

# PRESIDENT BUSH'S COLD ENERGY POLICY Pipe Dreams in the Arctic National Wildlife Refuge

by Kristin J. Berdan and Adam Torem

"A policy based on the security of the oil industry is not the same as a policy to make the American economy less dependent on oil." Brooks Yeager, National Audubon Society<sup>1</sup>

## INTRODUCTION

Memories of the Exxon Valdez catastrophe quickly faded as Americans watched United States soldiers fight a short but expensive war in the Persian Gulf. Saddam Hussein's invasion of Kuwait and the ensuing American military intervention came from a fight over the desert's black gold: oil. In the 1980's, annual expenditures by the Department of Defense added at least \$23.50 to the actual cost of each barrel of oil America imported;<sup>2</sup> the Gulf War only highlighted this traditional subsidy. The Department of Energy's recent public opinion hearings showed a demand for greater energy independence and conservation, but the federal government has refused to turn away from petroleum.

Calls for a National Energy Policy were met with a series of legislative proposals, ranging from offshore drilling to increased Corporate Average Fuel Economy (CAFE) standards. However, only Senate Bill 1220, introduced by Senators Johnston<sup>3</sup> (R-LA) and Wallop (R-WY) and endorsed by the Bush Administration, has made considerable progress. The "National Energy Strategy's" linchpin provision is found in Title VII, calling for oil and gas drilling in Alaska's Arctic National Wildlife Refuge. President Bush has in fact threatened to veto the entire bill if this provision is not included. Because of its location on federal lands, explicit permission from Congress is required for drilling in ANWR, and S.1220 asks for that license.

In this article, we will focus on S.1220's Title VII, outlining the potential impacts and benefits of drilling in ANWR. First, we will explore the environmental costs to the refuge's wildlife. Finally, alternatives to increased domestic petroleum production will be enumerated and analyzed.

## I. IMPACTS OF ANWR DRILLING

The Arctic National Wildlife Refuge constitutes 19 million acres of boreal forest, mountains, and tundra. The 125 miles of ANWR's coastal plain is the only stretch of Alaska's 1100 mile coastline not currently open to oil and gas leasing and development. The coastal plain is a richly varied strip of tundra lying between the foothills of the Brooks Range and the shores of the Beaufort Sea. The U.S. Fish & Wildlife Service has observed that "the coastal plain is the most biologically productive part of [ANWR] and is the center of wildlife activity."<sup>4</sup>

This area has been described as "the flat land bordering the Beaufort Sea [which] holds the imprint of a savage wind for most of the year: snowdrifts contorted and hardened, a landscape like paste from a blender."<sup>5</sup> This vast wilderness has been called the "American Serengeti" and is held up as the last truly wild place in the United States. In the words of Representative Gerry Studds (D-MA), the question facing our nation's lawmakers is

whether the effects [of drilling and leasing] will go beyond significant to devastating and whether the economic value of the oil will, in any case, exceed the less tangible--but no less real--value of the resources at risk.<sup>6</sup>

*Expenditures by the Department of Defense add at least \$23.50 to the actual cost of each barrel of oil America imports.*

## WILDLIFE

Myriad species of animals make their homes in ANWR. Over one-hundred species of birds reside there, as do musk oxen, polar bears, and wolves.<sup>7</sup> However, the most famous animals of ANWR are its caribou, specifically the Porcupine herd.

The Porcupine caribou herd is a highly migratory population of 180,000 animals named for the Porcupine River. Their annual lifecycle is highlighted by a northward spring migration, to ANWR's Coastal Plain. In mid-May, pregnant females are the first to arrive, and calving begins shortly thereafter. To overwhelm their predators (grizzly bears, wolves, and occasionally golden eagles), the herd's births come with a high degree of synchrony, with thousands of births each day. By mid-summer, the mosquitoes swarm in such numbers that the caribou are forced to move north across the coastal plain to the shores of the Beaufort Sea where the ocean water and coastal winds provide relief from the intense hordes of insects.

