

## MEMORANDUM

TO: BLM Alaska State Director

FROM: Principal Deputy Director, Bureau of Land Management

SUBJECT: BLM Interim Management of Special Areas within the National Petroleum Reserve-Alaska

### I. Background

The Naval Petroleum Reserves Production Act of 1976 (NPRPA), as amended, requires that the Secretary assure the maximum protection of significant surface values “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,” consistent with the exploration for and production of oil and gas from the National Petroleum Reserve – Alaska (NPR-A or Reserve). 42 U.S.C. 6504(a); *see also* 42 U.S.C. 6506a(n)(2). The NPRPA further authorizes the Secretary of the Interior to designate areas with significant surface resource values as “Special Areas” within the Reserve.

On May 7, 2024, the BLM published the final rule for management and protection of the National Petroleum Reserve in Alaska in the Federal Register (89 Fed. Reg. 38712), which among other things, provides procedures for the designation, de-designation, amendment, and change in management of Special Areas within the Reserve. Under the final rule, which became effective on June 6, 2024, the BLM has flexibility in how, whether, and when to undertake changes to Special Area designations, including by undertaking a process to amend the Integrated Activity Plan (IAP) governing the NPR-A or by utilizing a separate process (43 CFR 2361.30). The final rule also clarifies that the BLM may implement interim measures, as necessary to protect special resource values, at any time after the BLM receives a recommendation to designate or modify a Special Area, with the condition that the BLM provide public notice that interim measures are in place and reassess such measures to determine if they are still needed if they remain in place for more than 5 years (43 CFR 2361.30(b)(4)).

Section 2361.30 of the NPR-A rule establishes the process for the BLM to designate, amend, and de-designate Special Areas. During the public comment period on the proposed NPR-A rule, the BLM received several comments recommending the BLM use the rulemaking process to modify the boundaries of existing Special Areas and to recognize additional significant resource values in existing Special Areas. While the BLM declined to make those changes in the final rule, the agency initiated the process outlined in the rule soon after the final rule was effective.

On July 17, 2024, the BLM published a Request for Information in the Federal Register (89 Fed. Reg. 58181) seeking public input on any need to: (1) identify additional significant resource values for existing Special Areas; (2) modify the boundaries or management of existing Special Areas; and (3) identify public lands that may qualify for designation as new Special Areas in the NPR-A. The public comment period closed on September 16, 2024, and the BLM received a

significant amount of input in response to the request for information, including detailed proposals from Native-led non-governmental organizations (NGO) and knowledge holders and from national conservation NGOs.

## **II. Report**

The content of the submissions received in response to the Request for Information and the BLM's evaluation of this public input is summarized in the January 16, 2025, Report "Maximizing Protection in the National Petroleum Reserve - Alaska ("BLM Report") attached to this guidance.

As a result of that evaluation, the BLM has determined to:

- Recognize subsistence as a significant resource value within all existing Special Areas and in the proposed new and modified Special Areas under consideration, and apply interim measures assure the maximum protection of this significant resource value.
- Acknowledge that, based on the presence of this significant resource value, the proposed Nuiqsut Subsistence Use Area and the proposed expansions to the Teshekpuk Lake, Colville River, Utukok River Uplands, and Peard Bay Special Areas are suitable for designation and merit further consideration.
- Commence consultation and a public process to incorporate subsistence as a significant resource value into the management of existing Special Areas and, as necessary, for the proposed new and modified Special Areas under consideration. These processes will also help the BLM define the appropriate boundaries and necessary management actions, including identification of additional significant resource values, for the modified Special Areas.
- Prioritize opportunities to enter into co-stewardship of the existing Special Areas and for the proposed new and modified Special Areas, as well as for subsistence across the entire NPR-A.

This guidance describes the interim measures that will apply to ensure maximum protection of the newly recognized significant resource values, including in the proposed new and modified Special Areas under consideration, and reiterates next steps. The guidance will be posted and maintained on the BLM's website, serves as public notice that interim measures are in place, and will be reassessed to determine if they are still needed if they remain in place for more than 5 years.

This direction does not alter the applicable laws or legal framework applicable to management of the NPR-A. While certain legal obligations are discussed in this management direction, those obligations stem from applicable statutes and regulations. As implementation of the interim measures and next steps for further evaluation proceed, additional guidance will be provided as necessary.

