

# CRS Report for Congress

## Arctic National Wildlife Refuge (ANWR): Votes and Legislative Actions, 95<sup>th</sup> Congress to 110<sup>th</sup> Congress

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# Arctic National Wildlife Refuge (ANWR): Votes and Legislative Actions, 95<sup>th</sup> Congress to 110<sup>th</sup> Congress

## Summary

A major part of the energy debate has been 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 resources. ANWR is rich in fauna, flora, and commercial oil potential. Its development has been debated for over 40 years, but increases in gasoline and natural gas prices, terrorist attacks, and infrastructure damage from hurricanes have intensified the debate. Current law forbids energy leasing in ANWR.

This report provides a summary of legislative attempts to address issues of energy development and preservation in the Refuge from the 95<sup>th</sup> Congress through the 110<sup>th</sup> Congress, with emphasis on the 108<sup>th</sup> through 110<sup>th</sup> Congresses. This history has been cited by many, in and out of Congress, as background for issues that may be raised in the 110<sup>th</sup> Congress. The substance of this issue is covered in other CRS reports. See CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): New Directions in the 110<sup>th</sup> Congress*, for information on actions in the 110<sup>th</sup> Congress relative to ANWR.

In the first session of the 110<sup>th</sup> Congress, the House rejected a motion to recommit H.R. 3221 to the Energy and Commerce Committee with instructions that it be reported back with language authorizing ANWR development. In the second session, the House rejected a motion to adjust budget levels to assume increased revenues from opening ANWR to development. Also in the second session, the Senate rejected an amendment (S.Amdt. 4720) to S. 2284 to open ANWR to energy development.

The ANWR debate took two basic legislative routes in the 109<sup>th</sup> Congress: (1) budget resolutions and reconciliation bills (S.Con.Res. 18, H.Con.Res. 95, S. 1932, H.R. 4241, S.Con.Res. 83, and H.Con.Res. 376), which cannot be filibustered; and (2) other bills (H.R. 6, an omnibus energy bill; H.R. 2863, Defense appropriations; and H.R. 5429, a bill in the second session to open the Refuge to development), which are subject to filibusters. In none of these measures did Congress reach agreement to allow development.

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# Arctic National Wildlife Refuge (ANWR): Votes and Legislative Actions, 95<sup>th</sup> Congress to 110<sup>th</sup> Congress

## Background and Analysis

The Arctic National Wildlife Refuge (ANWR) consists of 19 million acres in northeast Alaska. It is administered by the Fish and Wildlife Service (FWS) in the Department of the Interior (DOI). Its 1.5 million acre coastal plain on the North Slope of the Brooks Range is currently viewed as one of the most likely undeveloped U.S. onshore oil and gas prospects. According to the U.S. Geological Survey, there is a small chance that taken together, the fields on this federal land could hold as much economically recoverable oil as the giant field at Prudhoe Bay, found in 1967 on the coastal plain west of ANWR. That state-owned portion of the coastal plain is now estimated to have held 11 billion to 13 billion barrels of oil at the time.

At the same time, the Refuge, and especially the coastal plain, is home to a wide variety of plants and animals. The presence of caribou, polar bears, grizzly bears, wolves, migratory birds, and many other species in a nearly undisturbed state has led some to call the area “America’s Serengeti.” The Refuge and two neighboring parks in Canada have been proposed for an international park, and several species found in the area (including polar bears, caribou, migratory birds, and whales) are protected by international treaties or agreements.

The analysis below covers, first, the economic and geological factors that have triggered new interest in development, followed by the philosophical, biological, and environmental quality factors that have triggered opposition to it. That analysis is followed by a history of congressional actions on this issue, with a focus on those in the 107<sup>th</sup> Congress through the 109<sup>th</sup> Congress. See **Tables 1** and **2** for votes in the House and Senate from the 96<sup>th</sup> Congress through the 110<sup>th</sup> Congress.

The conflict between high oil potential and nearly pristine nature creates a dilemma: should Congress open the area for oil and gas development, or should the area’s ecosystem be given permanent protection from development? What factors should determine whether to open the area? If the area is opened, how can damages be avoided, minimized, or mitigated? To what extent should Congress legislate special management of the area (if it is developed), and to what extent should federal agencies be allowed to manage the area under existing law? If Congress takes no action, the Refuge remains closed to energy development.

**Table 1. Votes in the House of Representatives on  
Energy Development Within the Arctic National Wildlife Refuge**

<b>Congress</b>	<b>Date</b>	<b>Voice/ Roll Call</b>	<b>Brief Description</b>
95 <sup>th</sup>			no floor votes
96 <sup>th</sup>	5/16/79	#152	Udall-Anderson substitute for H.R. 39 adopted by House (268-157); included provisions designating all of ANWR as wilderness.
	5/16/79	#153	H.R. 39 passed House (360-65).
	11/12/80	voice (unan- imous)	Senate version (leaving 1002 area development issue to a future Congress) of H.R. 39 passed House.
97 <sup>th</sup>			no floor votes
98 <sup>th</sup>			no floor votes
99 <sup>th</sup>			no floor votes
100 <sup>th</sup>			no floor votes
101 <sup>st</sup>			no floor votes
102 <sup>nd</sup>			no floor votes
103 <sup>rd</sup>			no floor votes
104 <sup>th</sup>	11/17/95	#812	House agreed (237-189) to conference report on H.R. 2491 (H.Rept. 104-350), FY1996 budget reconciliation (a large bill that included 1002 area development provisions; see text).
105 <sup>th</sup>			no floor votes
106 <sup>th</sup>			no floor votes
107 <sup>th</sup>	8/1/01	#316	House passed Sununu amendment to H.R. 4 to limit specified surface development of 1002 area to a total of 2,000 acres (228-201).
	8/1/01	#317	House rejected Markey-Johnson (CT) amendment to H.R. 4 to strike 1002 area development title (206-223).
	8/2/01	#320	H.R. 4, an omnibus energy bill, passed House (240-189). Title V of Division F contained 1002 area development provisions.
108 <sup>th</sup>	4/10/03	#134	House passed Wilson (NM) amendment to H.R. 6 to limit certain features of 1002 area development to a total of 2,000 acres (226-202).
	4/10/03	#135	House rejected Markey-Johnson (CT) amendment to H.R. 6 to strike 1002 area development title (197-228).
	4/11/03	#145	House passed H.R. 6, a comprehensive energy bill (247-175); Division C, Title IV would have opened the 1002 area to energy development.

Congress	Date	Voice/ Roll Call	Brief Description
109 <sup>th</sup>	3/17/05	#88	House adopted (218-214) the concurrent budget resolution, H.Con.Res. 95, which included spending targets that would be difficult to achieve unless ANWR development legislation was passed.
	4/20/05	#122	House rejected (200-231) Markey amendment to strike the ANWR provision in its omnibus energy bill (H.R. 6) allowing leases for exploration, development, and production in ANWR.
	4/21/05	#132	House passed an omnibus energy bill (H.R. 6) with an ANWR development title (249-183).
	4/28/05	#149	House adopted (214-211) the conference report on the concurrent budget resolution, H.Con.Res. 95.
	12/18/05	#669	House adopted (308-106) the conference report on the Defense appropriations bill (H.R. 2863), which would have allowed oil and gas leasing in ANWR.
	12/22/05	voice	House passed S.Con.Res. 74, which corrected the enrollment of H.R. 2863, removing the ANWR development provision.
	5/25/06	#209	House passed H.R. 5429 to open ANWR to development (225-201).
110 <sup>th</sup>	8/4/07	#831	House rejected motion to recommit H.R. 3221 to the Energy and Commerce Committee with instructions to report back with language authorizing ANWR development (169-244).
	5/14/08	#321	House rejected motion to instruct conferees for S.Con.Res. 70 to adjust budget levels to assume increased revenues from opening ANWR to development (185-229).

**Table 2. Votes in the Senate on Energy Development Within the Arctic National Wildlife Refuge**

Congress	Date	Voice/ Roll Call	Brief Description
95 <sup>th</sup>			no floor votes
96 <sup>th</sup>	7/22-23/80	#304	Motion to table Tsongas amendment (including a title to designate all of ANWR as wilderness) to H.R. 39 defeated (33-64).
	8/18/80	#354	Senate adopted cloture motion on H.R. 39 (63-25).
	8/19/80	#359	Senate passed Tsongas-Roth-Jackson-Hatfield substitute to H.R. 39 (78-14); this bill is current law, and leaves decision about any 1002 area development for a future Congress.
97 <sup>th</sup>			no floor votes

<b>Congress</b>	<b>Date</b>	<b>Voice/ Roll Call</b>	<b>Brief Description</b>
98 <sup>th</sup>			no floor votes
99 <sup>th</sup>			no floor votes
100 <sup>th</sup>			no floor votes
101 <sup>st</sup>			no floor votes
102 <sup>nd</sup>	11/1/91	#242	Cloture motion on S. 1220 failed; one title would have opened 1002 area to development (50-44).
103 <sup>rd</sup>			no floor votes
104 <sup>th</sup>	5/24/95	#190	Senate voted to table Roth amendment to strip 1002 area revenue assumptions from S.Con.Res. 13 (56-44).
	10/27/95	#525	Senate voted to table Baucus amendment to strip 1002 area development provisions in H.R. 2491 (51-48).
105 <sup>th</sup>			no floor votes
106 <sup>th</sup>	4/6/00	#58	Senate voted to table Roth amendment to strip 1002 area revenue assumptions from the FY2001 budget resolution (S.Con.Res. 101) (51-49).
107 <sup>th</sup>	12/3/01	#344	Lott-Murkowski-Brownback amendment to Daschle amendment to H.R. 10 included 1002 area development title in H.R. 4, as passed by the House. A cloture motion on the amendment failed (1-94).
	4/18/02	#71	Senate failed to invoke cloture on Murkowski amendment to S. 517, an omnibus energy bill. ANWR language of the amendment was similar to that in the House-passed version of H.R. 4 (46-54).
108 <sup>th</sup>	3/19/03	#59	Senate passed Boxer amendment to delete certain revenue assumptions from S.Con.Res. 23, the FY2004 budget resolution; floor debate indicated that the amendment was clearly seen as a vote on developing the 1002 area (52-48).
109 <sup>th</sup>	3/16/05	#52	Senate voted to reject Cantwell amendment to strike revenue assumptions from its FY2006 budget resolution (S.Con.Res. 18) that would have given procedural protection to legislation authorizing oil drilling in part of ANWR (49-51).
	11/3/05	#288	Senate voted to reject Cantwell amendment to its FY2006 budget reconciliation bill (S. 1932) that would have deleted the provision establishing an oil and gas leasing program in ANWR (48-51).
	12/21/05	#364	Senate failed to invoke cloture on the conference report on the FY2006 Defense appropriations bill (H.R. 2863), which included provisions to open ANWR to development (56-44).

