

# CRS Report for Congress

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## Legislative Maps of ANWR

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### Summary

One major element of the U.S. energy debate is whether to approve energy development in the Arctic National Wildlife Refuge (ANWR) in northeastern Alaska, and if so, under what conditions, or whether to continue to prohibit development to protect the area's biological, recreational, and subsistence values. For over 20 years, the debate on whether to develop any energy resources in ANWR has focused on a familiar image of a coastal, northern part of the Refuge, the area that is thought to contain oil. Reconciliation bills under consideration in the 109<sup>th</sup> Congress have referred to two new maps, one with different boundaries than previous maps, and one apparently similar to those in previous bills. This report does not cover the general ANWR controversy, but shows the maps in the two reconciliation bills, and discusses historical maps and the implications of changes. It will be updated if new maps are referenced in legislation.

Under the FY2006 Budget Resolution (H.Con.Res. 95), the House Resources and Senate Energy and Natural Resources Committees were directed to reduce mandatory spending within their jurisdictions and, as most observers expected, the two Committees recommended legislation to open the Arctic National Wildlife Refuge (ANWR) to use its expected offsetting receipts to meet that target. While the Senate Committee's bill (Title IV of S. 1932, no report filed) confined itself to the opening of the Refuge alone, the House Committee recommended a variety of other changes within its jurisdiction (Title VI of H.R. 4241, H.Rept. 109-276). Only the difference related to the maps of the proposed development area in ANWR in the two bills will be discussed here.<sup>1</sup> The chief difference in the two maps is in the outer boundary, and the inclusion or exclusion of

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<sup>1</sup> For other aspects of the ANWR debate, see CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109<sup>th</sup> Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin; CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*, by Pamela Baldwin; CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*, by M. Lynne Corn (Coordinator); and CRS Report RS22304, *ANWR and FY2006 Budget Reconciliation Legislation*, by M. Lynne Corn and Bill Heniff Jr.

certain Native lands. Since ANWR development bills provide for such matters as revenue disposition, surface occupancy restrictions, environmental protections, and other provisions on the *Coastal Plain* as the bills define that term, then a change in the map specified in the definition can have substantial effects on many sections of such bills. This report provides a brief history of the area proposed for development, and then discusses how the two bills and their maps differ in this respect.

Over the last 25 years, there have been 4 definitions of the “Coastal Plain” of ANWR:

- a definition relying on the August 1980 map first mentioned in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA, P.L. 96-487, 94 Stat. 2371);
- a definition relying on the same 1980 map, plus a legal description in the Code of Federal Regulations (Appendix I, Part 37, 50 C.F.R.);
- a definition relying solely on a map dated September 2005; and
- a definition relying on a new map dated October 21, 2005 along with the same C.F.R. citation.

Each of these definitions and their maps will be discussed below.

**Brief Legislative History of Native Lands in ANWR.** In November 1957, an application for the withdrawal of lands bordering the Arctic Ocean in northeastern Alaska to create an “Arctic National Wildlife *Range*” was filed. On December 6, 1960, after statehood, the Secretary of the Interior issued Public Land Order 2214 reserving the area, including its coast, as a refuge. The potential for oil and gas leasing was expressly preserved.

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA, P.L. 92-203) to resolve all Native aboriginal land claims against the United States. ANCSA provided for monetary payments and created Village Corporations that received the surface estate to roughly 22 million acres of lands in Alaska. Village corporations obtained the right to select the surface estate of a certain amount of lands within the National Wildlife Refuge System. Under §22(g) of ANCSA, these lands were to remain subject to the laws and regulations governing use and development in the particular Refuge. Kaktovik Inupiat Corporation (KIC, the local corporation) initially received rights to three townships (about 69,000 acres) along and near the coast of ANWR. ANCSA also created Regional Corporations which could select subsurface rights to some lands and full title to others. Subsurface rights in Refuges were not available, but selections to substitute for such lands were provided.

