-collection requirements should be submitted by the date specified (see **DATES**) to www.reginfo.gov/public/do/PRAMain. Find this specific information-collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. If you submit comments on these information-collection burdens, you should provide the BLM with a copy at one of the addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rulemaking. Please indicate "Attention: OMB Control Number 1004-XXXX (RIN 1004-AE95) regardless of the method used to submit

comments on the information collection burdens. Comments not pertaining to the proposed rule's information-collection burdens should not be submitted to OMB. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB.

FOR FURTHER INFORMATION CONTACT: James Tichenor, Advisor - Office of the Director, at 202-573-0536 or *jtichenor@blm.gov* with a subject line of "RIN 1004-AE95." For questions relating to regulatory process issues, contact Faith Bremner at *fbremner@blm.gov*.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. For a summary of the proposed rule, please see the proposed rule summary document in docket BLM-2023-0006 on www.regulations.gov.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
 - A. Introduction
 - B. Brief Administrative History of the NPR-A
 - C. Statutory Authority for Managing the NPR-A
 - D. Current Conditions
 - E. Need for the Rule
- III. Section-by-Section Discussion
- IV. Procedural Matters

I. PUBLIC COMMENT PROCEDURES

If you wish to comment on this proposed rule, you may submit your comments to the BLM by mail, personal or messenger delivery during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays, or through <https://www.regulations.gov> (see the **ADDRESSES** section).

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, explain the reason for any changes you recommend, and include any supporting documentation. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the proposed rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed earlier (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II. BACKGROUND

A. Introduction

This proposed rule would revise the management framework for surface resources throughout the NPR-A and Special Areas in the NPR-A. The BLM has not updated this framework in the more than 45 years since the original and still current rule for management of NPR-A surface resources and Special Areas was promulgated in 1977. 42 FR 28721 (June 3, 1977). Currently, the legal standards and procedures that govern the

NPR-A are scattered throughout several statutes, regulations, plans, and guidance documents. This proposed rule would provide a more comprehensive guide to managing the NPR-A. It would improve upon the existing regulations' standards and procedures to balance oil and gas activities with the protection of surface resources in the NPR-A; designate and assure maximum protection of Special Areas' significant resource values; and maintain and enhance access for long-standing subsistence activities. The proposed rule would also implement statutory provisions that post-date the current regulations, including the Department of the Interior Appropriations Act, Fiscal Year 1981, which directed the Secretary to "conduct an expeditious program of competitive leasing of oil and gas" in the NPR-A, while "provid[ing] for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on . . . surface resources . . ." Pub. L. No. 96-514, 94 Stat. 2957 (1980). The proposed rule would not affect existing leases in the NPR-A.

B. Brief Administrative History of the NPR-A

In the early 20th century, the Federal government established several naval petroleum reserves on public land, including the NPR-A, which President Warren G. Harding designated in 1923. Exec. Order 3797-A. The NPR-A extends from the north slope of the Brooks Range to the Arctic Coast and encompasses approximately 23 million acres of public land.

In the decades that followed, the U.S. Navy began exploring for oil and gas in the NPR-A; however, by the 1970s, as Congress began debating the role of the naval petroleum reserves within the context of the nation's changing energy needs, the NPR-A remained "largely unexplored and almost completely undeveloped." H.R. Rep. No. 94-156, at 3 (1975). In 1976, Congress passed the NPRPA, which transferred management of the NPR-A to the Department of the Interior (DOI) and directed the President to

prepare a study to “determine the best overall procedures” for exploring, developing, and transporting the reserve’s oil and gas resources. Pub. L. 94-258, section 105 (1976) (codified at 42 U.S.C. 6505(b)).

In the NPRPA, Congress sought to strike a balance between exploration and “the protection of environmental, fish and wildlife, and historical or scenic values” in the NPR-A. It did so by directing the Secretary to “promulgate such rules and regulations as he [or she] deems necessary and appropriate for the protection of such values within the reserve.” 42 U.S.C. 6503(b). The Conference Report explained that the Act would immediately vest responsibility for protection of the NPR-A’s “natural, fish and wildlife, scenic and historical values ... in the Secretary of the Interior ... so that any activities which are or might be detrimental to such values will be carefully controlled.” H.R. Conf. Rep. No. 94-942 (1976). The report stated the Conference Committee’s expectation “that the Secretary will take every precaution to avoid unnecessary surface damage and to minimize ecological disturbances throughout the reserve.” *Id.*

In the same Act, Congress directed that “[a]ny exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.” 42 U.S.C. 6504(a). The Conference Report elaborated that the Act would “immediately authorize the Secretary to require that the exploration activities within these designated areas be conducted in a manner designed to minimize adverse impacts on the values which these areas contain.” H.R. Conf. Rep. No. 94-942 (1976). The “maximum protection” standard is an unusually high protective bar in comparison to other statutes granting authority to the BLM. *See, e.g.*, 43 U.S.C. 1632; 16 U.S.C. 7202(c)(2).

1. Special Area Designations

There are currently five Special Areas in the NPR-A that protect a wide range of significant subsistence, recreational, fish and wildlife, historical, and scenic values.

Responding to the congressional mandate to protect the values of highly sensitive areas in the NPR-A, particularly Teshekpuk Lake and the Utukok River Uplands, which the NPRPA specifically identified for protection, the Secretary in 1977 delineated the boundaries of those two congressionally designated Special Areas and also designated a third: the Colville River Special Area. 42 FR 28723 (June 3, 1977). The Secretary specifically identified the significant resource values to be protected for each of the three Special Areas:

- **Colville River:** “The central Colville River and some of its tributaries provide critical nesting habitat for the Arctic peregrine falcon, an endangered species. The bluffs and cliffs along the Colville River provide nesting sites with the adjacent areas being utilized as food hunting areas. . . . A total area of approximately 2,300,000 acres within the reserve is identified for inclusion in the Colville River special area.” *Id.*
- **Teshekpuk Lake:** “The Teshekpuk Lake and its watershed are an important nesting, staging, and molting habitat for a large number of ducks, geese, and swans. Because of its importance to these migratory birds and numerous other waterbirds, a total of approximately 1,734,000 acres is identified as the Teshekpuk Lake special area.” *Id.*
- **Utukok River Uplands:** “The Utukok River Uplands special area contains critical habitat for caribou. The critical decline in the population level of the western Arctic caribou herd (from 70,000 in 1975 to 35,000 in 1976) necessitates maximum protection of this area, which is ordinarily the calving territory for this herd. . . . Because of the nomadic nature of the

caribou, a large area encompassing approximately 4,032,000 acres is included within this area.” *Id.*

In 1999, the Secretary expanded the Colville River and Teshekpuk Lake Special Areas. The Secretary added “much of the Kikiakrorak and Kogosukruk Rivers and an area approximately two miles on either side of these rivers” to the Colville River Special Area, increasing its size to 2.44 million acres.¹ The Secretary also added the 10,000-acre Pik Dunes Land Use Emphasis Area to the Teshekpuk Lake Special Area.²

In 2004, the Secretary designated a fourth Special Area, Kasegaluk Lagoon, which encompasses 97,000 acres. 70 FR 9096 (Feb. 24, 2005). The Kasegaluk Lagoon Special Area is located in the northwestern corner of the NPR-A and includes important habitat for marine mammals, among other values.³

In 2013, the Secretary made several decisions concerning Special Areas. First, the Secretary designated a fifth Special Area: Peard Bay. The 107,000-acre area was designated to “protect haul-out areas and nearshore waters for marine mammals and a high use staging and migration area for shorebirds and waterbirds.”⁴ Second, the Secretary expanded the Teshekpuk Lake Special Area by 2 million acres “to encompass all the roughly 30-to-50-mile band of land valuable for bird and caribou habitat between Native-owned lands near Barrow and Native-owned lands near Nuiqsut”⁵ Third, the Secretary expanded the Utukok River Uplands Special Area to 7.1 million acres “to more

¹ BLM, Colville River Special Area (CRSA) Management Plan Environmental Assessment (EA) 1 (July 2008), *available at* https://eplanning.blm.gov/public_projects/nepa/5251/160692/196467/Colville_River_Special_Area_EA.pdf; Designation of Additions to Special Areas in NPR-A; Alaska, 64 FR 16,747 (April 6, 1999).

² 64 FR 16747; BLM, NPR-A Final Integrated Activity (IAP) Plan/Environmental Impact Statement (EIS) 355 (Nov. 2012), *available at* https://eplanning.blm.gov/public_projects/nepa/5251/41003/43153/Vol11_NPR-A_Final_IAP_FEIS.pdf.

³ BLM, Northwest NPR-A IAP/EIS Record of Decision (ROD) 4 (Jan. 2004), *available at* https://web.archive.org/web/20041204130751/http://www.ak.blm.gov/affairs/press/pr2003/Final_Northwest_NPR-A_ROD.pdf.

⁴ BLM, NPR-A IAP ROD 4 (Feb. 2013), *available at* https://eplanning.blm.gov/public_projects/nepa/5251/42462/45213/NPR-A_FINAL_ROD_2-21-13.pdf.

⁵ *Id.* at 19.

fully encompass prime calving and insect-relief habitat within the NPR-A”⁶ Finally, the Secretary broadened the purpose of the Colville River Special Area to include the “protect[ion of] all raptors, rather than the original intent of protection for arctic peregrine falcons.”⁷

The BLM currently manages all five Special Areas in accordance with the NPR-A IAP Record of Decision (ROD) of April 2022. The IAP provides for the management of the NPR-A, designates areas within the NPR-A for oil and gas leasing, infrastructure, and special protections, and identifies stipulations and required operating procedures to mitigate the impact of oil and gas and other permitted activities.⁸ The first IAP, which the BLM finalized in 1998, addressed management of the northeast NPR-A. This IAP superseded a 1983 oil and gas leasing environmental impact statement (EIS), which, until 1998, controlled leasing decisions throughout the NPR-A. In 2004 the BLM issued a separate IAP for the northwest NPR-A, and in 2013, the BLM approved an IAP that addressed activities and resources throughout the NPR-A.

The current IAP, adopted in April 2022, was informed by a Final EIS issued by the agency in 2020. The EIS evaluated a range of alternatives for managing oil and gas activities and resources in the NPR-A. These alternatives were informed and shaped by extensive outreach efforts with the public and stakeholders, including:

- Scoping: During the scoping period from November 21, 2018, to February 15, 2019, the BLM held eight public meetings in Alaska and received approximately 56,000 comment submissions, including form letters.
- Public Review of the Draft IAP/EIS: During the comment period for the Draft IAP/EIS from November 25, 2019, through February 5, 2020, the BLM held eight

⁶ *Id.* at 4.

⁷ *Id.*

⁸ BLM, NPR-A IAP ROD 2-3 (Apr. 2022), *available at* https://eplanning.blm.gov/public_projects/117408/200284263/20058238/250064420/2022_NPRA_IAP_ROD_508.pdf.

public meetings in Alaska and received more than 82,000 comments, including form letters and signed petitions.

- Comments received after the Final IAP/EIS was released and prior to the ROD: In reaching the decision in the 2022 ROD, the BLM reviewed and fully considered comments received after distribution of the Final IAP/EIS on June 26, 2020. The comments did not identify any significant new circumstances or information related to environmental concerns bearing upon the proposed action or its impacts. Instead, they generally reflected concerns already raised by comments submitted during scoping and the public’s review of the Draft IAP/EIS.

In addition to the above, the current IAP benefited from suggestions and careful review of the analysis in the IAP/EIS by several cooperating agencies: the Bureau of Ocean Energy Management, Inupiat Community of the Arctic Slope, National Park Service, North Slope Borough, State of Alaska, and U.S. Fish and Wildlife Service.