### **III. Interim Management Direction**

The applicable regulation, 43 CFR 2361.30(b)(4), provides that the BLM may implement interim measures to assure maximum protection of significant resource values at any point while the agency is considering Special Area designations and changes to Special Area management, including expanding Special Area boundaries. The interim measures must be consistent with the governing management prescriptions in the IAP.

When the BLM decides to designate lands as a Special Area or recognize the presence of additional significant resource values in an existing Special Area, under 43 CFR 2361.30(b)(5), the BLM must adopt measures to assure maximum protection of the significant resource values through a process that includes consultation and public input in accordance with applicable laws. Unlike the interim measures, these measures are not constrained by the provisions of the current IAP. Once adopted, these new measures will supersede inconsistent provisions of the IAP then in effect for the Reserve and will be incorporated into the IAP during the next revision or amendment.

Any interim measures or maximum protection measures must also be consistent with the terms of existing leases, development plans and permits.

#### **A. Recognizing Subsistence as a Significant Resource Value and Considering New Special Areas**

##### **1. Interim management approach**

Based on the BLM's evaluation of public input received and the conditions on the ground, the BLM Report recognizes subsistence as a significant resource value in all existing and proposed Special Areas. This recognition of subsistence as a significant resource value also supports the ongoing consideration of a new Nuiqsut Subsistence Use Special Area and modified Teshekpuk Lake, Colville River, Utukok River Uplands, and Peard Bay Special Areas. As discussed in further detail in the Report, both the science provided by the Native-led NGOs and knowledge holders and by the national conservation NGOs presented compelling evidence that subsistence should be identified as a significant resource value across all these lands.

Protection of subsistence use as a significant resource value within Special Areas is required by the NPRPA, which provides:

Any 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)).

In the Report, the BLM also commits to adopting interim measures to protect subsistence as a significant resource value until such time as the BLM completes the designation process. In

response to the July 2024 Request for Information, the BLM received detailed information from the public on the conditions for subsistence users and subsistence resources within the NPR-A, particularly regarding caribou migration corridors, fish, waterfowl and marine mammals.

In developing interim measures to protect these subsistence resources, the BLM relied on the discretion provided by the structure of the NPR-A IAP, which creates a range of options available to BLM-AK to protect surface resources based on the conditions on the ground. The IAP is intended to strike a balance between permitting oil and gas activities, protecting surface resources, and providing for subsistence access and uses. To do so, the IAP not only identifies areas that are available or not available to oil and gas leasing and infrastructure but also sets out lease stipulations and required operating procedures (ROPs) that are intended to meet plan objectives. The stipulations and ROPs provide important discretion to the BLM in managing activities such as drilling, construction and use of roads, infrastructure, and use of airplanes to protect subsistence activities, including denial or suspension of activities. For example, with regard to subsistence, the IAP identified the following:

- Projects are required to include setbacks from rivers that are identified as important for subsistence use (Stipulation K-1).
- Project authorizations must ensure protection for caribou from potential impacts from new infrastructure, including pipelines and roads, as well as ground and air traffic. Based on monitoring, the BLM will require adjustments to the approved use plans if resulting disturbance is determined to be unacceptable. (Stipulations K-9, K-10, and K-11).
- Permanent facilities within the major coastal waterbodies will only be permitted on or under the water if they meet certain criteria, including minimizing impacts to subsistence uses, travel corridors, seasonally concentrated fish and wildlife resources. (Lease Stipulation K-4).
- Aircraft use is restricted during certain times of year and restrictions may include limiting the number and locations of flights, and further adjustments, including suspension of all aircraft use, will be required if the BLM finds the resulting disturbance is unacceptable. (Lease Stipulation K-6, K-14).
- Roads must be designed, constructed, maintained, and operated to create minimal environmental impacts and to protect subsistence use and access to subsistence hunting and fishing areas (ROP E-1).
- To minimize the effects of low-flying aircraft on wildlife, subsistence activities, and local communities, proposed aircraft use plans should be reviewed by appropriate federal, State, and borough agencies and consultations with these same agencies will be required if unacceptable disturbance is identified by subsistence users. Adjustments, including possible suspension of all flights, may be required by the BLM if resulting disturbance is determined to be unacceptable. (ROP F-1).
- The BLM is required to consult with potentially impacted communities on a project-by-project basis to identify and implement mitigation measures to reduce impacts to subsistence users (ROPs H-1 and H-2).