Congress	Date	Voice/ Roll Call	Brief Description
	12/21/05	#365	Senate adopted a concurrent resolution (S.Con.Res. 74) that instructed the Clerk of the House to strike provisions from the conference report to H.R. 2863 that would have allowed oil drilling in ANWR (48-45).
	3/16/06	#74	Senate passed the FY2007 budget resolution (S.Con.Res. 83) with a reconciliation instruction (§201) directing the Committee on Energy and Natural Resources to reduce budget authority by an amount equal to assumed revenues from development in ANWR (51-49).
110 <sup>th</sup>	5/13/08	#123	Senate rejected (42-56) McConnell amendment (S.Amdt. 4720) to S. 2284 to open ANWR to energy development; earlier unanimous consent agreement had raised majority for adoption of amendment to 60 votes.

Basic information on the Refuge can be found in CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*, and at the FWS website, [<http://www.r7.fws.gov/nwr/arctic>],<sup>1</sup> which includes links to other organizations interested in the area. An extensive presentation of development arguments can be found at [<http://www.anwr.org>], sponsored by Arctic Power, a nonprofit coalition. Opponents' arguments can be found at [<http://www.protectthearctic.com/>] or [<http://www.wilderness.org/OurIssues/Arctic/>]. Maps of the coastal plain showing existing oil development areas on state land can be found at [<http://www.dog.dnr.state.ak.us/oil/products/maps/maps.htm>].

## Legislative History of the Refuge, 1957-2000

**The Early Years.** The energy and biological resources of northern Alaska have raised controversy for decades, from legislation in the 1970s, to a 1989 oil spill, to more recent efforts to use ANWR resources to address energy needs or to help balance the federal budget. In November 1957, DOI announced plans to withdraw lands in northeastern Alaska to create an “Arctic National Wildlife Range.” The first group actually to propose to Congress that the area become a national wildlife range, in recognition of the many game species found in the area, was the Tanana Valley (Alaska) Sportsmen’s Association in 1959. On December 6, 1960, after statehood, the Secretary of the Interior issued Public Land Order 2214 reserving the 9.5 million-acre area as the Arctic National Wildlife Range.

**The 1970s.** In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA, P.L. 92-203, 85 Stat. 688) to resolve all Native aboriginal land claims against the United States. ANCSA provided for monetary payments and also created Village Corporations that received the surface estate to approximately 22 million acres of lands in Alaska. Village selection rights included the right to choose the surface estate (surface rights, as opposed to rights to exploit any energy or minerals beneath the surface) in a certain amount of lands within the National Wildlife Refuge

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<sup>1</sup> This website and the others listed in this paragraph were last visited on July 8, 2008.



System. Under §22(g) of ANCSA, the chosen lands were to remain subject to the laws and regulations governing use and development of the particular refuge. Kaktovik Inupiat Corporation (KIC, the local Native corporation created under ANCSA, and headquartered within ANWR) received rights to three townships along 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 national wildlife refuges were not available, but in-lieu selections to substitute for such lands were provided.

**The 1980s.** In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA, P.L. 96-487, 94 Stat. 2371), which included several sections about ANWR. The Arctic Range was renamed the Arctic National Wildlife Refuge, and was expanded, mostly southward and westward, to include an additional 9.2 million acres.<sup>2</sup> Section 702(3) of ANILCA designated much of the original range as a wilderness area, but did not include the coastal plain.<sup>3</sup> ANILCA defined the *Coastal Plain* as the lands on a specified map — language that was interpreted as excluding most Native lands, even though these lands are *geographically* part of the coastal plain.<sup>4</sup> Section 1002 of ANILCA directed that a study of the Coastal Plain (which therefore is often referred to as the *1002 area*) and its resources be completed within five years and nine months of enactment. The resulting 1987 report was called the *1002 report* or the Final Legislative Environmental Impact Statement (FLEIS).

Section 1003 of ANILCA prohibited oil and gas development in the entire Refuge, or “leasing or other development leading to production of oil and gas from the range” unless authorized by an act of Congress.<sup>5</sup>

**From 1990 to 2000.** In recent years, there have been various attempts to authorize opening ANWR to energy development. In the 104<sup>th</sup> Congress, the FY1996 budget reconciliation bill (H.R. 2491, §§5312-5344) would have opened the 1002 area to energy development, but the measure was vetoed, as many observers had expected. President Clinton cited the ANWR sections as one of his reasons for the veto.

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<sup>2</sup> Additional land was added in later years, bringing the current total to 19.3 million acres. Portions of the Refuge added in 1980 and later were not included in the wilderness system.

<sup>3</sup> For more on wilderness designation, see CRS Report RL31447, *Wilderness: Overview and Statistics*, by Ross W. Gorte.

<sup>4</sup> This report will use “Coastal Plain” to refer to the land legally designated under ANILCA and under subsequent Executive Branch rulings. In lower case (“coastal plain”), the term will be used in the geographic sense, i.e., the area north of the foothills of the Brooks Range. It stretches from the Canadian border west to Bering Strait. Its width varies from about 10 miles (at the Canadian border) to over 100 miles south of Barrow.

<sup>5</sup> For more history of legislation on ANWR and related developments, see CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*, coordinated by M. Lynne Corn and CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*, by Pamela Baldwin.

While bills were introduced, the 105<sup>th</sup> Congress did not debate the ANWR issue. In the 106<sup>th</sup> Congress, bills to designate the 1002 area of the Refuge as wilderness and others to open the Refuge to energy development were introduced. Revenue assumptions about ANWR were included in the FY2001 budget resolution (S.Con.Res. 101) reported by the Senate Budget Committee on March 31, 2000. An amendment to remove this language was tabled. However, conferees rejected the language. The conference report on H.Con.Res. 290 did not contain this assumption, and the report was passed by both chambers on April 13. S. 2557 was introduced May 16, 2000; it included a title to open the Refuge to development. Hearings were held on the bill, but a motion to proceed to consideration of the bill on the Senate floor did not pass.

Only three recorded votes relating directly to ANWR development occurred from the 101<sup>st</sup> through 106<sup>th</sup> Congresses. All were in the Senate:

- In the 104<sup>th</sup> Congress, on May 24 1995, a motion to table an amendment that would have stripped ANWR development titles from the Senate version of H.R. 2491 passed (Roll Call #190). (See above.)
- In the same Congress, on October 27, 1995, another motion to table a similar amendment to H.R. 2491 also passed (Roll Call #525).
- In the 106<sup>th</sup> Congress, the vote to table an amendment to strip ANWR revenue assumptions from the budget resolution (S.Con.Res. 101; see above) was passed (April 6, 2000, Roll Call #58).

## **Legislative History of the Refuge, 2001-2002**

H.R. 4, an omnibus energy bill containing ANWR development provisions, passed the House on August 2, 2001 (yeas 240, nays 189; Roll Call #320). Title V of Division F was the text of H.R. 2436 (H.Rept. 107-160, Part I). The measure would have opened ANWR to exploration and development. The previous day, an amendment by then Representative Sununu to limit specified surface development to a total of 2,000 acres was passed (yeas 228, nays 201; Roll Call #316). Representatives Markey and Johnson (CT) offered an amendment to strike the title; this was defeated (yeas 206, nays 223; Roll Call #317). The House appointed conferees on June 12, 2002. (See below for action after Senate passage of H.R. 4.)

In the first session, Senator Lott (on behalf of himself and Senators Murkowski and Brownback) offered an amendment (S.Amdt. 2171) to an amendment on pension reform (S.Amdt. 2170) to H.R. 10, a bill also on pension reform. Their amendment included, among other energy provisions, the ANWR development title in H.R. 4, as passed by the House. Their amendment also included provisions prohibiting cloning of human tissue. A cloture motion was filed on the Lott amendment, and the Senate failed to invoke cloture (yeas 1, nays 94; Roll Call #344) on December 3, 2001. Instead, the Senate voted the same day in favor of invoking cloture on the underlying amendment (S.Amdt. 2170), (yeas 81, nays 15; Roll Call #345). Because cloture was invoked on the underlying amendment, Senate rules required that subsequent and pending amendments to it be germane. The Senate's presiding officer subsequently sustained a point of order against the Lott amendment, which was still pending, on

the grounds that it was not germane to the underlying amendment on pension reform, and thus the amendment fell.

The next vehicle for Senate floor consideration was S. 517, which concerned energy technology development. On February 15, 2002, Senator Daschle offered an amendment (S.Amdt. 2917), an omnibus energy bill. It did not contain provisions to develop the Refuge, but two amendments (S.Amdt. 3132 and S.Amdt. 3133) to do so were offered by Senators Murkowski and Stevens, respectively, on April 16. The language of the two amendments was, in most sections, identical to that of H.R. 4 (Division F, Title V). Key differences included a requirement for a presidential determination before development could proceed, an exception to the oil export prohibition for Israel, and a number of changes in allocation of any development revenues, as well as allowing some of those revenues to be spent without further appropriation. On April 18, the Senate essentially voted to prevent drilling for oil and gas in the Refuge. The defeat came on a vote of 46 yeas to 54 nays (Roll Call #71) on a cloture motion to block a threatened filibuster on Senator Murkowski's amendment to S. 517, which would have ended debate and moved the chamber to a direct vote on the ANWR issue.

Lacking a provision to develop ANWR, the text of S. 517, as amended, was substituted for the text of the House-passed H.R. 4, and passed the Senate (yeas 88, nays 11; Roll Call #94) on April 25, 2002. Conferees attempted to iron out the substantial differences between the two versions in the time remaining in the second session. The conference committee chairman, Representative Tauzin, indicated that the ANWR issue, as one of the most controversial parts of the bill, would be considered toward the end of the conference, after less controversial provisions. Press reports at the time indicated that conferees were likely to drop provisions to develop the Refuge. Interior Secretary Norton was quoted as stating that she would recommend veto of a bill lacking ANWR development provisions.<sup>6</sup> In the end, no conference agreement was reached, and H.R. 4 died at the end of the 107<sup>th</sup> Congress.

