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# Drill, Baby, Drill: The Arctic National Wildlife Refuge and America's Energy Reckoning

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# **“DRILL, BABY, DRILL!”: THE ARCTIC NATIONAL WILDLIFE REFUGE AND AMERICA’S ENERGY RECKONING<sup>1</sup>**

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## INTRODUCTION

The Arctic National Wildlife Refuge (“ANWR”), a region that has been at the forefront of the environmental policy debate for over thirty years, lies in the remote reaches of northern Alaska. The ANWR mainly exists along the Arctic Coastline at Alaska’s North Slope and encompasses approximately twenty million acres of land. Since the 1970s, an environmental battle has been waged between oil interests, who seek to drill for oil within the Refuge, and environmental activists, who seek to prohibit drilling along the Coastal Plain.

The debate between these parties regards whether to allow oil drilling, leasing, and production in a specific area of the ANWR known as the “1002 Area.” While the discourse is by no means a new one, it continues to be at the forefront of national environmental and energy policy. Importantly, the ANWR discussion has recently reemerged with new vigor and passion as the United States seeks to gain greater energy independence from Middle Eastern oil suppliers in response to the terrorist attacks of September 11, 2001.

Certainly, energy independence is vital to the United States’ economic and national security interests. However, this Note argues that open drilling in the ANWR provides only a short-term patch to these significant renewable energy concerns. While prudent drilling in the ANWR should be allowed, the effectiveness of this approach will only be realized if it is coupled with an earnest effort to develop alternative sources of energy.

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1. The skyrocketing cost of a tank of gas is surely a factor. But the issue [of domestic drilling] shot to prominence this week when GOP presidential nominee John McCain named Alaska Gov. Sarah Palin as his running mate. She’s an aggressive advocate of expanded drilling, including in Alaska’s Arctic National Wildlife Refuge. McCain opposes that, but that didn’t matter to delegates. They chanted “Drill, baby, drill!” during Palin’s speech a night earlier.

Juliet Williams, *Drilling for Oil a Hot Topic at GOP*, ROCKY MTN. NEWS, Sept. 5, 2008, available at <http://www.rockymountainnews.com/news/2008/sep/05/drilling-for-oil-a-hot-topic-at-gop/>.

\* Anticipated J.D. Notre Dame Law School 2009. To my wife, Crystal, the only woman I’d move to Alaska for.

Part I of this Note examines the development of oil and its importance to the United States' economy. Part II explores the history of Alaska with respect to the Arctic National Wildlife Refuge. Part III analyzes the debate between both sides and attempts to address pertinent environmental, economic, and national security concerns. Finally, Part IV will conclude with an attempted solution to the ANWR drilling debate. The conclusion will utilize a cost-based analysis to specifically scrutinize environmentalist attempts to ban ANWR drilling altogether.

## I. THE IMPORTANCE OF OIL TO THE UNITED STATES AND THE COUNTRY'S CURRENT ENERGY NEEDS

### A. *The Characteristics of Oil in its Natural State*

To gain a more complete comprehension of the ANWR debate, it is helpful to have a fundamental understanding of oil dynamics. This comprehension demands a review of oil's physical characteristics and natural development processes. While the origins of oil are subject to some level of scientific debate, most accept the theory that oil develops from the decomposition of marine animals. According to this vastly accepted principle, these marine animals die in concentrated areas and their remains are "chemically altered through geologic time."<sup>2</sup>

In most cases, these oil "deposits are found in sedimentary beds of sandstone, shale, and limestone."<sup>3</sup> The oil deposits subsist within the "interstices" of the rock—basically, the pores within the rock itself—and are confined by impermeable strata.<sup>4</sup> Thus, "[o]il and gas reservoirs form when hydrocarbons migrate up from their origin rock until they collect in a porous sedimentary deposit (the actual reservoir rock) overlain by a denser mineral, such as shale or salt, which prevents the oil or gas from migrating further."<sup>5</sup> An oil reservoir, then, is fundamentally a permeable rock that contains a sufficient quantity of marketable oil.<sup>6</sup> This oil is trapped within the rock by layers of impervious strata.<sup>7</sup>

### B. *Oil as Integral to the United States' Economic and Military Interests*

Oil represents an integral component of the U.S. economy and is vital to American military operations. As this country continues to

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2. William E. Colby, *The Law of Oil and Gas: A Consideration of Landowners' Rights, Particularly as Developed in California*, 31 CAL. L. REV. 357, 357 (1943).

3. *Id.* at 358.

4. *Id.*

5. Robert W. Corbisier, Note, *The Arctic National Wildlife Refuge, Correlative Rights, and Sourdough: Not Just for Bread Anymore*, 19 ALASKA L. REV. 393, 399 (2002).

6. See HOWARD R. WILLIAMS & CHARLES J. MEYERS, *MANUAL OF OIL AND GAS TERMS* 209 (1957).

7. *Id.*

struggle to consistently utilize viable alternative sources of energy,<sup>8</sup> the need for oil becomes even clearer. According to the Energy Information Administration ("EIA"), the United States is the leading consumer of oil by a considerable amount.<sup>9</sup> The large amounts of oil consumed by the United States relative to other countries would not be significant if the U.S. would produce enough oil domestically to fulfill its energy needs. Unfortunately, this is not the case, as the United States consumes far more oil than it generates.<sup>10</sup> Thus, the United States must import the majority of its oil in order to function.

The importation of vast amounts of foreign oil concerns many Americans, considering that much of our oil comes from the Middle East. A large amount of oil that the U.S. acquires comes from the Persian Gulf as well as from other nations within the Organization of Petroleum Exporting Countries ("OPEC").<sup>11</sup> These countries include Iran, Iraq, Kuwait, Qatar, Saudi Arabia, and the United Arab Emirates, many of which are openly hostile to American interests.<sup>12</sup>

Thus, for the United States to remain the global leader in commerce and military power, many contend that America must increase its domestic supply of oil or, perhaps, develop alternative sources of energy. Those who support the increase of our domestic oil supply argue that a large source of oil may exist in Alaska—specifically in the 1002 Area of the Arctic National Wildlife Refuge.

### C. *Potential Environmental Impact of Oil Production*

While drilling in the ANWR may seem like a simple and viable solution to our oil production woes, it could potentially come with a large cost to the Alaskan environment. For reasons involving the potential harm to the environment and animals in the Refuge, many feel the perceived benefit of a larger supply of oil is not worth the potential alarming costs.

Those who oppose drilling in the Refuge are concerned with the impact that drilling and its related operations will have on the environment. Drilling opponents contend that not only will drilling operations

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8. See William Tucker, *No Time to Declare Independence*, WALL ST. J., Mar. 26, 2008, at D9 (reviewing ROBERT BRYCE, *GUSHER OF LIES* (2008), in which Bryce calls the development of ethanol "the largest scam in our nation's history" and develops over fifty pages of evidence to suggest that the method of distilling ethanol from corn, in an attempt to utilize alternative sources of energy, actually "diminishes our energy supply").

9. Energy Info. Admin., Dep't of Energy, World Petroleum Supply and Disposition (rev. Dec. 8, 2008), <http://www.eia.doc.gov/pub/international/iea2006/table31.xls>.

10. *Id.*

11. See Christopher R. Clements, Note, *No Blood for Oil?[:] United States National Security, Oil, and the Arctic National Wildlife Refuge*, 28 WM. & MARY ENVTL. L. & POL'Y REV. 87, 89 (2003).

12. *Id.* at 89 n.14.

result in environmental disruptions based on the actual drilling, but that the resulting production infrastructure will create a spider-web of environmental disruptions that includes more roads, landing strips, and mechanisms for transporting oil back to the continental United States.

Anti-drilling activists further contend that these environmental disruptions will not only harm a serene and beautiful wilderness, but that they could also lead to the demise of animal populations in the ANWR, as well as the humans that count on those animals for basic subsistence. (For an expansive discussion on the potential impacts that oil production in the ANWR could have on animals, see Part III.A.3 *infra*.)

