



RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

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Public Comments Processing

Attn: FWS-R7-ES-2009-0042

Division of Policy and Directives Management

U.S. Fish and Wildlife Service

4401 N. Fairfax Drive, Suite 222

Arlington, VA 22203

Re: Comments of the Resource Development Council - Proposed Rule to Designate Critical Habitat for the Polar Bear (FWS-R7-ES-2009-0042)

To Whom It May Concern:

This letter is in response to the U.S. Fish and Wildlife Service's request for comments on the Proposed Rule to Designate Critical Habitat for the Polar Bear (FWS-R7-ES-2009-0042). The Resource Development Council for Alaska, Inc., (RDC) strongly opposes the overly broad and excessive designation of critical habitat for the polar bear as identified in the Proposed Rule. We urge the Service to substantially reduce the area identified as critical habitat, in accordance with the best available scientific and commercial data. Critical habitat designations should be confined to those areas that are absolutely essential to the conservation needs of polar bears.

RDC is a statewide, non-profit business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, tourism and fisheries industries. RDC's membership includes Alaska Native corporations, local communities, organized labor and industry support firms. Our purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through responsible resource development.

RDC and its members support ongoing polar bear research, management and conservation. A number of our members include major industry and local government stakeholders operating within the historic and current range of the polar bear. These stakeholders, including the North Slope Borough, Arctic Slope Regional Corporation (ASRC) and oil and gas companies, have been major contributors to the extensive research conducted on polar bears and have played a significant role in advancing the scientific community's understanding of the polar bear and its habitat. This experience, especially the unparalleled traditional knowledge and understanding of the polar bear by the Iñupiat community, should be taken into consideration as the Service identifies critical habitat, essential biological features, and the need for special management measures. In light of this experience and knowledge, RDC endorses the separately filed comments of the Alaska Oil and Gas Association (AOGA) and encourages the

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Service to give serious consideration and weight to the comments filed by ASRC, the North Slope Borough and the State of Alaska.

The Proposed Rule is unprecedented

The Proposed Rule is unprecedented in a number of ways. Foremost, it applies to a species whose population worldwide has more than doubled over the past 40 years. In fact, polar bear populations are stable or increasing, despite the warming trend of the past 20-plus years and the recession of sea ice. This fact is a strong indication that protections in place today are effective in protecting polar bears.

No species has ever been listed under the Endangered Species Act (ESA) where the scientific consensus indicated the species continued to occupy its entire historical range at sustaining population levels. In Alaska, polar bears are abundant and are near historic population highs. No listings or critical habitat designations have occurred when an animal or plant was at the level of health the polar bear finds itself in today.

In its petition to list the polar bear under the ESA, the Center for Biological Diversity (CBD) claims that the species' current health is irrelevant. It argues that climate change will threaten polar bears in the future. However, the leading indicators of a species risk in ESA listings and critical habitat designations are current population, trend and the range of the species. Because of their healthy status in these leading indicators, a listing of the polar bear is unnecessary.

Second, it is not clear how critical habitat designations would help polar bears. Given the limitations of the ESA itself, the listing will not stop sea ice from melting. In fact, the U.S. Geological Survey (USGS) has concluded that restrictions on human activities would not prevent polar bear habitat – Arctic sea ice – from disappearing during the summer months. This conclusion alone calls into doubt the usefulness of the ESA and its critical habitat designations. If an ESA listing is not going to stop polar bear habitat from melting away and arrest the threat to the bears themselves, why spend the time and money to impose significant burdens on industry, government agencies, society, landowners, and others when there is no benefit to the species? The Service should clearly identify and make public – prior to making a final decision on critical habitat – how the designation of critical habitat for polar bears will slow the loss of sea ice. Specifically, we would like to know how critical habitat designations would reverse the global phenomena of climate change.

