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ANWR and FY2006 Budget Reconciliation Legislation

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ANWR and FY2006 Budget Reconciliation Legislation

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Summary

The FY2006 budget resolution (H.Con.Res. 95, H.Rept. 109-62) contains reconciliation directives to the House Committee on Resources and the Senate Committee on Energy and Natural Resources to reduce direct spending by \$2.4 billion for the period covering FY2006-FY2010. The Senate Energy and Natural Resources Committee has voted to transmit legislative recommendations to open the Arctic National Wildlife Refuge (ANWR) to development in order to meet its reconciliation targets. The Chairman of the House Resources Committee has also indicated support for this approach. The projected proceeds from such ANWR provisions would be counted as direct spending reductions.

Budget reconciliation legislation, which implements some of the direct spending and revenue policy changes assumed in the congressional budget resolution, is considered under expedited procedures that, in particular, limit debate and amendments in the Senate. The debate limitation makes a reconciliation measure an attractive vehicle for legislative initiatives that otherwise might be subject to a filibuster.

This report will be updated as developments warrant.

Background on ANWR

The Arctic National Wildlife Refuge (ANWR) consists of 19 million acres in northeast Alaska. It is administered by the Fish and Wildlife Service in the Department of the Interior (DOI). Its 1.5-million-acre coastal plain is viewed as one of the most promising U.S. onshore oil and gas prospects. According to the U.S. Geological Survey, the mean estimate of technically recoverable oil is 7.7 billion barrels (billion bbl), and there is a small chance that, taken together, the fields on this federal land could hold 10.9 billion bbl of economically recoverable oil (at \$50/bbl in 2005 dollars). That amount

would be nearly as much as the giant field at Prudhoe Bay, found in 1967 on the state-owned portion of the coastal plain west of ANWR, now estimated to have held almost 14 billion bbl of economically recoverable oil.

The refuge, especially the nearly undisturbed coastal plain, also is home to a wide variety of plants and animals. The presence of caribou, polar bears, grizzly bears, wolves, migratory birds, and other species in this de facto wilderness has led some to call the area “America’s Serengeti.” The Refuge and two neighboring parks in Canada have been proposed for an international park, and several species found in the area (including polar bears, caribou, migratory birds, and whales) are protected by international treaties or agreements.

The conflict between high oil potential and nearly pristine nature in the Refuge creates a dilemma: should Congress open the area for energy development, or should the area’s ecosystem continue to be protected from development, perhaps permanently? What factors should determine whether to open the area? If the area is opened, to what extent can damages be avoided, minimized, or mitigated? To what extent should Congress legislate special management of the area if it is developed, and to what extent should federal agencies be allowed to manage the area under existing law?¹

Legislative History of the Refuge

The energy and biological resources of northern Alaska have been controversial for decades, from legislation in the 1970s, to a 1989 oil spill, to more recent efforts to use ANWR resources to address energy needs or to help balance the federal budget. In November 1957, an application for the withdrawal of lands in northeastern Alaska to create an “Arctic National Wildlife Range” was filed. The first group actually to propose to Congress that the area become a national wildlife range, in recognition of the many game species found in the area, was the Tanana Valley (Alaska) Sportsmen’s Association in 1959. On December 6, 1960, after statehood, Secretary of the Interior Fred A. Seaton issued Public Land Order 2214, reserving the area as the “Arctic National Wildlife Range.”

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 in 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 of the particular

¹ Basic information on the Refuge can be found in CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*, coordinated by M. Lynne Corn. For legal background, see CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge (ANWR)*, by Pamela Baldwin. State lands on the coastal plain are shown at [<http://www.dog.dnr.state.ak.us/oil/products/maps/maps.htm>]. An extensive presentation of development arguments can be found at [<http://www.anwr.org>]; sponsored by a consortium of groups. Opponents’ arguments can be found at [<http://www.alaskawild.org>]; [<http://www.canadianembassy.org/environment/>]; [<http://www.protectthearctic.com/>]; or [<http://www.tws.org/OurIssues/Arctic/index.cfm?TopLevel=Home>].

refuge. Kaktovik Inupiat Corporation (KIC, the local corporation) received rights to three townships along the coast of ANWR. ANCSA also created Regional Corporations that 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.

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA, P.L. 96-487, 94 Stat. 2371) renamed the Range as the Arctic National Wildlife Refuge, and 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. (Newer portions of the refuge were not included in the wilderness system.) Instead, Congress postponed decisions on the development or further protection of the coastal plain. Section 1002 directed that a study of ANWR's "coastal plain" (therefore often referred to as the "1002 area") and its resources be completed within five years and nine months of enactment. The resulting 1987 report was called the 1002 report, or the Final Legislative Environmental Impact Statement (FLEIS). ANILCA defined the "coastal plain" as the lands on a specified map — language that was later interpreted as excluding most native lands, even though these lands are geographically part of the coastal plain.