Finally, H.R. 770 and S. 411 would have designated the 1002 area as wilderness, but no action was taken on either bill.

## **Legislative History of the Refuge, 2003-2004**

Work began on FY2003 Interior appropriations in the 107<sup>th</sup> Congress but was not completed until the 108<sup>th</sup> Congress. In the 107<sup>th</sup> Congress, for the FY2003 Interior appropriations bill, the House Committee on Appropriations had agreed to report language on the Bureau of Land Management (BLM) energy and minerals program in general, and stated that no funds were included in the FY2003 funding bill “for activity related to potential energy development within [ANWR]” (H.Rept. 107-564, H.R. 5093). But §1003 of ANILCA prohibited “development leading to production of oil and gas” unless authorized by Congress. Thus, the committee's report language was viewed by some as barring the use of funds for pre-leasing studies and other preliminary work related to oil and gas drilling in ANWR. The

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<sup>6</sup> Tom Doggett “Interview — Norton wants energy bill veto if no ANWR drilling,” Reuters News Service (Sept. 19, 2002).

report of the Senate Committee on Appropriations did not contain this prohibition. A series of continuing resolutions provided funding for DOI into the 108<sup>th</sup> Congress.

Conferees on the FY2003 Consolidated Appropriations Resolution (P.L. 108-7) included language in the joint explanatory statement stating that they “do not concur with the House proposal concerning funding for the [BLM] energy and minerals program.” This change from the House report language was interpreted by some as potentially making available funds for preliminary work for development in ANWR. However, as noted, the prohibition contained in ANILCA remains in effect, so the ability to use money in the bill for particular pre-leasing activities was not clear.

**FY2004 Reconciliation.** During the 108<sup>th</sup> Congress, development proponents sought to move ANWR legislation through the FY2004 budget reconciliation process to avoid a possible Senate filibuster later in the session.<sup>7</sup> The House agreed to the FY2004 budget resolution (H.Con.Res. 95) on March 21 (yeas 215, nays 212; Roll Call #82). The resolution contained reconciliation instructions to the House Resources Committee for reductions, but did not specify the expected source of the savings. If the House language had been adopted, ANWR development language might have been considered as part of a reconciliation measure to achieve the savings. S.Con.Res. 23, as reported by the Senate Budget Committee, stated:

The Senate Committee on Energy and Natural Resources shall report a reconciliation bill not later than May 1, 2003, that consists of changes in laws within its jurisdiction sufficient to decrease the total level of outlays by \$2,150,000,000 for the period of fiscal years 2004 through 2013.

To meet this directive, the committee would very likely have reported legislation to open ANWR to development. On March 19, 2003, Senator Boxer offered S.Amdt. 272 to delete this provision. Floor debate indicated that the Boxer amendment was clearly seen as a vote on developing ANWR. The amendment passed (yeas 52, nays 48; Roll Call #59.) The amended Senate version of the resolution was ultimately accepted by both House and Senate. As a result, while the Committee on Energy and Natural Resources could still report legislation to authorize opening the Refuge, such legislation would not have been eligible for inclusion in a reconciliation bill. Without the procedural protections associated with reconciliation, a filibuster could have been used to prevent a vote on an authorization bill.<sup>8</sup> In the end, the conferees on the budget resolution included no instructions to the House Resources and Senate Energy and Natural Resources Committees.

**Comprehensive Energy Legislation.** The House passed H.R. 6, a comprehensive energy bill, on April 11, 2003. Division C, Title IV would have opened the 1002 area to energy development. On April 10, the House had passed the

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<sup>7</sup> Reconciliation bills in the Senate are considered under special rules that do not permit filibusters. See CRS Report 98-814, *Budget Reconciliation Legislation: Development and Consideration*, by Bill Heniff Jr., and CRS Report RL30862, *Budget Reconciliation Procedures: The Senate's 'Byrd Rule'*, by Robert Keith.

<sup>8</sup> See CRS Report RS20368, *Overview of the Congressional Budget Process*, by Bill Heniff Jr.

Wilson (NM) amendment to H.R. 6 to limit certain features of development to a total of 2,000 acres (yeas 226, nays 202; Roll Call #134), without restricting the total number of acres that could be leased. As in the 107<sup>th</sup> Congress, Representatives Markey and Johnson (CT) offered an amendment to strike the title; this was defeated (yeas 197, nays 228; Roll Call #135). H.R. 4514 was identical to the ANWR title of the House version of H.R. 6 except in one provision on revenue disposition. (See “Major Legislative Issues,” below.) In addition, one bill (H.R. 39) was introduced to open the 1002 area to development, and two bills (H.R. 770 and S. 543) were introduced to designate the 1002 area as wilderness.

The initial version of the Senate energy bill (S. 14) had no provision to open the Refuge, and Chairman Domenici stated that he did not plan to include one. After many weeks of debate in the Senate, as prospects of passage seemed to be dimming, Senators agreed to drop the bill they had been debating and to go back to the bill passed in the Democratic-controlled Senate of the 107<sup>th</sup> Congress. On July 31, 2003, they substituted the language of that bill for that of the House-passed H.R. 6. There was widespread agreement that the unusual procedure was a means of getting the bill to conference. Members, including Chairman Domenici, indicated at the time their expectation that the bill that emerged from conference would likely be markedly different from the version of H.R. 6 that had just been passed by the Senate. One of the key differences between the two bills was the presence of ANWR development language in the House version, and its absence in the Senate version. Conference Chairman Domenici included the House title on ANWR in his working draft, but in the end, the conference committee deleted ANWR development features in the conference report (H.Rept. 108-375); the conference report was agreed to by the House on November 18, 2003 (yeas 246, nays 180; Roll Call #630); the Senate considered the measure, but a cloture vote failed (57 yeas, 40 nays; Roll Call # 456) on November 21, 2003.

The Senate focused in the second session on a reduced energy bill (S. 2095) that might then go to a second conference with the House; like its version of H.R. 6, this new bill did not contain ANWR development provisions. In any event, no scenario for energy legislation that was discussed publicly included provisions that would have opened the Refuge to development. However, the President’s proposed FY2005 budget assumed legislation would be passed that would open the Refuge and would therefore produce revenues. This proposal would have assisted efforts to assume ANWR revenues in a budget resolution, and therefore aided its inclusion in a reconciliation package, as was attempted in the first session. The features of the bills mentioned above and the issues that most commonly arose in legislative debate are described below.

## **Legislative History of the Refuge, 2005-2006**

As explained below, the ANWR debate took two basic legislative routes in the 109<sup>th</sup> Congress: (1) budget resolutions and reconciliation bills (S.Con.Res. 18, H.Con.Res. 95, S. 1932, H.R. 4241, S.Con.Res. 83, and H.Con.Res. 376), which cannot be filibustered; and (2) other bills (H.R. 6, an omnibus energy bill; H.R. 2863, Defense appropriations; and H.R. 5429, a bill in the second session to open the Refuge to development), which are subject to filibusters. In none of these measures did Congress reach agreement to allow development.

**Budget Resolutions and Reconciliation Bills.** The budget resolution and reconciliation were a focus of attention, particularly in the Senate.<sup>9</sup> (See also “Omnibus Energy Legislation,” below.) The FY2006 Senate budget resolution (S.Con.Res. 18) passed by the Senate Budget Committee included instructions to the Senate Committee on Energy and Natural Resources to “report changes in laws within its jurisdiction sufficient to reduce outlays by \$33,000,000 in FY2006, and \$2,658,000,000 for the period of fiscal years 2006 through 2010.” The resolution assumed that the committee would report legislation to open ANWR to development, and that leasing would generate \$2.5 billion in revenues for the federal government over five years. Senator Cantwell offered a floor amendment (S.Amdt. 168) on March 16, 2005, to remove these instructions. The amendment was defeated (yeas 49, nays 51, Roll Call #52). The FY2006 House budget resolution (H.Con.Res. 95, H.Rept. 109-17), while instructing the House Resources Committee to provide somewhat smaller reductions in outlays, did not include specific assumptions about ANWR revenues.

In the end, the conference agreement (H.Con.Res. 95, H.Rept. 109-62) approved by the House and Senate on April 28, 2005, contained reductions in spending targets of \$2.4 billion over FY2006 to FY2010 for the House Resources and Senate Energy Committees that would be difficult to achieve unless ANWR development legislation were passed. The inclusion of the Senate target particularly set the stage for including ANWR development legislation in a reconciliation bill, since reconciliation bills cannot be filibustered (i.e., they require only a simple majority, rather than 60 votes to stop a filibuster).

Under the Congressional Budget Act of 1974 (CBA, Titles I-IX of P.L. 93-344, as amended, 2 U.S.C. §§601-688), while the target reductions of the budget resolutions are binding on the committees, the associated assumptions are not. The Senate Energy and Natural Resources Committee did choose to meet its target by recommending ANWR legislation, and the Budget Committee incorporated the recommendation as Title IV of S. 1932, the Deficit Reduction Act of 2005. There was some question procedurally as to whether Senate rules would permit ANWR legislation to be part of a reconciliation bill.<sup>10</sup> The House Resources Committee included ANWR development legislation, and other spending reductions and offsetting collections, thereby more than meeting the Committee’s targets. These measures were incorporated by the House Budget Committee into an omnibus reconciliation bill (H.R. 4241). However, before the House bill came to the floor, considerable opposition to the ANWR provision developed among a number of Republicans, 24 of whom signed a letter to the Speaker opposing its inclusion. The provision was removed before floor consideration; S. 1932 (with the text of H.R. 4241 inserted in lieu — i.e., minus an ANWR provision) passed the House on

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<sup>9</sup> For more on the budget process and budget enforcement, see CRS Report RS20368, *Overview of the Congressional Budget Process* and CRS Report 98-815, *Budget Resolution Enforcement*, by Bill Heniff Jr. For more on ANWR and reconciliation, see CRS Report RS22304, *ANWR and FY2006 Budget Reconciliation Legislation*, by Bill Heniff Jr. and M. Lynne Corn.

<sup>10</sup> See CRS Report RL30862, *The Budget Reconciliation Process: The Senate’s ‘Byrd Rule’*, by Robert Keith.

November 18, 2005 (yeas 217, nays 215; Roll Call #601). ANWR was a major issue in conference. In the end, the conference report (H.Rept. 109-362) omitted ANWR development provisions. The President signed the measure on February 8, 2006 (P.L. 109-171).