During the IAP/EIS process, the BLM consulted with:

- Tribes as required by a Presidential Executive Memorandum dated April 29, 1994;
- Communities, Tribal organizations, and Native corporations on the North Slope;
- The U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration— Fisheries pursuant to the Endangered Species Act; and
- Alaska’s State Historic Preservation Office pursuant to the National Historic Preservation Act.

Pursuant to Alaska National Interest Lands Conservation Act (ANILCA) section 810(a)(1) and (2), the BLM also conducted hearings in North Slope communities to gather comments regarding potential impacts to subsistence use resulting from the alternatives considered in the IAP/EIS.

2. Oil and Gas Leasing in the NPR-A

In 1980, Congress authorized competitive leasing of Federal oil and gas resources in the NPR-A. Pub. L. 96-514 (1980) (codified at 42 U.S.C. 6506a(a)). The BLM held two NPR-A lease sales in 1982 and one each in 1983 and 1984.⁹ After receiving no bids during the 1984 lease sale and determining that the oil and gas industry had “little interest in another lease sale,” the BLM discontinued sales in the NPR-A for the next 15 years.¹⁰

In the 1990s, following technological advances and successful development on nearby State lands, industry expressed a desire to resume leasing in the NPR-A.¹¹ The BLM restarted lease sales in 1999 and, over the next 2 decades, held a total of 15 sales for the NPR-A. These sales initially generated considerable bonus bid revenue for the Federal government and the State of Alaska, as the BLM collected an average of \$74 million in bonus bids at sales held in 1999, 2002, and 2004.¹² However, bid revenue dropped off significantly as lands in the NPR-A with the highest potential for development were leased. Between 2006 and 2019, the BLM received an average of just \$6 million in bonus bids per sale, and millions of acres offered for lease went unsold. Between 1999 and 2019, the BLM offered nearly 60 million acres of leases in the NPR-A but received bids on just 12 percent of that acreage.¹³

C. Statutory Authority for Managing the NPR-A

1. NPRPA

The NPRPA is the primary source of management authority for the NPR-A. Under the NPRPA, the Secretary must “assume all responsibilities” for “any activities related to the protection of environmental, fish and wildlife, and historical or scenic

⁹ U.S. Geological Survey, The NPR-A Data Archive 2 (Mar. 2001), available at <https://pubs.usgs.gov/fs/fs024-01/fs024-01.pdf>.

¹⁰ BLM, Northeast NPR-A Final IAP/EIS (Aug. 1998), available at https://web.archive.org/web/20001018022001/http://aurora.ak.blm.gov/npra/final/html/contents_vol1.html.

¹¹ *Id.*

¹² BLM, NPR-A Sale Statistics 1999 to Present, available at https://www.blm.gov/sites/blm.gov/files/documents/files/Oil_Gas_Alaska_NPR-A_LeaseSale_Statistics_1999toPresent.pdf.

¹³ *Id.*

values” and “promulgate such rules and regulations as he [or she] deems necessary and appropriate for the protection of such values within the reserve.” 42 U.S.C. 6503(b).

Congress has also directed the Secretary to “conduct an expeditious program of competitive leasing of oil and gas” in the NPR-A. *Id.* at 6506a(a). But the Secretary must ensure that all activities taken pursuant to the NPRPA “include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources” throughout the NPR-A. *Id.* at 6506a(b).

The NPRPA also authorizes the Secretary to designate Special Areas to protect “significant subsistence, recreational, fish and wildlife, or historical or scenic value[s]” in the NPR-A and provides that any “exploration” in Special Areas “shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.” *Id.* at 6504(a). Congress enacted that provision in 1976, prior to its authorization of competitive leasing in 1980. As a result, that provision expressly references only “exploration” and not leasing or other oil and gas activities. Nonetheless, the BLM has long interpreted that language to require maximum protection of Special Areas’ significant resource values from the impacts of all oil and gas activities.¹⁴ In 1980, when Congress authorized the Secretary to lease oil and gas in the NPR-A, it expressly required the BLM to “mitigate reasonably foreseeable and significantly adverse effects on surface resources” throughout

¹⁴ See, e.g., BLM, NPR-A Final IAP/EIS at 3-338 (June 2020), available at https://eplanning.blm.gov/public_projects/117408/200284263/20020421/250026625/Volume%202_Appendices%20B-Y.pdf; BLM, Northeast NPR-A IAP/EIS ROD 13 (Oct. 1998) BLM, Amendment to the Northeast NPR-A IAP/EIS ROD 22 (Jan. 2006) (“Maximum protection of important surface resources is provided in Special Areas designated by the Secretary through a combination of prohibitions, restrictions, and stipulations restricting oil and gas facilities and other activities that might adversely impact wildlife habitat and subsistence use areas.”), available at https://web.archive.org/web/20170212030656/https://www.blm.gov/style/medialib/blm/ak/aktest/planning/ne_npra_final_supplement.Par.62144.File.dat/npra_final_app_1.pdfhttps://web.archive.org/web/20170301153536/https://www.blm.gov/style/medialib/blm/ak/aktest/planning/ne_npra.Par.77875.File.dat/nerod_122205final.pdf.

the NPR-A. 42 U.S.C. 6506a(b). That mandate mirrored the 1976 Conference Committee's statement that "it ... expected ... the Secretary will take every precaution to avoid unnecessary surface damage and to minimize ecological disturbances throughout the reserve" and not solely in Special Areas. H.R. Rep. 94-942, at 21 (1976). The 1980 Act also provided that "any exploration or production undertaken pursuant to this section be in accordance with section 104(b) of the Naval Petroleum Reserves Production Act of 1976." 90 Stat. 2965. The referenced section of the NPRPA is the maximum protection provision codified at section 6504(a), and thus the maximum protection provision applies to production activities as well as exploration. In any event, it would make little sense for Congress to require maximum protection of surface values from exploration while requiring lesser protection from the greater impacts of oil and gas development. Accordingly, in the BLM's longstanding view, reading those two provisions (42 U.S.C. 6504(a) and 6506a(b)) together, Congress intended that BLM would provide for heightened (i.e., maximum) protection from the impacts of all oil and gas activities in Special Areas, but provide for lesser protection (mitigating reasonably foreseeable significant impacts) elsewhere throughout the Reserve. Interpreting the special areas provision (6504(a)) to apply *only* to exploration activities – when Congress chose *not* to repeal that provision when it authorized leasing, – would lead to the illogical result that BLM is required to apply a higher standard of protection for exploration, only to allow the greater impacts of oil and gas development to harm those same resources. That is, in the BLM's longstanding view, inconsistent with Congressional intent.

2. Other Authorities

Other authorities that guide management of the NPR-A include FLPMA and the ANILCA. Although Congress in 1980 exempted the NPR-A from FLPMA's land use planning and wilderness study requirements, 42 U.S.C. 6506a(c), it did not exempt the NPR-A from FLPMA's other mandates. Hence, the BLM must still "take any action

necessary to prevent unnecessary or undue degradation” of all BLM-administered public lands, including within the NPR-A. 43 U.S.C. 1732(b).

Under section 810 of ANILCA, the BLM must “evaluate the effect” of proposed oil and gas activities “on subsistence uses and needs” 16 U.S.C. 3120(a). If such activities will “significantly restrict subsistence uses,” then the BLM must hold hearings in affected communities, limit activities to “the minimal amount of public lands necessary,” and take “reasonable steps . . . to minimize adverse impacts upon subsistence uses and resources” *Id.* Fulfilling section 810’s requirements is of crucial importance for the NPR-A, as over 40 communities utilize its resources for subsistence purposes.¹⁵

D. Current Conditions

Conditions in the NPR-A are changing rapidly, as the Arctic continues to warm more than twice as fast as the rest of the Earth.¹⁶ This is causing disruptions to natural ecosystems, Native communities, and subsistence use patterns throughout the NPR-A. Notable changes include accelerating permafrost degradation; impairment of sensitive wildlife habitat and movement corridors, particularly for caribou; alterations in plant communities; and impacts on subsistence activities.¹⁷ From a management standpoint, climate change is “introduc[ing] substantial uncertainty,” particularly “in predicting demographic trends of species in the area[,] and will make the predicted impacts of development more difficult to accurately assess.”¹⁸

At the same time, oil and gas development is continuing in the NPR-A, and this proposed rule would have no effect on existing activities. Approximately 2.5 million

¹⁵ BLM, Determination of NEPA Adequacy (DNA): NPR-A IAP 2020 Final EIS Evaluation 9 (Apr. 2022), available at https://eplanning.blm.gov/public_projects/117408/200284263/20058231/250064413/NPRA%20IAP%20DNA%20signed%20508.pdf.

¹⁶ National Oceanic and Atmospheric Administration, 2022 Arctic Report Card, available at <https://www.arctic.noaa.gov/Report-Card/Report-Card-2022>.

¹⁷ BLM, Willow Master Development Plan (MDP) Supplemental EIS (SEIS) 37-38, 148-49, 415-16, 422 (Jan. 2023), available at https://eplanning.blm.gov/public_projects/109410/200258032/20073121/250079303/Willow%20FSEIS_Vol%201_Ch%201-Ch%205.pdf.

¹⁸ *Id.* at 413-14.

acres of the NPR-A are currently leased. The bulk of existing leases are clustered within an area of high development potential between Teshekpuk Lake and the Colville River.¹⁹ Outside of this area, the NPR-A's development potential is medium and low.²⁰ Production is occurring on two pads in the Greater Mooses Tooth (GMT) Unit immediately west of the community of Nuiqsut. Additional development is planned in the Beartooth Unit, including under the Willow Master Development Plan (MDP), which the BLM approved on March 12, 2023. When fully built out, the Willow project will include three pads with up to 199 wells, a network of roads and pipelines, a central processing facility, and an operations center.²¹ In conjunction with the approval of the Willow MDP, the project proponent voluntarily agreed to relinquish approximately 68,000 acres of leases in the NPR-A, including approximately 60,000 acres in the Teshekpuk Lake Special Area.²² This relinquishment, along with additional provisions adopted in the Willow MDP ROD, will create an additional buffer from exploration and development activities near the calving grounds and migratory routes for the Teshekpuk Lake caribou herd, an important subsistence resource for nearby Alaska Native communities.²³

Significant surface resources are found throughout the NPR-A, but are concentrated in the Teshekpuk Lake Special Area and the other Special Areas. These resources include:

- **Caribou:** Because caribou exhibit high fidelity to calving grounds, herds are identified based on the location of those grounds.²⁴ The NPR-A contains extensive calving grounds for two herds: the Teshekpuk Caribou Herd and the

¹⁹ 2020 NPR-A IAP Final EIS at B-3 (June 2020).

²⁰ *Id.* at B-5.

²¹ BLM, Willow MDP ROD 3 (Mar. 2023), *available at* https://eplanning.blm.gov/public_projects/109410/200258032/20075029/250081211/2023%20Willow%20MDP%20Record%20of%20Decision.pdf.

²² DOI, Interior Department Substantially Reduces Scope of Willow Project (Mar. 13, 2023), *available at* <https://doi.gov/pressreleases/interior-department-substantially-reduces-scope-willow-project>.

²³ *Id.*

²⁴ Willow MDP SEIS at 224.

Western Arctic Caribou Herd.²⁵ During most years, the highest density of calving and post-calving use for the Teshekpuk herd occurs southeast of Teshekpuk Lake. Based on the results of a 2022 photo-census, the Teshekpuk herd population appears stable in spite of low birth rates and high harvest levels.²⁶ The principal calving grounds of the Western Arctic herd are located in the Utukok River Uplands Special Area. After reaching a recorded peak population of 243,000 animals in the 1970s, the Western Arctic herd has declined in recent years.²⁷ According to the Alaska Department of Fish & Game, the Western Arctic herd population now stands at roughly 164,000 animals. For this reason, the Western Arctic Caribou Herd Working Group recently designated the herd as “Preservative, Declining” – a management designation that triggers harvest and other restrictions – and recommended strengthening protections for the Western Arctic’s calving grounds in the NPR-A.²⁸

- **Birds:** Concentrations of shore and waterbirds in the NPR-A are among the highest in the Arctic coastal plain. In recognition of this, the National Audubon Society has identified seven Important Bird Areas in the NPR-A, including three within the Colville River, Kasegaluk Lagoon, and Teshekpuk Lake Special Areas. The East Asian-Australasian Flyway Partnership (EAAFP) has also designated the Qupałuk EAAFP Flyway Network Site

²⁵ 2020 NPR-A IAP Final EIS at 3-180.

