



Arctic National Wildlife Refuge (ANWR) Provisions in P.L. 115-97, Tax Cuts and Jobs Act

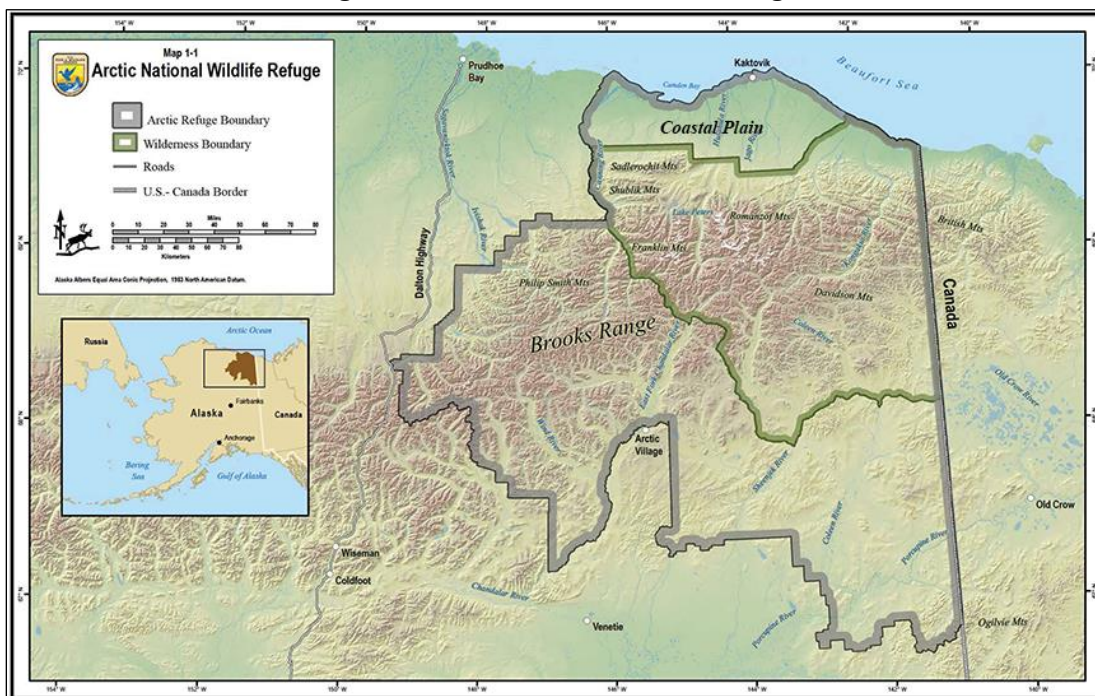
The Tax Cuts and Jobs Act (P.L. 115-97), enacted in December 2017, included provisions establishing an oil and gas program in the Arctic National Wildlife Refuge (ANWR or the Refuge). ANWR consists of 19 million acres in northeast Alaska, administered by the Fish and Wildlife Service (FWS) in the Department of the Interior (**Figure 1**). Initially established as a national wildlife range in 1960, the area was expanded and established as a refuge by the Alaska National Interest Lands Conservation Act of 1980 (ANILCA; 16 U.S.C. §§668dd note, 3141 et seq.). ANILCA designated a portion of the Refuge as wilderness and, in Section 1002, required a study of another portion—the 1.57-million-acre Coastal Plain (also referred to as the *1002 Area*)—to assess its wildlife and potential impacts of oil and gas development. The Coastal Plain is viewed as an onshore oil prospect, with a 2005 mean estimate by the U.S. Geological Survey of 7.7 billion barrels of technically recoverable oil on federal lands (10.4 billion barrels including Native lands and adjacent waters). It also is a center of activity for caribou and other wildlife, with Native subsistence uses and critical habitat for polar bears under the Endangered Species Act (16 U.S.C. §§1531-1544). Section 1003 of ANILCA prohibited oil and gas development in the Refuge unless authorized by an act of Congress. The enactment of P.L. 115-97 culminated a

decades-long congressional debate over whether to authorize development of the Coastal Plain’s mineral resources or to continue prohibiting development to protect biological and subsistence values.

The ANWR provisions in P.L. 115-97 responded to a reconciliation instruction to the Senate Committee on Energy and Natural Resources in the FY2018 concurrent resolution on the budget (H.Con.Res. 71). The committee was instructed to report changes in laws within its jurisdiction to reduce the deficit by not less than \$1 billion for the FY2018-FY2027 period. The Congressional Budget Office (CBO) estimated that the ANWR provisions in Title II of the law, along with other oil and gas provisions in that title, would increase net offsetting receipts by about \$1.1 billion during this period.

Other bills related to ANWR’s Coastal Plain were introduced in the 115th Congress prior to enactment of P.L. 115-97. H.R. 1889 and S. 820 would establish the Coastal Plain as wilderness, while H.R. 49 and S. 49 propose oil and gas leasing programs for the Coastal Plain that are similar but not identical to the program mandated by P.L. 115-97. This CRS product focuses on P.L. 115-97.