The Senate passed the FY2007 budget resolution (S.Con.Res. 83; yeas 51, nays 49, Roll Call #74; no written report) on March 16, 2006. Its sole reconciliation instruction (§201) directed the Committee on Energy and Natural Resources to reduce budget authority by an amount equal to predicted bonus bids, royalties, and rental revenues from ANWR development. According to press reports, some Senators hoped that if the final budget resolution had such instructions — on this topic alone — there would be (1) a FY2007 reconciliation bill on ANWR alone; and (2) sufficient bipartisan support for this single-purpose reconciliation bill in the House to counterbalance opposition of the 24 Republican Members who opposed its inclusion in a much larger FY2006 reconciliation measure in the first session. The FY2007 budget resolution as passed by the House on May 18, 2006, did not include any such instruction (H.Con.Res. 376, H.Rept. 109-402; yeas 218, nays 210, Roll Call #158). The Senate and House, however, did not complete action on the FY2007 budget resolution, and therefore, neither chamber developed or considered any subsequent reconciliation legislation.

**ANWR in the Defense Appropriations Bill.** As Congress moved toward the December recess, and the chance of an agreement on reconciliation with an ANWR provision seemed to fade, Senator Stevens (Chair of the Defense Appropriations Subcommittee) added an ANWR development title to the “must-pass” FY2006 Defense appropriations bill (H.R. 2863) during conference. Senators opposing ANWR were forced to choose between filibuster of the popular measure or acquiescing to opening the Refuge. Members began a filibuster, and a cloture motion failed (yeas 56, nays 44, Roll Call #364). While the conference report was approved, the relevant two Divisions (C and D) were removed through House and Senate passage of S.Con.Res. 74, correcting the enrollment of the bill (P.L. 109-148).

**Omnibus and Other Energy Legislation.** The House Resources Committee considered and marked up its portion of the omnibus energy bill on April 13, 2005, before the bill was introduced. The provisions, including an ANWR development title, were approved by the committee and incorporated into the House version of H.R. 6 and introduced by Representative Barton (Chair of the Energy and Commerce Committee) on April 18. During House consideration on April 20, Representatives Markey and Johnson offered an amendment (H.Amdt. 73) to strike the title; it was rejected (yeas 200, nays 231, Roll Call #122). The House passed H.R. 6 on April 21 (yeas 249, nays 183, Roll Call #132). The Senate passed its version of H.R. 6 on June 28, 2005 (yeas 85, nays 12, Roll Call #158). The Senate bill contained no ANWR development provisions. The ANWR title was omitted in the final measure (P.L. 109-58).

On May 25, 2006, the House passed H.R. 5429, to open ANWR to development (yeas 225, nays 201, Roll Call #209). In nearly all respects, the bill was similar to the ANWR title in the House version of H.R. 6. (See “Major Legislative Issues,” below, for details.) The bill was not taken up by the Senate.

## Legislative History of the Refuge, 2007-2008

The President's FY2008 budget proposed enacting legislation to open the Coastal Plain in the Arctic National Wildlife Refuge (ANWR) to oil and gas exploration and development.<sup>11</sup> The budget proposed that the first lease sale be held in FY2009. Under the proposal, this and subsequent sales were estimated to generate \$7.0 billion in revenues over the following five years, to be divided evenly between the U.S. Treasury and the State of Alaska.

As in the 109<sup>th</sup> Congress, there was an effort in the second session to assume ANWR revenues in the budget resolution (S.Con.Res. 70). The vehicle was a motion to adjust budget levels to assume increased revenues from opening ANWR to leasing and exploration. However, on May 14, 2008, the House rejected the motion (yeas 185, nays 229; Roll Call #321). In the Senate, during debate on S. 2284 (a bill originally concerning flood insurance) on May 13, 2008, the Senate rejected the McConnell amendment (S.Amdt. 4720) to open ANWR to energy development (yeas 42 - nays 56, Roll Call #123). In addition, rising gasoline prices during 2008 intensified interest in opening ANWR to development, and a number of bills to open the coastal plain to development were introduced during the second session.

## Major Legislative Issues in the 108<sup>th</sup>-110<sup>th</sup> Congresses

Some of the issues that have been raised most frequently in the ANWR debate are described briefly below. In addition to the issue of whether development should be permitted at all, key aspects of the debate include restrictions that might be specified in legislation, including the physical size, or footprint, of development; the regulation of activities on Native lands; the disposition of revenues; labor issues; oil export restrictions; compliance with the National Environmental Policy Act; and other matters. (References below to the "Secretary" refer to the Secretary of the Interior, unless stated otherwise.)

For the 108<sup>th</sup> Congress, the analyses below describe features of H.R. 6 as passed by the House and H.R. 4514 (identical, except as noted in "Revenue Disposition," below). S. 2095 and the Senate version of H.R. 6 had no provision to develop the 1002 area, but any provisions corresponding to issues below are also described.<sup>12</sup>

For the 109<sup>th</sup> Congress, the analyses describe H.R. 5429 as passed by the House; the provisions of Division C of the conference report on H.R. 2863 (the "Defense bill"), and §4001 of S. 1932, the Senate reconciliation bill (the "Senate bill"). Because of the lack of detail in §4001, many aspects of ANWR leasing would have been left to administrative decisions, with levels of public participation in some instances curtailed along with judicial review, as noted below.

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<sup>11</sup> U.S. Office of Management and Budget, *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2008* (Washington, DC), p. 279. The proposed authorization for exploration and development would be separate legislation, rather than part of the Interior appropriations bill. The proposal is not part of the FWS Budget Justification for FY2008.

<sup>12</sup> For more background on each topic, see CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*, coordinated by M. Lynne Corn.



Because a number of nearly identical bills have been introduced in the 110<sup>th</sup> Congress, the analysis below focuses on S. 2973, which has been placed on the Senate legislative calendar, with additional information where other bills differ markedly. A list of bills is found below under “Selected Legislation in the 110<sup>th</sup> Congress.”

**Environmental Direction.** Should Congress open the Refuge to energy leasing, it could choose to leave environmental matters to administrative agencies under existing laws. Alternatively, Congress could impose a higher standard of environmental protection because the area is in a national wildlife refuge or because of the fragility of the arctic environment, or it could legislate a lower standard to facilitate development. The degree of discretion given to the administering agency could also affect the stringency of environmental protection. For example, Congress could include provisions requiring use of “the best available technology” or “the best commercially available technology” or similar general standards; alternatively, it could limit judicial review of environmental standards. Another issue would be the use of gravel and water resources essential for oil exploration and development. Congress could also leave environmental protection largely up to the administering agency — to be accomplished through regulations, or through lease stipulations. The former require public notice and comment, while the latter do not involve public participation, and may provide fewer public enforcement options. Other legislative issues include limitations on miles of roads or other surface occupancy; the adequacy of existing pollution standards; prevention and treatment of spills; the adequacy of current environmental requirements; and aircraft overflights, among other things.

**108<sup>th</sup> Congress.** The House bill did not name a lead agency, but since §30403(a) stated that the program would be administered under the Mineral Leasing Act, BLM seemed likely to lead. The House bill (§30407(a)) required the Secretary to administer the leasing program so as to “result in no significant adverse effect on fish and wildlife, their habitat, and the environment, [and to require] the application of the best commercially available technology...” The House bill (§30403(a)(2)) also required that this program be done “in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.” It is unclear how the two goals of environmental protection and of fair market value were to relate to each other (e.g., if environmental restrictions might make some fields uneconomic). As in the 107<sup>th</sup> Congress, the House bill (§§30406(a)(3) and (5)) was identical to §§6506(a)(3) and (5) in the 107<sup>th</sup> Congress. H.R. 770 and S. 543 would have designated the area as wilderness, as discussed below.

**109<sup>th</sup> Congress.** H.R. 5429 named BLM as the lead agency. Section 7(a) required the Secretary to administer the leasing program so as to “result in no significant adverse effect on fish and wildlife, their habitat, and the environment, [and to require] the application of the best commercially available technology...” Section 3(a)(2) would also have required that this program be done “in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.” It is unclear how the two goals of environmental protection and fair market value would have related to each other (e.g., if environmental restrictions would have made some fields uneconomic). Subsections 6(a)(3) and (5) required lessees to be responsible and liable for reclamation of lands within the Coastal Plain (unless the Secretary approved other arrangements), and required that the lands support pre-

leasing uses or a higher use approved by the Secretary. There were requirements for mitigation, development of regulations, and other measures to protect the environment. These included prohibitions on public access to service roads and other transportation restrictions. Other provisions might also have affected environmental protection. (See “Judicial Review,” below.) The Defense bill (§7) was similar to the House bill. The Senate bill (§4001(b)(1)(B)) directed the Secretary to establish and implement an “environmentally sound” leasing system, but did not provide further direction.

**110<sup>th</sup> Congress.** S. 2973 names BLM as the lead, acting consultation with FWS (and “in coordination with a State coordinator appointed by the Governor of Alaska”). Section 112(a) would require the Secretary to administer the leasing program so as to “result in no significant adverse effect on fish and wildlife, their habitat, and the environment, [and to require] the application of the best commercially available technology.” Section 112(a)(2) would also require that this program be done “in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.” It is unclear how the two goals of environmental protection and fair market value would relate to each other (e.g., if environmental restrictions would have made some fields uneconomic). Subsections 113(a)(3) and (5) would require lessees to be responsible and liable for reclamation of lands within the Coastal Plain (unless the Secretary approves other arrangements), and would require that the lands support pre-leasing uses or a higher use approved by the Secretary. There are requirements for mitigation, development of regulations, and other measures to protect the environment. These include prohibitions on public access to service roads and other transportation restrictions (§ 116(d)(2)(D)). Other provisions might also affect environmental protection. (See “Judicial Review,” below.)

**The Size of Footprints — Federal Lands.** Newer technologies permit greater consolidation of leasing operations, which tends to reduce the size and the environmental impacts of development. One aspect of the debate in Congress has focused on the size of footprints in the development and production phases of energy leasing. The term *footprint* does not have a universally accepted definition, and therefore the types of structures falling under a “footprint restriction” are arguable (e.g., the inclusion of exploratory structures, roads, gravel mines, port facilities, etc.).<sup>13</sup> In addition, it is unclear whether exploratory structures or structures on Native lands would be included under any provision limiting footprints.<sup>14</sup> The new map accompanying S. 1932 in the 109<sup>th</sup> Congress included the Native lands in its definition of the Coastal Plain leasing area, but how the federal leasing program would have applied to those lands was not clear. (See “New Maps,” below.)