²⁶ Willow MDP SEIS at 224.

²⁷ 2020 NPR-A IAP Final EIS at 3-181-82; *see also* Western Arctic Caribou Herd Working Group, Draft – 2022 Meeting Summary 16-17, *available at* <https://westernarcticcaribou.net/wp-content/uploads/2023/02/2022-WACH-WG-Meeting-Summary-DRAFT-for-WACHWG-approval-at-2023-2.14.2023.pdf>. “Primary causes of mortality are predation, ‘unknown’ . . . Since 2005, the herd has had more years of decline than increase or stability, with cow mortality higher and calf recruitment lower.”

²⁸ Western Arctic Caribou Herd Working Group, Draft – 2022 Meeting Summary 16-17, *available at* <https://westernarcticcaribou.net/wp-content/uploads/2023/02/2022-WACH-WG-Meeting-Summary-DRAFT-for-WACHWG-approval-at-2023-2.14.2023.pdf>.

within the Teshekpuk Lake Special Area.²⁹ The lake contains an “exceptional” breeding and molting ground for geese and other waterfowl, as an estimated 573,000 birds breed at the lake. The NPR-A also provides habitat for two threatened species – the spectacled eider and the Alaska breeding population of Steller’s eider – and 11 BLM Alaska special status species. Many of the bird populations breeding in the Arctic have been in decline since the 1980s; shorebirds as a group have declined by about half and land-birds by about 20 percent.³⁰

- **Fish:** Fish are widely distributed in the NPR-A’s extensive network of lakes, ponds, alluvial and beaded streams, and adjacent wetlands. The most common fish species are Arctic grayling, broad whitefish, burbot, least cisco, Arctic cisco, Arctic flounder, round whitefish, humpback whitefish, and ninespine stickleback. The NPR-A also provides “essential” habitat for several species of Pacific salmon.³¹ Many fish species, particularly anadromous species, migrate both locally and extensively between major drainages to access habitats that support various life history stages.³² Most of these habitats currently exhibit few, if any, impacts from human activities.³³
- **Marine mammals:** Eleven species of marine mammals are found in or near the NPR-A, including six cetaceans (bowhead whales, minke whales, gray whales, killer whales, beluga whales, and narwhals), four pinnipeds (pacific walrus, bearded seals, spotted seals, and ringed seals), and the polar bear; four of these species are listed as threatened or endangered under the ESA. Special

²⁹ East Asian-Australasian Flyway Partnership, Qupaluk Flyway Network Site [EAAF133] – East Asian-Australasian Flyway Partnership, available at <https://www.eaaflyway.net/qupaluk-flyway-network-site-eaaf133-east-asian-australasian-flyway-partnership/>.

³⁰ 2020 NPR-A IAP Final EIS at 3-137-46.

³¹ 2020 NPR-A IAP Final EIS at 3-122, M-2, M-3.

³² Willow MDP SEIS at 165.

³³ 2020 NPR-A IAP Final EIS at 3-119.

Areas provide important habitat for many marine mammals, including spotted seals and walruses, which utilize haul-out areas in the Kasegaluk Lagoon and Peard Bay Special Areas, and polar bears, which are increasingly using terrestrial habitats in the Teshekpuk Lake Special Area due to receding sea ice. Overall, the implications of climate change for marine mammals in the Arctic are substantial. Continued arctic warming and the resulting deterioration of sea ice pose a major threat to marine mammals and their prey in the Arctic.³⁴

- **Cultural resources:** Although less than 3 percent of the NPR-A has been surveyed for cultural resources, nearly 2,000 sites have been identified. Additionally, there are 925 documented Traditional Land Use Inventory sites in the NPR-A, which are important place names, landmarks, traditional land use sites, travel routes, and other places of cultural importance to the North Slope Iñupiat. These sites have ongoing spiritual and cultural importance to residents of the North Slope. Protecting cultural resources sites, both documented and undocumented, is of concern to the Iñupiat. However, early exploration and development projects on the North Slope had a greater potential to affect cultural resources due to the less stringent regulations and identification requirements than those in place today. For example, oil exploration trails have been associated with some damage to the Qalluvuk site, a traditional fishing and hunting area that also served as a trading station in the 1930s. Other observations, testimony, and traditional knowledge from local residents have documented experiences associated with cultural resource

³⁴ *Id.* at 3-208-222.

impacts, including the potential disturbance of gravesites and camps from winter seismic exploration activities.³⁵

- **Recreation resources:** The NPR-A offers numerous unique and primitive recreational opportunities, including backpacking, boating, sight-seeing, hunting, fishing, tourism, and off-highway vehicle use. Because most of the NPR-A is considered an unmodified natural environment, individual users rarely, if ever, encounter other recreationists. Guided expeditions for backpacking, sight-seeing, and hunting primarily occur in the Utukok River Uplands. Similar recreational activities also occur in the vicinity of Teshekpuk Lake and Umiat.³⁶

Over 40 communities harvest subsistence resources from the NPR-A, including many of the resources described earlier. Six communities in particular – Anaktuvuk Pass, Atkasuk, Nuiqsut, Point Lay, Utqiagvik, and Wainwright – harvest all or nearly all of their subsistence resources from the NPR-A, including large land mammals (primarily caribou or moose), furbearers and small land mammals, non-salmon fish, waterfowl, upland game birds, and vegetation. Marine mammals and salmon harvesting is less common in the NPR-A; instead, they are harvested in nearshore areas, such as Peard Bay, Elson Lagoon, and Kasegaluk Lagoon.³⁷

Subsistence harvesting is the cornerstone of the traditional relationship of the Iñupiat people with their environment. Residents of communities in and around the NPR-A rely on subsistence harvests of plant and animal resources for nutrition and their cultural, economic, and social well-being. Activities associated with subsistence – processing; sharing; redistribution networks; cooperative and individual hunting, fishing, whaling, and gathering; and ceremonial activities – strengthen community and family

³⁵ *Id.* at 3-249-51.

³⁶ *Id.* at 3-319.

³⁷ *Id.* at 3-262.

social ties, reinforce community and individual cultural identity, and provide a link between contemporary Alaska Natives and their ancestors. These activities are guided by traditional knowledge based on a long-standing relationship with the environment.

Traditional Iñupiaq values remain strong on the North Slope and include respect for nature, humility, love and respect for elders, cooperation, hunting traditions, knowledge of language, and family and kinship. These values are embedded within all facets of Iñupiaq society, including subsistence hunting and harvesting traditions. The ability to pass on these values through the continuation of traditional subsistence activities in traditional places is critical to maintaining Iñupiat cultural identity. Sharing is one of the core values of Iñupiaq society and culture, which serves to maintain and strengthen familial and social ties both within and between communities on the North Slope. Traditional feasts such as Nalukataq (the spring Whale Festival) and Kivgiq (the Messenger Feast) revolve around the bringing together of communities and the distribution of subsistence foods throughout the community and region. Extensive sharing networks exist between North Slope communities, and between the North Slope and other regions in Alaska. Iñupiaq people continue to identify with the places of their ancestors and return to these places to hunt, fish, camp, gather, and process wild foods. Subsistence activities help maintain the relationship between Iñupiaq people and the land, as do stories, Iñupiaq place names, trails and travel routes, and landmarks. Thus, to the Iñupiat, protection of traditional lands, waters, and the wild resources that inhabit them is essential to maintaining cultural traditions, traditional knowledge, and identity.³⁸

Impacts on subsistence are occurring on the North Slope with greater frequency as development expands across the region. Nuiqsut, the community closest to current oil and gas development on the North Slope, has experienced the most impacts. Subsistence impacts and concerns have also been documented for Point Lay, Wainwright, Utqiagvik,

³⁸ Willow MDP SEIS at 303.

Atqasuk, and Anaktuvuk Pass. Many of these concerns are related to effects of development, including seismic activity and oil and gas-related research, pipelines, and traffic, on caribou and other terrestrial species.

Overall, future infrastructure, oil and gas development, and other activities in the NPR-A area could have lasting effects on cultural practices, values, and beliefs. The potential impacts of development could result in reduced harvests, changes in uses of traditional lands, and decreased community participation in subsistence harvesting, processing, consuming, sharing, and associated rituals and feasts. Because of this, communities could experience a loss of cultural and individual identity associated with subsistence, a loss of traditional knowledge about the land, damaged social and kinship ties, and effects on spirituality associated with degradation of the NPR-A.³⁹

The BLM solicits comments on this section. Specifically, BLM welcomes comment from the regulated community including industry, residents of communities in and around the NPR-A, and Alaskan natives and indigenous Tribes who may benefit or bear costs from this proposed rule.

E. Need for the Rule

The BLM is proposing this revision because the regulatory framework governing the management and protection of surface resources and Special Areas in the NPR-A needs updating. Conditions throughout the Arctic have changed dramatically since 1977, when the BLM issued the current regulations for management of surface resources and Special Areas in the NPR-A. As discussed in greater detail in Section II.D, the impacts of climate change on the NPR-A's natural environment and Native communities are intensifying. Conditions are changing rapidly in the Arctic, making it necessary and appropriate for the BLM to develop new regulations that account for and respond to these changing conditions. Thus, the proposed rule would direct the BLM to regularly address

³⁹ 2020 NPR-A IAP Final EIS at 3-265-66, 3-280.

changing conditions. Among other things, it would require the BLM to conduct an evaluation of Special Areas at least once every 5 years and update Special Area designations to include new resource values. It also would require the BLM to account for any uncertainty concerning the effects of proposed activities.

New and revised standards and procedures are also needed to ensure that the BLM is fulfilling its statutory duties under the NPRPA, FLPMA, and other authorities to the best of its ability. For example, the BLM has a responsibility to “provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects [of oil and gas activities] on the surface resources” throughout the NPR-A.” 42 U.S.C. 6506a(b). The current regulations, however, provide little detail on the standards and procedures the BLM should use to implement these important requirements.

The BLM also has an obligation to “assure the maximum protection of . . . surface values” within Special Areas “to the extent consistent with the requirements of [the NPRPA] for the exploration of the reserve.” 42 U.S.C. 6504(a). The proposed rule would improve upon the standards and procedures that implement this requirement. For example, the current regulations identify specific measures the BLM may take to assure maximum protection but provide no further guidance on the evaluation and selection of such measures.

In addition, the current regulations do not reflect the full management regime for the NPR-A. This proposed rule would provide a more comprehensive guide to managing the NPR-A. Currently, the applicable legal standards and procedures are scattered throughout several statutes, regulations, plans, and guidance documents. For example, the existing regulations do not integrate with the use of IAPs, which BLM has used either on a regional or area wide basis for the NPR-A for over two decades. Although the BLM is not required to plan for the use of the NPR-A, see 42 U.S.C. 6506a(c), it has chosen to

produce the IAP through a public process and has analyzed it in an Environmental Impact Statement. The IAP allocates land uses in the NPR-A and details oil and gas lease stipulations and infrastructure restrictions for Special Areas. The overlay of a regulatory regime to govern the NPR-A, including the development and use of IAPs, would enhance consistency and certainty, particularly with respect to protection of surface resources and Special Areas.

