

ALASKA WILDERNESS LEAGUE, BRAIDED RIVER, CANADIAN PARKS AND WILDERNESS SOCIETY-YUKON CHAPTER, CENTER FOR BIOLOGICAL DIVERSITY, DEFENDERS OF WILDLIFE, EARTHJUSTICE, ENVIRONMENT AMERICA, EYAK PRESERVATION COUNCIL, FAIRBANKS CLIMATE ACTION COALITION, FRIENDS OF ALASKA NATIONAL WILDLIFE REFUGES, GWICH'IN STEERING COMMITTEE, NATIONAL AUDUBON SOCIETY, NATIONAL WILDLIFE REFUGE ASSOCIATION, NATIVE MOVEMENT, NATURAL RESOURCES DEFENSE COUNCIL, NORTHERN ALASKA ENVIRONMENTAL CENTER, RESISTING ENVIRONMENTAL DESTRUCTION ON INDIGENOUS LANDS, SIERRA CLUB, THE WILDERNESS SOCIETY, TRUSTEES FOR ALASKA, WILDERNESS WATCH ALASKA CHAPTER

August 17, 2018

Shelly Jones
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Submitted via e-mail

Dear Ms. Jones:

On behalf of our millions of members and supporters nationwide and in Alaska and Canada, the above listed organizations write to register our deep concerns with the Bureau of Land Management's (BLM) planning process for authorizing seismic exploration for oil and gas resources on the Coastal Plain of the Arctic National Wildlife Refuge. BLM is moving forward with its review of SAExploration, Inc.'s (SAE) proposal to conduct 3-Dimensional (3D) winter seismic surveys across the entire 1.6 million acre Coastal Plain without any apparent legal authority to do so, without providing adequate opportunities for public involvement, and without preparing the full Environmental Impact Statement (EIS) required by the National Environmental Policy Act (NEPA).

The Arctic National Wildlife Refuge is the crown jewel of the National Wildlife Refuge System. It is the largest and wildest of our nation's wildlife refuges. The Coastal Plain is the biological heart of the Refuge, providing essential habitat for a variety of wildlife, including imperiled polar bears, the Porcupine caribou herd, and numerous species of migratory birds from all 50 states and six continents. It is an area sacred to the Gwich'in nation, who depend on the Refuge for their way of life. These unparalleled public lands, and the wildlife that depend on them, are an international treasure that must be conserved for future generations.

PROCESS ISSUES

We submit these initial scoping comments focused primarily on BLM's NEPA obligations, if the agency continues to evaluate SAE's seismic proposal. We say "if" because, to date, BLM has not publicly identified any source of authority for permitting pre-leasing seismic exploration anywhere in the Coastal Plain, nor is any such authority apparent. BLM should not pursue authorization for SAE to explore for oil and gas on the Coastal Plain unless and until it can identify such authority, and it should do so publicly, to justify the time and resources that BLM, other agencies, and the public would invest in a permitting process. Regardless, we oppose authorizing SAE to conduct seismic surveys even if BLM claims to have that authority, and strongly oppose any oil and gas activities on the Coastal Plain, including seismic exploration.

We also oppose the process that BLM has undertaken thus far to evaluate SAE's proposal. It undercuts the public's ability to meaningfully participate in planning and decision making and will not enable BLM, sister agencies, decision makers, or the public to adequately analyze and account for the environmental impacts of exploration on public resources as required by law. BLM's lack of clarity and conflicting statements regarding public review of the seismic proposal have already created significant confusion and curtailed public participation in the process. BLM originally posted only a summary document of SAE's proposal to its website on July 18, 2018.¹ It did so without making any formal announcement to the public that it was initiating its review and providing a scoping comment period. The summary document, titled "Seismic Exploration on the Coastal Plain," was posted with no notification to our organizations, our membership, or, as far as we can determine, any other interested stakeholders or the public at large. BLM did not post a copy of SAE's plan of operations on its website until August 6, 2018.² Again, it did so without making any formal announcement to the public that it was initiating a scoping comment period or that the document was available. Incredibly, BLM previously deemed this same document, titled "Marsh Creek Plan of Operations Submitted May 2018," insufficient for the agency itself to evaluate the project.³ By the same token, it does not provide the public with sufficient information for purposes of providing informed comments on the proposal.

