

**Alaska Clean Water Advocacy • Alaska Community Action on Toxics
Alaska Warrior Partnership • Alaska Wilderness League
Alaska Wildlife Alliance • Beluga Whale Alliance • Center for Biological Diversity
Coalition to Protect America’s National Parks • Cook Inletkeeper • Defend the West-Su
Earthworks • Mother Kuskokwim Tribal Coalition
National Parks Conservation Association • Natural Habitat Adventures
Northern Alaska Environmental Center • Sierra Club¹**

Via E-mail/Portal

June 24, 2024

Superintendent Susanne Fleek-Green
Lake Clark National Park & Preserve
Johnson Tract Transportation and Port Site Easements
240 West 5th Avenue, Suite 236 Anchorage, AK 99501

Re: Resource Analysis for the Johnson Tract Transportation and Port Site Easements

Dear Superintendent Fleek-Green:

On behalf of the above-listed organizations and our members, we provide the following comments in response to the National Park Service’s (NPS or the Service) request for input on its forthcoming resource analysis evaluating two proposed easements requested by Cook Inlet Region, Inc. (CIRI) that would provide access to the Johnson Tract within Lake Clark National Park and Preserve. We are concerned about the potential for these easements to have significant impacts across the entire Park and broader region, including the Cook Inlet watershed. NPS is required to fully analyze all potential impacts from this proposed project in a scientifically sound and publicly transparent manner, and to comply with the broad set of legal mandates that apply to this request.

Lake Clark National Park is one of the wildest national park landscapes in the world. Lake Clark protects the headwaters of the Kvichak and Nushagak rivers that flow into Bristol Bay, home to the world’s largest wild sockeye salmon run. Wild salmon sustain the traditional lifeways of local people, play an essential role in the ecosystem and support the \$2 billion fishing industry that anchors the local economy. Additionally, the world-famous brown bears of the region allow for the most incredible bear-watching opportunities anywhere on the planet, which supports a thriving bear-viewing economy for the region. The Park is also home to many other wildlife, including caribou, moose, a variety of birds, and the endangered beluga whales that inhabit its nearshore waters.

Our organizations are concerned about the significant negative effects that the easements, and the future mining the easements would facilitate, could have on this wild area and its resources. This is a complex and far-reaching proposal that is likely to have significant impacts

¹ Comments prepared with assistance from Trustees for Alaska.

on the special values and resources of the region and the entire Park. The easements and future mining will cause a large, undeveloped area to become industrialized. Future development will disturb wildlife, destroy wetlands, impact a thriving recreation-based economy, and permanently alter rural lifestyles dependent on traditional food resources. Consistent with its authority and discretion under the 1976 Cook Inlet Land Exchange, NPS must carefully consider how it can address the potentially serious impacts of these easements as part of this process and its upcoming resource analysis.

NPS must also ensure that its process complies with myriad laws intended to protect Lake Clark National Park and its wildlife, environmental, and subsistence values. This includes, but is not limited to, ensuring that this process is consistent with NPS's mandates under the Alaska National Interest Lands Conservation Act (ANILCA) to protect Lake Clark's purposes and to address the easements' impacts on subsistence users. NPS must also fully comply with the Endangered Species Act (ESA) when undertaking this process, given the potentially significant impacts the easements could have on endangered Cook Inlet beluga whales and other species. Further, the National Historic Preservation Act requires NPS to engage in Section 106 consultation to avoid impacts to historic and cultural resources in the area. These and other legal requirements must be fully complied with as part of NPS's process.

We are also deeply troubled by the lack of a meaningful opportunity for public participation in this permitting process. Public participation should be a key consideration as NPS undertakes this resource analysis. Instead, the manner in which NPS is proceeding will suppress the public's ability to review and engage in the evaluation of these easements. A 14-day comment period during the summer for this initial scoping stage — when members of the public, local businesses, and affected communities are busy preparing for and undertaking the very subsistence, commercial, and recreational fishing activities that this proposal threatens — is plainly insufficient to meet any goal to provide robust participation by the interested public and potentially affected communities. Similarly, NPS's stated plan to only provide a 14-day public review period on the resource analysis this fall is insufficient to ensure the public has time to weigh in on this hugely impactful proposal. That will not provide enough time for the public to review and provide thoughtful comments on the resource analysis. NPS should rethink that approach and provide additional time for public comment to ensure the public has adequate time and the opportunity to engage in each step of this process as it moves forward.

In sum, we are deeply concerned about the impacts from the proposed easements to the resources and values of Lake Clark and the broader region and the limited opportunity for public input. The attached comments represent our best efforts to engage, despite the limited time period for commenting. NPS must do better going forward on engaging the public in this process, given the complexity of the issues and analysis required, and potentially significant adverse impacts these easements could have on Lake Clark's sensitive resources, the local economy, and subsistence.

If you have any questions or wish to clarify anything in our comments, please do not hesitate to contact Jen Woolworth at (907) 444-1137 or by e-mail at jwoolworth@npca.org. Thank you for your prompt attention to our comments.

Sincerely,

Gershon Cohen

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I. NPS MUST COMPLY WITH ALL APPLICABLE LEGAL MANDATES.

A. 1976 Cook Inlet Land Exchange

In 1976, as a result of a settlement reached following litigation between CIRI, the State of Alaska, and the United States, the Cook Inlet Land Exchange was codified into law as an amendment to the Alaska Native Claims Settlement Act (ANCSA). This gave CIRI ownership over the two tracts of land in the area that was being considered for designation as the Lake Clark National Park. The exchange provided for the conveyance of two tracts commonly referred to jointly as the Johnson Tract (divided into a North Tract and South Tract) and easement rights at issue here.² The easements in Lake Clark National Park would provide access to the Johnson Tract via a road establish a port to support mining operations.

The Terms and Conditions of the conveyance to CIRI require that in the North Tract, “all activities related to the extraction of minerals shall be subject to a surface use plan submitted by CIRI and approved by the Secretary,” and that the conveyance of the South Tract “shall be subject to a restrictive covenant, running with the land, providing that the surface shall only be used for purposes reasonably incident to mineral and mining extraction, including processing and transportation.”³ It further provides that “[t]he Secretary and CIRI shall mutually agree upon the location of these two easements.”⁴

Notably, despite provisions of Public Law 94-204, the Secretary is still subject to a broad set of legal obligations other federal laws, including but not limited to ANILCA, the Organic Act, the ESA, and NHPA Section 106. These obligations are discussed in turn below.