III. Section-by-Section Discussion

The proposed rule would change the section designations from the current regulations to implement Office of the Federal Register requirements. Some provisions of the existing regulations would not change; we do not discuss those provisions here.

Section 2361.1 Purpose.

Section 2361.0-1 would be redesignated to § 2361.1. The existing provision states that the purpose of the regulations is “to provide procedures for the protection and control of environmental, fish and wildlife, and historical or scenic values” in the NPR-A. As proposed, § 2361.1 would establish a two-part purpose for the rule to more accurately and completely reflect the scope of the regulations. The first purpose would be to provide standards and procedures to implement 42 U.S.C. 6506a(b), which requires the Secretary to ensure that “[a]ctivities undertaken pursuant to this Act include or provide for such conditions, restrictions, and prohibitions as [she] deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [NPR-A].”

The second purpose outlined in this section would be to provide standards and procedures to implement 42 U.S.C. 6504(a), under which any exploration in Special Areas “shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the [NPR-A].” The standards and procedures to implement these two

provisions would also fulfill BLM's mandate to take action necessary to prevent unnecessary or undue degradation under FLPMA, 43 U.S.C. 1732(b).

Section 2361.0-2 Objectives.

The existing § 2361.0-2 states the objectives of the regulations. We propose to remove this section because our proposed revision of § 2361.1 would make it redundant.

Section 2361.3 Authority

Section 2361.0-3 would be redesignated to § 2361.3. The existing provision lists the NPRPA as the statutory authority for the regulations. We propose to add the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), which amended the NPRPA and instructed the Secretary to mitigate reasonably foreseeable and significantly adverse effects on the surface resources in the NPR-A.

Section 2361.4 Responsibility.

Section 2361.0-4 would be redesignated to § 2361.4. This section would modify the existing statement that, under the NPRPA, the BLM is responsible for managing surface resources in the NPR-A to add that BLM is now also responsible for managing the subsurface mineral resources in the NPR-A. It would also add that the BLM is responsible for assuring maximum protection of Special Areas' significant resource values. Paragraph (b) would be deleted because the U.S. Geological Survey is no longer responsible for managing exploration in the NPR-A. Secretarial Order 3071, 47 FR 4751 (Feb. 2, 1982); Secretarial Order 3087, 48 FR 8982-83 (Mar. 2, 1983).

Section 2361.5 Definitions.

Section 2361.0-5 would be redesignated to § 2361.5. In this section, the BLM would update the definition for "exploration" to ensure consistency with NPRPA's definition of "petroleum." 42 U.S.C. 6501. The BLM would also update the definition of "Special Areas" for consistency with other proposed changes to the regulations. Finally, the BLM would also incorporate a new definition for "Indigenous Knowledge,"

consistent with the guidance set forth in the Memorandum issued by the Council on Environmental Quality's Office of Science and Technology Policy on November 30, 2022.⁴⁰ New definitions would also be added for "Integrated Activity Plan," "infrastructure," and "significant resource value."

Section 2361.6 Effect of law.

Section 2361.0-7 would be redesignated to § 2361.6. The BLM is proposing to update this section to conform to existing legal authorities, including adding provisions to implement the Department of the Interior Appropriations Act, Fiscal Year 1981, Pub. L. 96-514 (Dec. 12, 1980), 94 Stat. 2957, 2964, in revised paragraph (a), and the Barrow Gas Field Transfer Act of 1984, Pub. L. 98-366 (July 17, 1984), 98 Stat. 468, 470, in new paragraph (b)(4).

Section 2361.7 Severability.

This proposed new section would establish that if any provision of part 2360 is invalidated, then all remaining provisions would remain in effect. The various components of the proposed rule are distinct. For example, many of the proposed provisions would simply update the regulations to bring them more into line with the BLM's statutory duties. Those updates would function independently of the rest of the proposed rule. The procedural requirements in proposed § 2361.10(b) for protecting surface resources in the NPR-A also would stand alone, as would the codification of existing Special Areas in § 2361.20, the procedural requirements in § 2361.30, and other provisions.

Section 2361.10 Protection of surface resources.

Section 2361.1 would be redesignated to § 2361.10, and the title would be changed from "protection of the environment" to "protection of surface resources" to

⁴⁰ Council on Environmental Quality, Guidance for Federal Departments and Agencies on Indigenous Knowledge (Nov. 30, 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IG-Guidance.pdf>.

more closely track with the BLM's statutory authority under 42 U.S.C. 6506a(b), which directs the BLM to "provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [NPR-A]."

The proposed rule would establish new standards and procedures for managing and protecting surface resources in the NPR-A from the reasonably foreseeable and significantly adverse effects of oil and gas activities. In 1980, Congress authorized the Secretary to mitigate those effects through "necessary or appropriate" "conditions, restrictions, and prohibitions." 42 U.S.C. 6506a(b). Existing paragraph (a) requires the authorized officer to take action "to mitigate or avoid unnecessary surface damage and to minimize ecological disturbance throughout the reserve to the extent consistent with the requirements of the Act for the exploration of the reserve." We propose to amend paragraph (a) to mirror the statutory language. As amended, paragraph (a) also would provide further clarification by recognizing that, in some circumstances, the BLM may delay or deny proposed activities that would cause reasonably foreseeable and significantly adverse effects on surface resources.

Existing paragraph (b) would be deleted. It concerns coordination between the BLM and the U.S. Geological Survey, which is no longer relevant because the Geological Survey is no longer responsible for managing exploration in the NPR-A.

Paragraph (b) in the proposed rule would spell out new procedures for protecting surface resources in the NPR-A. As explained above, Congress assigned the BLM the duty to protect the surface resources in the NPR-A, but BLM regulations do not fully explain the scope of that duty. The proposed rule would fill that gap.

In paragraph (b)(1), the proposed rule would direct the BLM to manage oil and gas activities in accordance with the IAP. In doing so, the proposed rule would enshrine longstanding BLM practice into regulations. As explained above, the NPR-A is exempt

from FLPMA's planning requirements. Nonetheless, since 1998, the BLM has prepared several IAPs to primarily govern oil and gas activities in the NPR-A. The IAP is a form of land use plan that "addresses a narrower range of multiple use management than a resource management plan."⁴¹ In the BLM's experience, the IAP provides an invaluable means of evaluating management options, engaging the public, and guiding decision-making, consistent with the BLM's duties under NPRPA and the National Environmental Policy Act. Accordingly, the proposed rule would require the BLM to maintain an IAP, which would help guide BLM use authorizations in the NPR-A but would give way to the regulations in the event of a conflict.

Paragraph (b)(2) would require the BLM, in each decision concerning oil and gas activity in the NPR-A, to adopt measures to mitigate the reasonably foreseeable and significantly adverse effects on surface resources, taking particular care with surface resources that support subsistence. The BLM would do so by documenting for each decision its consideration of effects and how those effects informed the choice of mitigation measures. Paragraphs (b)(3) and (4) would specify that the BLM's effects analysis would include any reasonably foreseeable effects, including indirect effects (those that are "later in time or farther removed in distance"), cumulative effects (those "that result from the incremental effects of proposed activities when added to the effects of other past, present, and reasonably foreseeable actions"), and "any uncertainty concerning the nature, scope, and duration of potential effects." For example, if the BLM determined that a proposed lease sale's effects on subsistence resources – when added to the effects of other past, present, and reasonably foreseeable actions – could be significantly adverse, then under this proposed section, the BLM would need to adopt measures to mitigate those effects.

⁴¹ 2013 NPR-A IAP ROD at 17.

Existing paragraphs (c) and (d) would be deleted. Existing paragraph (c) requires the BLM to take maximum protection measures on all actions within Special Areas and identify the boundaries of Special Areas on maps. It also describes some requirements that may constitute “maximum protection measures.” Existing paragraph (d) concerns designation of new Special Areas. This material would be addressed in §§ 2361.20, 2361.30, and 2361.40. Moving this material to those new sections would provide clarification by focusing § 2361.10 on protection of surface resources throughout the NPR-A.

Proposed new paragraph (c) would clarify that for surface resources in Special Areas, the BLM also would have to comply with the provisions governing Special Areas in §§ 2361.20 through 2361.60. Moving the provisions concerning Special Areas to different sections makes that cross-reference necessary.

Proposed new paragraph (d) would require the BLM to include in each oil- and gas-related decision or authorization, “such terms and conditions that provide the Bureau with sufficient authority to fully implement the requirements of this subpart.” That provision would ensure that the BLM incorporates into decision documents whatever language is necessary to enable it to implement any final rule.

Existing paragraph (e)(1) provides that “the authorized officer may limit, restrict, or prohibit use of and access to lands within the Reserve, including special areas.” The existing rule conditions that authority by requiring it to be exercised “consistent with the requirements of the Act and after consultation with appropriate Federal, State, and local agencies and Native organizations.” The proposed rule would specify that the authorized officer has that authority “regardless of any existing authorization.” That added language would clarify that existing authorizations would not prevent the BLM from limiting, restricting, or prohibiting access to the NPR-A consistent with the requirements of the Act. The proposed rule would retain the condition that exercises of that authority must be

consistent with the NPRPA, and it would add “and applicable law” to clarify that the authorized officer cannot contradict other legal requirements. Instead of requiring the authorized officer to consult with “Native organizations,” the proposed rule would provide more specificity by requiring consultation with federally recognized Tribes and Alaska Native Claims Settlement Act corporations. Consistent with the BLM’s duty under NPRPA and ANILCA, paragraph (e)(1) would also be amended to allow the authorized officer to limit, restrict, or prohibit use of and access to the NPR-A to protect subsistence uses and resources.

Existing paragraph (f) would be amended to recognize the breadth of Federal laws that apply to the management and protection of historical, cultural, and paleontological resources in the NPR-A.

Section 2361.20 Existing Special Areas.

The existing regulations only identify the Colville River, Teshekpuk Lake, and Utukok River Uplands Special Areas by name (43 CFR 2361.1(c)); they do not account for the Kasegaluk Lagoon and Peard Bay Special Areas. Further, the current regulations do not identify or describe the significant resource values associated with each Special Area. Under the NPRPA, the BLM must assure maximum protection of each of these values consistent with exploration of the Reserve. In pursuit of that obligation, this new § 2361.20 would incorporate all five of the existing Special Areas into part 2360 and would identify the significant subsistence, recreational, fish and wildlife, historical, and scenic values that are associated with each of them. The proposed rule would require any lands designated as a Special Area to continue to be managed as such for the already-identified values and any additional values identified through the process set forth in new § 2361.30. The existing regulations (43 CFR 2361.1(c)) require the boundaries of the Special Areas to be depicted on maps available for public inspection in the BLM’s Fairbanks District Office. New § 2361.20 would specify that a map of each Special Area

is available at the Arctic District Office, which is now the BLM office that oversees the NPR-A. The BLM would also publish and maintain copies of these maps on its website.

The following briefly summarizes the existing Special Areas:

- **Colville River Special Area:** The Colville River Special Area covers 2.44 million acres along the southeastern boundary of the NPR-A. The Special Area encompasses the Colville River and two of its main tributaries – the Kogosukruk and Kikiakrorak rivers – which collectively provide “one of the most significant regional habitats for raptors in North America” and “the North Slope’s single most important area of raptor nesting habitat.”⁴² Many other bird species utilize the river corridors, including shorebirds, loons, waterfowl, inland dwelling sea birds, and several unique trans-Beringian migrant passerines.⁴³ The Special Area also “support[s] the highest concentration of . . . moose on Alaska’s North Slope,”⁴⁴ “contains world-class paleontological deposits[,] and is an important corridor for subsistence and recreational activities.”⁴⁵ Finally, the Special Area includes “numerous sites from prehistoric and historic era human activity.”⁴⁶
- **Kasegaluk Lagoon Special Area:** The Kasegaluk Lagoon Special Area, which encompasses approximately 97,000 acres, borders the Chukchi Sea in the northwestern corner of the NPR-A. It is “rich in wildlife, including migratory birds” and has especially “high values for marine mammals.”⁴⁷ The Special Area also “features tidal flats that are rare on the North Slope.”⁴⁸

These natural resources contribute to an ecosystem that is “unique . . . for the

⁴² 2013 NPR-A IAP Final EIS at 270, 355.