Third, like the proposed listing itself, the major studies conducted by USGS, which were used to justify an ESA listing, are filled with uncertainty and doubt. The USGS admits to the limitations inherent in its studies and concedes that “uncertainty in projections of Arctic climate change is relatively high.” These limitations and high levels of uncertainty in climate change models call into question any conclusions and critical habitat designations. The USGS studies do not change the fact that the proposed listing itself is unprecedented and based on highly-speculative risks outlined in carbon-emission scenarios and various climate change models. In fact, the USGS admits its models are highly unreliable and it reaffirmed that there continues to be a lack of science demonstrating in a *reliable* manner that polar bears are *likely* to become extinct in the *foreseeable future*. A key principal issue in this debate continues to be whether the extent and pace of summer sea ice decline in the Arctic over the next century is *reliably predictable* and, if so, is *likely* to threaten the polar bear with extinction.

Fourth, the critical habitat designation is unprecedented because of its massive scope. The Proposed Rule calls for the largest critical habitat area ever proposed, overlaying approximately 200,500 square miles – an area larger than 48 of the 50 U.S. states, and exceeding the size of California by nearly 50,000 square miles. Within this massive area is nationally-significant oil and gas activity that has coexisted with polar bears for 40 years. Moreover, oil and gas production in this region is the foundation of Alaska's economy

and new prospects have the potential to sustain the state's economy for decades, as well as reduce America's dependence on foreign oil.

Fifth, there is a strong consensus among the major stakeholders that live, own land and have business operations within or near the areas proposed for critical habitat designation. All of these interests – the North Slope Borough, local government authorities, Arctic Slope Regional Corporation, Native village corporations, Native subsistence users, the State of Alaska, and the oil industry – agree that the proposed critical habitat designations are overly broad and excessive. Given these diverse interests often disagree on various public policy issues, the strong consensus among them on the Proposed Rule speaks to the urgent need for the Service to reconsider and revise its proposal.

Sixth, as noted in AOGA's comments, the Service's proposal for critical habitat carries an alarmingly high degree of uncertainty and disagreement regarding the legal consequences of the proposed action. The Service has stated that designation of critical habitat will not have new or significant effects on energy supply, distribution or use, given the agency's longstanding findings conclude that the oil industry in Alaska has minimal impact on polar bears, does not pose a threat to the survival or recovery of the species and is more rigorously regulated under the Marine Mammal Protection Act (MMPA) than the provisions of the ESA. Yet the CBD and other environmental groups have made it clear that the designation of critical habitat should both form a mandatory legal basis for regulation of greenhouse gas emissions under the ESA, and should also provide an effective means of defeating or impeding oil and gas exploration and development in the Arctic and the adjacent Outer Continental Shelf (OCS). As a result of these conflicting views on the legal consequences of the proposed listing, AOGA explained in its comments that the oil industry, state and local governments, and Native interests are trapped by the vast disconnect between the Service's findings and assurances on the one hand, and the intentions of CBD and other environmental groups on the other hand. Litigation regarding both the scope of critical habitat designations and subsequent alleged "adverse modification" of critical habitat by oil and gas activities and other development is certain.

Proposed Critical Habitat lacks important clarifications and should be substantially reduced (Unit 1)

Under the ESA, critical habitat is to be limited to specific areas occupied by a species on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations. In addition, the ESA requires that decisions to designate critical habitat may only be made after consideration of the economic impact, the impact on national security, and any other relevant impact. Any area otherwise qualifying for designation as critical habitat may be excluded from designation if the benefits of excluding the area outweigh the benefits of including the area, unless excluding an area would result in the extinction of the species concerned.

In short, RDC believes the Proposed Rule, in its critical habitat designations, largely lacks clarification of the features essential to the conservation of polar bears. Moreover, there is a lack of demonstrated need in the Proposed Action for special management considerations. Under the ESA, special management considerations may be required only where the existing legal framework provides inadequate management measures or protections.

As noted earlier, the Service's proposal to designate an area larger than California as polar bear critical habitat, including an area containing the nation's largest producing oil fields, is excessive and should be substantially reduced. Proposed sea-ice critical habitat (Unit 1) comprises 93 percent of the proposed critical habitat for polar bears. Sea-ice critical habitat extends a minimum distance of 85 miles from the Alaska coast at the U.S.-Canadian border, and a maximum distance of 200 miles into the Arctic Ocean to the limits of the U.S. Exclusive Economic Zone boundary. This huge unit alone is larger than any other currently existing critical habitat designation.