Development advocates have emphasized the total acreage of surface disturbance, while opponents have emphasized the dispersal of not only the structures

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<sup>13</sup> See CRS Report RL32108, *North Slope Infrastructure and the ANWR Debate*, by M. Lynne Corn.

<sup>14</sup> For a discussion of an acreage limit, see CRS Report RS22143, *Oil and Gas Leasing in the Arctic National Wildlife Refuge (ANWR): The 2,000-Acre Limit*, by Pamela Baldwin and M. Lynne Corn.

themselves but also their impacts over much of the 1.5 million acres of the 1002 area. One single consolidated facility of 2,000 acres (3.1 square miles, a limit commonly supported by development advocates) would not permit full development of the 1002 area. Instead, full development of the 1002 area would require that facilities, even if limited to 2,000 acres in total surface area, be widely dispersed. Dispersal is necessary due to the limits of lateral (or extended reach) drilling: the current North Slope record for this technology is 4 miles. If that record were matched on all sides of a single pad, at most about 4% of the Coastal Plain could be developed from that pad. If the current world record (7 miles) were matched, about 11% of the 1002 area could be accessed from a single compact 2,000-acre facility. In addition, drilling opponents argue that energy facilities have impacts on recreation, subsistence, vegetation, and wildlife well beyond areas actually covered by development.

However, global climate change may complicate efforts to limit footprints. In the last 25 years, the duration of the ice season, when the tundra is frozen sufficiently to permit travel and temperatures are low enough to permit construction of ice roads and ice drill pads, has decreased from over 200 days per year to less than 100 days. If industry is forced to return to the older, more expensive use of gravel roads and pads, a 2,000 acre limit on the footprint of development could constrain full development severely, by making marginal fields too expensive for production. Alternatively, if costs escalate, the 2,000 acre limit could be dropped to allow industry to exploit available resources more fully.

**108<sup>th</sup> Congress.** The House bill (§30407(d)(9)) provided for consolidation of leasing operations; among other things, consolidation would tend to reduce environmental impacts of development. Section 30407(d)(3) would have gone further to require, “consistent with the provisions of section 6503” (which included ensuring receipt of fair market value), that the Secretary administer the leasing program to “ensure that the maximum amount of surface acreage covered by production and support facilities, including airstrips and any areas covered by gravel berms or piers for the support of pipelines, does not exceed 2,000 acres on the Coastal Plain.” The acreage limitation was added in a floor amendment by Representative Wilson (NM) to the House bill on April 10, 2003 (yeas 226, nays 202; Roll Call #134). The terms used were not defined in the bill (nor discussed in the committee report), and therefore the full set of structures that might have fallen under the restriction was arguable (e.g., whether roads, gravel mines, and structures on Native lands would be included under this provision). Floor debate focused on the extent to which the facilities would be widely distributed around the Refuge. In addition, Native lands might not have been limited by this provision. (See “Native Lands,” below.)

**109<sup>th</sup> Congress.** H.R. 5429 (§7(d)(9)) provided for consolidation of leasing operations to reduce environmental impacts of development. Section §7(a)(3) would have further required, “consistent with the provisions of section 3” (which included ensuring receipt of fair market value for mineral resources), that the Secretary administer the leasing program to “ensure that the maximum amount of surface acreage covered by production and support facilities, including airstrips and any areas covered by gravel berms or piers for the support of pipelines, does not exceed 2,000 acres on the Coastal Plain.” The terms used were not defined in the bill and therefore the range of structures which would have been covered by the restriction is arguable

(e.g., whether roads, gravel mines, causeways, and water treatment plants would be included under this provision). In addition, the wording may not have applied to structures built during the exploratory phase. An essentially identical provision was in S. 1932 (§4001(f)) and H.R. 2863 (§7(a)(3)). H.R. 2863 also called for facility consolidation (§7(d)(4)) and for the Secretary to develop a consolidation plan (§7(f)).

**110<sup>th</sup> Congress.** Section 115(d)(4) of S. 2973 would provide for consolidation of facility siting. Section 116(a) would further require, “in accordance with the provisions of Section 112” (which includes ensuring receipt of fair market value for mineral resources), that the Secretary administer the leasing program to “ensure that the maximum surface acreage covered in connection with the leasing program by production and support facilities, including airstrips and any areas covered by gravel berms or piers for the support of pipelines, does not exceed 2,000 acres on the Coastal Plain.” The terms used are not defined in the bill and therefore the range of structures that would be covered by the restriction is arguable (e.g., whether roads, gravel mines, causeways, and water treatment plants would be included under this provision). In addition, the wording may not apply to structures built during the exploratory phase.

**Native Lands.** Generally, the Alaska Natives (Inuit) along the North Slope have supported ANWR development, while the Natives of interior Alaska (Gwich’in) have opposed it, though neither group is unanimous. ANCSA resolved aboriginal claims against the United States by (among other things) creating Village Corporations that could select surface lands, and Regional Corporations that could select surface and subsurface rights as well. Kaktovik Inupiat Village (KIC) selected surface lands (originally approximately three townships) on the coastal plain of ANWR but these KIC lands were administratively excluded from being considered as within the administratively defined “1002 Coastal Plain.” A fourth township was added by ANCILA, and is within the defined Coastal Plain. The four townships, totaling 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 thousands of acres of conveyed or claimed individual Native allotments in the 1002 area of the Refuge 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 allowed or become feasible on the nearly 100,000 acres of Native lands, possibly free of any acreage limitation applying to development on the federal lands, depending on how legislation is framed. The extent to which the Native lands could be regulated to protect the environment is uncertain, given the status of allotments and some of the language in the 1983 agreement with ASRC.<sup>15</sup> (See “New Maps,” below.)

**108<sup>th</sup> Congress.** The House bill would have repealed the ANILCA prohibition on oil and gas development. If oil and gas development were authorized for the federal lands in the Refuge, it appears that development could occur on the

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<sup>15</sup> For more information, see CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge (ANWR)*, by Pamela Baldwin (hereafter cited as CRS Report RL31115).

more than 100,000 acres of Native lands, arguably free of any acreage limitation applying to development on the federal lands. The extent to which the Native lands could be regulated to protect the environment is uncertain, given the status of allotments and some of the language in the 1983 agreement with ASRC.<sup>16</sup>

**109<sup>th</sup> Congress.** The bills in the 109<sup>th</sup> Congress contained identical language concerning repeal to that in the House bill in the 108<sup>th</sup> Congress, and therefore the same apparent opening of Native lands. See also “New Maps,” below.

**110<sup>th</sup> Congress.** S. 2973 has the same language as in the House bill in the 108<sup>th</sup> Congress, and refers to the same map.

**New Maps.** Both the House and Senate created new maps of the “Coastal Plain” that would be the subject of leasing.<sup>17</sup> The Coastal Plain was defined in §1002 of ANILCA as the area indicated on an August 1980 map. The 1980 map is now missing. An administrative articulation of the boundary was authorized by §103(b) of ANILCA and has the force of law. Since the 1980 map is missing, evaluating whether the administrative description properly excluded the Native Lands is impossible, and, as noted, the fourth Native Township (selected later) is not excluded from the Coastal Plain by that description. The legal description required under ANILCA was completed in 1983 (48 *Fed. Reg.* 16838, Apr. 19, 1983; 50 C.F.R. Part 37, App. I), but questions also surround this description.<sup>18</sup> The description excluded three Native townships from the articulated Coastal Plain. Some bills in various Congresses also have excluded these same Native lands by referring to the 1980 map and the administrative description.

**109<sup>th</sup> Congress.**<sup>19</sup> S. 1932 (§4001(a)) provided a new map, provided by the U.S. Geological Survey (USGS) and dated September 2005, to accompany its submission to the Budget Committee for reconciliation. This map included *all* Native lands in the “Coastal Plain.”<sup>20</sup> However, the bill text did not refer to the Native lands, and the extent of federal control of Native lands that was intended or accomplished by the map change is not clear. For example, the bill directed a 50/50 revenue split between the State of Alaska and the federal government, thereby possibly giving rise to Native claims for compensation for revenues from their lands. If this revenue provision was not intended to apply to Native lands, it was not clear whether other provisions also might not apply. Also, some of the terms in the 1983 Agreement with ASRC call for an express congressional override to negate some of its terms, and the text of the bill did not discuss the Native lands or the Agreement. The Defense bill also used a USGS map dated September 2005 (§2(4)); it is not clear whether the map is the same as the one referred to in the Senate bill.

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<sup>16</sup> For additional legal analysis, see CRS Report RL31115.

<sup>17</sup> See CRS Report RS22326, *Legislative Maps of ANWR*, by M. Lynne Corn and Pamela Baldwin.

<sup>18</sup> See CRS Report RL31115.

<sup>19</sup> The issue of new maps was first raised in legislation in the 109<sup>th</sup> Congress.

<sup>20</sup> See Figure 1 in CRS Report RS22326, *Legislative Maps of ANWR*, by M. Lynne Corn and Pamela Baldwin.

H.R. 5429 did not refer to a map, but instead defined the Coastal Plain as the area described in 50 C.F.R. Part 37, App. I (the administrative articulation of the Coastal Plain). As discussed, this regulation currently excludes three Native townships, but leaves the fourth within the Coastal Plain, and arguably the leasing provisions would have applied to it. The House bill raised the possibility that the defined Coastal Plain could be expanded or reduced at some later time through rule-making procedures.

**110<sup>th</sup> Congress.** S. 2973 refers to the 2005 USGS map. (See discussion above.)

**Revenue Disposition.** Another issue is whether Congress may validly provide for a disposition of revenues according to a formula other than the (essentially) 90% state - 10% federal split specified in the Alaska Statehood Act.<sup>21</sup> A court in *Alaska v. United States* (35 Fed. Cl. 685, 701 (1996)) indicated that the language in the Statehood Act means that Alaska is to be treated like other states for federal leasing *conducted under the Mineral Leasing Act* (MLA), which contains a 90% -10% split. Arguably, Congress could establish a different, *non-MLA* leasing regimen with a different ratio — for example, the separate leasing arrangements that govern the National Petroleum Reserve-Alaska, where the revenue-sharing formula is 50/50 — but this issue was not before the court and hence remains an open issue.