⁴³ CRSA EA at 19.

⁴⁴ 2013 NPR-A IAP Final EIS at 355.

⁴⁵ 1998 Northeast NPR-A IAP Final EIS.

⁴⁶ CRSA EA at 25.

⁴⁷ 2013 NPR-A IAP Final EIS at 17.

⁴⁸ *Id.*

arctic coast.”⁴⁹ Subsistence activities take place in the lagoon, which also “offer[s] primitive recreation experiences, including kayak and small boat paddling along the coast.”⁵⁰

- **Peard Bay Special Area:** The Peard Bay Special Area also borders the Chukchi Sea along the northern boundary of the NPR-A. The Special Area covers 107,000 acres and includes “haul-out areas and nearshore waters for marine mammals and a high use staging and migration area for shorebirds and waterbirds.”⁵¹
- **Teshkepuk Lake Special Area:** The Teshkepuk Lake Special Area includes 3.65 million acres in the northeastern corner of the NPR-A. Teshkepuk Lake provides “important nesting, staging, and molting habitat for a large number of ducks, geese, and swans,” “prime calving and insect-relief habitat” for the Teshkepuk Caribou Herd, and “overwintering habitat for fish .”⁵² “Of particular sensitivity are lands nearest Teshkepuk Lake that are the most heavily used by calving caribou and molting geese. . . .”⁵³ The Special Areas “is of special importance to subsistence users because of the caribou and fish resources in the area and long-standing subsistence use of the area.”⁵⁴ Additionally, the Special Area includes the Pik Dunes – “an unusual geologic feature” that “provide 1) insect-relief habitat for caribou, 2) habitat for several

⁴⁹ *Id.*

⁵⁰ 2004 Northwest NPR-A IAP ROD at 4.

⁵¹ 2013 NPR-A IAP ROD at 4.

⁵² 43 FR 28723; BLM, Northeast NPR-A Final Amended IAP/EIS 3-29 (Jan. 2005), available at <https://web.archive.org/web/20060303123155/http://www.ak.blm.gov/nenpraeis/FinalAmendedIAPEIS/Volume%201/Chapter%203%20Affected%20Environment.pdf>; 2022 NPR-A IAP ROD at 5.

⁵³ 2013 NPR-A IAP ROD at 20.

⁵⁴ BLM, Northeast NPR-A IAP/EIS ROD (Oct. 1998), available at <https://web.archive.org/web/20001210191000/http://aurora.ak.blm.gov/npra/final/html/rodtitle.html>.

uncommon plant species, and 3) data critical to understanding major climatic fluctuations over the last 12,000 years.”⁵⁵

- **Utukok River Uplands Special Area:** The Utukok River Uplands encompasses 7.1 million acres in the southwestern corner of the NPR-A. The Special Area includes “prime calving and insect-relief habitat” and “the most intensely used summer movement area” for the Western Arctic Caribou Herd.⁵⁶ “This large herd disperses widely in the winter, wandering within reach of subsistence hunters from over forty villages in northwest Alaska.”⁵⁷ The Special Area also includes “grizzly bear habitat” and “important wilderness characteristics.”⁵⁸

Section 2361.30 Special Areas designation and amendment process.

While the existing regulations anticipate that the Secretary may identify new Special Areas, they do not specify procedures for designating and amending Special Areas. In the past, the BLM has typically designated Special Areas, and received Special Area recommendations from the public and stakeholders, through the IAP revision and amendment process. Enumerating procedures for designating and amending Special Areas in the regulations would provide clarity for stakeholders and ensure that the BLM fulfills its statutory obligation to assure maximum protection of Special Areas’ significant resource values.

This proposed new section would, for the first time, provide standards and procedures for designating and amending Special Areas. Paragraph (a) would require the BLM, at least once every 5 years, to evaluate lands in the NPR-A for significant resource values and designate new Special Areas or update existing Special Areas by expanding

⁵⁵ Northeast National Petroleum Reserve Alaska Draft IAP/EIS, 62 FR 65440 (Dec. 12, 1997); Northeast NPR-A Final Amended IAP/EIS at 2-7.

⁵⁶ 2013 NPR-A IAP ROD at 21; 2022 NPR-A IAP ROD at 5.

⁵⁷ 2013 NPR-A IAP ROD at 22.

⁵⁸ 1998 Northeast NPR-A IAP Final EIS; 2013 NPR-A IAP ROD at 22.

their boundaries, recognizing the presence of additional significant resource values, or requiring additional measures to assure maximum protection of significant resource values. The BLM believes that a 5-year timeframe is reasonable considering how rapidly conditions across the Arctic are changing; it is also consistent with the agency's timeframe for similar land use planning evaluations.⁵⁹ Paragraph (a)(2) would allow, but not require, the BLM to conduct this evaluation through the IAP amendment process. Paragraph (a)(3) would require the BLM to rely on the best available scientific information, including Indigenous Knowledge, and the best available information concerning subsistence uses and resources. Paragraph (a)(4) would require the BLM to provide meaningful opportunities for public participation in the evaluation process, including review and comment periods and, as appropriate, public meetings.

Existing § 2361.1(d) concerns the submission, content, and public review of recommendations for additional Special Areas. Proposed paragraph (a)(4) would retain the basic contours of that provision but provide additional specificity. It would allow the public to participate in the evaluation process, including by recommending new Special Areas, new significant resource values for existing Special Areas, and measures to assure maximum protection of Special Areas' significant resource values. The proposed rule would require the BLM to evaluate and respond to such recommendations. Similar to existing § 2361.1, proposed paragraph (a)(4) would specify that Special Area recommendations should describe the size and location of the lands, significant resource values, and measures necessary to assure maximum protection of those values.

Paragraph (a)(5) would allow the authorized officer to implement interim measures to assure maximum protection of significant resource values in lands under

⁵⁹ See BLM Land Use Planning Handbook H-1601-1 34 (Mar. 2005) (directing the BLM to evaluate land use plans "at a minimum every five years"), available at https://www.ntc.blm.gov/krc/uploads/360/4_BLM%20Planning%20Handbook%20H-1601-1.pdf.

consideration for designation as a Special Area. This provision would assist the BLM in fulfilling its statutory duty to protect Special Areas.

Paragraph (a)(6) would require that the BLM base decisions to designate Special Areas solely on whether significant resource values are present and would prohibit the BLM from considering the existence of measures to protect or otherwise administer those values. For example, if lands not within a Special Area contained important caribou calving habitat and those lands were already subject to certain protections under the IAP, the BLM would not be permitted to consider those protections during the decision-making process for the proposed designation or update. This change is needed to align the regulations with the NPRPA, which authorizes the Secretary to designate Special Areas based on the presence of “any significant subsistence, recreational, fish and wildlife, or historical or scenic value” 42 U.S.C. 6504(a).

Paragraph (a)(7) would require the BLM, when designating a Special Area or recognizing the presence of additional significant resource values in an existing Special Area, to adopt measures to assure maximum protection of significant resource values. That provision mirrors the BLM’s statutory responsibility under the NPRPA. 42 U.S.C. 6504(a). Paragraph (a)(7) would provide needed clarification by specifying that those measures would supersede any inconsistent provisions in the IAP.

Paragraph (a)(8) would incorporate the requirement of existing § 2361.1(c) that the BLM publish in the *Federal Register* a legal description of any new Special Area. The proposed rule also would require the BLM to publish in the *Federal Register* a summary of the significant resource values supporting the Special Area designation. Rather than requiring publication in local newspapers as the current regulations require, the proposed rule would require the BLM to maintain maps of the Special Areas on its website. We believe those proposals would provide more effective public notice.

Section 2361.30(b) would establish a framework for removing lands from Special Area designations. Because Congress identified the Utukok River Uplands and Teshekpuk Lake Special Areas in the NPRPA and required them to be managed to protect surface resources, the BLM cannot remove lands from those Special Area designations absent statutory authorization. See Pub. L. 94-258, sec. 104(b), 90 Stat. 304 (1976). For other Special Areas, the proposed rule would allow the BLM to remove lands from a Special Area designation only when the significant resource values that supported the designation are no longer present (e.g., if important wildlife habitat that supported the designation was no longer present). That provision is consistent with the BLM's statutory duty to "assure the maximum protection of such surface values consistent with the requirements of [the NPRPA] for the exploration of the reserve." *Id.*

Before removing lands from a Special Area designation, paragraph (b) would require the BLM to provide the public with the opportunity to review and comment on its proposed decision and consult with federally recognized Tribes and Alaska Native Claims Settlement Act corporations. Finally, the proposed rule would require the BLM to document its consideration of those comments. Those requirements would assure public participation in the de-designation process.

Section 2361.40 Management of Oil and Gas Activities in Special Areas.

As noted above, the proposed rule would enhance the specificity of the current regulations on the mechanisms for assuring maximum protection of significant resource values in Special Areas. The current regulations paraphrase the maximum protection requirement of the NPRPA and provide examples of measures that the BLM could potentially take to assure maximum protection. See 43 CFR 2361.1(c). This proposed new section would establish new standards and procedures for achieving maximum protection of Special Areas' significant resource values, with a specific focus on addressing the impacts of oil and gas activities. Of note, this section would affirmatively

establish that assuring maximum protection of significant resource values is the management priority for Special Areas. Under proposed paragraph (a), the BLM would need to comply with this standard and adopt maximum protection measures for each significant resource value associated with a Special Area. Paragraph (b) would require the BLM take such steps to avoid the adverse effects of proposed oil and gas activities on the significant resource values of Special Areas, including by conditioning, delaying action on, or denying proposals for activities.

Paragraph (c) of this section would require oil and gas leasing and new infrastructure to conform to the land use allocations and restrictions identified on maps 2 and 4 of the 2022 IAP ROD that are published along with the final rule, unless the BLM makes revisions in accordance with § 2361.30 of these regulations. Map 2 shows the areas of the NPR-A that are open and closed to oil and gas leasing. The map reflects that approximately 11.8 million acres are open to leasing subject to the terms and conditions detailed in the IAP, while approximately 11 million acres are closed, including most of the Teshekpuk Lake and Utukok River Uplands Special Areas. The map also shows areas that are open to leasing, but subject to no surface occupancy and areas that are outside the BLM's subsurface authority.

Map 4 shows the areas of the NPR-A that are available and unavailable for new infrastructure. The map shows that new infrastructure is prohibited on approximately 8.3 million acres of the NPR-A, limited to "essential" infrastructure on approximately 3.3 million acres, and permitted on approximately 10.8 million acres. The BLM is considering including in the final rule the following definition for the term "essential," which resembles provisions of Lease Stipulation K-12 from the 2022 IAP ROD: "*Essential* means the proposed infrastructure is necessary for development and production on a valid existing onshore or offshore lease and no other feasible and prudent

option is available.” The BLM requests feedback on this approach, as well as any additional recommendations on defining this term.

The restrictions identified on Maps 2 and 4 that would apply to new oil and gas leases and infrastructure are detailed in the 2022 IAP ROD and summarized in the following table.⁶⁰

Stipulation	Objective
K-1 – River Setbacks	Minimize the disruption of natural flow patterns and changes to water quality; the loss of spawning, rearing, and over-wintering habitat for fish; and impacts to subsistence cabins and campsites, among other purposes.
K-2 – Deep Water Lakes	Minimize the disruption of natural flow patterns and changes to water quality; the loss of spawning, rearing or over wintering habitat for fish; and the disruption of subsistence activities, among other purposes.
K-4 – Kogru River, Dease Inlet, Admiralty Bay, Elson Lagoon, Peard Bay, Wainwright Inlet/ Kuk River, and Kasegaluk Lagoon, and their associated islands	Protect fish and wildlife habitat; preserve air and water quality; and minimize impacts to subsistence activities and historic travel routes on the major coastal waterbodies.
K-5 – Coastal Setback Areas	Protect coastal waters and their value as fish and wildlife habitat; minimize hindrance or alteration of caribou movement within caribou coastal insect-relief areas; and

⁶⁰ 2022 NPR-A IAP ROD at A-6 to A-21.