The herd moves in huge aggregations that can number up to 80,000 animals. These large groups may not readily cross roads and pipelines. Under full development, with east-west running roads and pipelines blocking access to the coast, 80% of the coastal relief habitat within the coastal plain could become inaccessible to the caribou. "Failure to obtain relief from insect harassment. . . could shorten foraging time, thus leading to poorer physical condition and . . . to increased susceptibility to predation and overwinter survival."<sup>8</sup> Oil development on the coastal plain is also extremely likely to cause displacement of pregnant cows which in turn is expected to result in increased calf mortality and decreased productivity.

Another animal threatened by ANWR petrodevelopment is the polar bear. Although polar bears spend as much of the year as possible on sea ice and are completely dependent on the sea for their existence, they must still return to land to breed and raise their young. Offshore oil drilling platforms and tanker movements already complicate bear migration routes,<sup>9</sup> and potential oil spills pose an even greater threat to these animals.<sup>10</sup> Polar bears, like otters, depend on clean fur for insulation against the Arctic cold; a petroleum soiled pelt will nearly guarantee a bear's death.<sup>11</sup>

ANWR's Coastal Plain hosts a significant polar bear denning zone. Oil exploration and drilling would disturb ANWR's polar bears at their most sensitive time. Polar bears mate in April and May, with pregnant females digging maternity dens in early November. Cubs, weighing less than a kilogram, are born in late December and early January.<sup>12</sup> Female bears will quickly desert their dens if they sense danger, and abandoned cubs rarely survive. One biologist has testified that "a prohibition on oil and gas development on the refuge is especially necessary to protect polar bears during the denning period."<sup>13</sup>

To survive in the extreme Arctic environment, polar bears are necessarily opportunistic and investigative. Their natural curiosity may prove hazardous to their survival if they attempt to explore areas of drilling activity.<sup>14</sup> Some scientists have even questioned whether the smell of refined or crude oil attracts polar bears.<sup>15</sup>

For its part, the oil industry has assured the federal government that petrodevelopment will cause "minimal environmental impact" to ANWR. To support their position, British Petroleum Exploration (Alaska) has testified before the House of Representatives' Merchant Marine Fisheries Subcommittee that "no documented declines in wildlife populations" have occurred due to oil and gas development on Alaska's North Slope.<sup>16</sup> A special source of pride to the oil industry has been the increase in the population of the Central Arctic caribou herd in the Prudhoe Bay area: they numbered approximately 3,000 in 1970 and over 18,000 today. However, the oil companies neglect to explain this growth: wolves and bears, the herd's natural predators have been all but eliminated by the area's petrodevelopment.<sup>17</sup>

*The caribou herd moves in huge aggregations that can number up to 80,000 animals.*

The threats to caribou and polar bears are only the most obvious of the environmental risks posed by drilling within ANWR. Smaller and less endearing creatures will also be affected by any human industrial activity within the refuge. Alaskan wildlife can't afford the price of petrodevelopment, and they are not alone.

## NATIVE PEOPLES

While Alaskan wildlife depends on a pristine environment, the native peoples of Alaska depend, in turn, on the wildlife. Two distinct groups of Native people are at the center of the ANWR controversy: the Athabascan Indian nation known collectively as the Gwich'in and the coastal dwelling Inupiat Eskimos.

The Gwich'in people number only around 7,000 and are distributed in 15 tiny communities between northeastern Alaska and northwestern Canada. This people is the northernmost Indian tribe in North America and is thought to be the last to resist 20th Century assimilation. The Gwich'in rely on the Porcupine caribou herd for sustenance, and accompany the herd on its migrations, maintaining their traditional way of life. The tribe has mobilized against petrodevelopment but continues to lack influence. The Gwich'in lack mineral rights in ANWR and thus can seemingly be ignored by the oil companies. However, the potential threat to their food supply has brought the tribe together to create a "single voice" against jeopardizing ANWR.