Moreover, the language that the easement locations will be “mutually agreed upon” signals that the Secretary retains discretion as part of this process to ensure that any easements should be located in a manner that best complies with NPS’s other legal obligations and protects Lake Clark’s surface resources and purposes. Regardless of whether the National Environmental Policy Act (NEPA) is required for transfer of these easements,⁵ NPS should still prepare an environmental impact statement for this process. Undertaking a voluntary NEPA process, including developing an EIS, will best ensure that the Service and the public have the information needed to understand the impacts of the easements and can best engage in the process and ensure that all legal requirements are met.

At a minimum, NPS must conduct a robust analysis of alternatives to any proposed easement location by CIRI. Because the Secretary and CIRI can consider multiple potential easement locations, NPS should consider a range of alternative easement locations to determine

² Public Law 94-204, Jan. 2, 1976. The Cook Inlet Land Exchange was subsequently clarified and codified into law again in Public Law 94-456 on October 4, 1976.

³ Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, December 10, 1975, as clarified August 31, 1976, at 14–15.

⁴ *Id.*

⁵ See ANILCA § 910, 43 U.S.C. § 1638 (exempting conveyances made to fulfill ANCSA selections from NEPA compliance).

which potential locations would reduce impacts to the greatest extent possible. NPS should also consider a suite of terms and conditions to ensure that it can best meet the Park's specific purposes and Park Service's overarching policies and mandates. Engaging in a robust discussion of alternatives fosters informed decision-making and informed public participation,⁶ which are critically important to this process as NPS moves forward, regardless of whether NPS prepares an environmental impact statement.

Similarly, NPS must evaluate the resources and values which are currently found in the potential easement locations. It should assess how future mining and transportation along these easements would impact this broad range of resources and how such impacts could be mitigated. This includes a need to establish the baseline conditions in the region to gather and assess current ecological, economic, social, and health data. Once NPS has this information, it must then fully analyze the extent and nature of the impact that the easements and future mining would have on those resources. This is necessary to establish mitigation measures to ensure protection of Lake Clark's and the broader region's natural values, and comply with other applicable laws.

To be clear, the 1976 Land Exchange Act and Terms and Conditions of CIRI's conveyance do not negate NPS's other statutory mandates or restrict its ability to consider and impose mitigation measures. As such, NPS should use this process to determine what mitigation will be necessary to protect the region's values resources and to eliminate or reduce adverse effects from any transfer of these easements.

B. ANILCA And Related Obligations

1. Lake Clark National Park Purposes and NPS Nonimpairment Standard

When it enacted ANILCA, Congress established the 3,639,000-acre Lake Clark National Park and Preserve. In addition to ANILCA's overall purposes of conservation and subsistence protection,⁷ Congress set out specific purposes for Lake Clark:

To protect the watershed necessary for perpetuation of the red salmon fishery in Bristol Bay; to maintain unimpaired the scenic beauty and quality of portions of the Alaska Range and the Aleutian Range, including active volcanoes, glaciers, wild rivers, lakes, waterfalls, and alpine meadows in their natural state; and to protect habitat for and populations of fish and wildlife including but not limited to caribou, Dall sheep, brown/grizzly bears, bald eagles, and peregrine falcons.⁸

ANILCA directed that all national parks in Alaska would be administered under the Service's Organic Act of 1916.⁹ The Service's 1916 Organic Act, as amended, directs that the Service:

⁶ See e.g., 40 C.F.R. § 1500.1 (generally explaining NEPA's goals).

⁷ 16 U.S.C. § 3101.

⁸ ANILCA § 201(7)(a), 16 U.S.C. 410hh(7)(a).

⁹ ANILCA § 203, 16 U.S.C. 410hh-2.

... promote and regulate the use of the National Park System by means and measures that confirm to the fundamental purpose of the System units, which purpose to conserve the scenery and the natural and historic objects, and wild[]life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.¹⁰

The Cook Inlet Land Exchange Agreement provides that the “[t]he Secretary and CIRI shall mutually agree upon the location of these two easements.”¹¹ This provision provides the Secretary with ample discretion to determine the location of the easement, and in doing so, to outline the necessary terms and conditions for the use of the easement to best protect Park resources.¹²

Accordingly, when evaluating the transportation and port easements, the Service must evaluate the impacts of the proposed routes on the purposes of Lake Clark as well as consider what terms and conditions may be necessary to meet all of the Park’s purposes under ANILCA and the Organic Act.¹³

The Service must also consider its nonimpairment obligations.¹⁴ The Service’s Management Policies explain that National Parks should be managed to “preserv[e] park resources and values unimpaired.”¹⁵ As the Service explains, “NPS managers must always seek to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values.”¹⁶ The Service’s nonimpairment duty, therefore, provides additional authority to consider the locations of the easements and to impose terms and conditions on the easements as may be necessary to protect Park resources.

¹⁰ 54 U.S.C. § 100101(a); *see also* An Act to amend the act of Oct of October 2, 1968, Pub. L. 95-250, 92 Stat. 166 (Mar. 27, 1978); An Act to improve the administration of the national park system by the Secretary of the Interior, Pub. L. 91-383, 84 Stat. 825 (Aug. 18, 1970).

¹¹ P.L. 94-204, (I)(D)(3).

¹² *See also supra* Part I.A. (discussing Secretary’s discretion).

¹³ *See* U.S. Department of the Interior, National Park Service, Management Policies 2006 at 11 (explaining that even when the Service must allow a use “park managers do have the authority to and must manage and regulate the use to ensure, to the extent possible, that impacts on park resources from that use are acceptable”), *available at* https://www.nps.gov/subjects/policy/upload/MP_2006.pdf; *id.* at 98 (“When a use is mandated by law but causes unacceptable impacts on park resources or values, the Service will take appropriate management actions to avoid or mitigate the adverse effects.”).

¹⁴ *See generally* 54 U.S.C. § 100101(a), Pub. L. 95-250 & Pub. L. 91-383.

¹⁵ Management Policies 2006 at 36.

¹⁶ *Id.* at 10.