In order to better understand the nature of the debate as to whether or not drilling in the ANWR should be allowed, it is helpful to first learn more about the Refuge's history.

## II. THE HISTORY OF ALASKA AND THE ANWR

### A. *Brief History of Alaska*

The Arctic National Wildlife Refuge lies on the Arctic coastline at Alaska's northern slope.<sup>13</sup> In the early 1900s, oil seeps began to appear east of Point Barrow along the arctic coast.<sup>14</sup> The presence of oil seeps in rocks tends to suggest the potential of discovering profitable oil reserves.<sup>15</sup> This oil seep activity sufficiently generated interest in the oil drilling potential of northern Alaska. This activity and interest did not go unnoticed by the United States government. In 1923, the U.S. Navy established a twenty-three-acre petroleum reserve in northwestern Alaska.<sup>16</sup> The reserve—named Naval Petroleum Reserve No. 4—had the prophetic task of securing “a supply of oil for future national security needs.”<sup>17</sup> From 1944 to 1953, the government began extensive oil and gas drilling and exploration in the North Slope region.<sup>18</sup>

During World War II, the United States government suspended oil operations, including oil, gas, and mineral leasing, along the entire North

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13. M. LYNNE CORN & BETH A. ROBERTS, CONG. RES. SERV., ARCTIC NATIONAL WILDLIFE REFUGE (ANWR): VOTES AND LEGISLATIVE ACTIONS, 95TH CONGRESS TO 110TH CONGRESS 1 (CRS-RL32838, rev. Sept. 2, 2008), <http://www.ncseonline.org/NLE/CRSreports/08Aug/RL32838.pdf> [hereinafter CRS REPORT].

14. U.S. FISH & WILDLIFE SERV., ARCTIC NATIONAL WILDLIFE REFUGE[:] POTENTIAL IMPACTS OF PROPOSED OIL AND GAS DEVELOPMENT ON THE ARCTIC REFUGE'S COASTAL PLAIN: HISTORICAL OVERVIEW AND ISSUES OF CONCERN 1 (2001), [http://library.fws.gov/Pubs7/arctic\\_oilandgas\\_impact.pdf](http://library.fws.gov/Pubs7/arctic_oilandgas_impact.pdf) [hereinafter IMPACTS].

15. See Corbisier, *supra* note 5, at 402.

16. IMPACTS, *supra* note 14, at 1.

17. *Id.* The Naval Petroleum Reserve No. 4 was later renamed the National Petroleum Reserve-Alaska (NPR-A).

18. See Corbisier, *supra* note 5, at 402 (noting that Naval drilling expeditions were somewhat disappointing, as the government “found only uneconomic reserves of hydrocarbons”).

Slope of Alaska, which encompassed 48.8 million acres of land.<sup>19</sup> This prohibition of oil exploration and production was prompted by the war—the U.S. decided to secure the entire area for military purposes.<sup>20</sup> The Roosevelt administration determined that the field would best be protected in case the U.S. military required emergency oil production for use in the war effort.<sup>21</sup>

The 1950s brought post-war construction in Alaska.<sup>22</sup> It also proved to be a renewed time of energy exploration in the northern area of the state.<sup>23</sup> This prompted concerns by Alaskan citizens and those in the scientific community regarding the potential environmental impacts of these activities.<sup>24</sup> Scientists responded to this development in 1952, when they commenced a comprehensive conservation survey to identify environmental protection opportunities that exist within the region. The final scientific report, entitled *The Last Great Wilderness*, “identified the undisturbed northeast corner of Alaska as the best opportunity for protection.”<sup>25</sup>

Following *The Last Great Wilderness* were two significant governmental actions that would set out the land use designations that northern Alaska generally has today.<sup>26</sup> The first action occurred in 1957 under the Eisenhower administration.<sup>27</sup> Secretary of the Interior Fred Seaton ordered the U.S. military to withdraw from twenty million acres of the Alaskan North Slope. This move effectively allowed commercial oil and gas activities to resume on an area previously suspended by the military during World War II.<sup>28</sup> Secondly, that same year, the Department of the Interior's Bureau of Sport Fisheries and Wildlife applied for permission to withdraw land to establish a wildlife refuge in the North Slope.<sup>29</sup> Secretary Seaton, in 1960, designated an 8.9 million acre area in northeastern Alaska as the “Arctic National Wildlife Refuge.”<sup>30</sup> The intent of this designation was to preserve the ANWR's “unique wildlife, wilderness

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19. *Id.*; IMPACTS, *supra* note 14, at 1.

20. Kristofer Pasquale, Note, *ANWR: The Legislative Quagmire Surrounding Stakeholder Control and Protection, and the Practical Consequences of Allowing Exploration*, 9 BUFF. ENVTL. L.J. 245, 247–48 (2002) (discussing President Franklin D. Roosevelt's setting aside of 67,440,000 acres of land in the Alaskan Northern Slope for future military use); see also Public Land Order 82, 8 Fed. Reg. 1599 (1942).

21. See Pasquale, *supra* note 20, at 247–48.

22. IMPACTS, *supra* note 14, at 1.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 2; see also Corbisier, *supra* note 5, at 406.

27. IMPACTS, *supra* note 14, at 2.

28. *Id.* This was in addition to the twenty-three million acres already allowed to be used for commercial oil and gas drilling uses. See notes 16–17 *supra* and accompanying text.

29. See *United States v. Alaska*, 521 U.S. 1, 46 (1997).

30. IMPACTS, *supra* note 14, at 2.

and recreation values.”<sup>31</sup> These two acts promulgated by the Eisenhower administration developed Alaskan land use as we now know it. The acts effectively allowed forty-three acres to be used for commercial oil development opportunities, while providing environmental sanctuary for the 8.9 million acre Arctic National Wildlife Refuge.

### B. *Legislative History of the ANWR*

Alaska, specifically with regard to the ANWR, has more than just a rich history of commercial oil exploratory activities; it also has rich legislative history with regard to congressional debate as to the future of the ANWR. In this section, I will discuss the major legislative enactments regarding the possibility for future commercial oil and gas development in the ANWR.

#### 1. Application for Establishment of a Wildlife Refuge in 1957

As discussed above, upon the recommendation of scientists in their report *The Last Great Wilderness*, the Eisenhower administration in 1960 effectively designated the Arctic National Wildlife Refuge in order to protect it from commercial oil production.<sup>32</sup> This laid the groundwork for the land use pattern used in northeast Alaska today.

#### 2. Alaska National Interest Lands Conservation Act (ANILCA)—1980

However, the establishment of the ANWR as a wildlife refuge was not the end of U.S. government intervention on the issue. Despite the Eisenhower administration’s opening of a significant portion of Alaska to commercial drilling interests in 1957, large reserves of oil were believed to exist within the ANWR territory.<sup>33</sup>

It is entirely possible that this belief existed due to the successful discovery of oil in Prudhoe Bay in 1968. In 1968, the Atlantic Richfield Company (“ARCO”) and Exxon discovered the largest oil field ever to be found in North America.<sup>34</sup> The discovery produced significant amounts of oil and is still an active oil drilling site today, despite a spill and temporary shutdown in 2006.<sup>35</sup> The Prudhoe Bay oil field discovery prompted a renewed interest in the potential of the North Slope as an

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31. *Id.*

32. *Id.*

33. *Id.*

34. British Petroleum, Prudhoe Bay Fact Sheet (rev. Aug. 2006), [http://www.bp.com/liveassets/bp\\_internet/us/bp\\_us\\_english/STAGING/local\\_assets/downloads/a/A03\\_prudhoe\\_bay\\_fact\\_sheet.pdf](http://www.bp.com/liveassets/bp_internet/us/bp_us_english/STAGING/local_assets/downloads/a/A03_prudhoe_bay_fact_sheet.pdf); see also Scott L. Montgomery, *ANWR 1002 Area and Development: One Question, Many Issues*, 101 OIL & GAS J. 38, 39 (2003).