In the past, a number of ANWR bills have specified the disposition of the federal portion of the revenues. Among the spending purposes have been federal land acquisition, energy research, and federal assistance to local governments in Alaska to mitigate the impact of energy development. Amounts would have been either permanently or annually appropriated. In the latter case, there would be little practical distinction between annually appropriating funds based on ANWR revenues and annually appropriating funds from the General Treasury. If there is no particular purpose specified for leasing revenues, the resulting revenues would be deposited in the Treasury where they would be available for any general government use.

**108<sup>th</sup> Congress.** Several sections of the House bill related to revenues. Section 30409 would have provided that 50% of adjusted revenues be paid to Alaska, and the balance deposited in the U.S. Treasury as miscellaneous receipts, except for the portion allocated to a fund to assist Alaska communities in addressing local impacts of energy development under §30412. The assistance fund was not to exceed \$11 million in an unspent balance, with \$5 million available for annual appropriation. More fundamentally, under §6503(a), the Secretary was to establish and implement a leasing program *under the Mineral Leasing Act*, yet §30412 directed a revenue sharing program different from that in the MLA. Section 30403(a) established a leasing program under the MLA, yet provided for a different revenue disposition, which could have raised additional questions of legal validity. If the alternative disposition were struck down and the revenue provisions were determined to be severable, it is possible that Alaska could have received 90% of the revenues

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<sup>21</sup> For more information on revenue distribution under the MLA and related matters, see CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge (ANWR)*.

from ANWR. was identical to §6503(a) (establishing a leasing program under the MLA) in the 107<sup>th</sup> Congress. In addition, in the House version of H.R. 6, §30409(c) would have allowed certain revenues from bids for leasing to be appropriated for energy assistance for low-income households. This provision was lacking in H.R. 4514 — the only difference between the two bills.

**109<sup>th</sup> Congress.** Under §3(a) of H.R. 5429, the Secretary was to establish and implement a leasing program for ANWR in accordance with the bill, and §9 stated that “notwithstanding any other provision of law,” revenues were to be shared 50/50 between the federal government and Alaska (with some special provisions on the federal share). It can be argued that the leasing program is not “under the MLA” and hence the different revenue-sharing provisions were not contrary to the Alaska Statehood Act. However, if a court struck down the revenue-sharing provision, it would then have to determine if that provision was *severable* — whether Congress would have enacted the rest of the statute without the flawed provision. H.R. 5429 did not have a “severability” provision that stated the intent of Congress in this regard. If a court both struck down the revenue-sharing provision and found it to be severable, then Alaska could receive 90% of ANWR revenues.

Similarly, S. 1932 also did not state that leasing would be under the MLA, and also set out many requirements that differed from those of the MLA. “Notwithstanding any other provision of law,” it too directed that receipts from leasing and operations “authorized under this section” be divided equally between the state of Alaska and the federal government. Because of the change in the Senate definition of *Coastal Plain* and the accompanying map, the bill might have included revenues from Native lands in the 50/50 split. The Defense bill (Division D, §1) also provided for a 50/50 split, and contained various provisions for distribution of certain percentages of the federal share to various purposes, including hurricane relief. In addition, §14 of Division C of the Defense bill contained a severability provision that provided explicitly that if any portion of either Division C or D were held to be *unconstitutional*, the remainder of the two divisions would not be affected. It is not clear to what provisions the severability language might have applied. As discussed, some issues regarding the revenue split might remain, but those issues might rest on contractual interpretations, rather than constitutional concerns. However, if the 50/50 revenue split were struck down, Alaska could receive 90% of the ANWR revenues and, if so, fewer federal funds would be available for programs premised on the 50% federal share.

**110<sup>th</sup> Congress.** S. 2973 does not establish the leasing program under the MLA. And “notwithstanding the Mineral Leasing Act ... or any other provision of law,” it too directs (§122) that receipts from leasing and operations “authorized under this subtitle” allocates 50% to the government. Of the remainder, it sets aside \$35 million for a fund for local government impact aid, with the balance to the state of Alaska. It contains no severability clause regarding revenue-sharing.

Notably, the bills in the 110<sup>th</sup> Congress differ most widely in their allocations for revenues, compared to allocations proposed in previous Congresses. While most continue the tradition of allocating an even split between federal and state governments, four bills (H.R. 3089, H.R. 6001, H.R. 6165, and H.R. 6207) allocate 75% to the federal government and 25% to the state. One bill (S. 2758) allocates

100% to the federal government, and makes the funds “available without further appropriation or fiscal year limitation.” In addition, various other programs would benefit under certain bills: an “American-Made Energy Trust Fund” (H.R. 5437); an “Alternative Energy Trust Fund” (H.R. 6107); an “Alternative Energy Program” in the Department of Energy (S. 2758); the existing Low-Income Home Energy Assistance Program (S. 2758); the existing Energy Department Weatherization Assistance Program; and the existing Agriculture Department’s Supplemental Nutrition Program for Women, Infants, and Children. Finally, several bills (H.R. 3089, H.R. 5437, H.R. 6001, H.R. 6009, H.R. 6107, H.R. 6165, H.R. 6207, and S. 2758, as well as S. 2973) have provisions for community impact assistance, with amounts ranging from \$5 million to \$35 million.

**Project Labor Agreements (PLAs).** A recurring issue in federal and federally funded projects is whether project owners or contractors should be required, by agreement, to use union workers. PLAs are agreements between a project owner or main contractor and the union(s) representing craft workers that establish the terms and conditions of work that will apply for the particular project. The agreement may also specify a source (such as a union hiring hall) to supply the craft workers. Typically, the agreement is binding on all contractors and subcontractors working on the project, and specifies wage rates and benefits, discusses procedures for resolving labor and jurisdictional disputes, and includes a no-strike clause. Proponents of PLAs, including construction and other unions, argue that PLAs ensure a reliable, efficient labor source, help keep costs down, and ensure access for union members to federal and federally funded projects. Opponents, including nonunion firms and their supporters, believe that PLAs inflate costs, reduce competition, and unfairly restrict access to those projects. There is little independent information to weigh the validity of the conflicting assertions.

**108<sup>th</sup> Congress.** The House’s H.R. 6 directed the Secretary to require lessees “to negotiate to obtain a project labor agreement.” The Secretary was to do so “recognizing the Government’s proprietary interest in labor stability and the ability of construction labor and management to meet the particular needs and conditions of projects to be developed ....”

**109<sup>th</sup> Congress.** H.R. 5429 (§6(b)) directed the Secretary to require lessees in the 1002 area to “negotiate to obtain a project labor agreement” — “recognizing the Government’s proprietary interest in labor stability and the ability of construction labor and management to meet the particular needs and conditions of projects to be developed....” H.R. 2863 (§6(b)) contained similar provisions, but S. 1932 had no similar provision.

**110<sup>th</sup> Congress.** S. 2973 has the same language directing negotiation for a PLA as in previous Congresses.

**Oil Export Restrictions.** Export of North Slope oil in general, and any ANWR oil in particular, has been an issue, beginning at least with the authorization of the TransAlaska Pipeline (TAPS) in 1973, and continuing into the current ANWR debate. Much of the TAPS route is on federal lands and the MLA prohibits export of oil transported through pipelines granted rights-of-way over federal lands (16 U.S.C. §185(u)). The Trans-Alaska Pipeline Authorization Act (P.L. 93-153, 43



U.S.C. §1651 et seq.), specified that oil shipped through it could be exported only under restrictive conditions. Subsequent legislation strengthened the export restrictions further.<sup>22</sup> Oil began to be shipped through the pipeline in increasing amounts as North Slope oilfield development grew in the 1970s and 1980s. With exports effectively banned, most of the North Slope oil went to West Coast destinations; the rest was shipped to the Gulf Coast via the Panama Canal or overland across the isthmus. In the early and mid-1990s, the combination of California, North Slope, and federal offshore production, plus imports, produced large crude oil supplies relative to demand. California prices fell, causing complaints from California and North Slope producers.

By 1995, several years of low world oil prices and relative calm in the Mideast had reduced concern about petroleum supplies. Market forces eventually created pressure to change the law. In 1995, P.L. 104-58 (30 U.S.C. §185(s)) was enacted, Title II of which amended the MLA to provide that oil transported through TAPS may be exported unless the President finds, after considering stated criteria, that it is *not* in the national interest. North Slope exports rose to a peak of 74,000 barrels/day in 1999, representing 7% of North Slope production. North Slope oil exports ceased voluntarily in May 2000 and have since been minimal to none, as Alaska producers found ample demand in U.S. markets at world prices.

If Congress wished to limit export of any oil from the 1002 area, by applying the restriction to oil transported through TAPS, the restriction might not be effective: oil shipment via tanker could become practical if current warming trends in the Arctic continue and if crude oil prices provide sufficient incentive. Recent proposed bans on export of ANWR oil have not been tied to shipment through TAPS.

**108<sup>th</sup> Congress.** The House bill (§30406(a)(8)) would have required the prohibition on the export of oil produced in the 1002 area as a condition of a lease.

**109<sup>th</sup> Congress.** H.R. 5429 (§6(a)(8)) would have prohibited the export of oil produced in the 1002 area as a condition of a lease. S. 1932 (§4001(g)) contained a similar provision, as did H.R. 2863 (§12). However, inasmuch as other North Slope oil is allowed to be exported, it would appear that prohibiting the export of ANWR oil could be moot: producers aiming to tap the export market would substitute other North Slope oil to meet the demand.

**110<sup>th</sup> Congress.** S. 2973 (§ 121) has the same terms as those in H.R. 5429 in the previous Congress. As with these earlier bills, substitution of ANWR oil with oil from other fields outside of ANWR could reduce the effect of the export ban. However, because the limit is not cast in terms of the transportation of oil (TAPS vs. tankers), the export ban would still apply even with a shift to tanker transport.

**NEPA Compliance.** The National Environmental Policy Act of 1969 (NEPA, P.L. 91-190; 42 U.S.C. §4321) requires the preparation of an environmental impact

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<sup>22</sup> The Energy Policy and Conservation Act of 1975 (P.L. 94-163), the 1977 amendments to the Export Administration Act (P.L. 95-52 and P.L. 95-223), and the Export Administration Act of 1979 (P.L. 96-72), which replaced the Export Administration Act of 1969.

statement (EIS) to examine the effects of major federal actions with significant effects on the environment, and to provide public involvement in agency decisions. The last full EIS examining the effects of energy development in ANWR was the Final Legislative Environmental Impact Statement (FLEIS) completed in 1987, and some observers assert that a new EIS is needed to support development now. NEPA requires an EIS to analyze an array of alternatives, including a “no action” alternative. Some development supporters would like to see the process truncated, in light of past analyses and to hasten production. Development opponents, and NEPA supporters, argue that the 19-year gap and changed circumstances since the last analysis necessitates a thorough update, and stress the flaws they found in the 1987 FLEIS.

