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Legislative Maps of ANWR

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Abstract. A major element of the U.S. energy debate is whether to approve energy development in the Arctic National Wildlife Refuge (ANWR) in northeastern Alaska, and if so, under what conditions, or whether to continue to prohibit development to protect the area's biological, recreational, and subsistence values. For over 20 years, the debate on whether to develop any energy resources in ANWR has focused on a familiar image of a coastal, northern part of the Refuge, the area that is thought to contain oil. Reconciliation bills under consideration in the 109th Congress have referred to two new maps, one with different boundaries than previous maps, and one apparently similar to those in previous bills. This report does not cover the general ANWR controversy, but shows the maps in the two reconciliation bills, and discusses historical maps and the implications of changes.

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Summary

A major element of the U.S. energy debate is whether to approve energy development in the Arctic National Wildlife Refuge (ANWR) in northeastern Alaska, and if so, under what conditions, or whether to continue to prohibit development to protect the area's biological, recreational, and subsistence values. For over 20 years, the debate on whether to develop any energy resources in ANWR has focused on a familiar image of a coastal, northern part of the Refuge, the area that is thought to contain oil. Reconciliation bills under consideration in the 109th Congress have referred to two new maps, one with different boundaries than previous maps, and one apparently similar to those in previous bills. This report does not cover the general ANWR controversy, but shows the maps in the two reconciliation bills, and discusses historical maps and the implications of changes. It will be updated if new maps are referenced in legislation.

Under the FY2006 Budget Resolution (H.Con.Res. 95), the House Resources and Senate Energy and Natural Resources Committees were directed to reduce mandatory spending within their jurisdictions and, as most observers expected, the two Committees recommended legislation to open the Arctic National Wildlife Refuge (ANWR) to use its expected offsetting receipts to meet that target. While the Senate Committee's bill (Title IV of S. 1932, no report filed) confined itself to the opening of the Refuge alone, the House Committee recommended a variety of other changes within its jurisdiction (Title VI of H.R. 4241, H.Rept. 109-276). Only the maps of the proposed "Coastal Plain" oil and gas development area in ANWR in the two bills will be discussed here.[1] The chief difference in the two maps is in the outer boundary of the coastal plain part of the Refuge,

[1] For other aspects of the ANWR debate, see CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin; CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*, by Pamela Baldwin; CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*, by M. Lynne Corn (Coordinator); and CRS Report RS22304, *ANWR and FY2006 Budget Reconciliation Legislation*, by M. Lynne Corn and Bill Heniff Jr.

and the inclusion or exclusion of certain Native lands. Since ANWR development bills provide for such matters as revenue disposition, surface occupancy restrictions, environmental protections, and other provisions on the *Coastal Plain* as the bills define that term, then a change in the map specified in the definition can have substantial effects on many sections of such bills. This report provides a brief history of the area proposed for development, and then discusses how the two bills and their maps differ in this respect.

Over the last 25 years, there have been numerous definitions of the "Coastal Plain" of ANWR, including:

- a definition relying on the August 1980 map first mentioned in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA, P.L. 96-487, 94 Stat. 2371);
- the 1983 legal description of the coastal plain published in the Federal Register and then placed in the Code of Federal Regulations (Appendix I, 50 C.F.R. Part 37);
- a definition relying on the same 1980 map, plus the legal description in the C.F.R.;
- a definition relying solely on a map dated September 2005; and
- a definition relying on a new map dated October 21, 2005 along with the same C.F.R. citation.

These definitions and maps will be discussed below.

Brief Legislative History of Native Lands in ANWR. In November 1957, an application for the withdrawal of lands bordering the Arctic Ocean in northeastern Alaska to create an "Arctic National Wildlife *Range*" was filed. On December 6, 1960, after statehood, the Secretary of the Interior issued Public Land Order 2214 reserving the area, including its coast, as a refuge. The potential for oil and gas leasing was expressly preserved.

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA, P.L. 92-203) to resolve all Native aboriginal land claims against the United States. ANCSA provided for monetary payments and created Village Corporations that received the surface estate to roughly 22 million acres of lands in Alaska. Village corporations obtained the right to select the surface estate of a certain amount of lands within the National Wildlife Refuge System. Under §22(g) of ANCSA, these lands were to remain subject to the laws and regulations governing use and development in the particular Refuge. Kaktovik Inupiat Corporation (KIC, the local corporation) initially received rights to three townships (about 69,000 acres) along and near the coast of ANWR. ANCSA also created Regional Corporations which could select subsurface rights to some lands and full title to others. Subsurface rights in Refuges were not available, but selections to substitute for such lands were provided.