BLM has also issued conflicting statements regarding opportunities for public input. After posting the Seismic Proposed Action, the agency made statements to both the public and the media that the public would be given a 30-day opportunity to review and comment on the

¹ See U.S. Dep't of the Interior, Bureau of Land Mgmt., NEPA Register, DOI-BLM-AK-R000-2018-0040-EA (SAExploration, Inc. Seismic Application), *available at* <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=111085> [hereinafter BLM NEPA Register].

² *Id.*

³ BLM deemed SAE's submission incomplete and returned it to SAE. Steven Mufson & Juliet Eilperin, *Companies Take First Steps to Drill for Oil in Arctic National Wildlife Refuge*, THE WASHINGTON POST, June 1, 2018.

agency’s environmental assessment (EA) of the proposal, once drafted.⁴ However, on August 1, 2018, BLM-Alaska leadership could not confirm in a meeting with multiple representatives from conservation organizations whether the draft EA would be made available for a 30-day public comment period. Then on August 10—one week before the purported deadline—BLM posted to its NEPA Register that “scoping” comments on the proposal were due August 17.⁵ This was the first time that BLM indicated that there was a deadline for comments, or the nature of the comments sought (i.e., scoping comments). And again, BLM did not make any formal announcement to the public that it was undertaking a “scoping period” or imposing a deadline. When asked about the process, BLM leadership was again unable to confirm as of Monday, August 13, whether BLM would make the draft EA available for public comment as previously stated.

These flip-flops and the resulting compressed timeframe have severely hindered engagement in a NEPA process of intense public interest. As BLM is aware, given the submission of over 700,000 comments in response to its scoping notice for a proposed oil and gas leasing program for the Coastal Plain, the public is deeply committed to understanding and commenting on proposals for activities that could impact these vital public lands.⁶ The purposes of NEPA include ensuring “that environmental information is available to public officials and citizens before decisions are made and before actions are taken,” and that information relied upon is “of high quality.”⁷ To meet its legal obligations, BLM must provide the public with the information, analysis, and time necessary for informed, meaningful engagement.

BLM has a legal obligation to comply with NEPA’s mandate to prepare a detailed EIS for any major federal action that may significantly affect the quality of the human environment. BLM’s public statements to date about preparing an EA appear to indicate that the agency believes that the impacts of seismic exploration will not be significant and hence that it can dispense with an EIS. In fact, both the extraordinary and pristine natural values of the Refuge and the high potential for significant impacts mandate development of an EIS. Nothing shows that more vividly than the photo appended to these comments, revealing how completely seismic exploration bordering on the Refuge has changed the character of that landscape. If seismic exploration is ever contemplated in the Refuge, the direct, indirect and cumulative effects must be thoroughly analyzed and disclosed in a comprehensive EIS before any final decision is made to allow such activities on what many consider America’s premier wildland.⁸

⁴ See, e.g., Liz Ruskin, *BLM Projects ‘Insignificant’ Impact from Seismic Work in ANWR*, ALASKA PUBLIC MEDIA, July 27, 2018; Henry Fountain, *See the Scars That Oil Exploration Cut Across Alaska’s Wilderness*, N.Y. TIMES, Aug. 3, 2018.

⁵ BLM NEPA Register, *supra*.

⁶ Additionally, over 700,000 comments were submitted on the Fish and Wildlife Service’s scoping and draft Comprehensive Conservation Plan during its recent revision and numerous comments were submitted on the EIS for that agency’s exploration program in the 1980s.

⁷ 40 C.F.R. § 1500.1(b).

⁸ Notably, the Coastal Plain seismic program in the 1980s was preceded by a rulemaking, an EIS, and significant public involvement, including public hearings.