35. See BP *Completes Oil Pipeline Replacements*, PAC. BUILDER & ENG’R, Mar. 2, 2009, at 11.

area for U.S. oil development.<sup>36</sup> It is entirely possible that the excitement generated from Prudhoe Bay brought renewed emphasis on the search for oil in the ANWR.

Congress extensively debated U.S. oil policy with regard to the ANWR. Eventually, in 1978 and 1979, the U.S. House of Representatives voted to designate the entire original range as Wilderness.<sup>37</sup> The U.S. Senate had its own proposal, however, and it originally postponed its decision as to whether or not to allow for the drilling of oil in the ANWR.<sup>38</sup> Before making its decision, the Senate "required studies of wildlife and petroleum resources, and the potential impacts of oil and gas development within the northern part of the Range."<sup>39</sup> The House eventually accepted the amendments promulgated by the Senate, and ANILCA was passed into law.<sup>40</sup> ANILCA, importantly, effectively doubled the original size of the Range.<sup>41</sup> ANILCA "authorized the largest single increase . . . to the acreage of national parks and wildlife refuges" in U.S. history, leaving "a clear and lasting federal conservation footprint on the State of Alaska."<sup>42</sup> However, the newly crafted Wilderness area did not address a specific portion of the coastal plain known as the "1002 Area."<sup>43</sup>

"The part of the original Range that was not designated Wilderness was addressed in Section 1002 of ANILCA."<sup>44</sup> This Section, covering the ANWR area that is now under the most debate, discussed additional information that Congress required before it would make a final decision on whether or not to allow drilling interests to harvest the area.<sup>45</sup> Perhaps most importantly, Section 1003 of ANILCA prohibited all oil and gas development and production activities from taking place in the 1002 Area until such was explicitly authorized by an act of Congress.<sup>46</sup>

To make the determination of whether or not to authorize drilling in the 1002 Area, Congress required, under Section 1002 of ANILCA,

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36. See *IMPACTS*, *supra* note 14, at 2.

37. *Id.* at 3.

38. *Id.*

39. *Id.*

40. Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371 (1980). Cecil Andrus, then Secretary of the Interior, called ANILCA "the greatest conservation bill in history." Jerry McBeath, Book Review, 9 J. INT'L WILDLIFE L. & POL'Y 149, 149 (2006).

41. CRS REPORT, *supra* note 13, at 6.

42. McBeath, *supra* note 40, at 149.

43. CRS REPORT, *supra* note 13, at 6.

44. *IMPACTS*, *supra* note 14, at 3.

45. See *id.* ("Studies of the 1002 Area included a comprehensive inventory and assessment of the fish and wildlife resources, an analysis of potential impacts of oil and gas exploration and development on those resources, and a delineation of the extent and amount of potential petroleum resources.").

46. CRS REPORT, *supra* note 13, at 6.



that a study of the coastal plain be commenced and completed within "five years and nine months of enactment."<sup>47</sup> The majority of this research was performed by the U.S. Fish and Wildlife Service, which began conducting baseline studies in 1981.<sup>48</sup> Seismic studies of the 1002 Area were also conducted during that time period.<sup>49</sup> Other studies attempted to assess the effects that oil exploration, drilling, and production would have on various animal populations in the 1002 Area.<sup>50</sup> The U.S. Fish and Wildlife Services' final report, which encompassed several volumes, was completed in 1986.<sup>51</sup>

The Legislative Environmental Impact Statement (LEIS) was submitted to Congress in April of 1987.<sup>52</sup> The LEIS report, submitted by the Department of the Interior, concluded that drilling and other oil production activities had the potential to have major effects on wildlife in the 1002 Area.<sup>53</sup> While the LEIS report acknowledged the potentially significant environmental impacts that could occur if drilling was approved, the Secretary of the Interior recommended the full leasing of the 1002 Area to the extent that unnecessary adverse effects on the environment could be avoided.<sup>54</sup>

Congress did not immediately act on the Secretary's recommendation to allow drilling in the 1002 Area.<sup>55</sup> Instead, perhaps given controversial events such as the 1989 Exxon Valdez oil spill, Congress delayed authorizing commercial drilling activities.<sup>56</sup> In 1995, after the Republicans took control of Congress, legislation was passed that included provisions that would allow drilling in the 1002 Area of the Refuge.<sup>57</sup>

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47. *Id.*

48. Sara N. Pasquinelli, Note, *To Drill or Not to Drill: The Arctic National Wildlife Refuge v. the "Need" for U.S. Energy Independence*, 33 GOLDEN GATE U. L. REV. 503, 508 (2003).

49. *Id.*

50. *Id.*

51. IMPACTS, *supra* note 14, at 3–4. Notably, several private oil companies also published and financed independent research on the 1002 Area. These private studies included "surface rock sampling, mapping and geochemical testing." *Id.* at 3.

52. See *id.* at 4; M. LYNNE CORN ET AL., CONG. RES. SERV., THE ARCTIC NATIONAL WILDLIFE REFUGE: THE NEXT CHAPTER 2 (CRS-IB10073, rev. Dec. 17, 2001), <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-1405:1>.

53. See Lisa Feng, *Ecopledge Seeking UC-Davis Support to Protest British Petroleum*, CAL. AGGIE, Jan. 16, 2003 (noting the LEIS assessment that oil development would likely have wide-ranging impacts on the wildlife in the region). The LEIS report determined that the Porcupine River caribou and muskoxen would be most seriously affected. The report similarly concluded that drilling activity would have a moderate effect on other animal species. For an assessment of the potential impacts 1002 Area drilling could have on these creatures, see Part III.A.3 *infra*.

54. See CORN ET AL., *supra* note 52, at 2.

55. See IMPACTS, *supra* note 14, at 4.

56. *Id.*

57. *Id.*

President Bill Clinton summarily vetoed the bill, citing the necessity of protecting the environment.<sup>58</sup>

While President Clinton's veto put a temporary stop to the ANWR drilling proposal, Republicans in Congress continue to raise the issue. Attempts to allow drilling in the Refuge have yet to succeed. However, worldwide demand for oil continues to grow, despite the fact that it remains in short supply. Further, Americans are growing increasingly concerned with U.S. dependence on foreign oil as well as exorbitant gasoline prices. These considerations attest to the fact that the debate regarding the ANWR is far from over; indeed, it may be at a genesis.<sup>59</sup>

### III. THE DRILLING DEBATE

Whether or not to proceed with drilling operations in the 1002 Area of the ANWR is a debate that has generated heated disagreements from oil interests, environmental activists, the State of Alaska, Republicans, Democrats, political pundits, and those generally concerned with the condition of United States energy policy. While many of the following arguments have existed for quite some time, the issue remained relevant even in the 2008 presidential election—and beyond.<sup>60</sup> Part III proceeds with arguments from both sides of the debate. It begins with anti-drilling arguments and then surveys the arguments of pro-drilling forces.

#### A. Arguments Against Drilling

Pro-environmental interests and pundits assert a stable of arguments for the purposes of delaying and thwarting attempts to drill in the ANWR. While arguments in opposition to drilling are diverse, they are essentially founded on the same premise: drilling in the ANWR would have an adverse impact on the Alaskan environment.<sup>61</sup> Environmentalists essentially seek the status quo of preservation and protection of the

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58. *Id.*

59. See Alaska Digest, ANCHORAGE DAILY NEWS, Mar. 27, 2008, at A6 (reporting that U.S. Senator Ted Stevens, R-AK, "is confident ANWR legislation could be passed after [the] November [2008] presidential election" despite the fact that all three major candidates—Clinton, Obama, and McCain—oppose oil development in the Refuge).