The Service's proposal to designate this entire area as critical habitat is excessive because polar bears do not occupy areas with less than 15 percent ice concentration. The proposed definition of sea-ice habitat Primary Constituent Element (PCE) includes all sea ice over waters 300 meters or less in depth that occur over the continental shelf. This definition is overly broad and should be revised to exclude those areas comprising less than 15 percent ice concentrations. These areas do not contain biological features essential to the conservation of polar bears. Instead, they are equivalent to open water and do not provide a stable platform for polar bears to hunt seals, rest, or avoid the hazards posed by storms in open waters. As a result, designation of such areas as a PCE and as critical habitat is inappropriate.

The Service notes in the Proposed Rule that polar bears prefer habitat with sea ice concentrations that are conducive for hunting seals, provide safety from high seas, and prevent them from becoming separated from the main pack ice. These conditions occur in sea ice located over the OCS in concentrations exceeding 50 percent, with areas of 80 to 100 percent ice concentrations receiving the highest use by polar bears.

The Service asserts that sea-ice habitat may require special management measures, yet it does not fulfill its statutory obligations under the ESA and the federal Administrative Procedure Act regarding the relationship between sea-ice habitat and such management measures because the assertion is not explained or supported within the Proposed Rule. The Service's proposal does not explain why special management measures may be needed for sea-ice habitat.

To put this particular issue in perspective, when sea ice covers the 200,000 square mile area comprising Unit 1, polar bears move widely in widely dispersed low densities across the area. The area is primarily uninhabited, inaccessible and inhospitable to humans. Given the character of the area, polar bear sea-ice habitat is not a biologically limiting factor. In those few circumstances where activities do occur on ice habitat, such activities occur in a very small fraction of Unit 1 and are intensively managed for the protection of the environment and wildlife. Any oil and gas activity within Unit 1 must comply with federal, state, and North Slope Borough statutes, regulations, and ordinances, including the MMPA, the ESA, the Clean Water Act, the Clean Air Act, the Outer Continental Shelf Lands Act, the Coastal Zone Management Act, Alaska's Coastal Management Program and the Oil Pollution Act of 1990.

In determining whether special management measures or protections may be required, the Service should consider the statutes, regulations, and ordinances now in place. It should also recognize the fact that sea-ice habitat is not a biologically limiting factor, given the polar bear's widely dispersed movement across a largely uninhabited and inhospitable area. Given these facts, there is not a compelling need for special measures or protections different from those afforded by the MMPA and other existing management authorities.

Terrestrial Denning Habitat (Unit 2)

Unit 2 encompasses 5,668 miles of land, an area which is nearly 20 percent larger than the state of Connecticut. The proposed terrestrial denning critical habitat consists of a five-mile swath of the North Slope coastline from Barrow to the Kavik River, and a 20-mile wide coastal zone, including the Arctic National Wildlife Refuge, extending to the Canadian border.

While RDC recognizes that successful denning is essential for polar bears, we do not believe that special management measures or protections are necessary in the future for polar bear dens. These dens should continue to be protected through the long-standing and proven management measures applied under the MMPA.

Most of the area in Unit 2 proposed as critical habitat for the purposes of polar bear terrestrial denning is not supported by the best scientific and commercial data available. As a result, the Proposed Rule is overly broad. Although areas of actual denning occur within Unit 2 and there are other areas that hold the potential for denning, most of the area proposed for critical habitat designation does not contain biological or physical features identified by the Service as essential for polar bear conservation. In fact, approximately 99 percent of Unit 2 does not contain essential features for polar bear denning. Potential polar bear denning habitat has been mapped by the Service and by the USGS, and is based clearly on defined features with the capacity to catch enough drifting snow to be suitable for den construction. These areas are readily distinguishable from the broad expanses of unsuitable wetland tundra and shallow lakes occurring across most of the coastal plain. As a result, Unit 2 should be reduced to only those areas containing actual denning habitat.

In addition, substantial data exists on dens as a result of measures initiated under the MMPA. Forward looking infrared (FLIR) imagery of maternal polar bear dens in winter and data from radio-collared bears have provided a substantial body of reliable scientific information about the location of dens, especially those near actual or potential human activities. These data reveal that actual denning habitat occurs in very small and well-defined proportions of the coastal plain (less than one percent), and that maternal polar bear dens do not occur on most habitat within Unit 2.