2. *Alaska Maritime National Wildlife Refuge and Wilderness and Compatibility Standard*

In addition to designating the Lake Clark National Park, ANILCA also combined and re-designated various refuges as the Alaska Maritime National Wildlife Refuge (Refuge), including the existing Tuxedni National Wildlife Refuge consisting of Chisik and Duck Islands.¹⁷ This area has a long history of protection. President Theodore Roosevelt first protected it in 1909 as the Tuxedni Reservation — a “preserve and breeding ground for native birds.”¹⁸ It was then designated as Wilderness under the Wilderness Act in 1970.¹⁹ In ANILCA, Congress established the purposes of the newly designated Alaska Maritime National Wildlife Refuge as “conserve[ing] fish and wildlife populations and habitats” for marine mammals and birds, among other wildlife, “to fulfill the international treaty obligations with respect to fish and wildlife and their habitats,” to ensure “the opportunity for continued subsistence uses by local residents,” to afford “a program of national and international scientific research on marine resources,” and to protect water quality and water quantity needed to meet the Refuge’s purposes.²⁰ As a result, the purposes of the Tuxedni subunit of the Alaska Maritime National Wildlife Refuge include the 1909 purposes, Wilderness and Wilderness Act purposes, ANILCA’s general conservation and subsistence purposes as well as the specific purposes of the Alaska Maritime National Wildlife Refuge, and the purposes of the national wildlife refuge system.²¹ Additionally, because it had been designated Wilderness when Congress passed the Clean Air Act in 1977, the Tuxedni Wilderness is a Class I Wilderness and its air quality must be protected.²²

Given the extremely close proximity of the area being considered for the easements to the Wilderness area of the Refuge of Chisik and Duck Islands, and the fact that the Secretary is responsible for the management of both the park and refuge systems, it is vital that she consider the impact of the road and port easements on the Refuge’s purposes and resources, including air quality. This is so even if the easements will not be on Refuge lands or directly abut Refuge land, because the impacts from granting the easements will undoubtedly be felt on the Refuge and may

¹⁷ ANILCA § 303(1)(A).

¹⁸ Executive Order 1039 (Feb. 27, 1909). The map included with the Executive Order appears to show that the President withdrew submerged lands as part of his reservation. As such, those lands are Refuge lands and any use of them must comply with all law applicable to the Refuge, including its purposes.

¹⁹ Pub. Law 91-504, § 1(a) (Oct. 23, 1970). President Franklin Delano Roosevelt has previously changed the name to the Tuxedni National Wildlife Refuge in 1940. Proclamation 2416 (July 25, 1940).

²⁰ ANILCA § 303(1)(B).

²¹ ANILCA § 305; FWS Refuge Management Part 601 National Wildlife Refuge System, 601 FW 1 at 1.16, 1.17 (July 26, 2006); *see also* 16 U.S.C. § 1131 *et seq.* (Wilderness Act); 16 U.S.C. § 668dd (National Wildlife Refuge System Administration Act).

²² *See* U.S. Fish and Wildlife Serv., Air Quality, *available at*: <https://www.fws.gov/program/air-quality>.

impact the ability of the Refuge to achieve its purposes, including maintaining Wilderness values and characteristics.

Additionally, compatibility is a cornerstone of refuge management under the National Wildlife Refuge System Administration Act.²³ The Secretary should consider whether this mandate applies, and if so, ensure that the purposes and values of the Alaska Maritime National Wildlife Refuge are protected.

3. *ANILCA Subsistence Protection*

One of ANILCA's core purposes is to protect subsistence.²⁴ Title VIII of ANILCA recognizes that subsistence uses are a priority and provides a framework to consider and protect subsistence uses in agency decision-making processes.²⁵ Congress' intent was to ensure that "the utilization of the public lands in Alaska" would "cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands."²⁶ Section 810 is intended to help achieve this goal by providing agencies and the public with information about subsistence impacts and ensuring that the federal government affirmatively minimizes impacts from proposed actions. The statute is not merely procedural; it imposes substantive requirements that must be met.²⁷

At the outset, ANILCA 810 requires the Service to determine whether the proposed easements may significantly restrict subsistence uses and needs.²⁸ Adequate analysis will require incorporation of Traditional Indigenous Knowledge and consideration of all potentially impacted subsistence communities and subsistence species that rely on the proposed easement areas. This includes direct and indirect impacts to the abundance or availability of subsistence resources. For example, the proposed easements should be evaluated to determine whether there may be significant impacts to Cook Inlet beluga whales — an endangered subsistence species traditionally harvested for cultural, subsistence, and handicraft purposes.²⁹ As a species predominantly found in nearshore waters,³⁰ the National Marine Fisheries Service has found that "continued development within and along upper Cook Inlet" poses a significant threat to the species' recovery.³¹ With this in mind, the Service should evaluate all direct and indirect impacts

²³ 16 U.S.C. § 668dd(d).

²⁴ 16 U.S.C. § 3101(a)–(c).

²⁵ *Id.* §§ 3111–3126.

²⁶ *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310–11 (9th Cir. 1990) (quoting 16 U.S.C. § 3112(1)); *see also* 16 U.S.C. §§ 3111–3112.

²⁷ *See Amoco Prod. Co. v. Vill. Of Gambell, AK*, 480 U.S. 531, 544 (1987) (noting "the underlying substantive policy the process was designed to effect [is the] preservation of subsistence resources").

²⁸ *Kunaknana v. Clark*, 742 F.2d 1145, 1151 (9th Cir. 1984).

²⁹ Final Conservation Plan for the Cook Inlet Beluga Whale, National Marine Fisheries Service, National Oceanic and Atmospheric Administration at II-46 (Dec. 2016).

³⁰ *Id.* at xii.

³¹ *Id.* at I-2.

from the road and port to Cook Inlet beluga whales and the communities that have traditionally relied on them for subsistence purposes prior to their decline. Doing so is both required by ANILCA 810 and consistent with the Administration’s commitments to meeting its trust responsibility to Tribes and considering subsistence needs.³² The same is true for all subsistence resources that may be directly or indirectly affected by the proposed easements, and for all potentially affected communities.