Definition in ANILCA. ANILCA expanded the Refuge, mostly south and west, to include another 9.2 million acres. Section 702(3) designated much of the original Refuge as a wilderness area, but not the coastal plain, nor the newer portions of the Refuge. Instead, Congress postponed decisions on the development or further protection of the coastal plain — the area believed to contain oil and gas deposits. Section 1002

directed a study of ANWR's "coastal plain" (therefore often referred to as the "1002 area") and its resources to be completed within five years and nine months of enactment. The resulting 1987 study was called the *1002 report* or the Final Legislative Environmental Impact Statement (FLEIS). To a geographer, the "coastal plain" of ANWR is the relatively flat or rolling land whose southern boundary is a rather indefinite line at the foothills of the Brooks Range, and whose northern boundary is a somewhat indefinite line in the tidal zone at the coast of the Beaufort Sea; it stretches from the Canadian border on the east side of the Refuge, to ANWR's western boundary. This geographic term may not be identical to defined terms. Section 1002(b)(1) contained the definition that refers to a map that is now missing:[2]

> The term "coastal plain" means that area identified as such in the map entitled "Arctic National Wildlife Refuge", dated August 1980.

Administrative Description of the Coastal Plain. Section 103(b) of ANILCA authorized administrative creation of narrative legal descriptions of areas for which ANILCA changed the land management status, and these descriptions have the force of law. The Secretary of the Interior was authorized to make "minor" changes to boundaries established by ANILCA — minor being changes which could not increase or decrease the amount of land by more than 23,000 acres. A description of the Coastal Plain was published that excluded the approximately three townships of KIC lands then in existence, even though these lands are *geographically* part of the coastal plain and totaled approximately 69,000 acres. (48 Fed.Reg. 1685, April 19, 1983; Appendix I, 50 C.F.R. Part 37.) Without the 1980 map, it cannot be determined whether this description comported with that map or was a change from it.

These lands and a later-selected fourth KIC township that is within the defined Coastal Plain[3] (these four total approximately 92,000 acres) are all within the Refuge and subject to its regulations. The Arctic Slope Regional Corporation (ASRC) obtained subsurface rights beneath the KIC lands pursuant to a 1983 land exchange agreement. In addition, there are currently more than 10,000 acres of conveyed or claimed individual Native allotments in the 1002 area that are not expressly subject to its regulations. Were oil and gas development authorized for the federal lands in the Refuge, development would then be legally allowed or become feasible on the approximately 100,000 acres of Native lands, possibly free of any acreage limitation applying to development on the federal lands, depending on how the legislation is framed. The extent to which the Native lands would be regulated is uncertain, given the confusion over boundaries of the Coastal Plain, the status of allotments, and some of the language in the 1983 Agreement with ASRC that seems to require specific congressional language to override its terms. (See also CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*, by Pamela Baldwin.)

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[2] Felicity Barringer, "Arctic Map Vanishes and Oil Area Expands", *New York Times* (Oct. 21, 2005). It is not entirely clear that the missing map reported in this story, and once viewed by the authors, is actually the missing 1980 map. See CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*, by Pamela Baldwin, for a description of the missing map and its legal significance.

[3] The administrative legal description was not changed to reflect the fourth township and treat the Native lands consistently.

Various Definitions of Coastal Plain. Definitions or depictions of the Coastal Plain that depend on the missing 1980 map may not be sound; at least one case has held that administratively developed substitutes for a missing map that Congress relied on for substantive content are not effective.[4] The 1980 map defined the Coastal Plain for purposes of preserving that area from development pending completion of an environmental study, and possible future congressional action. Arguably, subsequent congressional action could define the Coastal Plain differently to accomplish other purposes. Over the years, ANWR development bills have taken various approaches to defining or depicting the coastal plain area that would be subject to leasing. For example, comprehensive bills in the 102d Congress defined the coastal plain by reference to a 1989 map that included all of the Native lands and contained specific provisions regarding those lands. More recently bills have been introduced that refer both to the ANILCA map and to the C.F.R. description[5] and are silent regarding Native lands.

Definition with September 2005 Map. Under §4001(a) of S. 1932, the Deficit Reduction Act of 2005, the Senate Energy Committee provided a new map prepared by the U.S. Geological Survey and dated September 2005, to accompany its submission to the Budget Committee for reconciliation and defined the Coastal Plain by reference to it. (See **Figure 1**.) This map included in the "Coastal Plain" all Native lands (both Corporation lands and allotments), though the bill text does not expressly address Native lands. The major provisions in the bill remained unchanged, including a provision (§4001(b)) authorizing development in the Coastal Plain, directing the Secretary to establish a leasing program, limiting certain surface acreage development in the Coastal Plain to 2,000 acres, and "notwithstanding any other provision of law" directing receipts from leasing and operations "authorized under this section" to be divided equally between the state of Alaska and the federal government. This last provision might give rise to Native claims for compensation for revenues from their lands. If the revenue provision is not intended to apply to Native lands, it is not clear whether other provisions also might not apply. The extent of federal control of Native lands that was intended or accomplished is not clear, given that the potential for increased federal control in the section derives primarily from a change in a map rather than legislative language. Also, some of the terms of the 1983 Agreement call for an express congressional override to negate their effects.