Despite the significant body of information regarding the location of potentially suitable denning habitat and the location of actual dens, the Proposed Rule intends to designate as critical habitat a huge swath of the coastal plain from Barrow to the Canadian border on the basis that 85 percent of all known dens have been located somewhere within this massive area. Essentially, the Service is arbitrarily proposing the designation of critical habitat on a broad regional scale. The best available data indicates this is both inaccurate and unnecessary. Moreover, the best available data demonstrates that more than 99 percent of the proposed area does not qualify as denning habitat. Given the best available data, the Service must revise and substantially narrow Unit 2 to reflect the actual location of polar bear denning habitat.

Moreover, terrestrial denning habitat in the U.S. Beaufort Sea coastal plain is plentiful, widely distributed and undisturbed. There is vastly more potential habitat available than is currently used and it is highly unlikely that terrestrial denning habitat will become a limiting factor for polar bears, even when all foreseeable development activity is taken into account.

RDC disagrees with the Proposed Rule's assertion that special management considerations and protections may be required for polar bear terrestrial denning habitat "to minimize the risk of human disturbances and crude oil spills associated with oil and gas development and production, and the risk associated with commercial shipping." As noted earlier, oil and gas development and production in Alaska's Arctic is regulated under the provisions of the MMPA. Such development has been effectively managed by the MMPA as oil and gas development has not been a source of mortality to polar bears. It is well documented that interaction between polar bears and the oil and gas industry as regulated under the MMPA is "minimal" and that the reasonably foreseeable impacts of all oil and gas activity on polar bears is likely to be negligible. The Service has also concluded that the measures and protections afforded under the MMPA incidental take regulatory program provide a greater level of protection for polar bears than procedures available under the ESA.

RDC does agree with the Service that the best available data supports not designating shoreline areas of the Chukchi Sea as terrestrial denning critical habitat and we concur with the Service's assessment that designation of denning habitat along Alaska's west coast between Barrow and the Seward Peninsula is not warranted by the best available science. The Proposed Rule reaffirmed that the core denning areas for the Chukchi and Bering Seas populations occur along the Russian Chukotka coast and Wrangel Island. An extensive record of radio-tagged female bears demonstrates that very few of them have historically denned along the west coast.

Barrier Island Habitat (Unit 3)

The Proposed Rule designates all barrier island lands within the Beaufort and Chukchi Seas, as well as a one-mile buffer zone of water, ice or land surrounding all barrier islands, as critical habitat. In addition, the buffer zones are designated as “no disturbance zones” in the Proposed Rule. While the smallest of the three proposed critical habitat units, this is still a large area, more than twice the size of Delaware. As with Unit 1 and 2, the proposed designations are overly broad and unjustified and are not supported by the best available science.

Not all barrier island habitat is of equal value to polar bears. In fact, some islands are unsuitable or are not used by polar bears because of the absence of topographic relief. Some islands are not suitable for denning and lack other features necessary for such activity. Bears do use some of these islands and surrounding lands for resting and transit to other areas, but they also use man-made islands and causeways for the same purposes.

With regard to the designation of barrier island buffer zones as “no disturbance zones,” such action exceeds the Service’s authority in designating critical habitat. RDC concurs with the comments of the American Petroleum Institute (API) in that the designation of critical habitat serves to mandate consultation under ESA Section 7 to ensure that federal actions do not destroy or adversely modify PCEs within the designated area. API noted that designation of buffer areas as “no disturbance zones” conflates the Service’s designation of critical habitat with the Service’s Section 7 responsibilities and, in effect, unlawfully prejudices the Section 7 consultation process for specific proposed actions.

Oil and gas exploration and development should be excluded from critical habitat

RDC believes the benefits of oil and gas development on the North Slope and future development in the Chukchi and Beaufort Seas far outweigh the benefits of including areas of oil and gas activity in critical habitat. Oil and gas development and production in the Arctic provides immense benefits to the state and the nation and is clearly in the nation’s best interest from an economic and national security standpoint. Alaska oil and gas production is important to national energy needs and development has the potential to create tens of thousands of new jobs and hundreds of billions of dollars in revenues to the federal government.