Importantly, such an EIS would need, among other things, to examine how the potential impacts of seismic exploration would combine with those of all other ensuing, reasonably foreseeable oil and gas related authorizations in the region—including leasing, exploration, development, production, and transportation—in a single EIS to ensure that BLM will protect the resources of the Arctic Refuge. BLM must not unlawfully segment its NEPA review and potentially allow destructive activities like SAE’s proposal without first preparing an EIS that examines the full range of potential impacts from all phases of oil and gas activities. In other instances, such as in the National Petroleum Reserve–Alaska, BLM has studied seismic impacts together with leasing impacts in an EIS. Fortunately, Congress provided ample time for completion of a full EIS prior to any decision on whether and how to permit any oil and gas activities.⁹

Finally, we emphasize that, even if BLM could convincingly show that it has the authority to authorize pre-leasing seismic activities on the Coastal Plain, it would also have to comply with numerous other legal mandates and policy obligations, including those related to the mission of the U.S. Fish and Wildlife Service (FWS), which manages the entire Arctic Refuge and whose role as primary manager was not altered by the Tax Act. These include, but are not limited to, the Endangered Species Act (ESA), the Marine Mammal Protection Act, the National Wildlife Refuge Administration Act (including protecting the conservation purposes of the Arctic Refuge), the Wilderness Act, the Alaska National Interest Lands Conservation Act, and others that guide and mandate the protection of the Coastal Plain, its natural resources, and the fish and wildlife that depend on it. An EIS would need to document how BLM is ensuring compliance with all applicable laws and policies.

MAJOR SCOPING ISSUES

Although we object to the manner in which BLM is proceeding with this planning process, we identify the following major issues that BLM must address in any environmental analysis. These comments are necessarily preliminary, not only because of the truncated process BLM has adopted, but also in keeping with the role of scoping comments. As the courts have found, scoping “describes when an agency begins initial consideration of a project, and identifies the significant issues related to the contemplated action.”¹⁰ Our focus in these comments is, therefore, simply on issue identification. More detailed input on the agency’s analysis and evaluation of these issues in its NEPA documentation must necessarily await public circulation of the environmental analysis.

SAE is proposing to conduct 3D seismic surveys across the entire Coastal Plain for the winter seasons of 2018/2019 and 2019/2020.¹¹ The summary document refers to the entire Coastal Plain and does not identify the specific areas where SAE will engage in activities. The seismic program will involve two camps of 160 people, 12–15 tracked vibrators, 20,000 to 25,000 nodes, and 6,000–7,000 gallons of fuel usage per day, for each camp. There would be approximately 50

⁹ See Pub. L. 115-97, sec. 20001(c)(1)(B)(ii).

¹⁰ *Lands Council v. Powell*, 395 F.3d 1019, 1025 (9th Cir. 2005).

¹¹ If activities are planned for the private corporation lands, the agency must address how these activities will be evaluated and the impacts as well.

trailers and support trailers that make up each camp, with generators, lighting, temporary airstrips, incinerators and waste discharges, and other industrial equipment and activities. SAE would move the camps with heavy vehicles every two to three days, eventually covering the entire Coastal Plain. Given the extent of the proposed program, there would be approximately forty to fifty different camp locations for each of the two crews throughout the Coastal Plain. Operations would continue 24 hours a day, 7 days a week. The impacts from these extremely extensive activities proposed by SAE will necessarily be significant, far more so than those associated with the two-dimensional seismic survey conducted in the 1980s, the scars of which remain detectable on the Refuge to this day. Moreover, the Coastal Plain and its wildlife are significantly more sensitive than during prior seismic activities due to the deleterious effects of climate change, which is impacting the Arctic at twice the rate as the rest of the country.