**108<sup>th</sup> Congress.** Section 30403(c) of the House bill deemed the 1987 FLEIS adequate with respect to actions by the Secretary to develop leasing regulations, yet required the Secretary to prepare an EIS with respect to other actions, some of which might require only a (usually shorter) “environmental assessment.” Consideration of alternatives was to be limited to two choices: a preferred option and a “single leasing alternative.” (Generally, an EIS analyzes a range of alternatives, including a “no action” alternative.)

**109<sup>th</sup> Congress.** Section 3(c) of the H.R. 5429 deemed the 1987 FLEIS to satisfy NEPA requirements with respect to prelease activities and the development and promulgation of leasing regulations, and required the Secretary to prepare an EIS of all other actions authorized by the subtitle before the first lease sale. Consideration of alternatives was to be limited to two choices, a preferred leasing action and a “single leasing alternative.” Compliance with the subsection was deemed to satisfy all requirements to analyze the environmental effects of proposed leasing. H.R. 2863 (Division C, §3(c)) was essentially identical. S. 1932 (§4001(c)) had similar provisions, but did not expressly require an EIS for leasing.

**110<sup>th</sup> Congress.** The terms of S. 2973 (§ 112(c)(2)) are identical to those of H.R. 5429 in the 109<sup>th</sup> Congress.

**Compatibility with Refuge Purposes.** Under current law for the management of national wildlife refuges (16 U.S.C. §668dd), and under 43 C.F.R. §3101.5-3 for Alaskan refuges specifically, an activity may be allowed in a refuge only if it is compatible with the purposes of the particular Refuge and with those of the Refuge System as a whole.

**108<sup>th</sup> Congress.** Section 30403(c) of the House bill stated that the oil and gas leasing program and activities in the Coastal Plain were deemed to be compatible with the purposes for which ANWR was established and that no further findings or decisions were required to implement this determination. This language appeared intended to answer the compatibility question and to eliminate the usual compatibility determination processes. The general statement that leasing “activities” are compatible arguably encompassed necessary support activities such as construction and operation of port facilities, staging areas, personnel centers, etc.

**109<sup>th</sup> Congress.** Section 3(c) of the H.R. 5429, §3(c) of H.R. 2863, and §4001(c) of S. 1932 also stated that the energy leasing program and activities in the Coastal Plain were deemed to be compatible with the purposes for which ANWR was established and that no further findings or decisions were required to implement this determination.

**110<sup>th</sup> Congress.** Section 112(e)(1) of S. 2973 has a compatibility provision identical to provisions in previous Congresses.

**Judicial Review.** Leasing proponents urge that any ANWR leasing program be put in place promptly and argue that expediting, curtailing, or prohibiting judicial review is desirable to achieve that goal. Judicial review can be expedited through procedural changes, such as reducing the time limits within which suits must be filed, avoiding some level of review, curtailing the scope of the review, or increasing the burden imposed on challengers. In the past, bills before Congress have combined various elements.

**108<sup>th</sup> Congress.** The House bill (§30408) contemplated prompt action to put a leasing program in place and had sections on expedited judicial review. It would have required that complaints be filed within 90 days. H.R. 6 §§30408(a)(1) and (2) appeared to contradict each other as to where suits were to be filed and it is possible part of a sentence was omitted. H.R. 6 (§30408(a)(3)) would also have limited the scope of review by stating that review of a Secretarial decision, including environmental analyses, was to be limited to whether the Secretary complied with the terms of that title of H.R. 6 and be based on the administrative record, and that the Secretary's analysis of environmental effects was "presumed to be correct unless shown otherwise by clear and convincing evidence to the contrary." This standard in this context arguably would make overturning a decision more difficult.

**109<sup>th</sup> Congress.** H.R. 5429 (§8) required that any complaints seeking judicial review be filed within 90 days. Section 8(a)(2) provided that suits were to be filed in the Court of Appeals in Washington, DC, as did H.R. 2863 (§8(a)). H.R. 5429 (§8(a)(3)) would also have limited the scope of review by stating that review of a secretarial decision, including environmental analyses, would be limited to whether the Secretary complied with the terms of the ANWR subtitle, that it would be based on the administrative record, and that the Secretary's analysis of environmental effects is "presumed to be correct unless shown otherwise by clear and convincing evidence to the contrary." This standard is unclear, but in this context arguably would make overturning a decision more difficult. S. 1932 and H.R. 2863 (§4001(c) and §8(a), respectively) were similar. S. 1932 omitted the presumption concerning the Secretary's analysis of environmental effects.

**110<sup>th</sup> Congress.** Section 117 of S. 2973 would also require filing within 90 days in the Court of Appeals in Washington, DC, and contains the same presumptions as those in H.R. 5429 in the 109<sup>th</sup> Congress. In addition, §117(b) provides that the Administrative Procedure Act, or any other method of bringing suit against the federal government, does not apply. Suits to enforce this law may only be brought pursuant to the specific provisions in §117.

**Special Areas.** Some have supported setting aside certain areas in the coastal plain for protection of their ecological or cultural values. This could be done by designating the areas specifically in legislation, or by authorizing the Secretary to set aside areas to be selected after enactment. The FLEIS identified four special areas that together total more than 52,000 acres. The Secretary could be required to restrict or prevent development in these areas or any others that may seem significant, or to select among areas if an acreage limitation on such set-asides is imposed.

**108<sup>th</sup> Congress.** The House bill (§30403(e)) allowed the Secretary to set aside up to 45,000 acres of special areas, and named one specific area in which leases, if permitted, would forbid surface occupancy. As mentioned above, the FLEIS identified four special areas which together total more than 52,000 acres, so the Secretary would have been required to select among these areas or any others that may seem significant. Section 30403(f) also stated that the closure authority in the ANWR title was to be the Secretary's sole authority, which might limit possible secretarial actions under the Endangered Species Act (P.L. 93-205; 16 U.S.C. §1531ff). H.R. 770 and S. 543 would have designated the entire 1002 area as wilderness.

**109<sup>th</sup> Congress.** H.R. 5429 (§3(e)) allowed the Secretary to set aside up to 45,000 acres (and names one specific special area) in which leases, if permitted, would forbid surface occupancy. Because the four special areas are larger than this total, the Secretary would be required to select among these areas or any others that may seem significant. Section 3(f) also stated that the closure authority in the ANWR title was to be the Secretary's sole authority, which might limit possible secretarial actions under the Endangered Species Act. H.R. 2863 (§3(e)) was essentially identical. H.R. 2863 had no provision for special areas.

**110<sup>th</sup> Congress.** The provisions of §112(e) and (f) are identical with those of H.R. 5429 (§3(e) and (f)), above.

**Non-Development Options.** Several options have been available to Congress to either postpone or forbid development, unless Congress were later to change the law. These options are allowing exploration only, designating the 1002 area as wilderness, and taking no action. The legislative history of these options is described below.

**Exploration Only.** Some have argued that the 1002 area should be opened to exploration first, before a decision is made on whether to proceed to leasing. Those with this view hold that with greater certainty about the presence or absence of energy resources, a better decision could be made about whether to open the coastal plain for full leasing. This idea has had relatively little support over the years. For those opposed to energy development, the reasons are fairly clear: if exploration results in no or insufficient economic discoveries, any damage from exploration would remain. If there were economic discoveries, support for further development might be unstoppable. Those who support development see unacceptable risks in such a proposal. First, who would be charged with carrying out exploration (federal agency or some private entity), who would pay for it, and to whom would the results be available? Second, if no economic discoveries were made, would that be because the "best" places (in the eyes of whatever observer) were not examined? Third,

might any small discoveries become economic in the future? Fourth, if discoveries did occur, could industry still be foreclosed from development, or might sparse but promising data elevate bidding to unreasonable levels? Fifth, if exploration is authorized, what provisions, if any, should pertain to Native lands? In short, various advocates see insufficient gain from such a proposal, and it has not been introduced in recent years.

**Wilderness Designation.** Energy development is not permitted in wilderness areas, unless there are valid pre-existing rights or unless Congress specifically allows it or later reverses the designation. Development of the surface and subsurface holdings of Native corporations would be precluded inside wilderness boundaries (though compensation might be owed). It would also preserve existing recreational opportunities and jobs, as well as the existing level of protection of subsistence resources, including the Porcupine Caribou Herd.

*108<sup>th</sup> Congress.* H.R. 770 and S. 543 would have designated the 1002 area as wilderness.

*109<sup>th</sup> Congress.* H.R. 567 and S. 261 would have designated the 1002 area as part of the National Wilderness System.

*110<sup>th</sup> Congress.* H.R. 39 and S. 2316 would designate the 1002 area as part of the National Wilderness System.

**Presidential Certification.** Under the two Senate amendments to S. 517 in the 107<sup>th</sup> Congress (which were ultimately rejected by the Senate), the leasing provisions would have taken effect upon a determination and certification by the President that development of the Coastal Plain is in the national economic and security interests of the United States. This determination and certification were to be in the sole discretion of the President and would not be reviewable. This option has not been raised in other bills.

**No Action.** Because current law prohibits development unless Congress acts, this option also prevents energy development on both federal and Native lands. Those supporting delay often argue that not enough is known about either the probability of discoveries or about the environmental impact if development is permitted. Others argue that oil deposits should be saved for an unspecified “right time.”

## Selected Legislation in the 108<sup>th</sup> Congress

### **H.R. 6 (Tauzin)**

Title IV, Division C to repeal current prohibition against ANWR development, create energy leasing program, and provide for distribution of revenues. Introduced April 7, 2003; referred to eight committees, including Committee on Resources. April 10, 2003, House passed Wilson (NM) amendment to limit specified surface development to 2,000 acres (yeas 226, nays 202; Roll Call #134) and defeated Markey-Johnson (CT) amendment to strike Title IV, Division C (yeas 197, nays 228;

Roll Call #135). Passed House April 11, 2003 (yeas 247, nays 175; Roll Call #145). Passed Senate (amended, no ANWR development provisions) July 31, 2003 (yeas 84, nays 15; Roll Call #317). Conference report (H.Rept. 108-375) filed November 18, 2003. Conference report agreed to in House November 18, 2003 (yeas 246, nays 180; Roll Call #630). Cloture motion failed in Senate November 21, 2003 (yeas 57, nays 40; Roll Call #456).