In contrast, the Service itself has repeatedly concluded that the conservation benefits of designating critical habitat are minimal, while the process consumes agency resources and results in significant costs. Meanwhile, oil and gas activity has not in the past and is unlikely to in the future pose a danger to the polar bear or its habitat. In addition, such activity will continue to be regulated effectively under the MMPA.

We believe these relevant facts and benefits clearly support excluding areas of oil and gas exploration and development and other activities (see page 8) from the designation of critical habitat. Moreover, the strong prospect of litigation and its economic consequences should also support excluding areas of oil and gas activity from critical habitat. Certain litigation would likely target government permits for future oil development in or near critical habitat. The polar bear has been adopted as a symbol of global warming and is being used as part of a broad campaign by national environmental groups to block oil and gas leasing, exploration and development in the Arctic. Critical habitat designations will at a minimum delay, disrupt and increase the costs of oil and gas development. As a result, critical habitat and subsequent litigation will likely result in less oil and gas activity in Alaska.

RDC is very concerned that the listing of polar bears under the ESA and the proposed critical habitat designations could result in severe unintended economic consequences to both the national and Alaska

economies and significantly impact U.S. energy production. The listing and the proposed critical habitat designations could even jeopardize the economic viability of the Alaska Natural Gas Pipeline and therefore kill prospects for its construction and delivery of gas to Lower 48 markets (see page 9.)

The overly broad critical habitat designations could make it difficult to obtain any federal or state permits that have the potential to affect polar bears and their habitat – directly or indirectly. When the specter of litigation is included in the picture, investment in new energy projects in Alaska and elsewhere could be deflected to other prospects overseas, meaning less domestic energy development and a greater reliance on foreign imports. At the very least, the proposed critical habitat designations will highly likely result in delays and higher costs with no corresponding benefit to polar bears.

Proponents of the 2008 listing have openly called for the entire energy-rich North Slope of Alaska to be designated critical habitat and have admitted their goal is to force the U.S. government to address global climate change. They want to use the ESA and its critical habitat designations to stop production of fossil fuels and stop oil and gas development in the Arctic.

RDC applauds the Department of the Interior for acknowledging that it does not intend to use the ESA to address carbon emissions or other issues of global climate change. The department has correctly assessed the law gives it no room to address the broader issues that may be causing receding ice. However, our concern is if the proposed over reaching critical habitat designations move forward and include areas of current and future oil and gas exploration and development, a frenzy of litigation will likely occur as any threat, whether it is perceived or real, would invite third-party litigants to challenge virtually any operation or proposed project.

As it stands now, the Proposed Rule would designate all of the coastal North Slope as critical habitat, including the energy-rich northern areas of National Petroleum Reserve – Alaska (NPRA). A 2002 U.S. Geological Survey assessment of NPRA resulted in a mean estimate of 10.6 billion barrels of oil and 61 trillion cubic feet (tcf) of natural gas. An assessment of the 1002 Area of Arctic National Wildlife Refuge (ANWR) gave a mean estimate of 10.4 billion barrels of technically-recoverable oil. Overall, government reports indicate as much as 124 tcf of natural gas could be in place beneath the North Slope. Offshore in the Chukchi and Beaufort Seas, the U.S. Minerals Management Service (MMS) estimates 130 tcf of natural gas is in place, along with 27 billion barrels of oil, nearly twice what has been produced on the North Slope to date. Responsible and cautious development of these onshore and offshore energy resources would greatly benefit Alaska and its residents, and would play a major role in boosting domestic energy production. However, once critical habitat designations are in place, litigation challenging development in or near those designations will have a negative effect on new energy exploration.