More specifically, SAE's seismic proposal indicates numerous activities the company will engage in that raise a host of potential significant impacts. Consistent with this, BLM must, among other things, fully analyze the following:

- The impacts of water withdrawals and snow usage with regard to specific locations and usage volumes, including the impacts to fish and wildlife that may rely on those freshwater resources;
- The potential for spills from up to 7,000 gallons of fuel that SAE's summary estimates it may use each day, and the ability to clean up any spills;
- The potential air, water quality, and other impacts from all of the proposed activities, the food waste that the summary says will be continually incinerated to avoid attracting wildlife, the discharge of gray water amounting to 1,000 to 2,500 gallons per crew per day, and the generators SAE says will operate 24 hours a day, 7 days a week, exposing, among others, the crews working in close proximity to hazardous air pollutants;
- The impacts from large numbers of personnel accessing the Coastal Plain with heavy equipment, traversing over state lands or across sea ice, as well as on unidentified snow trails within the Refuge, and with an unspecified number of river and other waterbody crossings, during the course of the project as camps are moved across the tundra every few days and dragged with heavy equipment;
- The effects on the unique terrain, ecology and conditions of the Coastal Plain, where there is limited snow cover in the winter compared to other areas on the North Slope;
- The impacts of the proposed activities on threatened polar bears and designated critical habitat for this imperiled species, including the potential effectiveness of the aerial FLIR survey and the manner in which it is being used, and the uncertainties associated with its implementation in practice, as well as impacts to other federally protected species that use the Refuge;
- The impacts of the proposed activities on all fish and wildlife and their habitats, including migratory, resident, and overwintering species, which may be present on or in the vicinity of the Coastal Plain during the timeframe of the proposed activities, including impacts that may result from damage to the Coastal Plain's vegetation and hydrological systems;
- The impacts to subsistence resources and users, human health, environmental justice, and sociocultural systems;
- The impacts to wilderness characteristics, including the globally significant natural values of the area;

- The impacts to tundra, soils, and permafrost, and the potential changes to hydrology from seismic activities, including as assessment of the damage that may be expected to occur from operations at different snow depths; and
- The impacts on and potential contributions of a potential oil and gas program in the Refuge to climate change.

To comply with NEPA, BLM should also consider alternatives or limitations to the proposed action. While we oppose any exploration activities, under NEPA, BLM must analyze a range of alternatives beyond the proposed action and no action alternatives in its environmental analysis. For example, BLM must consider alternatives that would limit the spatial extent of the survey to reduce or avoid impacts to the most sensitive and vulnerable resources of the Refuge. Although it is plain that significant impacts to the Refuge would result from any action alternative, BLM is bound by NEPA to consider alternatives including but not limited to: limiting the survey to areas outside of suitable polar bear denning habitat and limiting the survey to only a portion of the Refuge within a given denning season; excluding areas where the hydrology could be impacted by seismic tracks; and eliminating or vastly reducing the proposed mobile camps.

In sum, the cursory summary of SAE's seismic proposal and the deeply flawed plan of operations raise serious concerns about the proposed activities and the potential impacts to the Coastal Plain. These woefully inadequate documents make it impossible for the public to understand or comment on the full array of impacts from multi-year seismic exploration across the entire Coastal Plain. Based on the limited information provided to the public to date, the impacts are likely to be significant and long lasting. BLM must ensure that it has comprehensive baseline data of both current and historic conditions to evaluate this proposal. Additionally, the issues identified above are not the only issues that BLM must analyze; there are likely numerous other issues that the agency will need to consider. We urge BLM to provide opportunities for the public to review and weigh in on BLM's NEPA analysis of the proposed activities. The issues discussed above are simply those that are readily identifiable from the company's plan of operations and BLM's brief summary of its proposed activities. BLM must thoroughly and comprehensively analyze the impacts to all Coastal Plain resources and ensure that it is meeting all legal obligations. The analysis required should be completed in an EIS with significant and robust public involvement that evaluates all phases of oil and gas activities.

Thank you for your consideration of these comments.

Sincerely,

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Braided River

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Canadian Parks and Wilderness Society-Yukon Chapter

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Photo Credit: Matt Nolan, <https://fairbanksfodar.com/detecting-tire-tracks-in-the-1002-area-with-fodar>