**Definition in ANILCA.** ANILCA expanded the Refuge, mostly south and west, to include another 9.2 million acres. Section 702(3) designated much of the original Refuge as a wilderness area, but not the coastal plain, nor the newer portions of the Refuge. Instead, Congress postponed decisions on the development or further protection of the coastal plain. Section 1002 directed a study of ANWR’s “coastal plain” (therefore often referred to as the “1002 area”) and its resources to be completed within five years and nine months of enactment. The resulting 1987 study was called the *1002 report* or the Final Legislative Environmental Impact Statement (FLEIS). To a geographer, the “coastal plain” of ANWR is the relatively flat or rolling land whose southern boundary

is a rather indefinite line at the foothills of the Brooks Range, and whose northern boundary is a somewhat indefinite line in the tidal zone at the coast of the Beaufort Sea; it stretches from the Canadian border on the east side of the Refuge, to ANWR's western boundary. This geographic term is *not* identical to the legal term. Section 1002(b)(1) contained the first of the four definitions cited above:

The term "coastal plain" means that area identified as such in the map entitled "Arctic National Wildlife Refuge", dated August 1980.

Section 103(b) of ANILCA authorized administrative creation of narrative legal descriptions of areas for which ANILCA changed the land management status, and these descriptions have the force of law. A description of the Coastal Plain was published that excluded many of the KIC lands (48 Fed.Reg. 1685, April 19, 1983; Appendix I, Part 37 of 50 C.F.R.), even though these lands (originally approximately three townships) are *geographically* part of the coastal plain.

These lands and a fourth township that is within the defined Coastal Plain (these four totaling approximately 92,000 acres) are all within the Refuge and subject to its regulations. The Arctic Slope Regional Corporation (ASRC) obtained subsurface rights beneath the KIC lands pursuant to a 1983 land exchange agreement. In addition, there are currently more than 10,000 acres of conveyed or claimed individual Native allotments in the 1002 area that are not expressly subject to its regulations. Were oil and gas development authorized for the federal lands in the Refuge, development would then be legally allowed or become feasible on the approximately 100,000 acres of Native lands, arguably free of any acreage limitation applying to development on the federal lands. The extent to which the Native lands could be regulated to protect the environment is uncertain, given the status of allotments and some of the language in the 1983 Agreement with ASRC. (See also CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*, by Pamela Baldwin.)

**Definition Adding Legal Description.** As reports<sup>2</sup> of the apparent loss of the 1980 ANILCA map began to circulate in recent years, bills began to be introduced with reference both to the ANILCA map and to this portion of the C.F.R. For example, in 2002 in the 107<sup>th</sup> Congress, a Senate amendment (SA3132) defined the Coastal Plain using both the 1980 map and the C.F.R. reference. The change there and in a number of subsequent bills appeared to be a means of clarifying congressional intent in light of the missing map.

**Definition with September 2005 Map.** Under §4001(a) of S. 1932, the Deficit Reduction Act of 2005, the Senate Energy Committee provided a new map prepared by the U.S. Geological Survey and dated September 2005, to accompany its submission to the Budget Committee for reconciliation; the definition did not include the C.F.R. reference. (See **Figure 1**.) For the first time this map included in the "Coastal Plain" all Native lands (both Corporation lands and allotments), though the bill does not expressly

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<sup>2</sup> Felicity Barringer, "Arctic Map Vanishes and Oil Area Expands", *New York Times* (Oct. 21, 2005). It is not entirely clear that the missing map reported in this story, and once viewed by the authors, is actually the missing 1980 map. See CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*, by Pamela Baldwin, for a description of the missing map and its legal significance.

address Native lands. The major provisions in the bill remained unchanged, including a provision (§4001(b)) authorizing development in the Coastal Plain, directing the Secretary to establish a leasing program to carry out that authorization, limiting certain surface acreage development in the Coastal Plain to 2,000 acres, and “notwithstanding any other provision of law” directing receipts from leasing and operations “authorized under this section” to be divided equally between the state of Alaska and the federal government. It is unclear what level of federal control of Native lands was intended or accomplished, given that the potential for increased federal control in the section derives primarily from a change in a map rather than a change in the legislative language used in previous bills.

