



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



MAY 01 2018

The Honorable Lisa Murkowski  
Chairman, Committee on Energy and Natural Resources  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses prepared by the Department of the Interior to the questions for the record submitted following the February 28, 2018, legislative hearing on *S. 1556, Rural Water Guarantee Payment Act*; *S. 2074, a bill to establish a procedure for the conveyance of certain Federal property around the Jamestown Reservoir in the State of North Dakota*; and *S. 2166, the Endangered Fish Recovery Programs Extension Act of 2017* before your Committee.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Maria Cantwell, Ranking Member  
Committee on Energy and Natural Resources

**U.S. Senate Committee on Energy and Natural Resources**  
**Subcommittee on Water and Power**  
**February 28, 2018 Hearing: *Pending Legislation***  
**Questions for the Record Submitted to Mr. Alan Mikkelsen**

**Question from Ranking Member Maria Cantwell**

**(S. 2074) Question:** As part of your written testimony for this legislation, you state that “Title transfer can be an important tool to ensure that management of lands and other real property is carried out by the entities that are best equipped to most effectively manage such property. The Administration recently submitted a legislative proposal which would address this issue more comprehensively which would facilitate title transfer of certain Reclamation facilities to non-Federal entities when such transfers are beneficial.”

Specifically, would the legislative proposal provide Reclamation with the authority to administratively transfer the lands described in S. 2074?

**Response:** The Department’s legislative proposal is designed to allow local water managers to make their own decisions to improve water management at the local level, while allowing the Bureau of Reclamation to focus management efforts on projects with a greater federal nexus. Under the proposal, the conveyance of Reclamation facilities under this authority would be contingent upon the utilization of eligibility criteria set forth in Section 4, along with any additional criteria the Secretary of the Interior finds is in the public interest. Eligible facilities include Reclamation projects or facilities, or portions of Reclamation project or facilities, which include dams and appurtenant works, infrastructure, recreational facilities, buildings, distribution and drainage works. The legislative proposal also allows for the conveyance of “associated land or interest in land or water”. Absent the development of criteria as required under Section 4(a), the Department cannot determine with certainty whether the lands described in S. 2074 would be subject to this new authority. However, as a general matter, Reclamation believes that Congress should retain the ability to approve complicated transfers.

**Questions from Senator John Barrasso**

**Question 1:** If S.2166 is signed into law, the cooperative agreement, capitol construction authorization, and the funding authorization will expire at the same time. Do you anticipate the program needing to go beyond 2023?

**Response:** Yes, although it may assume a different programmatic format. Efforts are currently underway to assess what type of program or actions will be necessary after fiscal year (FY) 2023 to address continued threats to endangered fish and to provide Endangered Species Act (ESA) coverage to current water users and future water development. Even if all four species of fish are delisted by 2023, there would be a need to continue activities that address threats faced by the fish, including continued operation, maintenance, and rehabilitation of fish screens on diversion structures to prevent entrainment of fish, fish passages that expand habitat, flooded bottomlands that support reproduction and hatcheries. The greatest threat to endangered fish at this point is the presence of predatory nonnative fish in endangered fish riverine habitat, some of which have

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been illegally introduced. Efforts to control nonnative fish in river habitat may have to be continued for the foreseeable future.

Federal and nonfederal participants in The Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program (Recovery Programs) have initiated discussions to identify activities needed to benefit the endangered fish after 2023 and to maintain ESA compliance for approximately 2,500 water projects, including every Reclamation project upstream of Lake Powell. The discussions will include recommendations for the institutional and cost-sharing arrangements that will be needed to support these activities. The proposed funding legislation (S. 2166) requires the Secretary of the Interior, in collaboration with participants in the two programs, to provide a Report to Congress in FY 2021 identifying the status of the fish in 2023 and recommending continuing institutional and financial needs/arrangements beyond 2023.