60. See generally Ann Coulter, *From Goldwater Girl to Hillary Girl*, TOWNHALL.COM, Feb. 7, 2008, [http://townhall.com/columnists/AnnCoulter/2008/02/07/from\\_goldwater\\_girl\\_to\\_hillary\\_girl](http://townhall.com/columnists/AnnCoulter/2008/02/07/from_goldwater_girl_to_hillary_girl) (arguing that 2008 presidential candidate John McCain is a "Democrat" based on various stances, including McCain's opposition to drilling in the ANWR); Donald Lambro, *The Reign of McCain Might Not Be a Gain*, TOWNHALL.COM, Feb. 11, 2008, [http://townhall.com/columnists/DonaldLambro/2008/02/11/the\\_reign\\_of\\_mccain\\_might\\_not\\_be\\_a\\_gain](http://townhall.com/columnists/DonaldLambro/2008/02/11/the_reign_of_mccain_might_not_be_a_gain) (arguing that McCain holds many policy positions that are different from those championed by pure conservatives).

61. See, e.g., Sheila Weigert, Note, *Arctic National Wildlife Refuge: In the Debate Over Drilling in the Refuge's Coastal Plain, The Environment is the Only True Loser*, 8 ENVTL. LAW. 169 (2001).

wilderness over oil development. Environmental groups such as the Sierra Club, the Defenders of Wildlife, and the Natural Resources Defense Council ("NRDC") actively work to ensure that the sacred aesthetic of the Northern Slope remains intact.<sup>62</sup> The arguments that follow, while not holistic, present a solid basis for these environmental opinions. While the arguments are somewhat diverse and attempt to persuade based on different lines of reasoning, the premise regarding the sanctity of wilderness preservation is consistent.

### 1. Taking the Focus Off the True Problem—Consumption

Anti-drilling advocates contend that increasing the supply of oil, while it may provide a short-term fix, will not ultimately solve America's energy needs.<sup>63</sup> Certainly, there is some debate as to the amount of oil that actually exists in the ANWR.<sup>64</sup> While drilling advocates contend that harvesting oil in the ANWR will solve problems regarding energy independence and high fuel costs, environmentalists are skeptical.<sup>65</sup> The Alaska Wilderness League argues that oil production in the ANWR would only last the country two hundred days.<sup>66</sup> The NRDC contends that the amount of oil in the 1002 Area would constitute "less than half a year's supply of oil for the United States."<sup>67</sup>

The last estimation of the amount of oil present in the 1002 Area occurred in 1998 and was conducted by the U.S. Geological Survey ("USGS").<sup>68</sup> The study was based entirely on probability, since drilling is prohibited in the area.<sup>69</sup> The USGS estimates that there is a 95% chance that more than 11.6 billion barrels of oil exist in the 1002 Area.<sup>70</sup> Further, there is a 5% chance that more than 31.5 billion barrels of oil exist in the Refuge.<sup>71</sup> Obviously, as gas prices continue to increase, so too will the desire to more realistically determine the true amount of oil that could be harvested in the 1002 Area.

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62. See generally Sierra Club, <http://www.sierraclub.org>; Defenders of Wildlife, <http://www.defenders.org>; Natural Resources Defense Council, <http://www.nrdc.org>.

63. See, e.g., Danny L. Eidson, 2 *Why Congress Should Grant Wilderness Status to the Coastal Plain of the Arctic National Wildlife Refuge*, 8 S.C. ENVTL. L.J. 55 (1999).

64. See Bonnie Docherty, *Challenging Boundaries: The Arctic National Wildlife Refuge and International Environmental Law Protection*, 10 N.Y.U. ENVTL. L.J. 70, 105 (2001) (discussing the precautionary principle in the context of the ANWR).

65. *Id.*

66. *Id.* However, the article continues to note that pro-drilling forces estimate that, at the production of two million barrels a day, the oil could supply the United States for a twenty-five year period.

67. NAT. RESOURCES DEF. COUNCIL, A RESPONSIBLE ENERGY POLICY FOR THE 21ST CENTURY 14 (2001), <http://www.ogapold.org/resources/rep.pdf> [hereinafter RESPONSIBLE ENERGY POLICY].

68. See Docherty, *supra* note 64, at 105–06.

69. *Id.*

70. *Id.*

71. *Id.*

Clearly, much scientific uncertainty exists as to the benefit that oil drilling would yield in the ANWR. One notion that both parties seem to agree with is the idea that Alaskan oil drilling constitutes merely a short-term solution to a very complex problem, rather than a comprehensive energy policy. Senator Lincoln Chafee (R-RI), discussing national energy policy, determined that "[a]llowing oil and gas development in the coastal plain promises only short-term benefits that may irreparably damage the wildlife values and unique vitality of the Arctic Refuge."<sup>72</sup>

As noted by the NRDC, 1002 Area drilling would not resolve America's "long-term need for greater energy efficiency, would not affect the price of gasoline at the pump, and would not significantly reduce U.S. dependence on foreign oil."<sup>73</sup> Regardless of whether the NRDC statement is accurate as to how much oil exists in the 1002 Area and what effect it would have on the economy, human consumption will continue to increase as the world grows larger and more industrialized. Drilling for oil in regions that are sensitive to environmental impacts will certainly come at a high cost. If the United States feels that an increase in energy supply is worth these costs, then it should at least recognize that an increase in oil production is purely a temporary patch on a large problem. Until the global marketplace can develop some form of alternative energy or otherwise curb the growing demand for oil, an energy shortage will continue to linger. Further, oil production and the construction of related infrastructure has the potential to environmentally impact "America's Serengeti" in a very real and potentially catastrophic way.

## 2. The Destruction of Vegetation in America's Last Great Wilderness

President Jimmy Carter famously portrayed the Arctic National Wildlife Refuge as "America's Serengeti." Environmental advocates, as well as those generally concerned with the overdevelopment of the American aesthetic, are concerned that oil production in the 1002 Area will disrupt the environment extensively.<sup>74</sup> While the potential impact on various species of animals in the ANWR has been widely documented, drilling in the ANWR has the potential to disrupt the vegetation and visual aesthetics that make the Refuge a unique and undeveloped place of pristine beauty.

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72. 148 CONG. REC. S3160 (daily ed. Apr. 23, 2002) (statement of Senator Chafee). Chafee has since declared himself an Independent after losing his 2006 reelection bid.

73. RESPONSIBLE ENERGY POLICY, *supra* note 67, at 2.

74. See Pasquinelli, *supra* note 48, at 554–55 (concluding that drilling should be prohibited in the ANWR so that its "unique wilderness is not jeopardized due to political and corporate greed").

Within the Arctic National Wildlife Refuge, which for perspective is roughly the size of the State of Maine,<sup>75</sup> are hundreds of species of various types of plants and other vegetation.<sup>76</sup> The extensive amount of vegetation in the 1002 Area consists of mosses, wildflowers, grasses, and shrubs, along with other plant species.<sup>77</sup>

Environmental anti-drilling proponents contend that these various species of vegetation will be harmed by oil production in the Refuge. For instance, it is believed that much vegetation will be harmed merely by the production of the facilities that will be used to harness the oil. Not only are pipelines required for oil delivery, but various support structures such as roads and housing will be necessary to sustain any meaningful oil production in the 1002 Area.<sup>78</sup> In addition, "drilling production entails the construction of processing facilities, power plants, landfills, reserve pits, waste sites, and solid waste treatment facilities."<sup>79</sup> It is possible that the complex web of activity and development necessary for oil production will harm vegetation within the region.<sup>80</sup> Moreover, these harmful effects could occur even before the drilling actually commences.

Further, the vegetation would most definitely fall victim to the resulting adverse effects that would occur once drilling begins. Oil leaks as well as ruptured delivery methods could prove deadly to nearby vegetation, as fuel, gasoline, and oil are highly toxic and would assuredly kill vegetation on contact.<sup>81</sup> Any oil spilled would not only present dire consequences to any aboveground vegetation that it comes into contact with; such fuel, if the spills are large enough, has the potential to infiltrate the soil and have a lasting toxic effect on 1002 Area plant life for the long-term.<sup>82</sup> The potential environmental impacts on vegetation are vast, but further environmental degradation could potentially occur with regard to endangered species that live in, or rely on, the 1002 Area.