If the Service determines the proposed easements “may significantly restrict” subsistence uses, it must minimize all potential impacts. The Service must also provide notice to local and regional councils and hold hearings in impacted communities that may experience subsistence impacts.³³ ANILCA 810 provides that actions which would significantly restrict subsistence uses may only be undertaken if (1) the restriction on subsistence is necessary, consistent with sound management principles for the utilization of the public lands, (2) the action will involve the minimal amount of public lands needed to accomplish the purpose of the action, and (3) the adverse effects to subsistence are minimized.³⁴ To comply with Section 810, the Service must consider how to minimize impacts to subsistence, including through covenants and restrictions in the easements, and other measures to reduce impacts.

C. Endangered Species Act

NPS must consult under section 7 of the ESA prior to issuing any easements. In enacting the ESA, Congress recognized that certain species “have been so depleted in numbers that they are in danger of or threatened with extinction.”³⁵ Accordingly, a primary purpose of the ESA is “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such ... species.”³⁶

³² See The White House, Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (Jan. 26, 2021), available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/> (reaffirming policy requiring agencies to engage “in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications”); see also Secretary of the Interior and Secretary of Agriculture Joint Order No. 3403, Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (Nov. 15, 2021), available at: <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf> (requiring departments to “ensure that all decisions by the Departments relating to Federal stewardship of Federal lands, waters, and wildlife under their jurisdiction include consideration of how to safeguard the interests of any Indian Tribes such decisions may affect”).

³³ 16 U.S.C. § 3120(a).

³⁴ *Id.*

³⁵ *Id.* § 1531(a)(2).

³⁶ *Id.* § 1531(b).

To achieve these goals, section 9 of the ESA prohibits any person, including any federal agency, from “taking” any endangered species without proper authorization through a valid incidental take permit.³⁷ The term “take” is statutorily defined broadly as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”³⁸ Courts have found federal agencies liable for take of listed species where agency-authorized activities resulted in the killing or harming of ESA-listed species.³⁹

Additionally, section 7(a)(2) of the ESA requires federal agencies to “insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of [the critical] habitat of such species.”⁴⁰ “Action” is broadly defined to include “all activities or programs of any kind authorized, funded, or carried out, in whole or in part by Federal agencies” and include “the granting of ... easements” as well as actions that may directly or indirectly cause modifications to the land, water, or air.⁴¹

To facilitate compliance with section 7(a)(2), the action agency (here, NPS) must request from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service information regarding whether any listed species “may be present” in a proposed action area, and if so, the action “agency shall conduct a biological assessment” to identify species likely to be affected.⁴² The action agency must then initiate formal consultation with the Services if a proposed action “may affect” any of those listed species.⁴³

The “may affect” standard is broad, and includes “[a]ny possible effect, whether beneficial, benign, adverse or of an undetermined character.”⁴⁴ The only circumstances in which formal consultation is not required is when the action agency reasonably determines that the proposed action is not likely to adversely affect any listed species, and the wildlife agencies concur in writing with that determination.⁴⁵ The action agency cannot reach a “not likely to adversely affect” determination when the action is likely to take a listed species or when “any [other] adverse effect to listed species may occur as a direct or indirect result of the proposed action.”⁴⁶

³⁷ *Id.* § 1538(a)(1)(B).

³⁸ *Id.* § 1532(19).

³⁹ See e.g., *Defenders of Wildlife v. Env'tl. Prot. Agency*, 882 F.2d 1294, 1300-01 (8th Cir. 1989); *Strahan v. Coxe*, 127 F.3d 155, 163 (1st Cir. 1997).

⁴⁰ 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).

⁴¹ 50 C.F.R. § 402.02.

⁴² 16 U.S.C. § 1536(c).

⁴³ 50 C.F.R. § 402.14(a).

⁴⁴ 51 Fed. Reg. 19,926 (June 3, 1986).

⁴⁵ 50 C.F.R. § 402.13(c).

⁴⁶ U.S. Fish and Wildlife Service and National Marine Fisheries Service, Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act (March 1998) at xv.

After formal consultation, the expert wildlife agencies issue a biological opinion to determine whether the agency action is likely to “jeopardize” any species’ existence. If so, the opinion may specify reasonable and prudent alternatives (RPAs) that avoid jeopardy.⁴⁷ If the wildlife agencies conclude that the action or the RPAs will not cause jeopardy, the Services will issue an incidental take statement (ITS) that specifies “the impact, i.e., the amount or extent, of ... incidental taking” that may occur.⁴⁸ When those listed species are marine mammals, the take must first be authorized under the Marine Mammal Protection Act (MMPA), and the ITS must include any additional measures necessary to comply with the MMPA. *Id.* The take of a listed species in compliance with the terms of a valid ITS is not prohibited under section 9 of the ESA.⁴⁹ Both the action agency and the wildlife agencies must use “the best scientific and commercial data available” throughout the consultation process.⁵⁰

Several federally-designated threatened and endangered species in Cook Inlet may be impacted by the easements, and the activities the easement will facilitate, including but not limited to Cook Inlet beluga whales, Steller sea lions, sea otters, short-tailed albatross, and Steller’s eiders. Thus, NPS must engage in section 7 consultation under the ESA. Its failure to consult would violate its clear statutory obligations under section 7(a)(2), and render it liable for any harm to ESA-listed species that results from the project.⁵¹

D. National Historic Preservation Act

Before issuing any easements, the Service must comply with Section 106 of the National Historic Preservation Act (NHPA), which requires the Service to identify historic properties and “take into account the effect” the proposed easements will have on such areas.⁵² This process must be conducted in consultation with any Indian tribe that may attach religious and cultural significance to any historic property potentially affected.⁵³ Any archaeological resources identified must be protected consistent with the Archaeological Resources Protection Act (ARPA) to ensure there is no “[u]nauthorized excavation, removal, damage, alteration, or defacement of archaeological resources.”⁵⁴ In addition, the Service’s assessment must identify any properties eligible to be listed on the National Historic Register so that they may be preserved to maintain their historic, archaeological, architectural, and cultural values.⁵⁵

Compliance with these mandates requires the Service to conduct a thorough assessment

⁴⁷ 16 U.S.C. § 1536(b); 50 C.F.R. 402.14(h)(3).

⁴⁸ 50 C.F.R. § 402.14(h)(3).

⁴⁹ 16 U.S.C. § 1536(b)(4), (o)(2); 50 C.F.R. § 402.14(i)(5).

⁵⁰ *Id.*; 50 C.F.R. § 402.14(a).