The potential economic implications to Alaska of the polar bear listing and its expansive proposed critical habitat designations are frightening. Ninety percent of the Alaska's unrestricted revenue base comes from North Slope oil production. An ESA listing and third-party lawsuits from litigants with a variety of motivations would, at a minimum, discourage investment, which would likely result in less exploration, translating into lower production, which in turn would constrict revenues to the State, compromising its ability to provide services to rural and urban Alaskans. A more dire outcome would likely occur if litigants were to challenge virtually every oil and gas lease sale and project near or in critical habitat areas. On a national scale, litigants could effectively hold the nation's best onshore and offshore energy prospects hostage as they move to block virtually any new oil, gas and other fossil fuel development in the Arctic. This could bring the economy, especially in Alaska, to its knees and sharply raise the cost of energy for all Americans. Moreover, if litigants are successful in limiting domestic energy production, the nation will be forced to import more oil from overseas where less protective environmental and emission standards often apply.

Impact of third-party litigation

To imagine the potential impact of third-party litigation on North Slope communities and resource development, one only needs to look at the forest products industry in Southeast Alaska. Timber sales in this region are routinely litigated by non-development interests. As a result, the U.S. Forest Service has been unable to supply adequate amounts of timber allowed by the current Tongass National Forest land management plan to the few surviving local sawmills. The industry is now a mere shadow of itself, having lost thousands of jobs over the past two decades. Local communities have experienced severe economic downturns and the annual harvest from the Tongass has fallen beyond 50-year lows.

In response to those who claim an ESA listing of polar bears and its critical habitat designations would have no negative impact on Alaska, the oil industry and local communities, the Service should consider the severe impacts the forest products industry experienced from the listing of the Northern Spotted Owl under the ESA. Beginning in the late 1980s, lawsuits to protect the habitat of the spotted owl withdrew huge acreage of national forests from timber harvesting. President Clinton's Northwest Forest Plan set aside 24.5 million acres for spotted owl recovery under the ESA. This caused an 80 percent drop in overall timber harvests in the Pacific Northwest, which must be considered an opportunity loss. The estimated losses alone resulting from the owl recovery plan ranged from a low of \$33 billion to a high of \$46 billion. Those losses were borne out by mill closures and job losses. Since 1989, when environmental lawsuits began, through 1994, 424 lumber mills closed in the Pacific Northwest alone. More than 27,000 loggers and mill workers lost their jobs. Furthermore, as logging communities across the Northwest lost direct timber-related jobs, the jobs of thousands of other employees providing goods and services to local timber-dependent communities dried up.

Additionally, numerous local communities lost major revenues derived from the forest products industry. As mills closed and employees lost their jobs, the revenue base of many communities fell sharply. Lower revenues to state and federal governments also resulted when the sale of national forest timber products fell sharply. Even local school districts lost funding as timber-dependent counties lost tax income, population and commercial activity.

The economic costs of mill closures and lost jobs also had severe social consequences. As more logging families lost their incomes and became unable to pay their debts, the pressures within families increased, leading to social issues like alcohol and drug abuse, domestic violence, children dropping out of school and families becoming separated.

The unwarranted and overly broad proposed critical habitat designations for the polar bear could result in similar economic and social impacts, especially in Alaska, without any added benefit to the bear.

Other economic exclusions: ASRC, other Native and North Slope Borough lands

Native-owned lands, including those owned by ASRC, village corporations, and local governments such as the North Slope Borough, should be excluded from proposed critical habitat designations for economic reasons. Moreover, Native and local community lands in Northwest Alaska and on the Seward Peninsula should also be excluded. With regard to the Red Dog Mine port, this critical facility and adjacent lands must remain exempt from critical habitat designation. Likewise, the Port of Nome and other coastal facilities on the Seward Peninsula should remain exempt, too. The Port of Nome is a vital point of commerce in Western Alaska and it also is an important infrastructure component for current and future mining. Other coastal lands that may some day serve as critical infrastructure and port development for potential new mineral development in Northwest and Western Alaska, including ASRC's Western Arctic Coal deposit (which may hold up to 25% of the world's known coal resources), should be excluded from critical habitat.