**H.R. 39 (D. Young)**

To repeal current prohibition against development in ANWR; and for other purposes. Introduced January 7, 2003; referred to Committee on Resources.

**H.R. 770 (Markey)**

To designate the 1002 area of ANWR as wilderness. Introduced February 13, 2003; referred to Committee on Resources.

**H.R. 4514 (Pombo)**

Virtually identical to House-passed version of H.R. 6; (see “Revenue Disposition” above, for only difference). Introduced June 4, 2004; referred to Committee on Resources.

**S. 543 (Lieberman)**

To designate the 1002 area of ANWR as wilderness. Introduced March 5, 2003; referred to Committee on Environment and Public Works.

## Selected Legislation in the 109<sup>th</sup> Congress

**P.L. 109-58 (H.R. 6, Barton)**

An omnibus energy act; Title XXII to open ANWR coastal plain to energy development. Introduced April 18, 2005; considered and marked up by Committee on Resources April 13, 2005 (no report). Considered by House April 20-21, 2005. Markey/Johnson amendment (H.Amdt. 73) to strike ANWR title rejected (yeas 200, nays 231, Roll Call #122) April 20. Passed April 21, 2005 (yeas 249, nays 183, Roll Call #132). Passed Senate, with no ANWR development provision, June 28, 2005 (yeas 85, nays 12, Roll Call #158). Conference agreement omitted ANWR title; signed by President, August 8, 2005.

**P.L. 109-148 (H.R. 2863)**

Provided for Defense appropriations. Conference report (H.Rept. 109-359) filed December 18, 2005 (Division C & D provided for ANWR development and revenue disposition). Cloture motion on filibuster on ANWR provision failed December 21, 2005 (yeas 56, nays 44, Roll Call #364). S.Con.Res. 74 corrected enrollment of the bill to delete Divisions C and D. Passed Senate December 21, 2005 (yeas 48, nays 45, Roll Call #365). Passed House December 22, 2005 on voice vote. Signed by President, December 30, 2005.

**P.L. 109-171 (S. 1932)**

Omnibus budget reconciliation; Title IV to provide for ANWR development. Introduced, referred to Committee on Budget, and reported October 27, 2005 (no

written report). Passed Senate November 3, 2005 (yeas 52, nays 47, Roll Call #303). Passed House (amended) November 18, 2005. (For House action, see also H.R. 4241.) Title IV dropped in conference. House approved conference report (H.Rept. 109-362; yeas 212, nays 206, Roll Call #670). Senate approved report with an amendment (yeas 51, nays 50, Roll Call #363), December 21, 2005. House agreed to Senate amendment (yeas 216, nays 214, Roll Call #4), February 1, 2006. Signed by President, February 8, 2006.

**H.Con.Res. 95 (Nussle)**

FY2006 budget resolution, included spending targets for Committee on Resources. Introduced, referred to Committee on Budget, and reported March 11, 2005 (H.Rept. 109-17). Passed House March 17, 2005 (yeas 218, nays 214, Roll Call #88). Passed (amended) Senate in lieu of S.Con.Res. 18 (no report). April 28, 2005, House approved conference report (H.Rept. 109-62; yeas 214, nays 211, Roll Call #149), and Senate approved conference report (yeas 52, nays 47, Roll Call #114).

**H.Con.Res. 376 (Nussle)**

FY2007 budget resolution, to set spending targets including those for Committee on Resources. Introduced, referred to Committee on Budget, and reported March 31, 2006 (H.Rept. 109-402). Passed House May 18, 2006 (yeas 218, nays 210, Roll Call #158).

**H.R. 39 (D. Young)**

To repeal current prohibition against ANWR leasing; direct Secretary to establish competitive oil and gas leasing program; specify that the 1987 FLEIS is sufficient for compliance with the National Environmental Policy Act; authorize set-asides up to 45,000 acres of Special Areas that restrict surface occupancy; set minimum for royalty payments and for tract sizes; and for other purposes. Introduced January 4, 2005; referred to Committee on Resources.

**H.R. 567 (Markey)**

To designate Arctic coastal plain of ANWR as wilderness. Introduced February 2, 2005; referred to Committee on Resources.

**H.R. 4241 (Nussle)**

FY2006 budget reconciliation. Title to open ANWR struck before floor consideration. Introduced November 7, 2005; passed House November 18, 2005 (yeas 217, nays 215, Roll Call #601). Inserted in lieu of the text of S. 1932.

**H.R. 5429 (Pombo)**

To create a leasing program to open ANWR to energy development. Introduced May 19, 2006; referred to Committee on Resources; passed House May 25, 2006 (yeas 225, nays 201, Roll Call #209).

**S.Con.Res. 18 (Gregg)**

FY2006 budget resolution; to set spending targets including those for Committee on Energy and Natural Resources. Introduced January 31, 2005; referred to Committee on Budget. Reported March 10, 2005 (no written report). Cantwell amendment (S.Amdt. 168, relating to ANWR) defeated March 16, 2005 (yeas 49, nays 51, Roll Call #52). Passed Senate March 17, 2005 (yeas 51, nays 49, Roll Call

#81). Senate incorporated measure in H.Con.Res. 95 as an amendment; passed H.Con.Res. 95 in lieu.

**S.Con.Res. 74 (Cantwell)**

Corrected enrollment of the bill H.R. 2863 (P.L. 109-148) to delete Divisions C and D. Passed Senate December 21, 2005 (yeas 48, nays 45, Roll Call #365). Passed House December 22, 2005, on voice vote.

**S.Con.Res. 83 (Gregg)**

FY2007 budget resolution; providing direction for cuts in mandatory spending targets only for Committee on Energy and Natural Resources. Introduced and reported by Committee on Budget on March 10, 2006 (no written report). Passed Senate March 16, 2006 (yeas 51, nays 49, Roll Call #74).

**S. 261 (Lieberman)**

To designate Arctic coastal plain of ANWR as wilderness. Introduced February 2, 2005; referred to Committee on Environment and Public Works.

**S. 1891 (Murkowski)**

To authorize energy development and economically feasible oil transportation in ANWR. Introduced October 19, 2005; referred to Committee on Energy and Natural Resources.

## **Selected Legislation in the 110<sup>th</sup> Congress**

**H.R. 39 (Markey)**

To designate the Coastal Plain as wilderness. Introduced January 9, 2007; referred to Committee on Natural Resources.

**H.R. 2415 (Paul)**

To repeal the withdrawal of the ANWR coastal plain from mining and mineral leasing acts and to repeal prohibition in ANILCA on leasing in ANWR. Introduced May 21, 2007; referred to Committees on Ways and Means, Natural Resources, and Financial Services.

**H.R. 3089 (Thornberry)**

To repeal current prohibition against development in ANWR; and for other purposes. Introduced July 18, 2007; referred to Committees on Natural Resources, Ways and Means, and Energy and Commerce.

**H.R. 5437 (Ross)**

Title III to open ANWR coastal plain to development. Introduced February 14, 2008; referred to the Committee on Energy and Commerce, and in addition to the Committees on Science and Technology, Oversight and Government Reform, Armed Services, Agriculture, Natural Resources, and Ways and Means.



**H.R. 6001 (Buyer)**

Title I, Subtitle B, to open ANWR coastal plain to development. Introduced May 8, 2008; referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce, Ways and Means, Armed Services, and Science and Technology.

**H.R. 6009 (English)**

Title III, Subtitle A, to open ANWR coastal plain to development. Introduced May 8, 2008; referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce, the Judiciary, Ways and Means, and Foreign Affairs.

**H.R. 6107 (Young of Alaska)**

To open ANWR coastal plain to development. Introduced May 21, 2008; referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce and Science and Technology.

**H.R. 6165 (Whitfield)**

Title III, Subtitle B, to open ANWR coastal plain to development. Introduced May 22, 2008; referred to Committee on Ways and Means, and in addition to the Committees on Natural Resources, Oversight and Government Reform, Armed Services, and Science and Technology.

**H.R. 6207 (Akin)**

Title III, Subtitle C, to open ANWR coastal plain to development. Introduced June 9, 2008; referred to Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Rules, and Natural Resources.

**S. 2316 (Lieberman)**

To designate ANWR coastal plain of ANWR as wilderness. Introduced November 11, 2007; referred to Committee on Environment and Public Works.

**S. 2758 (Murkowski)**

To open ANWR coastal plain to development. Introduced March 13, 2008; referred to Committee on Energy and Natural Resources.

**S. 2973 (Domenici)**

Title I, Subtitle B, to open ANWR coastal plain to development. Introduced May 2, 2008; placed on Senate Legislative Calendar under General Orders, May 6, 2008.

**S.Amdt. 4720 (McConnell) to S. 2284**

Title I, Subtitle B, to open ANWR coastal plain to development. Submitted May 7, 2008; pursuant a unanimous consent agreement requiring 60 votes for passage, the amendment was not agreed to (yeas 42, nays 56; Roll Call # 123), May 13, 2008.

## For Additional Reading

### CRS Reports

CRS Report RL33872. *Arctic National Wildlife Refuge (ANWR): New Directions in the 110<sup>th</sup> Congress*, by M. Lynne Corn, Bernard A. Gelb, and Kristina Alexander.

CRS Report RL34547. *Possible Federal Revenue from Oil Development of ANWR and Nearby Areas*, by Salvatore Lazzari.

CRS Report RS22304. *ANWR and FY2006 Budget Reconciliation Legislation*, by Bill Heniff Jr. and M. Lynne Corn.

CRS Report RS21030. *ANWR Development: Economic Impacts*, by Bernard A. Gelb.

CRS Report RS22428. *ANWR Leasing Revenue Estimates*, by Bernard Gelb.

CRS Report RS21170. *ANWR Oil: Native Lands and State Waters*, by Bernard A. Gelb.

CRS Report RL31278. *Arctic National Wildlife Refuge: Background and Issues*, by M. Lynne Corn (Coordinator).

CRS Report RL31022. *Arctic Petroleum Technology Developments*, by Bernard A. Gelb, M. Lynne Corn, and Terry R. Twyman.

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<sup>23</sup> This agency is now called the Government Accountability Office.