⁵¹ *Strahan*, 127 F.3d 155, 163 (1st Cir. 1997) (“a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA”); *id.* at 165 (“a single injury to one whale is a taking under the ESA”).

⁵² 54 U.S.C. § 306108.

⁵³ 36 C.F.R. §§ 800.2(c)(2)(ii), 800.3(f)(2).

⁵⁴ 16 U.S.C. § 470ee(a).

⁵⁵ 54 U.S.C. § 306102(b)(2).

of cultural and historical resources in the area of the proposed easements, in consultation with Tribes, prior to finalizing an agreement on their location. Ground disturbance required to construct the proposed easements could significantly impact or destroy unidentified cultural sites, landscapes, and artifacts representing invaluable links to the cultural heritage of the area. Concerningly, there appears to be little information regarding such resources in the project area. For example, a 1993 report prepared by CIRC, and discussed further below, briefly addresses the potential for cultural and paleontological resource impacts, but the information provided is dated, cursory, and incomplete.⁵⁶ The section addressing cultural resources consists of excerpts from a study conducted in 1993 that does not appear to be readily available on-line.⁵⁷ The portions of the study provided in the CIRC Report are exceedingly brief. There is, for example, only one paragraph addressing potential impacts to cultural resources resulting from an overland transportation easement. That paragraph does not draw definitive conclusions about the nature, extent, locations, or features of cultural resources. Instead, it merely notes that vegetation in the area is thick, that there may be areas in the Johnson River glacial valley where early habitations might be found, and that cultural resources closer to streams in the Johnson River or Bear Creek valleys have “likely” been eradicated by spring breakups. It is unclear from the excerpt provided whether an actual on-the-ground assessment of cultural resources was conducted in the area of the proposed transportation easement. While excerpts regarding a potential port easement indicate the port area “was examined as best as permissible”⁵⁸ given shrub cover, the excerpt addressing an overland easement simply notes vegetation in the area is “impenetrably thick.”⁵⁹

Given this apparent lack of information regarding cultural and historical resources in the area, the Service must complete a full, comprehensive study of the area’s cultural, archaeological, ethnographic, and historic resources in consultation with Tribes. Such an analysis will ensure important cultural and historic resources are safeguarded for present and future generations.

II. NPS MUST CAREFULLY ANALYZE IMPACTS TO LAKE CLARK AND THE REGION’S IRREPLACEABLE RESOURCES.

A. CIRC’s 1993 Environmental Analysis

In 1993, CIRC evaluated the impacts of potential easements in a document titled “Johnson Tract Transportation and Port Easements Identification Process Environmental Analysis Document,” which it shared with Interior Secretary Bruce Babbitt. The document explicitly

⁵⁶ Cook Inlet Region, Inc. and Westmin Resources, *Johnson Tract Transportation and Port Easements Identification Process Environmental Analysis Document* at 1–3 (December 1993), <https://www.arlis.org/docs/vol1/176919103.pdf> [hereinafter “CIRC Report”].

⁵⁷ *Id.* at 3-21 to 3-22 (citing Lobdell, J.E., *Johnson River Tract Transportation and Port Site Easements Cultural Resources Assessment*, Southcentral Alaska, Lobdell & Associates, Inc, Placitas, New Mexico (1993)). An on-line search for this study conducted on June 17, 2024, returned no results.

⁵⁸ *Id.* at 3-22.

⁵⁹ *Id.* at 3-21.

disclaimed being prepared under NEPA, although it looked similar in nature to an environmental assessment.⁶⁰ CIRI's choice to prepare this document over thirty years ago should not govern the approach that NPS take here. Indeed, it was insufficient at the time to serve as an evaluation of the impacts to resources from the easements, and it is now out-of-date and incomplete. Instead, the 1993 Environmental Analysis simply demonstrates that NPS needs to conduct an updated, more robust analysis as part of the current process that uses the best available biological and scientific information to establish baseline conditions, examine alternatives, and assess potential impacts and ways to mitigate them.

The data and analysis in the 1993 document are outdated and inadequate to serve as the baseline for the current process. It identifies a list of resources which should be considered by NPS, including water quality, air quality, climate, and more. Many of these resources had significant data gaps 30 years ago, and it is likely that there are additional data gaps today. This needs to be rectified; NPS should obtain updated data and seek to fill data gaps for its resource analysis.⁶¹ NPS must consider new data and information available for each resource identified in the 1993 Environmental Analysis, as well as consider whether additional resources should be identified and baseline information compiled.

CIRI also purported to evaluate a range of potential alternatives and a no action alternative, rejected certain alternatives, and identified two preferred alternatives.⁶² However, because the Secretary and CIRI must mutually agree upon the easement locations, NPS is not obligated to only consider the alternatives CIRI previously put forth, nor is it limited to selecting from the alternatives considered and proposed by CIRI then or now. Rather, NPS should carefully consider and evaluate alternative proposals that would reduce impacts on the Lake Clark National Park, Alaska Maritime National Wildlife Refuge, and the region as a whole. For instance, CIRI assumed any easement would share the same nearly 8-mile segment proceeding down the Johnson River away from the ore deposit.⁶³ This is approximately half the total length of any easement.⁶⁴ NPS should consider whether such a constraint on alternatives at the outset is reasonable.

NPS must also consider robust mitigation measures as part of this analysis, to ensure that impacts to the region's resources are avoided and minimized to the greatest extent possible. No such analysis appears in the 1993 Environmental Assessment. A thorough analysis of covenants, restrictions, stipulations, and mitigation measures that the Service could impose on the easements is necessary to comply with the agency's statutory mandates, as described above.

⁶⁰ CIRI Report at 1-3.

⁶¹ See *e.g.*, *supra* (explaining cultural resources had not been identified), CIRI Report at 3-10 ("The extent of freshwater fish resources in the Johnson River area is not well known...No formal fish survey of this area...has been made by ADF&G."); *Id.* at 3-9 (noting that no climate data exists for the Johnson River area and not mentioning any impacts of climate change on the region).

⁶² See *id.* at 4-1-4-8.

⁶³ *Id.* at 4-1.

⁶⁴ *Id.* at 4-4 (identifying easement lengths as varying between 14.1 to 16.2 miles).