Definition with October 2005 Map and Legal Description. As reported, Title VI of H.R. 4241, the House reconciliation bill, includes a provision to open ANWR to development. The provision is essentially identical to previous ANWR development provisions reported in the past by the Resources Committee. The map (**Figure 2**) accompanying the bill was prepared by the U.S. Geological Survey and dated October 21, 2005. The definition of "Coastal Plain" contained in H.R. 4241 refers to the October, 2005 map, and also to the C.F.R. Appendix. Therefore, presumably the map in question is intended to be identical to the published legal description of the Coastal Plain, and therefore to exclude basically three of the four Native townships.

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[4] Coast Alliance v. Babbitt, 6 F. Supp. 2d 29 (1998 U.S. Dist. LEXIS 6927 (D. D.C. 1998), *dismissed as moot* 199 U.S. App. LEXIS 2414 (D.C. Cir. 1999). Although the case may not be precedent, its reasoning appears sound.

[5] For example, in 2002 in the 107th Congress, a Senate amendment (SA3132) defined the Coastal Plain using both the 1980 map and the C.F.R. reference.

Representations of the two recent maps follow.

Figure 1. Senate Map of 1002 Area

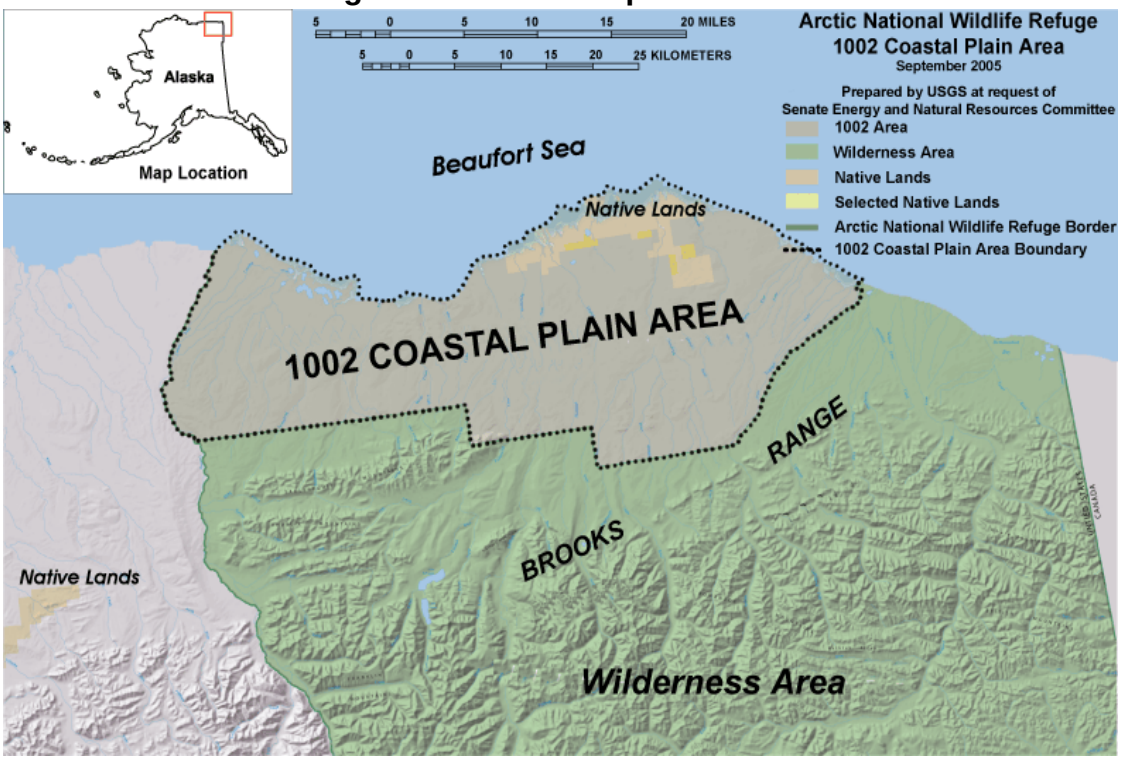

Figure 2. House Map of 1002 Area