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75. See, e.g., *Power, Ego, and Greed Threaten the Arctic National Wildlife Refuge*, EARTH FIRST, May 1, 2001, at 10.

76. See Weigert, *supra* note 61, at 176.

77. *Id.*

78. *Hearing on H.R. 2436 Before the H. Comm. on Resources*, 107th Cong. (July 11, 2001), available at <http://www.savearcticrefuge.org/sections/species/lentfer.pdf> at 2-3 (prepared statement of Jack Lentfer, U.S. Fish & Wildlife Serv. (Ret.)) [hereinafter Lentfer Testimony] (discussing a significant "industrial complex" that would result from drilling activity in the ANWR). Lentfer, a biologist formerly with the U.S. Fish and Wildlife Service, determines that even if drilling is done in a safe and efficient way, small drilling footprints would need to eventually be connected by pipelines and road. Although Lentfer discussed the industrial complex with regard to polar bears, presumably the effect of the construction on vegetation would also be significant. *Id.*

79. See Weigert, *supra* note 61, at 175 (adding that a drilling operation will also require "airstrips, ports and loading docks").

80. *Id.*

81. *Id.* at 176.

82. *Id.* at 177.

### 3. Destroying the Habitats of Many Endangered Species

Within the Arctic National Wildlife Refuge lies the Coastal Plain. The Coastal Plain hosts a diverse stable of wildlife species, including caribou, muskoxen, polar bears, and a large number of bird species.<sup>83</sup> It is possible that oil drilling and supplemental activities could disrupt the lifestyle of these uniquely situated animals. This section will discuss the various species that could be affected by drilling in the 1002 Area, as well as the native people who rely on them.

#### *a. Porcupine River Caribou*

Perhaps the most famous, if not notorious, species that is at risk if the Arctic National Wildlife Refuge opens for oil development is the Porcupine River Caribou. The Porcupine caribou herd is sharply declining in population, recently dropping from 180,000 in the 1980s to roughly 129,000 animals today.<sup>84</sup> While the herd is generally dispersed throughout greater Alaska, the caribou gather each year in the 1002 Area to birth their young.<sup>85</sup> The 1002 Area is an ideal birthing and nursing ground for young caribou, as it is more or less free from predators and has a large supply of plants.<sup>86</sup> The caribou have migrated to this traditional calving ground for thousands of years.<sup>87</sup> Drilling opponents argue that the Porcupine caribou herd has nowhere else to give birth and that drilling operations and the related infrastructure will effectively wipe out this declining herd.<sup>88</sup>

Drilling advocates contend that caribou effectively co-exist, and even thrive, alongside drilling operations. The proponents cite the Central Arctic caribou herd as an example of a caribou population that is thriving amongst oil production and development in the Prudhoe Bay region.<sup>89</sup> According to drilling proponents, the Central Arctic caribou herd, which cohabitates with oil drilling operations, is at its highest pop-

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83. N.K. CLOUGH ET AL., U.S. DEP'T OF THE INTERIOR, ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA, COASTAL PLAIN RESOURCE ASSESSMENT: REPORT AND RECOMMENDATION TO THE CONGRESS OF THE UNITED STATES AND FINAL ENVIRONMENTAL IMPACT STATEMENT 1, 21-31 (1987).

84. RICK BASS, CARIBOU RISING: DEFENDING THE PORCUPINE HERD, GWICH-IN CULTURE, AND THE ARCTIC NATIONAL WILDLIFE REFUGE 4 (Sierra Club Books 2004).

85. *Id.*

86. See ALASKA WILDERNESS LEAGUE, PROTECT AMERICA'S ARCTIC NATIONAL WILDLIFE REFUGE 6 (1997), <http://www.p-plus.nl/beelden/alaska.pdf>.

87. *Id.*

88. See BASS, *supra* note 84, at 5 (arguing that various predators such as polar bears, brown bears, mosquitoes, and wolverines would disrupt caribou migration and birthing practices if forced to go elsewhere).

89. See Arctic Power, Faces of ANWR: Caribou, <http://www.anwr.org/features/pdfs/faces-caribou.pdf>.

ulation ever.<sup>90</sup> Further, "[t]he herd has grown more than seven-fold since Prudhoe Bay development began in the mid-1970s."<sup>91</sup>

Opponents argue that various differences between Central Arctic caribou and Porcupine caribou exist and that environmental disparities between the Prudhoe Bay and the 1002 Area render the analogy impotent. They postulate that these distinguishing characteristics inevitably mean that drilling in the 1002 Area will ultimately conclude with a more dire fate for the Porcupine caribou. First, drilling opponents urge that the Porcupine caribou herd suffers from lower calf production and survival rates.<sup>92</sup> They argue that this difference will result in negative effects for the herd.<sup>93</sup> While the Porcupine caribou suffer from lower calf survival rates, drilling opponents contend that the herd's ability to survive significantly increases if they give birth on the "traditional calving ground."<sup>94</sup>

Drilling opponents further argue that the Porcupine caribou herd significantly outnumbers the Central Arctic caribou.<sup>95</sup> The Porcupine caribou population has over 100,000 more caribou than the Central Arctic caribou. While this number is not, in itself, significant, it is important to note that not only are there fewer Central Arctic caribou than Porcupine caribou, but the Central Arctic caribou also command a much larger breeding ground.<sup>96</sup> Thus, the Central Arctic caribou are perhaps less disturbed by extensive oil drilling operations than the Porcupine caribou would be. After all, not only is the Porcupine caribou breeding ground far more narrow, but there are more than 100,000 more caribou squeezing into it.<sup>97</sup> Drilling production thus has a much greater likelihood of affecting the breeding patterns of the Porcupine caribou than the Central Arctic caribou given the relative size of the herds and their respective habitats. More caribou living in a smaller area, drilling opponents contend, will face a far greater chance of being disrupted by drilling operations.

Drilling opponents further postulate that oil drilling would result in the evisceration of not only animals, but also of indigenous people who rely on caribou meat to survive in the Coastal Plain—the Gwich'-in cul-

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90. *Id.*

91. *Id.*

92. See Samuel Stanke, Note, *Like Wilderness, But Need Oil?[:] Securing America's Future Energy Act Puts Little Between Accident-Prone Oil Companies and the Arctic National Wildlife Refuge*, 32 ENVTL. L. 905, 915 (2002).

93. *Id.*

94. *Id.* ("Permitting drilling in the 1002 Area will mean putting oil wells in the middle of the porcupine caribou herd's maternity ward.")

95. *Id.* at 916.

96. *Id.*

97. *Id.*

ture.<sup>98</sup> The Gwich-'in Athabaskan Indians live in the Arctic Village, which is a small community located just outside the Refuge.<sup>99</sup> This tiny community of natives—roughly 150 strong—have primarily relied on Porcupine caribou, for a variety of purposes, for approximately twenty-thousand years.<sup>100</sup> Many feel that drilling in the ANWR will result in the death of not only the Gwich-'in culture, but also its people.<sup>101</sup>

The Gwich-'in, certainly, almost exclusively rely on the Porcupine caribou herd for food, as the culture lives more than 100 miles away from the Arctic Ocean.<sup>102</sup> The Gwich-'in only hunt caribou for half the year and they do so entirely for subsistence.<sup>103</sup> However, the Porcupine caribou offer more than mere physiological subsistence to the Gwich-'in culture. The traditional hunting of the caribou does not “merely supply physical strength and vitality;” the caribou are “literally the spiritual and social fabric” of the Gwich-'in.<sup>104</sup> While drilling proponents assure that the harvesting operations will occur in a fashion that will not disturb the Porcupine caribou herd, nor the Gwich-'in culture that relies on it, many still assert that drilling in the ANWR will disrupt, if not extinguish, both. While the majority of Alaskans support drilling in the ANWR, the Gwich-'in do not share the sentiment—rather, they “support declaring the 1002 Area a wilderness.”<sup>105</sup>

#### *b. Polar Bears*

While the Porcupine River caribou seem to get the most press, it should be noted that other species could be potentially affected if drilling is allowed in the ANWR. Polar bears are a species that, according to environmental drilling opponents, face harm if drilling, and the resulting oil development infrastructure, takes place.<sup>106</sup>

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98. See BASS, *supra* note 84, at 4. The name Gwich-'in means “people of the caribou.” Bass writes that they “are thought to be the source of all native cultures” in the Americas, with their colonization having extended as far as the desert Southwest. *Id.* at 7.