B. Water, Air, and Light Quality

Lake Clark National Park was created in part, to protect critical spawning and rearing habitat at the headwaters of the world's most productive red (sockeye) salmon fishery. Cold, clean, water is a key component. Water quality is pristine in these wild places, and there is great concern as to how a road and port development would negatively impact water quality standards. Wetlands totaling about 20 square miles occupy the majority of the lowlands in both watersheds. Waters from the Johnson River and Bear Creek flow into extensive coastal marshes and tidal mudflats at Cook Inlet. Resident and anadromous fish species, all inhabit the Johnson River. Tidal flats and sloughs at both watersheds harbor dense shellfish populations and support important commercial and personal use fisheries. Beaver are common and help maintain extensive freshwater wetlands throughout Johnson River.

The intertidal mudflats, estuaries, and wetlands are important to resident and migratory birds. Tuxedni Bay qualifies for inclusion in the Western Hemisphere Shorebird Reserve Network in both the hemispheric and international categories. It is particularly important for major portions of one of North America's most (Western Sandpiper) and least (Rock Sandpiper) abundant shorebird species. Bear Creek is the second largest staging area for shorebirds in the bay, annually attracting mixed flocks numbering in the thousands and the largest seabird colony in Cook Inlet. Thousands of kittiwakes, murrelets, puffins and gulls feed just off the mouth of Bear Creek, eight pairs of bald eagles nest in both watersheds, and ten pairs of trumpeter swans breed in the Johnson River valley, making this the largest breeding population in western lower Cook Inlet.

Marine mammals known to use the coastline adjacent to the project include harbor seals, Steller's sea lions, killer whales, minke whales, humpback whales, and endangered beluga whales. The mouth of the Johnson River is one of only a few known haulout sites for harbor seals along the vicinity's coastline.

As noted above, air quality in Lake Clark is very good, although small amounts of airborne contaminants are transported into the park each year from local, regional, and international sources. Some park ecosystems are considered to be highly sensitive to atmospheric deposition of sulfur and nitrogen.⁶⁵

Night sky conditions in Lake Clark remain in near pristine condition. A night sky measurement at Telaquana Lake detected virtually zero anthropogenic light. Measurements on lower Lake Clark only detected small anthropogenic light from Nondalton and Newhalen.

Because of these outstanding values, NPS must evaluate and explain how it will protect them consistent with its statutory mandates, including but not limited to the following: the Johnson River watershed and adjacent coastlines; Cook Inlet, specifically from impacts of a deep-water port and potential spills; park ecosystems from mining impacts, including dust from mining roads and development; and maintain dark night skies. Further, based on lessons learned from other access easements in NPS areas in Alaska, material sourcing for building the access

⁶⁵ National Park Service, State of the Park Report, Lake Clark National Park and Preserve (2016), available at: <http://npshistory.com/publications/state-of-the-park/lac1-2016.pdf>

roads and ongoing operations (fuel, solid waste, transportation) often have significant impacts to air and water quality and must be evaluated.

C. Cook Inlet Beluga Whales

NPS must also carefully consider the impacts of the easement, and resulting gold mining, on critically endangered Cook Inlet beluga whales. With a loss of more than 75 percent of the population since the 1970s, in 2015, Cook Inlet belugas became one of the National Marine Fisheries Service (NMFS)'s nine "Species in the Spotlight"—a program that prioritizes the agency's efforts to protect those species at the highest risk of extinction.⁶⁶ NMFS considers these Species in the Spotlight a "recovery priority #1." A recovery priority #1 species is one whose extinction "is almost certain in the immediate future because of a rapid population decline or habitat destruction, whose limiting factors and threats are well understood and the needed management actions are known and have a high probability of success, and is a species that is in conflict with construction or other developmental projects or other forms of economic activity."⁶⁷

NMFS developed five-year action plans for each of the "Species in the Spotlight" that outline short-term efforts vital for stabilizing their populations and preventing their extinction. The first of the "Key Actions Needed" in NMFS's original Cook Inlet Beluga Whale 5-Year Action Plan is "Reduce the Threat of Anthropogenic Noise in Cook Inlet Beluga Whale Habitat."⁶⁸ Other key actions include protecting habitats that support foraging and reproduction and ensuring the availability of healthy and plentiful prey.⁶⁹

Additionally, NMFS issued a recovery plan for the species in 2016, which lists catastrophic events such as oil spills, the cumulative effects of multiple stressors, and noise as the threats of highest relative concern to the species.⁷⁰ It states, for instance, that "[t]he effect of anthropogenic noise, particularly the combined effect of different sound sources occurring simultaneously or consecutively, has the potential to affect beluga acoustic perception, communication, echolocation, and behavior (such as foraging and movement patterns)."⁷¹ Furthermore, the long-term effects of such impacts "may induce chronic effects altering the health of individual [Cook Inlet] belugas, which in turn have consequences at the population level (i.e., decreased survival and reproduction)."⁷²

⁶⁶ See NMFS, Species in the Spotlight Priority Actions: 2016–2020 Cook Inlet Beluga Whale *Delphinapterus leucas* (2015).

⁶⁷ *Id.* at 1, n.1.

⁶⁸ *Id.* at 4.

⁶⁹ *Id.* at 6; see also NMFS, Species in the Spotlight Priority Actions: 2021–2025 Cook Inlet Beluga Whale (*Delphinapterus leucas*) (2021) (reiterating each of these as needed actions).

⁷⁰ NMFS, Recovery Plan for the Cook Inlet Beluga Whale (*Delphinapterus leucas*) (Dec. 2016)

⁷¹ *Id.* at xiii.