Section 1003 of ANILCA prohibited oil and gas development in the entire refuge, or "leasing or other development leading to production of oil and gas from the range" unless authorized by an act of Congress.²

Brief Overview of the Budget Reconciliation Process

Budget reconciliation is an optional two-step process Congress may use to make changes to existing law related to mandatory spending, revenues, or the debt limit.³ First, Congress includes reconciliation directives in a budget resolution directing one or more committees in each chamber to recommend changes in statute to achieve the levels of direct spending, revenues, debt limit, or a combination thereof, agreed to in the budget resolution.

Second, each instructed committee develops legislative recommendations to meet its reconciliation directives and reports its legislative recommendations to its respective chamber directly, or transmits such recommendations to its respective budget committee. Section 310(b) of the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, 88 Stat. 297-332) specifies two options for the submission of legislative recommendations to comply with reconciliation directives: (1) if one committee is instructed, the committee reports its legislative recommendations to its parent chamber directly; or (2) if two or more committees are instructed, the committees submit their legislative recommendations to their respective budget committee. In the latter case, the legislative language recommended by committees is packaged "without any substantive revision"

² For specific actions, including key votes, from the 104th to the 108th Congresses, see CRS Report RL32838, *Arctic National Wildlife Refuge: Legislative Actions Through the 108th Congress*, by Anne Gillis, M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin.

³ The process is set forth in Section 310 of the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, 88 Stat. 297-332), as amended. For a full discussion of the reconciliation process, see CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

into one or more budget reconciliation bills, as set forth in the budget resolution, by the House and Senate Budget Committees.

Once the reconciliation legislation is reported in the House or Senate, consideration is governed by special procedures. These procedures serve to limit what may be included in reconciliation legislation, prohibit certain amendments, and encourage its completion in a timely fashion. In the Senate, in particular, debate on a budget reconciliation measure is limited to 20 hours, thereby precluding extended debate on the measure.

Possible Inclusion of ANWR Provisions in Budget Reconciliation Legislation in 2005

Congress agreed to the conference report on the FY2006 budget resolution (H.Con.Res. 95, H.Rept. 109-62) on April 28, 2005. The conference report on the FY2006 budget resolution provides for three budget reconciliation measures: (1) to cut direct (or mandatory) spending by about \$35 billion; (2) to cut taxes by \$70 billion; and (3) to increase the statutory debt limit by \$781 billion.⁴ The spending reconciliation directives instruct eight committees from each chamber to recommend by September 16 changes to existing laws to reduce direct spending by varying amounts totaling approximately \$35 billion over a six-year period (FY2005-FY2010).⁵ In particular, as it might relate to ANWR, the spending reconciliation directives instruct the House Resources Committee and the Senate Energy and Natural Resources Committee to reduce direct spending by \$2.4 billion for the period covering FY2006-FY2010.

During the week of September 12, 2005, the chairmen of the Senate and House Budget Committees announced a delay in the reconciliation process so that authorizing committees could devote their attention to Hurricane Katrina-related legislation.⁶ Senator Judd Gregg, chairman of the Senate Budget Committee, announced that the committee will report the omnibus spending reconciliation measure on October 26. Similarly, Representative Jim Nussle, chairman of the House Budget Committee, informed authorizing committees that the House Budget Committee intends to report the omnibus spending reconciliation measure the week of October 24, later extended to the week of

⁴ The latter two reconciliation directives involve the House Ways and Means Committee and the Senate Finance Committee only. The committees were instructed to report their tax cut reconciliation legislation by September 23 and their statutory debt limit reconciliation legislation by September 30. With the delay in the consideration of the omnibus spending reconciliation measure by the House and Senate Budget Committees, the House Ways and Means Committee and the Senate Finance Committee have also delayed their reporting of these reconciliation measures.

⁵ Most committees are instructed to reduce direct spending over a five-year period (FY2006-FY2010), but two committees (the House Education and the Workforce Committee and the Senate Health, Education, Labor, and Pensions Committee) are instructed to reduce direct spending over the six-year period (FY2005-FY2010).

⁶ See Steven T. Dennis, "Recalibrating Reconciliation," *CQ Weekly*, Sept. 19, 2005, p. 2503.

October 31.⁷ Consequently, instructed committees are expected to transmit their legislative recommendations to the budget committees before these dates.

Development of Reconciliation Legislation. A committee's reconciliation directives indicate budgetary amounts that must be achieved by fiscal-year time periods; they do not specify any particular policy changes.⁸ The House Resources Committee and the Senate Energy and Natural Resources Committee may recommend changes to any existing law under their jurisdictions, which include matters related to ANWR. On October 19, 2005, the Senate Energy and Natural Resources Committee voted to transmit legislative recommendations to open ANWR to development in order to meet its reconciliation targets. In addition, some Representatives reportedly have indicated that the House Resources Committee might include provisions opening ANWR to development in order to meet its reconciliation targets as well.⁹ The Congressional Budget Office (CBO) has projected that opening ANWR to development will result in net federal proceeds of about \$2.5 billion over a five-year period.¹⁰ Such proceeds are classified as offsetting receipts and are deducted from spending; the receipts, therefore, are counted as spending reductions rather than as revenue increases.¹¹ Accordingly, legislation increasing offsetting receipts by opening ANWR to development would enable the two committees to satisfy their reconciliation directives to reduce direct spending.