99. *Id.* at 4.

100. *Id.* at 6–7.

101. See *id.* at 6 (“While we below—some of us—want to eat the world beneath the caribou, so that if we do—make no mistake about this—it will be as if we are eating the Gwich-'in themselves: all of them, and their history, too. That, more than anything, is my idea of a barbarous savage.”).

102. See Stanke, *supra* note 92, at 917 (noting that neighboring Inupiat Indians, who live closer to the Arctic Ocean, have the ability to hunt “whale, seal, and ocean fish in addition to caribou”).

103. See BASS, *supra* note 84, at 15.

104. *Id.*

105. Stanke, *supra* note 92, at 918.

106. See generally Lentfer Testimony, *supra* note 78, at 2 (predicting that global warming will have adverse effects on polar bears due to the thinning of ice).



Polar bears do not live in the proposed drilling area; rather, for the majority of the year, they live on packs of ice on the Arctic Ocean.<sup>107</sup> Despite not living directly in the 1002 Area, drilling opponents contend that their birthing patterns could be greatly disrupted if drilling is allowed to take place and that this disruption could sufficiently result in "threats to its survival as a species."<sup>108</sup> For two months of the year, female polar bears leave their normal Arctic Ocean habitats and seek birthing areas on land.<sup>109</sup> About half of the female polar bears pursue this strategy and, of that amount, about one-third choose to conclude their birthing process in the ANWR.<sup>110</sup> The Arctic Refuge's coastal tundra is the "most important land denning habitat for the Beaufort Sea Polar Bear Population."<sup>111</sup>

Many of those who oppose ANWR drilling argue that extensive drilling operations in the region could disturb the birthing process of the polar bears and, possibly, result in an increased mortality rate among baby polar bears.<sup>112</sup> They argue that the presence of oil operations and humans in general will greatly upset female polar bears during the "denning" period.<sup>113</sup> This disruption, while seemingly inconsequential, could be significant in that polar bears consistently abandon their cubs if they are disturbed during the denning period.<sup>114</sup> The abandonment of young polar bears could effectively result in an increasing death rate for the already endangered species. The idea that polar bears will be harmed despite reasonable efforts by drilling interests to promote environmentally friendly drilling practices is strengthened by the fact that drilling production requires extensive, additional infrastructure.<sup>115</sup> Despite this theory, drilling opponents concede that polar bears have consistently coexisted among drilling interests and that the polar bear population in these areas "ha[s] not significantly diminished in that time."<sup>116</sup>

### c. *Muskoxen*

It is further possible that drilling operations would affect muskoxen that live in the Refuge.<sup>117</sup> Roughly 350 muskoxen live in the ANWR.<sup>118</sup>

107. Stanke, *supra* note 92, at 918.

108. *Id.*

109. *Id.*

110. *Id.*

111. IMPACTS, *supra* note 14, at 10.

112. See generally Lentfer Testimony, *supra* note 78, at 3.

113. See Stanke, *supra* note 92, at 918.

114. *Id.*

115. See Lentfer Testimony, *supra* note 78, at 2-3 (noting that even smaller drilling "footprints" would result in adverse consequences for animal populations, since these footprints would necessitate connection by pipelines and roads, which would result in a significant "industrial complex" in the Refuge).

116. Stanke, *supra* note 92, at 919.

117. *Id.*

Muskoxen, unlike the other species discussed, do not frequent the 1002 Area solely for purposes of birthing their young.<sup>119</sup> Rather, the muskoxen live in the 1002 Area year-round.<sup>120</sup> Notably, the muskoxen respond to both disturbances and predators in a fashion that could prove deadly for their young.<sup>121</sup> The muskoxen, when threatened, "mov[e] into a defensive group from which they protect themselves with sharp horns."<sup>122</sup> When this defensive mechanism proves insufficient or when the muskoxen become exceedingly frightened, they retreat.<sup>123</sup> It is during this retreat that the young are most likely to be left behind.<sup>124</sup> Calves left behind during the retreat will likely perish.

Drilling opponents cite this theory as the primary reason that muskoxen face perhaps another period of extinction from the region. However, other creature concerns regarding drilling activities in the ANWR also exist.<sup>125</sup>

#### *d. Bird Species*

Finally, drilling in the Arctic National Wildlife Refuge could potentially affect some of the more than 135 species of birds that frequent the 1002 Area from May to September.<sup>126</sup> The Arctic National Wildlife Refuge is used by many of these birds for food and nesting.<sup>127</sup>

An example of the typical way a bird uses the 1002 Area can be found in the migratory pattern and lifestyle of snow geese.<sup>128</sup> For example, "[l]arge numbers of snow geese, varying from 15,000 to more than 300,000 birds, feed on the Arctic Refuge coastal tundra for three to four weeks each fall, on their way from nesting grounds on Banks Island in Canada to wintering grounds primarily in California's Central Valley."<sup>129</sup> These snow geese eat as much as a third of their body weight on a daily basis—feeding on plants and other ANWR vegetation—as they prepare

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118. *Id.* at 920 n.138. Notably, the muskoxen had already died out in the Refuge, but were reintroduced into the ANWR in the late 1960s. *Id.* at 919.

119. *Id.* at 920.

120. *Id.*

121. *Id.*

122. *IMPACTS*, *supra* note 14, at 9.

123. *Id.*

124. *Id.*

125. Other concerns include, generally, the "displacement [of muskoxen] from [their] preferred winter habitat," "increased energy needs related to disturbance and displacement," the "decreased body condition of [muskoxen] females," increased muskoxen fatalities due to predators (which also occurs because of potential displacement), and "decreased calf production." *Id.*

126. Stanke, *supra* note 92, at 919.

127. *Id.* (noting the wide variety of bird species—including "[s]wans, geese, ducks, seabirds, shorebirds, raptors, graylings, and passerines"—which nest in the 1002 Area and feed on its vegetation).

128. *IMPACTS*, *supra* note 14, at 15.

129. *Id.*

for their southern migration.<sup>130</sup> The snow geese require a large area of land in order to meet their dietary needs.<sup>131</sup> This is true because they "feed on small patches of vegetation that are widely distributed across the Refuge's coastal tundra."<sup>132</sup> According to the U.S. Fish and Wildlife Service, snow geese are extremely sensitive to the slightest disturbance, and any disruptive human activity, even when miles away, could cause the geese to fly away from their feeding sites.<sup>133</sup> The loss in feeding time could potentially result in a significant reduction in the survival of migrating geese.<sup>134</sup> The potential disruption of snow geese migratory patterns offers just one example of how drilling operations could disrupt the behavior of one of the 135 species of birds that rely on the 1002 Area for both nesting and vegetation.

Clearly, drilling operations will have some impact on ANWR wildlife. While the actual effect is entirely unclear, drilling opponents contend that the disruption in the 1002 Area ecosystem will result in exceedingly dire consequences for a number of animal species. It is important to note that drilling opponents contend that these consequences will take place no matter how careful and prudent oil developers are in their development of the ANWR. Further, drilling opponents proffer that people—namely, the Gwich-'in Indians—will also feel the disastrous effects of 1002 Area oil refining.