## 2. Interim measures

Consistent with the governing management prescriptions in the IAP and as required by 43 CFR 2361.30(b)(4), BLM-AK shall implement interim measures to protect the subsistence significant resource value by exercising its discretion to protect and reduce potential impacts to subsistence use and access in managing other activities in all parts of all existing and proposed Special Areas under consideration in the NPR-A.

Specifically, in evaluating proposed actions in existing and proposed Special Areas, including proposed expansions to Special Areas, BLM-AK shall consider and apply mitigation measures, as necessary to provide maximum protection for subsistence use and access, including by modifying, suspending or denying activities related to roads, infrastructure and aircraft. As part of such evaluations, BLM-AK shall document: (1) potential impacts to subsistence, (2) consideration of options to maximize protection for subsistence, and, if applicable, (3) reasons for approving actions without adopting the approach that maximizes protection for subsistence.

Per 43 CFR 2361.30(b)(4), I have determined that these interim measures are required to assure maximum protection of significant resource values in the Special Areas under consideration for recognizing a new significant resource value and developing appropriate maximum protection measures.

These new interim measures would not be applied in any manner that conflicts with the Teshekpuk Lake Conservation Right of Way, which was issued to the Nuiqsut Trilateral, Inc., by the BLM on December 17, 2024. The Right of Way implements Mitigation Measure 27 from the March 2023 Willow Master Development Plan Record of Decision to provide durable, long-term protections for the Teshekpuk Caribou Herd and its key habitat within the Teshekpuk Lake Special Area. The Nuiqsut Trilateral, Inc. is a non-profit corporation formed by the community closest to and most impacted by oil and gas development on the North Slope and has the authority to enforce, or in limited circumstances, waive increased restrictions on oil and gas development within the right-of-way. In applying any interim measures within the boundary of the Teshekpuk Lake Conservation Right of Way, the BLM will work with the Nuiqsut Trilateral, Inc., to ensure such application is consistent with the terms of the right-of-way.

### B. Co-Stewardship

Consistent with the NPR-A regulations (43 CFR 2361.60), the BLM Report also commits to taking affirmative steps to develop co-stewardship agreements with interested Alaska Native Tribes and ANCSA Corporations to enhance the management of existing and proposed new and expanded Special Areas, as well as regarding subsistence use and resources across the NPR-A.

In recognition of the importance of the participation of Alaska Native Tribes and ANCSA Corporations in management of the NPR-A and to ensure that management decisions reflect Tribal expertise and Indigenous Knowledge, BLM-AK shall explore entering into agreements with interested Alaska Native Tribes and ANCSA Corporations for co-stewardship of existing and proposed Special Areas and subsistence use and resources within the NPR-A.

#### **IV. Next Steps**

BLM-AK will initiate a process to designate a new Nuiqsut Subsistence Use Area and modified Teshekpuk Lake, Colville River, Utukok River Uplands, and Peard Bay Special Areas and to adopt measures to provide maximum protection for subsistence uses and resources in each of the existing and modified Special Areas, consistent with the NPR-A regulations, the National Environmental Policy Act, and the Federal Land Policy and Management Act. Until BLM-AK adopts new measures to protect subsistence use in the Special Areas, the interim measures will remain in effect, to the extent they are consistent with the 2022 NPR-A IAP.

In this process, BLM-AK will prioritize consultation with Alaska Native Tribes and ANCSA Corporations. The process should also include opportunities for consultation with other Federal land management agencies and provide for maximum public involvement, including consultation with State and local governments, community members, and other interested stakeholders.

Under 43 CFR 2361.30(b)(4), interim measures “will be reassessed to determine if they are still needed if they remain in place for more than 5 years.” Accordingly, the BLM shall, no later than 5 years from the date of this guidance, finalize a plan and initiate this process. In addition, BLM-AK will submit regular progress reports to the BLM Director on the status of co-stewardship in Special Areas and across the NPR-A and post those reports on its website related to the NPR-A.

Attachments:

BLM Report