⁷² *Id.* at III-31; see also Castellote, M., Anthropogenic Noise and the Endangered Cook Inlet Beluga Whale, *Delphinapterus leucas*: Acoustic Considerations for Management, 86 Marine Fisheries Review 3 (2019) (emphasizing that the whale's site fidelity makes them "particularly

Moreover, recent research indicates that climate change and water pollution may also be a significant threat to Cook Inlet belugas. Studies indicate that climate change will further negatively impact the whales through, for example, shifts in sea ice regimes and associated increases in human activities (including vessels);⁷³ increases in the incidence of disease in fish prey populations; and generally reduced prey availability or distribution, including Chinook salmon populations in Cook Inlet.⁷⁴ Climate change may also be increasing siltation as warming temperatures reduce snowfall during warmer winters and cause glaciers to melt, releasing sediment.⁷⁵ Such elevated siltation and deposition levels may affect beluga whale access to river mouths and feeding habitat.⁷⁶

And a new study documented congenital defects observed in two Cook Inlet belugas.⁷⁷ The first case was an aborted fetus that lacked a peduncle and flukes, along with other issues.⁷⁸ The second had a perineal groove defect and systemic herpesvirus infection.⁷⁹ These are the first documented cases of congenital defects in these animals, raising concerns that the species is now suffering new harms. While the causes of the defects are not known, scientists suspect it may be due to exposure to pollution, lack of genetic diversity, nutritional stress, or a combination thereof.⁸⁰ This study adds to the evidence supporting the fact that increasing marine pollution is a major concern for belugas.⁸¹ Indeed, studies have shown that Cook Inlet belugas have elevated levels of numerous contaminants compared to other belugas off Alaska and elsewhere, including

vulnerable to anthropogenic impacts” and they are suffering the impacts of existing noise by “potentially mask[ing] beluga hearing and interfer[ing] with their communication[s].”)

⁷³ Stephanie Norman, et al., Potential natural and anthropogenic impediments to the conservation and recovery of Cook Inlet beluga whales, *Delphiapterus leucas*, 77 *Marine Fisheries Rev.* 89 (2015); Skovrind, Mikkel et al., Circumpolar phylogeography and demographic history of beluga whales reflect past climatic fluctuations, 30 *Molecular Ecology* 2543 (2021).

⁷⁴ See Norman et al. 2015; VanWormer, E. et al., Viral emergence in marine mammals in the North Pacific may be linked to Arctic sea ice reduction, 9 *Nature Sci. Reports* 15569 (2019); Jones, L. A., et al., Watershed-scale climate influences productivity of Chinook salmon populations across southcentral Alaska, 26(9) *Global Change Biology* 4919–4936 (2020).

⁷⁵ Carter, B. T., & Nielsen, E. A., Exploring ecological changes in Cook Inlet beluga whale habitat through traditional and local ecological knowledge of contributing factors for population decline. 35(3) *Marine Policy* 299–308 (2011).

⁷⁶ *Id.*

⁷⁷ Kathleen A. Burek-Huntington, et al., Congenital defects and herpesvirus infection in beluga whale *Delphinapterus leucas* calves from the Critically Endangered Cook Inlet population, 151 *Dis. Aquat. Org.* 29–35 (2022).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ SA Norman SA, et al., A Systematic Review Demonstrates How Surrogate Populations Help Inform Conservation and Management of an Endangered Species—The Case of Cook Inlet, Alaska Belugas, 9 *Front. Mar. Sci.* 804218 (2022).

polycyclic aromatic hydrocarbons, which could lead to adverse reproductive effects, gastrointestinal cancer, and other problems.⁸²

Granting the easements, and gold mining in Johnson Tract, will exacerbate each of these threats via increased vessel traffic and other noise pollution, increased greenhouse gas emissions, and increased water pollution. Indeed, mining causes the discharge or deposition of toxic pollution that can harm water quality and bioaccumulate in belugas, such as mercury, lead, and arsenic; and other harmful pollutants like cyanide.⁸³ And the release of toxic materials stored in a tailings dam would cause catastrophic damage to belugas, their prey, and numerous other important resources.⁸⁴

It is especially concerning that a recent study highlights the critical importance of Tuxedni Bay to the survival and recovery of these whales, noting that the whales actively use the area from September 1st to May 15th, and concluding that “[m]anaging future anthropogenic activities to minimize habitat degradation and acoustic disturbance in this winter foraging refuge will be a key component to support the recovery of this endangered population.”⁸⁵

D. Other Wildlife

The area’s intact ecosystems support a remarkable array of wildlife, including one of the planet’s densest congregations of brown bears, all five species of Pacific salmon, and hundreds of thousands of seabirds and shorebirds annually. The proposed easements and resultant development would significantly disturb wildlife and destroy and fragment their habitat.⁸⁶ For example, development on the proposed easements would result in salmon experiencing a direct loss of aquatic habitat, changes in surface water and groundwater flows, increased sedimentation and turbidity in streams, impacts to fish migration, and changes in surface water temperatures

⁸² Recovery Plan at IX-60; Bors, E.K. et al., An epigenetic clock to estimate the age of living beluga whales, 14 *Evolutionary Applications* 1263 (2021).

⁸³ EPA, An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska (Jan. 2014), https://www.epa.gov/sites/default/files/2015-05/documents/bristol_bay_assessment_final_2014_vol1.pdf.

⁸⁴ *See, e.g.*, WISE Uranium Project, <https://www.wise-uranium.org/mdaf.html> (updated May 2024) (documenting hundreds of major tailings dam failures).

⁸⁵ Castellote, M., et al., Using passive acoustics to identify a quiet winter foraging refuge for an endangered beluga whale population in Alaska, *Front. Mar. Sci.*, Vol. 11 (2024), <https://www.frontiersin.org/articles/10.3389/fmars.2024.1393380/abstract>.

⁸⁶ Benitez-Lopez, A. et al., The impacts of roads and other infrastructure on mammal and bird populations: A meta-analysis, 143 *Biological Conservation* 1307 (2010); Trombulak, S. C., and Frissell, C. A., Review of Ecological Effects of Roads on Terrestrial and Aquatic Communities, 14 *Cons. Bio.* 18 (2001); Forman, R. T. and Alexander, L., Roads and Their Major Ecological Effects 29 *Annu. Rev. Ecol. Syst.* 201 (1998); Darnell, R. M., *Impacts of Construction Activities in Wetlands of the United States* (1976).

and chemistry, among other impacts.⁸⁷ These changes would directly impact animal behavior and reduce wildlife population abundances, negatively affecting species such as brown bears, wolves, bald eagles, and other wildlife that consume salmon. Large mammals like brown bears would experience a range of additional impacts, including loss of habitat, altered feeding, denning, and travel routes, increased mortality, and behavioral changes.⁸⁸ Hundreds of thousands of birds rely on the coastal, wetland, and mudflat habitat in the area, and development in the proposed easements would impact breeding, wintering, migrating, and staging bird populations through behavioral disturbance and habitat changes.⁸⁹ NPS must fully consider the devastating direct, indirect, and cumulative impacts the proposed easements would have on wildlife in Lake Clark National Park, the Alaska Maritime National Wildlife Refuge, and the region as a whole.