**Definition with October 2005 Map and Legal Description.** As reported, Title VI of H.R. 4241, the House reconciliation bill, includes a provision to open ANWR to development. The provision is essentially identical to previous ANWR development provisions reported in the past by the Resources Committee. The map (**Figure 2**) accompanying the bill was prepared by the U.S. Geological Survey and dated October 21, 2005. It is apparently similar to an August 1980 map referred to in ANILCA, cited in previous bills such as H.R. 4 as introduced in the 107<sup>th</sup> Congress: the definition of “Coastal Plain” contained in H.R. 4241 refers to the October, 2005 map, and also to the same appendix of the C.F.R. and one might presume that the map in question is intended to be identical to the published legal description of the Coastal Plain, and therefore to exclude basically three of the four Native townships.

Figure 1. Senate Map of 1002 Area

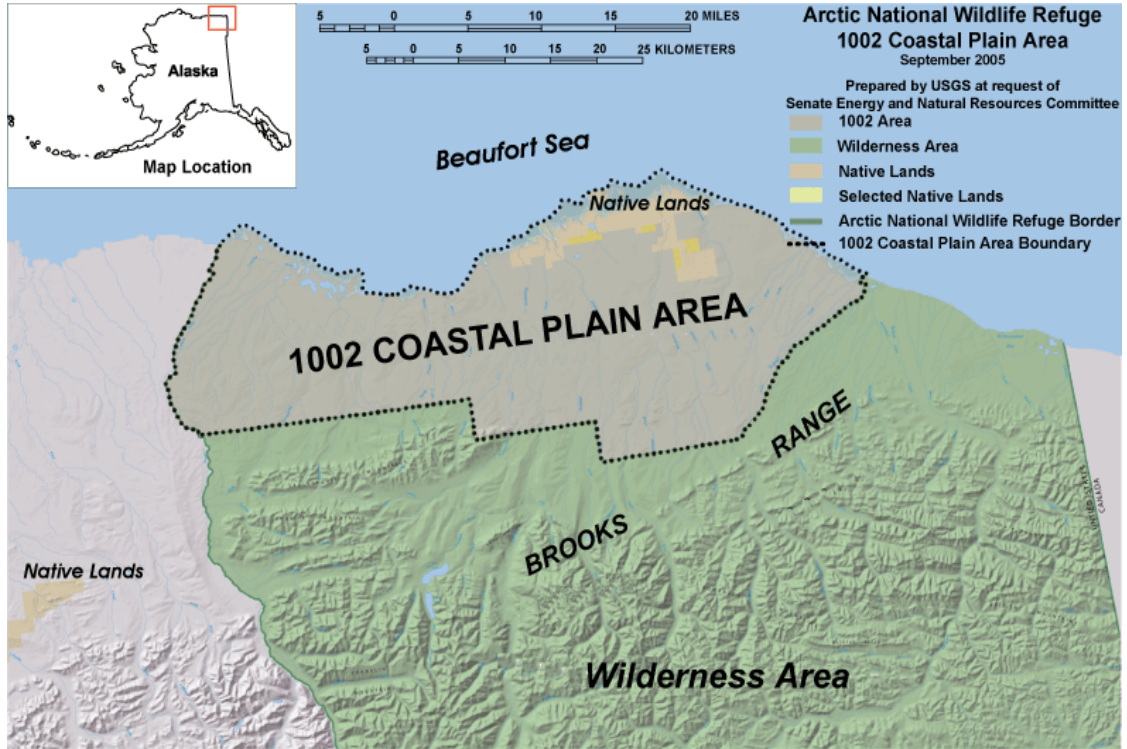


Figure 2. House Map of 1002 Area