*The Gwich'in people rely on the caribou for sustenance, following their migrations.*

On the other hand, the Inupiat Eskimo people support petrodevelopment within ANWR. The Inupiat culture is based on the traditional hunting of sea mammals, such as seals and whales, and consequently (some say hypocritically) they are opposed to offshore drilling. This tribe believes that oil companies will bring money and modern amenities to their community; almost 6500 Inupiat live on the North Slope including the coastal village of Kaktovik (Pop. 200), which is itself located within ANWR. The Inupiat have already benefitted greatly from drilling activity on the North Slope and would like to continue their profitable relationship with the oil industry.<sup>18</sup> The Inupiat hold surface rights to approximately 92,000 acres of ANWR's coastal plain, and they have already allowed Chevron to drill an exploratory well.<sup>19</sup>

Alaska's Governor, Walter J. Hickel, supports petrodevelopment in ANWR and raises human concerns to promote his stance. He points out that petrodevelopment will bring thousands of temporary and permanent jobs to the state, as well as an increase in every Alaskan citizen's dividend check.<sup>20</sup> In 1990, just over 15,000 tourists visited ANWR, as compared to the millions who cram into the Yosemite Valley each summer. Used as a wildlife refuge, ANWR is not a revenue generator for the state, but Hickel seems ready to ignore ANWR's principal purpose of preservation.

## II. BENEFITS OF ANWR DRILLING

### DECREASED IMPORT DEPENDENCE?

The productivity of the Alaskan North Slope (ANS) has been steadily declining. In 1988, 2.036 million barrels/day (mbl/dy) were produced, while the 1991 figures show 1.874 mbl/dy. Projections for 1995 are 1.469 million mbl/dy, dropping off to just 584,000 bl/dy by the year 2000.<sup>21</sup> Even at its peak, ANS crude provided Americans with only a very small percentage of their annual oil needs.

According to the Coastal Plain Resource Assessment, a study commissioned by the Alaska Lands Act of 1980, the estimated in-place oil reserves in ANWR's Coastal Plain ranges from 4.8 billion barrels/day (bbl/dy) to 29.4 bbl/dy. The mean of that range is 3.2 bbl/dy of economically recoverable oil.<sup>22</sup> Other studies note that there is merely a 1 in 5 chance of finding a meaningful oil deposit within ANWR and note that even if one is found, it would only last for six to eight months.<sup>23</sup>

The Sierra Club claims that drilling in "all of the Arctic Refuge, the entire Outer Continental Shelf, and every last inch of U.S. territory" would only yield access to a scant 5% of the world's petroleum reserves. The environmentalist viewpoint is clear: don't risk public lands and resources for the fortunes of oil companies, an "institution that feeds entirely on hope." The United States cannot drill its way to energy independence.

## REVENUE DISTRIBUTION

Senator Johnston's National Energy Strategy has broken from well-established precedent to create an equal-sharing scheme for revenues generated from ANWR drilling. Under Senate Bill 1220's provisions, fifty percent of royalties will go to the State of Alaska and fifty percent will go to the federal government.<sup>24</sup> This provision is rumored to be a compromise from President Bush's preference for a 100% collection for the federal government and the State of Alaska's claim to 90% of the revenues.

Legislative precedent has provided for a 90-10 split on mineral revenues, with the lion's share going to the State hosting the economic activity. The Mineral Leasing Act of 1920<sup>25</sup> sets forth this revenue distribution formula to be used on acquired or public domain lands.<sup>26</sup> The Wildlife Refuge Revenue Sharing Act<sup>27</sup> instructs refuges formed from acquired lands (unlike ANWR, which is constituted entirely of public domain lands), to distribute 75% of revenues to the federal government, and the remaining 25% to the county in which the wildlife refuge is located. Theoretically, this compensates the county for lost property tax revenues.<sup>28</sup>



S.1220's 50-50 split also offends judicial precedent in the area of oil leasing. As noted above, ANWR is a wildlife refuge made up of public domain lands. Thus, it falls under the 1981 decision of Watt v. Alaska<sup>29</sup> in which the U.S. Supreme Court held that the 90-10 revenue distribution formula of the Mineral Leasing Act applied to withdrawn and reserved lands on the Kenai National Moose Range. ANWR's situation should be seen as parallel to the Kenai Range and thus be subject to the same 90-10 split.