E. Greenhouse Gas Emissions

NPS must also consider the foreseeable greenhouse gas emissions caused by the easement and the impacts of such emissions on our climate. Indeed, numerous courts have recognized the importance of examining the impacts of an action's upstream and downstream greenhouse gas emissions and held that an agency's failure to properly quantify such emissions and analyze their impacts violates the agency's legal obligations.⁹⁰ NPS's failure to do so here would be similarly unlawful.

⁸⁷ Kravitz, M. and Blair G., On Assessing Risks to Fish Habitats and Populations Associated with a Transportation Corridor for Proposed Mine Operations in a Salmon-rich Watershed, 64 Environmental Management 107 (2019); U.S. EPA, An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska, Vol. 1 – Main Report (Jan. 2014).

⁸⁸ Bischof, R. et al., Caught in the mesh: roads and their network-scale impediment to animal movement, 40 Ecography 1369 (2017); McLellan, B. N., and Shackleton, D. M., Grizzly Bears and Resource-Extraction Industries: Effects of Roads on Behaviour, Habitat Use and Demography, 25 Journal of Applied Ecology, 451 (1988).

⁸⁹ Kociolek, A. V. et al., Effects of Road Networks on Bird Populations, 25 Cons. Bio. 241 (2011).

⁹⁰ See, e.g., *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216–17 (9th Cir. 2008) (agency must analyze downstream greenhouse gas emissions from automotive fuel efficiency rule); *Sierra Club v. FERC*, 867 F.3d 1357, 1373–74 (D.C. Cir. 2017) (agency must analyze downstream emissions from burning natural gas transported in proposed pipeline); *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723 (9th Cir. 2020) (agency arbitrarily failed to include emissions estimates resulting from foreign oil consumption in its analysis of the no-action alternative for an offshore oil development project); *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549–50 (8th Cir. 2003) (agency must analyze downstream emissions from burning coal transported on proposed rail line); *Mont. Env'tl. Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074 (D. Mont. 2017) (agency must analyze downstream emissions from burning coal produced as a result of coal mine expansion); *San Juan Citizens All. v. Bureau of Land Mgmt.*, 326 F. Supp. 3d 1227, 1244 (D.N.M. 2018) (agency must analyze downstream emissions from burning oil and gas produced as a result of leasing decision); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 73 (D.D.C. 2019) (same);

The easements will facilitate gold mining in the area. A variety of studies and tools exist that can be used to estimate the carbon emissions from such mining. Studies have shown, for example, that for every ounce of gold produced, nearly 1 ton of carbon dioxide is emitted.⁹¹ And experts have developed ways to estimate the emissions for individual gold mining projects.⁹² Other ways to estimate such emissions also exist; for example, the Greenhouse Gas Protocol, developed by the World Resources Protocol Institute and World Business Council on Sustainable Development, provides a means of identifying and quantifying greenhouse gas emissions.⁹³ NPS must quantify and analyze how such emissions will negatively affect Alaska, which is already suffering the effects of climate change.

F. Tourism & Community Impacts

Lake Clark and Katmai national parks and preserves are two of America's "Best Ideas," iconic and inspirational places for present and future generations. Their continued protection is imperative to maintain landscape-level protection of wild salmon fisheries, world class bear viewing, and more than 10,000 years of cultural history. Congress recognized the importance of these parks' and preserves' contribution to the ecosystem's integrity and productivity by making them the only two national park units with detailed enabling language specifically charging them with protecting wild salmon habitat, and their associated natural and cultural values.

Because the Secretary has some discretion as to the location of the easements, the Secretary must take into account the purposes for which Congress designated the federal land at issue (i.e., consider the purposes of Lake Clark National Park & Preserve and the National Park System as a whole). As described above, ANILCA directs the Secretary to manage Lake Clark National Park & Preserve for specific purposes.⁹⁴

Wilderness Workshop v. U.S. Bureau of Land Mgmt., 342 F. Supp. 3d 1145, 1156 (D. Colo. 2018) (agency violated NEPA by not taking a hard look at the indirect effects resulting from the combustion of oil and gas in the planning area under a resource management plan).

⁹¹ S&P Global, Greenhouse gas and gold mines: Nearly 1 ton of CO₂ emitted per ounce of gold produced in 2019, Oct. 7, 2020, <https://www.spglobal.com/marketintelligence/en/news-insights/blog/greenhouse-gas-and-gold-mines-nearly-1-ton-of-co2-emitted-per-ounce-of-gold-produced-in-2019>.

⁹² Energet, Hemi Gold Project -Emissions estimates, Peer Benchmarking and Scope 3 Review: Summary Report (July 2022) (developing a carbon emissions calculation tool to estimate the emissions associated with the proposed Hemi Gold Project), https://www.epa.wa.gov.au/sites/default/files/Referral_Documentation/Appendix%2018_Hemi%20Gold%20Project-Emissions%20Summary%20Report_V2_Energetics_2022.pdf.

⁹³ See, e.g., Michael Burger & Jessica Wentz, Downstream and Upstream Greenhouse Gas Emissions: The Proper Scope of NEPA Review, 41 Harv. Env't'l L. Rev. 109, 122 (2017), at Appendix, available at <http://columbiaclimatelaw.com/files/2017/05/Burger-Wentz-2017-05-Downstream-and-Upstream-Emissions.pdf>.

⁹⁴ ANILCA § 201(7)(a).

Accordingly, the Secretary must choose locations for the easements that—in the Secretary’s judgment—best serve these purposes. Thus, in the evaluation of these easements, Interior must ensure that these parks are able to maintain their unimpaired scenic beauty and quality of portions of the Alaska Range and the Aleutian Range. This includes maintaining active volcanoes, glaciers, wild rivers, lakes, waterfalls, and alpine meadows in their natural state. When conducting the resource analysis, NPS must address how the Park will be protected in line with their mission; how the five species of salmon would be impacted by the proposed easements; how to minimize harm to the salmon and communities and recreational fisherman who rely on them; and how to protect unique and historic sites like Snug Harbor Outpost, Fossil Point, and Magnetic Island.