Minerals are the state's second largest export commodity. In recent years, mineral exports accounted for 30% of the state's export total and consist primarily of zinc and lead from the Red Dog Mine. These resources are exported out of the Red Dog port on the Chukchi Sea. *(The Northwest Alaska region is highly mineralized and there is potential for the development of new prospects in the region. Infrastructure will be key to such development and some of this infrastructure is likely to be built on the coast.)*

Red Dog, one of the largest zinc mines in the world, both in terms of production and reserves, employs more than 475 people of which 56 percent are NANA Regional Corporation (NANA) shareholders. In 2007, it paid \$48.9 million in annual wages and benefits and spent \$130.7 million for services and goods purchased from Alaskan companies. Red Dog is the sole taxpayer to the Northwest Arctic Borough and the payment for 2007 amounted to \$11 million.

Through the Alaska Native Claims Settlement Act (ANCSA), Congress created Native regional corporations such as ASRC and NANA and provided them with lands to benefit their people financially and culturally. In the case of ASRC and NANA, Congress intended for them to use their region's natural resources to benefit their people. Congress intended for these natural resources to be developed in order to give the local Native population a means for economic independence.

Congress settled aboriginal claims to Alaskan land by transferring title to the surface and subsurface estate of millions of acres in Alaska to ASRC, NANA and ten other land-owning regional corporations. It did so with the expectation that these regional corporations would be the engines for economic development and help provide for the well being of Alaska Natives within their regions. Through the resource revenue-sharing mechanism of Section 7(i) of ANCSA, all Native regional corporations in Alaska share from the proceeds of resource development. As a result, Native corporations and their shareholders across the entire state share in the revenues generated from the development of natural resources on ASRC and NANA lands.

ASRC and NANA have grown into major economic forces in Alaska, providing jobs for their people, tax revenues for their villages and local boroughs, and cash dividends to shareholders. ASRC itself owns approximately five million acres of land on the North Slope, an area nearly the size of Massachusetts. In just a few short decades, the Iñupiat have adapted from an economy largely based on subsistence to a mixed economy. The cash portion of that mixed economy depends mostly on oil and gas and the development of other natural resources to provide jobs, economic activity and a tax base for local governments, which in turn provide basic amenities such as schools, health care and sanitation facilities – all of which are largely taken for granted by Americans elsewhere. The Iñupiat's ability to maintain their traditions, communities and basic services all depend on their ability to access natural resources on their lands. Moreover, since ASRC, NANA, and other Native entities provide important services to the oil and gas and mining industries, it is imperative these industries have access to new oil, gas, and mineral development opportunities on state and federal lands, both onshore and offshore. Onerous restrictions and regulations, as well as overreaching critical habitat designations, will diminish the Iñupiat's ability to do the very things Congress intended for them to do. They and their business partners on the North Slope and in Northwest Alaska must retain the ability to use the resources on their lands in a responsible manner.

Listing could jeopardize the Alaska natural gas pipeline

The proposed critical habitat designations could jeopardize the long-term economics of the proposed Alaska gas pipeline. The pipeline is a top national energy priority and is considered vital to Alaska's future. The gas pipeline is projected to begin generating revenues to the state about the time oil production and corresponding revenues from such production falls below levels required to sustain state services to residents.

New natural gas discoveries beyond the North Slope's 35 tcf of known reserves are vital to ensuring the long-term profitability of any gas pipeline. But the proposed critical habitat designations and third-party lawsuits could potentially block access to highly prospective areas that may hold more than 200 tcf of natural gas. If this were to happen, investors would simply direct their capital toward other opportunities in their global portfolios. Unfortunately, this would only serve to crimp domestic production and result in an increase in America's reliance on foreign sources of energy, as noted earlier in these comments. Moreover, since environmental laws and regulations tend to be weaker outside America, an increase in foreign energy production to satisfy America's domestic energy needs could result in increased impacts to the environment abroad.

Beyond oil and gas development: local community concerns

The proposed critical habitat designations carry significant impacts well beyond oil and gas development in the Arctic. All projects, big and small, including expansion of municipal facilities and services in villages to critical gravel mining, will be placed in jeopardy by a high level of uncertainty, a regulatory quagmire, litigation delays and outright stoppages. Through ANCSA, Congress intended for ASRC and the Iñupiat people to build a future for their culture based on their land and natural resources. But now the Iñupiat see their future at risk from the proposed massive critical habitat designations. Below is a brief summary of highly relevant concerns addressed in the comments of ASRC and the North Slope Borough. RDC shares these concerns (as addressed earlier in these comments) as they speak directly to potential impacts of the proposed critical habitat designations on the Iñupiat people, as well as others who live and do business within the North Slope Borough.