Stipulation	Objective
	prevent impacts to subsistence resources and activities, among other purposes.
K-6 – Goose Molting Area	Minimize disturbance to molting geese and loss of goose molting habitat in and around lakes in the Goose Molting Area.
K-8 – Brant Survey Area	Minimize the loss or alteration of habitat for, or disturbance of, nesting and brood rearing brant in the Brant Survey Area.
K-9 – Teshekpuk Lake Caribou Habitat Area	Minimize disturbance and hindrance of caribou, or alteration of caribou movements through portions the Teshekpuk Lake Caribou Habitat Area that are essential for all season use, including calving and rearing, insect-relief, and migration.
K-10 – Teshekpuk Lake Caribou Movement Corridor	Minimize disturbance and hindrance of caribou, or alteration of caribou movements (that are essential for all season use, including calving and rearing, insect-relief, and migration) in the area extending from the eastern shore of Teshekpuk Lake eastward to the Kogru River.
K-11 – Southern Caribou Calving Area	Minimize disturbance and hindrance of caribou, or alteration of caribou movements (that are essential for all season use, including calving and post calving, and insect-relief) in the area south/southeast of Teshekpuk Lake.
K-12 – Colville River Special Area	Prevent or minimize loss of raptor foraging habitat.

Stipulation	Objective
K-13 – Pik Dunes	Retain unique qualities of the Pik Dunes, including geologic and scenic uniqueness, insect-relief habitat for caribou, and habitat for several uncommon plant species.
K-14 – Utukok River Uplands Special Area	Minimize disturbance and hindrance of caribou, or alteration of caribou movements through the Utukok River Uplands Special Area that are essential for all season use, including calving and rearing, insect-relief, and migration.

Several of the restrictions utilize the term “permanent oil and gas facilities,” which is defined on page A-3 of the 2022 IAP ROD to mean:

Permanent Facilities include production facilities, pipelines, roads, airstrips, production pads, docks and other bottom-founded structures, seawater-treatment plants, and other structures associated with an oil and gas operation that occupy land for more than one winter season; also included are material sites such as sand and gravel, and “temporary platforms” if those platforms are used for production rather than exploration. Exploration wellheads and seasonal facilities such as ice roads and ice pads are excluded, even when the pads are designed for use in successive winters. This definition does not include over-summering ice pads for exploration purposes.

The BLM is considering incorporating this definition into the rule and requests feedback on this approach.

The purpose of requiring leasing and infrastructure in Special Areas to conform to IAP maps 2 and 4 is to codify the existing protections and restrictions from the 2022 IAP ROD. As explained above, the BLM developed that land use plan through a lengthy public planning process involving all stakeholders, which stretches back to the

development of the 2013 IAP ROD. The 2022 IAP ROD, which is based in large part on the framework set forth in the 2013 IAP ROD, incorporates aspects of the 2020 IAP ROD, and reflects now-settled expectations about the use of the NPR-A. It also reflects what the BLM views as the floor of protections for the NPR-A that grew out of the public planning process. By incorporating the two maps into any final rule, the BLM intends to incorporate the land use allocations, restrictions, and stipulations from the 2022 IAP ROD into the rule without reprinting a lengthy text. We seek public comment in particular on whether this approach accomplishes that goal effectively and efficiently. Do the maps convey sufficient information? Are there additional definitions that should be included in the rule? Is there a better way to accomplish our goal?

Paragraph (c) also would establish a presumption against leasing and new infrastructure on lands in Special Areas that are allocated as available for those activities. That presumption could be overcome if specific information is available to the BLM that clearly demonstrates that those activities can be conducted with no or minimal adverse effects on the significant resource values of the Special Area. The intensive process that led to the IAP resulted in a comprehensive plan for protection of the Special Areas in the NPR-A. To fulfill the BLM's statutory duty to assure maximum protection for those areas' significant resource values, the BLM believes that plan should be treated as a regulatory floor, and additional activities should only be allowed when maximum protection is assured.

The proposed definition of "infrastructure" in § 2361.5(g) would exclude "exploratory wells that are drilled in a single season; infrastructure in support of science and public safety; and construction, renovation, or replacement of facilities on existing gravel pads at previously disturbed sites where the facilities will promote safety and environmental protection." These exceptions were specifically analyzed and adopted in the 2022 IAP ROD. Proposed § 2361.40(d) would establish three additional exceptions to

the oil and gas leasing and new infrastructure prohibitions in paragraph (c). The first exception would permit leasing and infrastructure solely to address drainage of Federal oil and gas resources. Drainage occurs “when a well that is drilled or is in production adjacent to Federal or Indian leases or unleased lands is potentially draining Federal or Indian oil and gas resources.” BLM MS-3160. Surface disturbing activities would be prohibited on any lease tract issued for this purpose. The exception for drainage of Federal oil and gas resources is included because the regulations expressly provide for leasing of tracts that are subject to drainage in order to prevent loss of United States oil and gas resources and potential royalties. See 43 CFR 3130.3. No-surface-occupancy leases are an option the BLM may elect to use when the surface management agency has determined that surface oil and gas facilities and operations would pose an unacceptable risk to the surface resources. The second exception would permit the construction of new infrastructure, including roads, transmission lines, and pipelines, that would primarily benefit communities in and around the NPR-A or would support subsistence activities. The BLM would still need to adopt measures to assure maximum protection of any significant resource values affected by that infrastructure. We propose to include that exception because communities in and around the NPR-A must have some infrastructure to survive and thrive. The third exception would allow the BLM to approve new infrastructure if essential to support exploration or development of a valid existing lease and no practicable alternatives exist that would have less adverse impact on significant resource values of the Special Area. That exception is necessary to accommodate the rights of current leaseholders.

Proposed paragraph (e) would require the BLM to document and consider any uncertainty regarding potential adverse effects on Special Areas and ensure that its actions account for such uncertainty. That provision will help fulfill the BLM’s statutory mandate to assure maximum protection for Special Areas’ significant resource values.

Proposed paragraph (f) would require the BLM to prepare a Statement of Adverse Effect whenever it cannot avoid adverse effects on a Special Area. In each statement, the BLM would need to describe the significant resource values that may be affected; the nature, scope, and duration of the effects; measures the BLM evaluated to avoid those effects; a justification for not requiring those measures; and measures it would require to minimize and mitigate the adverse effects on significant resource values. The BLM will require mitigation of adverse effects on significant resource values of Special Areas that cannot be avoided or minimized. Measures the BLM may require include compensatory mitigation. Such measures will be developed, evaluated, and, as necessary, adopted in project-specific analyses. Proposed paragraphs (g) and (h) would require the BLM to provide the public with an opportunity to review and comment on any Statement of Adverse Effect and consult with federally recognized Tribes and Alaska Native Claims Settlement Act corporations that have ties to the area.

Finally, proposed paragraph (i) would require the BLM to include in each oil- and gas-related decision or authorization “terms and conditions that provide the Bureau with sufficient authority to fully implement the requirements of this section.” That provision would ensure that the BLM incorporates into decision documents the necessary language to implement any final rule.

The BLM seeks feedback on whether this proposed rule would “assure the maximum protection” of significant resource values in Special Areas “to the extent consistent with the requirements of [the NPRPA] for the exploration of the reserve.” See 42 U.S.C. 6504(a).

Section 2361.50 Management of subsistence uses within Special Areas

The BLM recognizes the overriding importance of subsistence resources to communities in and around the NPR-A. There are over 40 communities that use the NPR-A or the resources it supports for subsistence purposes, including six with significant

connections: Anaktuvuk Pass, Atkasuk, Nuiqsut, Point Lay, Utqiagvik, and Wainwright.⁶¹ All of these communities “rely on . . . subsistence resources for their physical, traditional, and social existence,” and many of these resources, including caribou, fish, and waterfowl, are concentrated in Special Areas.⁶²

Accordingly, this new section would require the BLM to manage Special Areas to protect and support fish and wildlife and their habitats and the associated subsistence use of those areas by rural residents as defined in 50 CFR 100.4, the Department of the Interior’s subsistence management regulations for public lands in Alaska. Additionally, this section would require the BLM to provide appropriate access to and within Special Areas for subsistence purposes while still assuring maximum protection of the significant resource values of the Special Areas.

Section 2361.60 Co-stewardship opportunities in Special Areas.

This proposed new section would encourage the BLM to explore co-stewardship opportunities for Special Areas, including co-management, collaborative and cooperative management, and Tribally led stewardship. This provision would advance the Federal government’s commitment to strengthening the role of Tribal governments in Federal land management. (Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, January 26, 2021; Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, Order No. 3403, November 15, 2021.)

Section 2361.70 Use authorizations.

Section 2361.2 would be redesignated to § 2361.70. Existing paragraph (a) states that all use authorizations require approval from the authorized officer “[e]xcept for petroleum exploration which has been authorized by the Act.” The proposed rule would

⁶¹ 2022 NPR-A IAP DNA at C-3-4.

⁶² 2022 NPR-A IAP ROD at 11.

omit that exception. The NPRPA of 1976 authorized the Federal government to conduct exploration activities; those activities did not require approval by an authorized officer. Since the 1980 amendments initiated a competitive oil and gas leasing program, all oil and gas activities are conducted by oil and gas companies and require authorization from a BLM authorized officer.

No substantive changes are proposed to § 2361.70(b). The BLM would modify § 2361.70(c) for clarity purposes, and would update § 2361.70(d) to recognize its duties to protect surfaces resources and assure maximum protection of Special Areas' significant resource values in the NPR-A.

Section 2361.80 Unauthorized use and occupancy.

Section 2361.3 would be redesignated to § 2361.80. No substantive changes would be made to this section.

IV. Procedural Matters

Regulatory Planning and Review (Executive Orders (E.O.) 12866, as amended by E.O 14094, and 13563)

E.O. 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) within the OMB will review all significant regulatory actions. OIRA has determined that this proposed rule is significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of

ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act.

This proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The BLM is not required to prepare an Initial Regulatory Flexibility Analysis with this proposed rule. The BLM welcomes public comments on the impact of this proposed rule on small businesses.

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. The size standards can be found in 13 CFR 121.201. For a specific industry identified by the North American Industry Classification System (NAICS), small entities are defined by the SBA as an individual, limited partnership, or small company considered at “arm’s length” from the control of any parent company, which meet certain size standards.

The proposed rule is most likely to affect business currently operating in the oil and gas sector in the NPR-A. There are eight active lessees in NPR-A. SBA size standards identify small business in the crude petroleum extraction (NAICS 211120) and natural gas extraction (NAICS 211130) industries to be those with 1,250 or fewer employees. Some of the eight active lessees meet the SBA criteria for small businesses, which is less than a substantial number of small entities potentially affected. Further, the proposed rule will not affect existing leases and therefore would not have a significant economic impact on small businesses holding these leases.

Unfunded Mandates Reform Act (UMRA)

The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. The proposed rule contains no requirements that

would apply to State, local, or Tribal governments. The costs that the proposed rule would impose on the private sector are below the monetary threshold established at 2 U.S.C. 1532(a). A statement containing the information required by the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*) is therefore not required for the proposed rule. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

Takings (E.O. 12630)

This proposed rule would not affect a taking of private property or otherwise having taking implications under E.O. 12630, as it recognizes and is consistent with valid existing rights, including oil and gas leases. This proposed rule would revise the BLM's current management framework for surface resources and Special Areas in the NPR-A. The BLM has not substantially updated this framework since the early 1980s. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required. We welcome public comments on the impact this proposed rule could have on the State of Alaska.