By "compromising" with a 50-50 distribution, S.1220 robs Alaska of the dollars it will need to redress harm to its environment from petrodevelopment. The citizens of Alaska are cheated of their citizenship's oil royalty entitlement by Johnston's plan. Further, Congress would set a menacing precedent for dealing with mineral-rich states in the future. Advocates of state's rights would be well advised to oppose this federal greed and demand that money be returned to the economy of the state that is giving up its resources. This provision of S.1220

*S. 1220 robs Alaska of dollars it will need to redress harm to its environment.*

demands attention from organizations like the Western Governor's Association and the Association of Western Attorneys General.

### III. ALTERNATIVES TO ANWR DRILLING

Opposition to Johnston's National Energy Strategy has come from numerous directions, but leading the charge to defeat S.1220 is the environmental lobby. The Sierra Club demands an abandonment of new domestic petrodevelopment and recommends steps to improve our efficiency. They support legislation like the Motor Vehicle Fuel Efficiency Acts of 1991, authored by Senator Richard Bryan (D-NV) and Representative Barbara Boxer (D-CA). These bills call for 40% and 60% increases in CAFE standards by the year 2000, mandating an average of 40 and 45mpg, respectively. Estimates of the resultant fuel savings range from 2.5 to 3.5 mbl/dy by the year 2005. Although these bills would force the auto industry to develop new technologies, perhaps very costly ones, Bryan and Boxer are facing up to the folly of dependence on a nonrenewable resource.

The authors of this piece agree with the Sierra Club that conservation must be addressed in any National Energy Plan. The Republican tendency to study a problem endlessly might actually be utilized in this area by creating a national clearinghouse for alternative energy research. Funding for solar, geothermal, and hydroelectric research projects would be justified under any such plan. Additionally, we feel that any Energy Plan must provide for alternatives to the automobile altogether; mass transit services and environmentally sensitive land-use planning can assist in reducing American dependence on the automobile.

### CONCLUSION

Senate Bill 1220 went down to defeat in early November when Senator Johnston failed to avoid a filibuster and could not bring his package to a floor vote. Senator Joseph Lieberman (D-CT), a fierce supporter of Arctic preservation, helped lead efforts to "draw a line in the Tundra." The battle may resume in early 1992, but environmentalists have promised to hold the line and stand tough against any reintroduction of Johnston's bill. Further, several bills are currently circulating to increase the protection granted to ANWR.

The American public has recognized the need to reduce our dependence on imported oil, but the Bush Administration's response has been narrow-minded. Changing the origin of our petroleum does not address the real issue facing the United States: What source will we turn to when all the oil is gone? Calling a National Energy Plan that neglects this question a "strategy" is more than a misnomer; it is a fallacy.



*Conservation must be addressed in any National Energy Plan.*

*The authors would like to thank Richard D'Alessandro of the Coalition for Our Earth for his invaluable advice, knowledge, and assistance in the preparation of this article.*

## ENDNOTES

<sup>1</sup> "Adamant on ANWR," Oil and Gas Journal, Patrick Crow, December 24, 1990, at 19.

<sup>2</sup> Hubbard, Harold M., "The Real Cost of Energy: Bringing Market Prices in Line with Energy's Hidden Burdens Will be One of the Great Challenges of the Coming Decades," Scientific American, Vol. 264, No. 4, April 1991, at 36.

<sup>3</sup> Senator Johnston is the Chair of the Senate Committee on Energy and Natural Resources. Johnston was re-elected to the Senate in 1989 by a 56.5 to 43.5 margin in a race against then U.S. Representative David Duke. Louisiana's current economic problems are being blamed on the state's declining petroleum industry, and some critics criticize Johnston for trying to solve Louisiana's problems by opening up ANWR.

<sup>4</sup> Department of the Interior 1002 Report.