A majority vote is required in each committee to transmit its reconciliation recommendations to its respective budget committee. As described above, the budget committee in each chamber packages the instructed committees' legislative recommendations into an omnibus reconciliation measure. In both chambers, the Congressional Budget Act of 1974, as amended, prohibits the budget committees from making any substantive revisions to the committees' recommendations.¹² Any substantive changes to the recommendations by the House Resources Committee or the Senate Energy

⁷ See Steven T. Dennis, "House Delays Reconciliation Deadlines a Second Time," *CQ Today*, Oct. 11, 2005.

⁸ In fact, in the Senate, reconciliation directives may not specify the laws or "line items" a committee must change in order to achieve the budget targets. *Riddick's Senate Procedure: Precedents and Practices*, by Floyd M. Riddick and Alan S. Frumin, S.Doc. 101-28, 1992, p. 628.

⁹ See, for example: (1) Steven T. Dennis and Jonathan Allen, "Latest Round of ANWR Battle Will Be Fought in Budget Reconciliation Process," *CQ Today*, Aug. 19, 2005, p. 3; and (2) Lynn Garner and Nancy Ognanovich, "Congressional Budget Blueprint Includes \$11 Billion Energy Tax Plan, ANWR Drilling," *BNA's Daily Report for Executives*, May 2, 2005, p. A-23.

¹⁰ See letters dated April 19, 2005, from Douglas Holtz-Eakin, Director, CBO, to the Hon. Richard W. Pombo, chairman, House Resources Committee, regarding a preliminary cost estimate of the Domestic Energy Security Act, as approved by the House Resources Committee on April 13, 2005, and to the Honorable David Dreier, Chairman, House Rules Committee, regarding a preliminary cost estimate of H.R. 6, the Energy Policy Act of 2005, as introduced on April 18, 2005. A CBO cost estimate of the Senate Energy and Natural Resources Committee's reconciliation recommendations is not yet available.

¹¹ For further information on the budgetary treatment of offsetting receipts, see Office of Management and Budget, *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2006* (Washington: GPO, 2005), ch. 18, "User Charges and Other Collections," pp. 301-313.

¹² Section 310(b)(2) of the Budget Act.

and Natural Resources Committee, therefore, would have to occur on the floor of each chamber (or possibly in conference).

House Floor Consideration. The House usually has considered budget reconciliation measures under a special rule reported by the House Rules Committee and agreed to by the full House. The special rule specifies the terms under which the reconciliation measure will be considered. In the past, the special rule providing for the consideration of reconciliation measures has limited the amendment process, allowing the consideration of very few floor amendments, except for a limited number of leadership amendments.

The special rule for the consideration of the 2005 reconciliation measure could make in order an amendment proposing to change the provisions recommended by the House Resources Committee. Unless the special rule waives certain points of order, such an amendment must comply with the House Standing Rules and the Budget Act. In particular, an amendment must be germane to the reconciliation measure and must not have the effect of increasing the deficit.¹³ In addition, the special rule for the consideration of the reconciliation bill likely will allow a motion to recommit with instructions because House Rule XIII, clause 6(c)(2), prohibits a special rule from preventing the motion on such a bill. The instructions, however, must comply with the House Standing Rules and the Budget Act, as they apply to proposed floor amendments, unless those rules are waived by the special rule.

Senate Floor Consideration. As noted above, in the Senate, debate on a budget reconciliation measure is limited to 20 hours, thereby precluding extended debate on the measure. The Budget Act also places other restrictions on the consideration of the reconciliation measure on the Senate floor. Three requirements are particularly relevant: (1) floor amendments must be germane; (2) floor amendments must not cause an increase in the deficit; and (3) provisions contained in the measure and in floor amendments must not be extraneous under the Byrd rule (Section 313(b)(1)(D) of the Budget Act). Each of these requirements might have an effect on the inclusion of ANWR provisions in the reconciliation measure.¹⁴

¹³ House Rule XVI, clause 7, and Section 310(d)(1) of the Budget Act, respectively. Whether or not an amendment to a reconciliation measure violates the House Standing Rules or the Budget Act would depend on a ruling of the presiding officer, with the advice of the House Parliamentarian. Under Section 312 of the Budget Act, any points of order under the Budget Act relating to budgetary amounts, however, must be determined on the basis of estimates made by the House Budget Committee (HBC). Generally, the estimates used by the HBC are based on the cost estimates prepared by the Congressional Budget Office (CBO), but the HBC has the authority to make its own estimates, which may vary from the CBO estimates.

¹⁴ Like many Senate rules, these requirements are enforced by points of order. Points of order are not self-enforcing. A Senator must raise a point of order in order to prevent the consideration of legislation that violates the rules.