Figure 1. Arctic National Wildlife Refuge



Source: FWS, *Arctic National Wildlife Refuge Comprehensive Conservation Plan*, Introduction, April 2015, at <https://www.fws.gov/home/arctic-ccp/>. Edited by CRS.

Establishment of Oil and Gas Program

P.L. 115-97 directs the Secretary of the Interior, acting through the Bureau of Land Management (BLM), to establish and administer a competitive program for the leasing, development, production, and transportation of oil and gas in and from ANWR's Coastal Plain. Although the Refuge as a whole is administered by FWS, under the Mineral Leasing Act of 1920 (MLA; 30 U.S.C. §§181 et seq.), BLM manages onshore federal energy and mineral resources, not only on its own lands but also on those of other federal agencies. The law further provides that Section 1003 of ANILCA, which prohibits oil and gas development in ANWR unless authorized by Congress, shall not apply to the Refuge's Coastal Plain.

Refuge Purposes

ANILCA stated four purposes for which ANWR was established and is to be managed, including (1) conservation of fish and wildlife populations and habitats, (2) fulfillment of U.S. international fish and wildlife treaty obligations, (3) providing the opportunity for continued subsistence use by local residents, and (4) ensuring water quality and quantity within the Refuge. P.L. 115-97 amends ANILCA to add, as a fifth purpose of the Refuge, "to provide for an oil and gas program on the Coastal Plain." Under the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. §668dd), ANILCA Section 304, and regulations at 43 C.F.R. Section 3101.5-3 for Alaskan refuges, FWS undertakes compatibility determinations to assess whether proposed refuge activities are compatible with the purposes for which a refuge was established as well as the mission of the National Wildlife Refuge System as a whole. The addition of oil and gas development as a refuge purpose thus affects the context for a compatibility determination, but it is not yet clear how FWS would approach compatibility for oil and gas activities.

Oil and Gas Program Management

The law directs BLM to manage the oil and gas program on the Refuge's Coastal Plain in a manner similar to the administration of lease sales under the Naval Petroleum Reserves Production Act of 1976 (NPRPA, 42 U.S.C. §§6501 et seq.) and associated regulations, except as otherwise provided. The NPRPA provided for competitive oil and gas leasing in the National Petroleum Reserve in Alaska (NPR-A), subject to certain conditions and restrictions. The regulatory framework for the NPR-A (43 C.F.R. §§3130, 3137, 3150, 3152, and 3160) includes requirements for leasing terms, bonding, environmental obligations, and many other activities associated with oil and gas development.

Revenues and Royalties

The MLA requires royalty payments of at least 12.5% of the value of production for oil and gas leases on federal lands. P.L. 115-97 sets the royalty rate for oil and gas leases in ANWR's Coastal Plain at 16.67%. The law directs that

50% of revenues derived from oil and gas leases on the Coastal Plain (including royalties, rents, and bonus bids) be distributed to the State of Alaska and that the remaining 50% be deposited into the U.S. Treasury as miscellaneous receipts. This split differs from that established by the MLA, under which the State of Alaska typically receives 90% of the revenue from federal onshore oil and gas leases within the state, with 10% deposited in the Treasury as miscellaneous receipts. All other states receive 50% of the revenues from leases within their states (minus a 2% cost-sharing deduction), while 40% are deposited in the Reclamation Fund (which funds certain federally owned and operated western water and power projects) and 10% are deposited in the Treasury as miscellaneous receipts.

Schedule of Lease Sales

The law requires at least two area-wide lease sales in the Refuge's Coastal Plain. An initial lease sale is required within four years of the law's enactment, and a second lease sale is required within seven years of enactment. Separately, other provisions require that at least two lease sales be conducted within 10 years of the law's enactment. Each ANWR lease sale must offer at least 400,000 acres and must include those areas with the highest potential for discovery of hydrocarbons.

Surface Development and Rights-of-Way

The law requires the Secretary of the Interior to grant any easements or rights-of-way necessary to carry out the bill's provisions for exploration, development, production, and transportation in the Coastal Plain. It directs the Secretary to authorize up to 2,000 surface acres of federal land on the Coastal Plain to be covered by production and support facilities. (This 2,000-acre limit does not appear to apply to Native surface lands on the Coastal Plain owned by the Kaktovik Inupiat Corporation or through individual Native allotments.) The law does not require the development facilities to be concentrated in a single 2,000-acre area. The law specifies that "airstrips and any area covered by gravel berms or piers in support of pipelines" shall be included in the 2,000-acre limit. It is unclear whether other potential disturbances—for instance, temporary roads or areas under a pipeline that might be temporarily disturbed during construction—would be included within the limit.

Further Reading

For additional information, see CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): An Overview*, by Laura B. Comay, Michael Ratner, and R. Eliot Crafton; CRS Report RL32838, *Arctic National Wildlife Refuge (ANWR): Votes and Legislative Actions Since the 95th Congress*, by Laura B. Comay; and CRS Report R40806, *Energy Projects on Federal Lands: Leasing and Authorization*, by Adam Vann.

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