Not only do anti-drilling advocates argue that drilling in the Refuge will result in the potential extinction of various species of wildlife, they further postulate that the oil yields that potentially exist in the 1002 Area are outweighed by the necessity of developing alternative forms of energy. Finally, those who oppose drilling conclude that alternative sources of energy should be explored more fully before the United States even contemplates drilling for oil in the 1002 Area.

#### 4. Alternative Energy Sources as a Better, Long-Term Solution

Even if substantial amounts of oil are discovered and drilled in the 1002 Area, opponents and proponents agree that it will not solve the energy crisis in the long term. After all, at some point the oil wells will indeed dry up. Those who oppose drilling contend that the resources that would be utilized for drilling production in the Refuge are better used by researching and developing viable, renewable energy sources that will have a lesser impact on the environment.

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130. *Id.* Remarkably, these migratory birds are able to increase their "fat reserves by 400% in only two to three weeks" by feasting on the "rich vegetation of the coastal tundra." *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. See Weigert, *supra* note 61, at 183–84.

The potential forms of alternative energy solutions are vast, albeit underdeveloped. Examples of viable oil producing candidates include ethanol, hydrogen powered fuel cells, solar energy, wind energy, and tidal energy.<sup>135</sup> Other commentators have suggested that the majority of our energy concerns can be addressed merely by continuing to increase the fuel efficiency of passenger vehicles.<sup>136</sup> "Supporters of higher mandatory mile per gallon standards for automobiles cite that increasing the average fuel economy of American cars and sport utility vehicles to thirty-nine miles per gallon would save fifteen times the amount of oil that the Coastal Plain might yield."<sup>137</sup>

Essentially those who oppose drilling in the Arctic National Wildlife Refuge contend that many viable sources of clean energy exist and that these alternatives should be exhaustively researched and developed before the United States should allow drilling. Drilling proponents may or may not believe that alternative energy sources are viable. It is clear that they support oil production in the ANWR either in lieu of, or alongside, the development of these sources.

### B. *Arguments for Drilling*

Certainly, several compelling arguments exist that tend to suggest that drilling in the Arctic National Wildlife Refuge is undesirable. Those in favor of drilling also command a versatile set of arguments that contend that producing oil in the Refuge is not only attractive but necessary for U.S. survival. Just as the arguments that oppose drilling share a common theme, pro-drilling arguments consistently proffer that the costs of potential environmental harm are far outweighed by the benefits of ANWR oil production. This subsection considers the most persuasive arguments for oil development in the 1002 Area.

#### 1. Decreased Dependency on Foreign Oil

Perhaps, given the September 11, 2001 terrorist attacks, the most persuasive and timely argument for drilling in the ANWR is that doing so would radically decrease our dependence on foreign oil. Much of our oil, since we produce far less than we demand, is imported from foreign nations.<sup>138</sup> Further, a bulk of this fuel is purchased from Middle Eastern sovereigns.<sup>139</sup> Many fear that the continued purchasing of oil from these

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135. See, e.g., Pasquinelli, *supra* note 48, at 551.

136. See, e.g., Clements, *supra* note 11, at 114.

137. *Id.*

138. See Charles Krauthammer, *Fuel Grows on Trees*, TOWNHALL.COM, Jan. 27, 2007, [http://townhall.com/columnists/CharlesKrauthammer/2007/01/26/fuel\\_grows\\_on\\_trees](http://townhall.com/columnists/CharlesKrauthammer/2007/01/26/fuel_grows_on_trees) (noting that the United States currently imports roughly 60.3% of its oil. In 1973, the year the famous oil embargo commenced, the U.S. imported merely 34.8%).

139. See generally ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, INTERNATIONAL ENERGY OUTLOOK 2008, [http://www.eia.doe.gov/oiaf/ico/pdf/0484\(2008\).pdf](http://www.eia.doe.gov/oiaf/ico/pdf/0484(2008).pdf).

countries indirectly funds our enemies.<sup>140</sup> Further, it has been noted that not only does continued production fund terrorism, but it also puts our military and economy at the mercy of these countries.<sup>141</sup> Many directly blame environmentalists and Democratic leaders for this quandary, citing their refusal to allow domestic oil production due to environmental concerns.<sup>142</sup>

Many conservative commentators feel that this problem can be solved, at least temporarily, by allowing drilling in the ANWR. It should be clearly conceded that 1002 Area drilling will not completely alleviate our reliance on foreign oil. Estimates suggest that there is simply not enough oil in the Refuge to allow us to sever our ties with these nations. However, every barrel we pump domestically is one less barrel that we need to purchase from Middle Eastern nations, who may indirectly fund the operations of terrorist entities.

Another compelling argument, and one that consumers relate with more consistently, is the theory that increased oil production in Alaska will result in lower gasoline prices domestically.

## 2. Larger Supply as Relief From Rising Oil Costs

The price of oil, correlated with the amount we spend to purchase gasoline, is increasingly volatile. Not long ago, the price of oil fell to five-year lows, floating around \$40 a barrel. Not surprisingly, this has resulted in lower gasoline prices and perhaps less of a desire to drill. However, most contend that the low price of fuel is merely a temporarily reprieve and that demand will once again drive up prices to the levels seen in the summer of 2008. Notably, these high price pressures exist, while certain companies in the oil industry reap huge profits.<sup>143</sup> If

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140. There are many examples of this. For instance, Osama Bin Laden—architect and financier of the 9/11 attacks—acquired his vast wealth from his father, who made his fortune during the Arabic oil boom. See Gregg Easterbrook, *Why This War is Also About Oil*, NEW REPUBLIC, Oct. 8, 2001, at 15.

141. See Michael Reagan, *Environmental Terrorism and the Price of Oil*, TOWNHALL.COM, Jan. 17, 2008, [http://townhall.com/columnists/MichaelReagan/2008/01/17/environmental\\_terrorism\\_and\\_the\\_price\\_of\\_oil](http://townhall.com/columnists/MichaelReagan/2008/01/17/environmental_terrorism_and_the_price_of_oil) (claiming that the refusal to drill in the ANWR has put the United States in the position where “our economy is held hostage to foreign oil producers who can make or break our nation simply by limiting their petroleum production, thus causing the price of oil to skyrocket”).

142. *Id.* (“[I]t is even more shameful that we have allowed the so-called environmental movement to escape the blame for our [energy] predicament.”).

143. See, e.g., H. Josef Hebert, Associated Press, *Congress Presses Oil Execs on High Prices*, Apr. 1, 2008, available at [http://www.ibtimes.com/articles/20080401/congress-presses-oil-execs-on-high-prices\\_all.htm](http://www.ibtimes.com/articles/20080401/congress-presses-oil-execs-on-high-prices_all.htm) (“Top executives of the five biggest U.S. oil companies were pressed Tuesday [April 1, 2008] to explain the soaring fuel prices amid huge industry profits and why they weren’t investing more to develop renewable energy source [sic] such as wind and solar.”).

enough oil exists in the 1002 Area to truly grant American consumers relief, drilling would seem to be a pragmatic solution.

We've seen, in the discussion above, that much debate exists as to the amount of oil that exists in the Refuge. All parties would likely concede that there is not enough oil in the ANWR to solve the oil crisis; however, there could indeed be enough to significantly shave the price of gasoline. While ANWR drilling would not fix all energy problems, conservative figures estimate at least enough oil could be produced to equal 5% of U.S. consumption—"[i]n tight [fuel] markets, that makes a crucial difference."<sup>144</sup>

Commentators also argue that our "energy crisis" is essentially self-imposed. In other words, if the United States opened up the ANWR to drilling, and also allowed other types of energy production, we would have a bountiful supply of energy.<sup>145</sup> An intelligent and comprehensive U.S. energy policy requires both increased domestic production as well as a concentrated effort to produce viable alternative energy. One essential element necessary to increase domestic oil production is ANWR drilling.