- Iñupiat people depend on the land proposed as critical habitat for their livelihood, under the Congressional direction of ANCSA to develop a diversified economy within a for-profit corporate structure. Their future, as set in motion under ANCSA in 1971, depends on their continued ability to properly and perpetually utilize the lands and natural resources in Northern Alaska. This is a critical "relevant factor" for the Service to consider that warrants major changes to the Proposed critical habitat designations to reduce the burden on activities in the North Slope Borough.
- The Service listed polar bears as threatened under the ESA based on its conclusions that global climate change was causing changes to polar bear habitat to the detriment of the species. North Slope Borough residents are not responsible for these causes and cannot correct them, yet the heavy burden of the proposed designations will fall on North Slope communities and the region's economy. The Service must revise the proposed designations to avoid this disparate impact on Arctic Alaska and Alaska Natives who will be profoundly affected.
- The Service has determined numerous times that polar bears are not put at risk by the economic and ongoing activities on Alaska's North Slope, including activities associated with oil and gas, natural resources and other development. Given these conclusions, the proposed critical habitat designations of over 200,000 square miles on water and land are shocking and unnecessary. It will impose the heaviest burden on those least responsible for any threat to the polar bear. Such massive designations are not necessary to the needs of the species based on the government's own conclusions.
- In the absence of the Service revising its regulations defining "adverse modification" of critical habitat to address court decisions calling into question the current regulations, the Service's assertion that designation of critical habitat will impose no incremental burden over listing of the polar bear is questionable. Without knowing the regulatory meaning of "adverse modification," we are left questioning what the proposed designations will mean for Section 7 consultations. Or worse, those who live, work and do business on the North Slope will face years of litigation over their

activities as third party advocates pursue policy goals at the expense of the North Slope Borough and others.

- The Service has ignored the burdens of the proposed designations beyond Section 7 consultations, including (as noted earlier) the chilling effect of the designations on investment and development in the region. It is also ignoring the cumulative impact of multiple ESA actions in the same geographic location. Between overlapping species listings and protective zones, with multi-season restrictions, Alaska's Arctic is being colored as "off limits" for future development. The citizens' suit provision of the ESA increases the risk that even if the Service may authorize future activity, the region will face burdensome third-party litigation over activities within polar bear critical habitat.

These local concerns are real. The proposed designations will clearly raise the cost of projects and potentially prevent some from moving forward. Such projects include new port development and expansion of village infrastructure. For example, the village of Kaktovik is planning a new airstrip. With no road system connecting villages, air transportation is essential on the North Slope and in Northwest Alaska. People and all goods must move by air or water, meaning local communities must have ports and airstrips. In addition, the proposed designations also have the potential to compromise the original purpose of municipal land entitlements – economic development. The proposed designations must not hinder essential economic and resource development, nor block the ability of North Slope, Northwest Alaska and Seward Peninsula communities to grow in the future.

In conclusion, RDC urges the Service to withdraw and significantly modify the over reaching proposed critical habitat designations to avoid potentially severe impacts the Proposed Rule will have on Alaska, the oil and gas industry, the economy, and the Iñupiat people. The livelihoods of those who live and work on the North Slope and elsewhere are at risk. Their future, as well as Alaska's economy, largely depends on access to and development of natural resources across Northern and Northwest Alaska on federal, state, North Slope Borough, and Native corporation lands. These interests and activities have coexisted with polar bears for decades. Yet the burdens of critical habitat designations will fall most heavily on local communities, Native corporations, the oil and gas industry and the State of Alaska. None of these entities are the source of the perceived threat to polar bears and none are responsible for and cannot control climate change.

RDC appreciates the opportunity to comment on the Proposed Rule and requests the opportunity to comment on any new economic analysis or future proposal for exclusions.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.



Carl Portman
Deputy Director

cc: Governor Sean Parnell
Senator Lisa Murkowski
Senator Mark Begich
Congressman Don Young