<sup>5</sup> Egan, Timothy, "Can Oil and Wilderness Mix?" The New York Times Magazine, August 4, 1991.

<sup>6</sup> "BP Defends Industry's Record on North Slope to House Panel," Platt's Oilgram News, Vol. 69, No. 115, June 14, 1991, at 2.

<sup>7</sup> "Energy Policy Sacrifices Alaska," Alaska Conservation Foundation Dispatch, Spring 1991, at 1.

<sup>8</sup> DOI 1002 Report.

<sup>9</sup> Stirling, Ian, Polar Bears and Oil: Ecologic Perspectives, in Geraci, Joseph R. and St. Aubin, David J., Sea Mammals and Oil: Confronting the Risks, Academic Press, San Diego, 1990, at 223-232. Polar bears have become such a nuisance around Prudhoe Bay that they are often shot on sight.

<sup>10</sup> St. Aubin, David J., Physiologic and Toxic Effects on Polar Bears, in Geraci, Joseph R. and St. Aubin, David J., Sea Mammals and Oil: Confronting the Risks, Academic Press, San Diego, 1990, at 235-239.

<sup>11</sup> For a more detailed discussion on the effects of a marine oil spill, see Frommer, Dario and Torem, Adam, The Petroleum Industry and the Marine Habitat: The Exxon Valdez Catastrophe and California's Options, Vol 13:2 Environs, January 1990.

<sup>12</sup> Stirling, supra note 9, at 225.

<sup>13</sup> Kelly, Sean, "Arctic Refuge Drilling Would Threaten Polar Bear Habitat, Biologists Say," The Washington Post, October 14, 1991, at A26.

<sup>14</sup> "Eco-groups Issue Bearish Review of ANWR Drilling," Platt's Oilgram News, September 5, 1991, at 3.

<sup>15</sup> Stirling, supra note 9, at 232.

<sup>16</sup> "BP Defends Industry's Record on North Slope to House Panel," Platt's Oilgram News, June 14, 1991, at 2.

<sup>17</sup> Watkins, T.H., Vanishing Arctic, Aperture Foundation, Inc. and The Wilderness Society, Everbest Printing Co., Hong Kong, 1988, at 76.

<sup>18</sup> Eathorne, Richard, "Fade to Black: The Untold Story in the ANWR Battle," Buzzworm: The Environmental Journal, Volume III, Number 4, July/August 1991, at 34.

<sup>19</sup> This exploratory well, known as KIC-1, was drilled in 1986-86 on Inupiat land. It cost of roughly \$40 million and Chevron has refused to release its findings to the public. However, the Alaska Supreme Court ruled unanimously on 23 November 1991 that Chevron could no longer keep its secret. Even so, the information is not expected to be commercially available until mid-1992.

*Kristin Berdan is a 1L at King Hall with an interest in environmental policy issues.*

*Adam Torem is a 3L at King Hall as well as an M.S. Candidate with the Graduate Group in Ecology at U.C. Davis.*

<sup>20</sup> "Alaska Governor at Odds with Environmentalists, Sacramento Bee, October 1991.

<sup>21</sup> "Lack of Spot Market Liquidity and Falling Production May Seal Fate for ANS," Energy Listener Series, Oil Market Listener, August 10, 1991.

<sup>22</sup> Watkins, supra note 17, at 66.

<sup>23</sup> "Kick the Oil Habit: Choosing a Safe Energy Future for America," Sierra Club Publications, July 1991, at 2.

<sup>24</sup> S.1220, Title VII.

<sup>25</sup> 30 U.S.C. §351 et seq.

<sup>26</sup> Acquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in State or private ownership. *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 65, n.2 (1966).

<sup>27</sup> 16 U.S.C. §715s.

<sup>28</sup> Fairfax and Yale, *The Financial Interest of Western States in Non-Tax Revenues From the Federal Public Lands*, published by Western Legislative Conference, Council of State Governments, and Lincoln Institute of Land Policy, 1985.

<sup>29</sup> 451 U.S. 259 (1981).