The proposed rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. It would not apply to States or local governments or State or local governmental entities. The proposed rule would affect the relationship between operators, lessees, and the BLM, but it does not directly impact the States. Therefore, in accordance with Executive Order 13132, the BLM has

determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988. More specifically, this proposed rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This proposed rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Consultation and Coordination with Indian Tribal Governments (E.O. 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty.

The BLM evaluated this proposed rule under the Department's consultation policy and under the criteria in E.O. Order 13175 to identify possible effects of the rule on federally recognized Indian Tribes. Since the BLM is responsible for balancing the reserve's oil and gas resources with the protection of surface resources in the NPR-A, the proposed rule may have significance to Alaska Native Tribes and Alaska Native Claims Settlement Corporations.

On August 25, 2023, the BLM sent a letter to each federally registered Alaska Tribe and Alaska Native Corporation informing them of the rulemaking effort. The letter recognized the unique and vital input of Alaska Natives and offered opportunities for participation throughout the rulemaking process. The BLM will continue to engage in outreach efforts to ensure Alaska Natives are advised of the mechanisms by which they can participate, including opportunities for individual government-to-government consultation regarding the proposed rule.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

This proposed rule contains an information collection requirement that is subject to review by OMB under the PRA. This information collection is located in § 2361.30(a)(4). One of the key principles of the proposed rule is the inclusion of stakeholder and public notice and participation in the designation and removal of lands to be included in a Special Area. To help ensure that the BLM receives the information needed to inform its decision to include lands in a Special Area, § 2361.30(a)(4) includes a list of criteria that should be addressed when a member of the public recommends lands for such a designation. This information includes the following:

- The size and location of the recommended lands;
- The significant subsistence, recreational, fish and wildlife, historical, or scenic resource values that are present within or supported by the recommended lands;
- Measures that may be necessary to assure maximum protection of those values; and
- Any other pertinent information.

The BLM has submitted a request to OMB for this information collection requirement under the requirements of 5 CFR 1320.11, *Clearance of collections of information in proposed rules*. The estimated burden associated with this information-collection is outlined as follows.

OMB Control Number: 1004-XXXX.

Title of Collection: Management and Protection of the National Petroleum Reserve in Alaska - Recommendations for Special Reserve Areas (43 CFR 2361.30).

Form Number: None.

Type of Review: New collection (Request for new OMB Control Number).

Respondents/Affected Public: Persons who wish to recommend lands to be designated as a SA in the NPR-A.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion; at least once every 5 years.

Number of Respondents: 100.

Annual Responses: 100.

Estimated Average Response time: 15 hours

Annual Burden Hours: 1,500.

Annual Burden Cost: None. If you want to comment on the information-collection requirements of this proposed rule, please send your comments and suggestions on this information collection by the date indicated in the **DATES** and **ADDRESSES** sections as previously described.

National Environmental Policy Act (NEPA)

This proposed rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this proposed rule is “of an administrative, financial, legal, technical, or procedural nature.” They do not involve any of the extraordinary circumstances listed in 43 CFR 46.215.

Effects on the Energy Supply (E.O. 13211)

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This statement is to include a detailed statement of “any adverse effects on energy supply, distribution, or use

(including a shortfall in supply, price increases, and increase use of foreign supplies)” for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a “significant energy action” as “any action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by OIRA as a significant energy action.”

This proposed rule would not have a significant effect on the Nation’s energy supply. It would restate existing statutory standards and establish a procedural framework for ensuring that the BLM meets those standards. It also would codify land use restrictions that already are legally binding in the 2022 IAP ROD. Further, the proposed rule would presume, in proposed § 2361.40(c), that oil and gas leasing or infrastructure on lands allocated as available for such activities “should not be permitted unless specific information available to the Bureau clearly demonstrates that those activities can be conducted with no or minimal adverse effects on significant resource values.” That presumption merely implements the BLM’s existing statutory duty to assure maximum protection of the significant resource values in Special Areas. 42 U.S.C. 6504(a). Therefore, the proposed rule would not change the supply, distribution, or use of energy. The BLM welcomes public comments on the impact of this proposed rule on future energy production.

Clarity of this Regulation (E.O.s 12866, 12988, and 13563)

We are required by E.O.s 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help the BLM revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary,

Land and Minerals Management.

List of Subjects in 43 CFR Part 2360

Alaska, Oil and gas activity, Protection of surface resources, Tribes, Special Areas.

For the reasons set out in the preamble, the Bureau of Land Management proposes to revise 43 CFR part 2360 as follows:

PART 2360—NATIONAL PETROLEUM RESERVE IN ALASKA

Subpart 2361—Management and Protection of the National Petroleum Reserve in Alaska

Sec.

2361.1 Purpose.

2361.3 Authority.

2361.4 Responsibility.

2361.5 Definitions.

2361.6 Effect of law.

2361.7 Severability.

2361.10 Protection of surface resources.

2361.20 Existing Special Areas.

2361.30 Special Areas designation and amendment process.

2361.40 Management of oil and gas activities in Special Areas.

2361.50 Management of subsistence uses within Special Areas.

2361.60 Co-stewardship opportunities in Special Areas.

2361.70 Use authorizations.

2361.80 Unauthorized use and occupancy.

Subpart 2362 [Reserved]

Authority: 42 U.S.C. 6501 *et seq.* and 43 U.S.C. 1701 *et seq.*

§ 2361.1 Purpose.

The purpose of the regulations in this subpart is to provide procedures for protection and control of the environmental, fish and wildlife, and historical and scenic values of the National Petroleum Reserve in Alaska, including mitigating the significantly adverse effects of oil and gas activities on the surface resources of the Reserve and assuring maximum protection of significant resource values in Special Areas pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*), Alaska National Interest Lands Conservation Act (94 Stat. 2371, 16 U.S.C. 3101 *et seq.*), and other applicable authorities.

§ 2361.3 Authority.

The statutory authority for these regulations is the Naval Petroleum Reserves Production Act of 1976, as amended by the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514).

§ 2361.4 Responsibility.

The Bureau of Land Management is responsible for the surface and subsurface management of the Reserve, including protecting surface resources from environmental degradation and assuring maximum protection of significant resource values in Special Areas. The Act authorizes the Bureau to prepare rules and regulations necessary to carry out surface management and protection duties.

§ 2361.5 Definitions.

As used in this subpart, the term:

Act means the Naval Petroleum Reserves Production Act of 1976 (as amended and codified at 42 U.S.C. 6501-6508).

Authorized officer means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties of this subpart.

Bureau means the Bureau of Land Management.

Exploration means activities conducted on the Reserve for the purpose of evaluating petroleum resources, including crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any such resources.

Indigenous Knowledge (IK) means a body of observations, oral and written knowledge, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, and cultural systems. IK can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. IK is developed by Indigenous Peoples including, but not limited to, Tribal Nations, American Indians, and Alaska Natives.

Integrated Activity Plan (IAP) means a land use management plan that governs the management of all BLM-administered lands and minerals throughout the Reserve.

Infrastructure means a structure or improvement that is not built for use by subsistence hunters, trappers, fishers, berry-pickers, and other subsistence users to facilitate subsistence activities and that is not ephemeral, such as snow or ice roads. Infrastructure includes pipelines, gravel drilling pads, and other improvements built to support commercial oil and gas activities, but it does not include exploratory wells that are drilled in a single season; infrastructure in support of science and public safety; and construction, renovation, or replacement of facilities on existing gravel pads at previously disturbed sites where the facilities will promote safety and environmental protection.

Reserve means those lands within the National Petroleum Reserve in Alaska (prior to June 1, 1977, designated Naval Petroleum Reserve No. 4) which was established by Executive order, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344 (the Naval Arctic Research–Laboratory - surface estate only) dated April 24, 1961.

Secretary means the Secretary of the Interior.

Significant resource value means any subsistence, recreational, fish and wildlife, historical, or scenic value identified by the Bureau as supporting the designation of a Special Area.

Special Areas means areas within the Reserve identified by the Secretary or by statute as having significant resource values and that are managed to assure maximum protection of such values, to the extent consistent with the requirements of the Act for the exploration of the Reserve.

Use authorization means a written approval of a request for use of land or resources.

§ 2361.6 Effect of law.

(a) Subject to valid existing rights, and except as provided by the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), all lands within the exterior boundaries of the Reserve are reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other acts.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Secretary is authorized to:

(1) Make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601), for appropriate use by Alaska Natives and the North Slope Borough.

(2) Make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out the Secretary's responsibilities under the Act.

(3) Convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

(4) Grant such rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*) or section 28 of the Mineral Leasing Act, as amended (30 U.S.C. 185), as may be necessary to permit the North Slope Borough to provide energy supplies to villages on the North Slope.

(c) All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Reserve shall remain in full force and effect to the extent not inconsistent with the Act.

(d) To the extent not inconsistent with the Act, all other public land laws are applicable.

§ 2361.7 Severability.

If a court holds any provision of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these regulations and their applicability to other people or circumstances will remain unaffected.

§ 2361.10 Protection of surface resources.

(a) In administering the Reserve, the Bureau must protect surface resources by adopting whatever conditions, restrictions, and prohibitions it deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects of proposed activities. Such conditions, restrictions, or prohibitions may involve conditioning, delaying action on, or denying some or all aspects of proposed activities, and will fully consider community access and other infrastructure needs, after consultation with the North Slope Borough and consistent with § 2361.6.

(b) The Bureau will use the following procedures to protect surface resources from the reasonably foreseeable and significantly adverse effects of proposed activities:

(1) The Bureau will maintain an Integrated Activity Plan (IAP) addressing management of all BLM-administered lands and minerals throughout the Reserve. When issuing a use authorization, the Bureau must conform to the IAP and these rules. To the extent there is any inconsistency between the IAP and these rules, the rules govern;

(2) In each decision concerning proposed activity in the Reserve, the Bureau will document consideration of, and adopt measures to mitigate, reasonably foreseeable and significantly adverse effects on fish and wildlife, water, cultural, paleontological, scenic, and any other surface resource. The Bureau will take particular care to account for, and mitigate adverse effects on, surface resources that support subsistence uses and needs;

(3) In assessing effects of a decision concerning proposed activity in the Reserve, the Bureau will identify and evaluate any reasonably foreseeable effects of its decision, including effects that are later in time or farther removed in distance, and effects that

result from the incremental effects of the proposed activities when added to the effects of other past, present, and reasonably foreseeable actions; and

(4) The Bureau will document its consideration of any uncertainty concerning the nature, scope, and duration of potential effects on surface resources of the Reserve and shall ensure that any conditions, restrictions, or prohibitions on proposed activities account for and reflect any such uncertainty.

(c) When affected surface resources are located in Special Areas, the Bureau must comply with the procedures and requirements of §§ 2361.20 through 2361.60.

(d) The Bureau must include in each decision and authorization related to proposed activity in the Reserve such terms and conditions that provide the Bureau with sufficient ability to fully implement the requirements of this subpart.

(e)(1) To the extent consistent with the requirements of the Act, the terms of any applicable existing authorization, and applicable law, and after consultation with appropriate Federal, State, and local agencies, federally recognized Tribes, and Alaska Native Claims Settlement Act corporations, the authorized officer may limit, restrict, or prohibit the use of or access to lands within the Reserve, including Special Areas. Upon proper notice, as determined by the authorized officer, such actions may be taken to protect fish and wildlife breeding, nesting, spawning, lambing or calving, or migrations; subsistence uses and resources; and other environmental, scenic, or historic values.