Fortunately, many contend that 1002 Area drilling can be accomplished without destroying the pristine Alaskan environment.

### 3. Prudent Drilling Could Leave the Wilderness Virtually Undisturbed

Drilling advocates contend that environmental concerns regarding drilling in the ANWR are largely overblown. First, when one considers the ANWR drilling issue, it is important to note that 92% of the ANWR would remain permanently closed to oil drilling, development, leasing, and production activities.<sup>146</sup> Further, it is possible that oil development could be executed in harmony with the Alaskan wildlife and environment. Drilling advocates often point to Prudhoe Bay, another Alaskan drilling site, as an example of a drilling operation that has successfully coexisted with the Alaskan environment.<sup>147</sup>

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144. See Krauthammer, *supra* note 138 (concluding that "[w]e will always need some oil. And the more of it that is ours, the better.").

145. See Ed Feulner, *Tanks for Nothing*, TOWNHALL.COM, Mar. 31, 2008, [http://townhall.com/columnists/EdFeulner/2008/03/31/tanks\\_for\\_nothing?page=1](http://townhall.com/columnists/EdFeulner/2008/03/31/tanks_for_nothing?page=1) (arguing that there is no real energy crisis and that massive environmental meddling is the cause of the problem). The article notes that the United States has not "built a new petroleum refinery since 1976." Further, the U.S. government has not "opened a nuclear power plant in two decades."

146. See Arctic Power, *Top Ten Reasons to Support ANWR Development*, <http://www.anwr.org/ANWR-Basics/Top-ten-reasons-to-support-ANWR-development.php> [hereinafter *Ten Reasons*] ("If oil is discovered [in the ANWR], less than 2000 acres of the over 1.5 million acres of the Coastal Plain would be affected. That's less than half of one percent of ANWR that would be affected by production activity.").

147. See *id.* (noting that "the Central Arctic Caribou Herd (CACH) which migrates through Prudhoe Bay has grown from 3000 animals to its current level of

The specific impact drilling will have on the 1002 Area is obviously unclear. There are, indeed, several distinctions between the environmental characteristics of the 1002 Area and Prudhoe Bay. However, given successful integration of oil operations into the Alaskan wilderness, it is likely that a similarly favorable drilling process can occur in the 1002 Area. It is important to reflect on the fact that oil drilling technology is considerably more advanced than it was during the successful Prudhoe Bay oil development, which took place in the 1970s. Further, to help ensure the success of this operation, the U.S. government can and should actively regulate the oil industry activity. Since the U.S. has the ultimate say as to whether oil can be harvested in the 1002 Area, it also has the power to compose sharply defined regulations to ensure careful and prudent drilling operations.

Given these considerations, it is likely that there will be very few environmental consequences to careful drilling in the Refuge. And even if environmental costs do exist, it is clear that these minimal costs will go unnoticed by the bulk of U.S. citizens—including Alaskans. Perhaps this is why a supermajority of Alaskans supports the opening of the ANWR for oil development.<sup>148</sup>

Given the success of similar Alaskan oil ventures in the past, 1002 Area drilling is very likely worth the risk—especially when you consider the positive impact it can have on the federal economy, as well as the economy of the State of Alaska.

#### 4. Stimulation of the U.S. and Alaskan Economies

Not only would drilling in the 1002 Area have the potential effects of alleviating the mounting prices of gasoline, reducing our dependence on foreign oil, and coexisting with environmental concerns, it also would have positive effects on federal and local economies.

First, on the federal level, it is basic economics that the more oil we import, the more money flows out of our economy. This capital outflow results not only in fewer American jobs, but also in a trade deficit that ultimately impacts the value of the dollar. Also, the federal government, if it ultimately decides to allow oil development in the ANWR region, could increase its revenues by charging for bonus bids, lease rentals, and taxes.<sup>149</sup>

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32,000 animals" since the Prudhoe Bay development was established). *But see* Part III.A.3.a *supra* (arguing that there are significant differences between the 1002 Area and the Prudhoe Bay, which could lead to distinct results).

148. *See* Ten Reasons, *supra* note 146 (estimating that 75% of Alaskans favor drilling, including the Inupiat Eskimos).

149. *Cf. id.* ("Estimates on bonus bids for ANWR by the Office of Management and Budget and the Department of Interior for the first 5 years after Congressional approval are \$4.2 billion. Royalty and tax estimates for the life of the 10-02 fields were estimated by the Office of Management and Budget from \$152–237 billion.").

An increase in jobs would also occur if the U.S. opens the Coastal Plain to development. While it is difficult to precisely determine the number of jobs that would indirectly result from 1002 Area drilling, it is likely that, at a minimum, the figure would be around 250,000.<sup>150</sup> It is important to note that a job increase not only stimulates local economies, but that it further results in higher dollar amounts collected for payroll taxes, indirectly creating more revenue for state and national governments.

The benefits of prudently harvesting oil in the Arctic National Wildlife Refuge are many. While the environmental costs of drilling are potentially high, it is likely that these costs can be successfully mitigated by active federal government regulation. The careful drilling practices of regulated oil interests could very well result in a bountiful economic gain for both the United States and Alaska.

#### IV. CONCLUSION—THE COSTS OF OIL

The Arctic National Wildlife Refuge, and all of its human and animal inhabitants, represents a truly unique and pristine ecosystem that should be diligently protected. The preservation of "America's Last Great Wilderness" should always be paramount. However, an absolute prohibition on oil production in the 1002 Area is not a necessary component of adequate wilderness protection. Careful, prudent drilling may indeed satisfy all parties.

Certainly there are several potential costs of drilling and producing oil in the Refuge. While oil interests successfully coexisted with the animals and the environment in the Prudhoe Bay, the 1002 Area boasts a plethora of unique characteristics that make a similar result uncertain at best. But environmentalists who argue for a complete ban on ANWR drilling seem to discount the pressing costs that will occur if we decide *not* to pursue ANWR oil. Pragmatically, alternative fuels are currently insufficient to satisfy our domestic energy needs; we have to get our oil from somewhere. We seem to forget that the importation of foreign oil also has its consequences—environmental and otherwise.

While domestic production may result in costs to our domestic environment, at least, with respect to Alaskan drilling, the regulation of such activity is within the direct control of the U.S. government. If we decide to further prohibit ANWR oil drilling and exploration, our importation will have alternative costs; Russian oil production is far less regulated and could have disastrous environmental impacts abroad, the

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150. *Id.* (estimating that between 250,000 and 735,000 jobs could be created if the ANWR is opened for development). The website notes that these jobs, created indirectly by the increase of domestic oil production, would be spread over the entire country and would not merely benefit western or oil drilling states. See Arctic Power, Jobs Brief, [http://www.anwr.org/docs/ANWR\\_jobs\\_brief.pdf](http://www.anwr.org/docs/ANWR_jobs_brief.pdf).



drilling of oil in Colombia places workers in danger of guerilla attacks, and Middle Eastern oil production indirectly results in the funding of our Nation's enemies. Further, on the home front, less domestic supply results in higher gas prices and a weakened dollar. Certainly there are potential environmental costs of ANWR drilling, but these essentially amount to the unlikely possibility that oil production will harm the Refuge's aesthetic—an aesthetic that the bulk of the American population will never directly encounter.

Those who oppose drilling in the ANWR recognize that drilling is only a short-term patch to our country's energy woes. For ANWR drilling and production to make sense, and be worth the potential costs to the environment, more American funds need to be diverted to discover and develop alternative forms of energy. Without the careful development of renewable energy sources, ANWR drilling simply delays an important and pressing U.S. energy reckoning. However, while it is only a short-term patch, such is perfectly reasonable if it is merely a component of a long-term strategy.

Further, while drilling should ultimately be allowed, it must be heavily regulated to ensure prudence. While reckless drilling would adversely affect the 1002 Area environment, cautious energy harvesting could indeed have a minimal effect on North Slope inhabitants and appreciably benefit American citizens.