(2) The consultation requirement in § 2361.1(e)(1) is not required when the authorized officer determines that emergency measures are required.

(f) No site, structure, object, or other values of historical, cultural, or paleontological character, including, but not limited to, historic and prehistoric remains, fossils, and artifacts, shall be injured, altered, destroyed, or collected without authorization under an appropriate Federal permit and without compliance with applicable law governing cultural items, archaeological resources, and historic properties.

§ 2361.20 Existing Special Areas.

Any lands within the Reserve designated as a Special Area as of [EFFECTIVE DATE OF THE FINAL RULE], will continue to be managed as a Special Area except as modified pursuant to § 2361.30, including:

(a) *Colville River Special Area.* The Colville River Special Area encompasses the area within the boundaries depicted on maps that are published as of [EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Colville River Special Area shall be managed to assure maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

(1) Important habitat for raptor species, including, but not limited to, the Arctic peregrine falcon;

(2) Important habitat for other bird species, including, but not limited to, neotropical migratory birds, shorebirds, loons, waterfowl, inland dwelling sea birds, and passerines;

(3) Important habitat for moose;

(4) Important habitat for fish;

(5) Important subsistence activities;

(6) Important recreational activities;

(7) World-class paleontological deposits; and

(8) Significant cultural resources, including numerous sites from the prehistoric and historic eras.

(b) *Kasegaluk Lagoon Special Area.* The Kasegaluk Lagoon Special Area encompasses the area within the boundaries depicted on maps that are published as of [EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Kasegaluk Lagoon Special Area shall be managed to assure

maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

- (1) Important habitat for marine mammals;
- (2) Unique ecosystem for the Arctic Coast;
- (3) Opportunities for primitive recreational experiences;
- (4) Important habitat for migratory birds; and
- (5) Important subsistence activities.

(c) *Peard Bay Special Area.* The Peard Bay Special Area encompasses the area within the boundaries depicted on maps that are published as of [EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Peard Bay Special Area shall be managed to assure maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

- (1) Haul-out areas and nearshore waters for marine mammals; and
- (2) High-use staging and migration areas for shorebirds and waterbirds.

(d) *Teshekpuk Lake Special Area.* The Teshekpuk Lake Special Area encompasses the area within the boundaries depicted on maps that are published as of [EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Teshekpuk Lake Special Area shall be managed to assure maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

- (1) Important nesting, staging, and molting habitat for a large number of migratory and other waterbirds;
- (2) Important caribou habitat;
- (3) Important shorebird habitat;
- (4) Subsistence hunting and fishing activities;

(5) Pik Dunes; and

(6) Overwintering habitat for fish.

(e) *Utukok River Uplands Special Area*. The Utukok River Uplands Special Area encompasses the area within the boundaries depicted on maps that are published as of [EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. The Utukok River Uplands Special Area shall be managed to assure maximum protection of the following significant resource values, as well as additional values identified through the process set forth in § 2361.30:

(1) Important habitat for the Western Arctic Caribou Herd;

(2) Subsistence hunting activities;

(3) Grizzly bear habitat; and

(4) Important wilderness values.

§ 2361.30 Special Areas designation and amendment process.

(a) The Bureau must evaluate lands within the Reserve for the presence of significant subsistence, recreational, fish and wildlife, historical, or scenic values and shall designate lands as Special Areas containing such values in accordance with the following procedures:

(1) At least once every 5 years, the Bureau must evaluate and determine whether to:

(i) Designate new Special Areas;

(ii) Expand existing Special Areas;

(iii) Recognize the presence of additional significant resource values in existing Special Areas; or

(iv) Require additional measures to assure maximum protection of significant resource values within existing Special Areas.

(2) The Bureau may, but is not required to, conduct the evaluation and otherwise designate and amend Special Areas through amendment of the IAP.

(3) Throughout the evaluation process, the Bureau must rely on the best available scientific information, including Indigenous Knowledge, as well as the best available information concerning subsistence uses and resources within the Reserve.

(4) The Bureau must provide the public and interested stakeholders with notice of, and meaningful opportunities to participate in, the evaluation process, including the opportunity to recommend lands that should be considered for designation as a Special Area, significant resource values that the Bureau should consider recognizing for existing Special Areas, and measures that the Bureau should consider requiring to assure maximum protection of significant resource values within Special Areas. The Bureau will evaluate and respond to recommendations that are made in completing its evaluation. Such recommendations should identify and describe:

(i) The size and location of the recommended lands;

(ii) The significant resource values that are present within or supported by the recommended lands;

(iii) Measures that may be necessary to assure maximum protection of those values; and

(iv) Any other pertinent information.

(5) If, at any point during the evaluation process, the authorized officer determines that interim measures are required to assure maximum protection of significant resource values in lands under consideration for designation as a Special Area, the authorized officer may implement such measures during the period for which the lands are under consideration.

(6) The Bureau must base its decisions to designate lands as Special Areas solely on the presence of significant resource values and must not consider the existence of

measures that have been or may be adopted to protect or otherwise administer those values.

(7) When the Bureau designates lands as Special Areas or recognizes the presence of additional significant resource values in existing Special Areas, the Bureau must adopt measures to assure maximum protection of significant resource values. Once adopted, these measures become part of and supersede inconsistent provisions of the IAP then in effect for the Reserve.

(8) For any lands designated as a Special Area, the Bureau will publish a legal description of those lands in the *Federal Register*, along with a concise summary of the significant resource values that support the designation. The Bureau will also maintain a map of the Special Area on its website.

(b) The Bureau may not remove lands from the Teshekpuk Lake and Utukok River Uplands Special Areas unless directed to do so by statute. The Bureau may remove lands within other Special Areas only when all of the significant resource values that support the designation are no longer present. When determining whether to remove lands from a Special Area designation, the Bureau must:

(1) Prepare a summary of its proposed determination, including the underlying factual findings;

(2) Provide the public and interested stakeholders with the opportunity to review and comment on the proposed determination;

(3) Consult with any federally recognized Tribes and Alaska Native Claims Settlement Act corporations that use the affected Special Area for subsistence purposes or have historic or cultural ties to the Special Area; and

(4) Issue a determination that documents how the views and information provided by the public, federally recognized Tribes, Alaska Native Claims Settlement Act

corporations, federally qualified subsistence users, and other interested stakeholders have been considered.

§ 2361.40 Management of oil and gas activities in Special Areas.

Assuring maximum protection of significant resource values is the management priority for Special Areas. The Bureau must fulfill this duty at each stage in the decision-making process for oil and gas activities in the Reserve and in accordance with the following procedures:

(a) The Bureau will identify and adopt maximum protection measures for each significant resource value that is present in a Special Area.

(b) The Bureau must, to the extent consistent with the Act, take such steps as are necessary to avoid the adverse effects of proposed oil and gas activities on the significant resource values of Special Areas. This includes, but is not limited to, conditioning, delaying action on, or denying proposals for activities, either in whole or in part.

(c) Subject to any revisions made pursuant to § 2361.30, oil and gas leasing and authorization of new infrastructure in Special Areas will conform to the land use allocations and restrictions identified on the maps published as of [EFFECTIVE DATE OF THE FINAL RULE], and available for public inspection at the Arctic District Office. On lands allocated as available for future oil and gas leasing or new infrastructure, the Bureau will presume that those activities should not be permitted unless specific information available to the Bureau clearly demonstrates that those activities can be conducted with no or minimal adverse effects on significant resource values.

(d) The following exceptions apply within lands identified as closed to leasing or unavailable to new infrastructure:

(1) The Bureau may issue oil and gas leases in Special Areas if drainage is occurring. Any lease issued for drainage purposes will include provisions that prohibit surface-disturbing oil and gas activities on the entire lease tract.

(2) The Bureau may approve new roads, pipelines, transmission lines, and other types of infrastructure in Special Areas provided that:

(i) The infrastructure will primarily be used by and provide a benefit to communities located within or in close proximity to the Reserve or will support subsistence activities; and

(ii) Appropriate measures are adopted to assure maximum protection of significant resource values.

(3) The Bureau may approve new permanent infrastructure related to existing oil and gas leases only if such infrastructure is essential for exploration or development activities and no practicable alternatives exist which would have less adverse impact on significant resource values of the Special Area, but only if necessary to comport with the terms of a valid existing lease.

(e) The Bureau must document and consider any uncertainty concerning the nature, scope, and duration of potential adverse effects on significant resource values of Special Areas and shall ensure that any actions it takes to avoid, minimize, or mitigate such effects account for and reflect any such uncertainty.

(f) If the Bureau determines that it cannot avoid adverse effects on a Special Area's significant resource values, then it must prepare a Statement of Adverse Effect, which must describe the:

(1) Significant resource values that may be adversely affected;

(2) Nature, scope, and duration of those adverse effects;

(3) Measures the Bureau evaluated to avoid the adverse effects;

(4) Justification for not requiring those measures;

(5) Measures the Bureau will require to minimize, to the maximum extent possible, adverse effects on significant resource values of the Special Area; and

(6) Measures the Bureau will require to mitigate any residual adverse effects that cannot be avoided or minimized, including compensatory mitigation, along with an explanation of how those measures will assure maximum protection of significant resource values.

(g) The Bureau must provide the public with a meaningful opportunity to review and comment on any Statement of Adverse Effect prepared under this section and must consider and respond to any relevant matter it receives.

(h) The Bureau must consult with any federally recognized Tribes and Alaska Native Claims Settlement Act corporations that use the affected Special Area for subsistence purposes or have historic or cultural ties to the Special Area.

(i) The Bureau must include in each decision and authorization related to oil and gas activity in the Reserve terms and conditions that provide the Bureau with sufficient authority to fully implement the requirements of this section.

§ 2361.50 Management of subsistence uses within Special Areas.

(a) The Bureau will ensure that Special Areas are managed to protect and support fish and wildlife and fish and wildlife habitat and associated subsistence use of such areas by rural residents as defined in 50 CFR 100.4.

(b) The Bureau will provide appropriate access to and within Special Areas for subsistence purposes to the extent consistent with assuring maximum protection of all significant resource values that are found in such areas.

§ 2361.60 Co-stewardship opportunities in Special Areas.

In accordance with the Bureau's co-stewardship guidance, the Bureau will seek opportunities to engage Tribes in co-stewardship for Special Areas. Co-stewardship opportunities may include co-management, collaborative and cooperative management, and Tribally-led stewardship, and can be implemented through cooperative agreements, memoranda of understanding, self-governance agreements, and other mechanisms. The

Bureau may also partner with Alaska Native Claims Settlement Act corporations, local governments, or organizations as provided by law.

§ 2361.70 Use authorizations.

(a) Use authorizations must be obtained from the authorized officer prior to any use within the Reserve. Only uses that are consistent with the purposes and objectives of the Act and these regulations will be authorized.

(b) Except as may be limited, restricted, or prohibited by the authorized officer pursuant to §§ 2361.1 and 2361.2 or otherwise, use authorizations are not required for:

(1) Subsistence uses (e.g., hunting, fishing, and berry-picking); and

(2) Non-commercial recreational uses (e.g., hunting, fishing, backpacking, and wildlife observation).

(c) Applications for use authorizations shall be filed in accordance with applicable regulations in this chapter. In the absence of such regulations, the authorized officer may consider and act upon applications for uses allowed under the Act.

(d) In addition to other statutory or regulatory requirements, approval of applications for use authorizations shall be subject to such terms and conditions as the authorized officer determines to be necessary to protect the environmental, subsistence, recreational, fish and wildlife, historical, and scenic values of the Reserve and to assure maximum protection of significant resource values within Special Areas.

§ 2361.80 Unauthorized use and occupancy.

Any person who violates or fails to comply with regulations of this subpart is subject to prosecution, including trespass and liability for damages, pursuant to the appropriate laws.

Subpart 2362 [Reserved]