Reclamation and the other Program partners see the need for continuation of activities to benefit the species beyond 2023 in order to assure that the species are recovered and delisted, and are not in need of protection of the ESA in the future. Any activities beyond 2023 – and cost sharing/institutional arrangements - will be subject to review and approval of Congress. If enacted, a joint report to Congress will be required by the Recovery Programs, through the Secretary of Interior, in FY 2021 which will provide a detailed prognosis and recommendation for the future activities that will be necessary to avoid jeopardy of the endangered fish.

**Question 2:** When does the Bureau of Reclamation anticipate the endangered fish in the Upper Colorado River will be recovered?

**Response:** Reclamation and the Recovery Program partners do not anticipate that all four species will be delisted by 2023. The ongoing discussions referenced in the response to Question 1 include identifying the manner in which species will be maintained and protected beyond 2023. A range of legal and institutional alternatives are being reviewed that will ensure the species are protected in the future and that ESA compliance is maintained for water projects in the Upper Colorado and San Juan river basins.

In 2002, the U.S. Fish and Wildlife Service (Service) amended the Colorado River fish recovery plans with objective and measurable recovery goals (endangered species population demographics and threat removal) to define what recovery means. Those recovery goals estimated that the fish would be recovered by 2023. Five-year status reviews were completed for each of the endangered species in 2011 and 2012, which determined that each of the species remained endangered.

Ongoing recovery actions are continuously evaluated to determine their effectiveness in contributing to recovery. Species Status Assessments for three of the four endangered fish are underway and the next round of 5-year status reviews will be completed by the end of FY 2018. On March 22, the U.S. Fish and Wildlife Service announced its completion of a Species Status

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Assessment and 5-Year Review, which proposes downlisting the humpback chub from the status of "endangered" to the status of "threatened". The humpback chub is still classified as endangered and, at this time, is only proposed for downlisting. If the classification of the species is officially changed to threatened, as the 5-Year Review recommends, it will remain fully protected under the ESA. The Recovery Programs are recognized as key contributors in the recovery of this native fish. Reclamation's modification of flow regimes from large dams, provision of flows to support native fish, and participation in and funding of the conservation and recovery programs is a central reason this species is able to be considered for downlisting. Collaborative partnerships and management of resources have protected the species from extinction.

The remaining 5-year reviews may recommend that one or more of the endangered Colorado River fish be downlisted from endangered to threatened, and that the objective and measurable criteria in the recovery plans be updated to incorporate new information gathered since 2002. The report to Congress referenced in the proposed legislation, requires the Secretary of Interior to describe projected timelines to recovery based on the revised recovery plans. Reclamation and Program partners anticipate that the species recovery plans will be revised consistent with the recommendations coming from the discussions referenced in Question 1 and the Secretary's report to Congress.

**Question 3:** What would happen to the communities in the Colorado River Basin if the Upper Colorado River Endangered Species Recovery Act program goes away without the fish being delisted?

**Response:** The Recovery Programs provide ESA compliance for approximately 2,500 existing water projects and future development in the Upper Colorado River Basin above Glen Canyon Dam. Since the first Colorado River Recovery Program was established in 1988, all existing and proposed water development and hydropower projects associated with the Recovery Programs have proceeded in compliance with the ESA, Reclamation project authorizations, interstate water compacts, and state water law without ESA litigation. These projects provide approximately 3.8 million acre-feet of water to municipal, industrial, and agricultural water users. The cost-shared Recovery Programs have shifted the burden of ESA compliance from individual projects to the Recovery Programs. If the Recovery Programs go away before the fish are delisted, the vehicle for ESA compliance disappears, and the cooperative programs that are working and have the broad support of water users, federal agencies, states, tribes, environmental organizations, and power customers would be replaced with legal and regulatory chaos that would create tremendous uncertainty for water suppliers that would likely go on for years. This may require the Service to re-initiate ESA consultations on existing water projects. Each individual project would then be responsible compliance with the ESA. This would result in uncertainty on the ability of municipal, industrial, and agricultural water suppliers to meet current and future demands and the cost of meeting those demands.

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The Recovery Programs have greatly streamlined administration of the ESA for the Service, federal agencies, and water users. The Service conducted four ESA consultations on approximately 700 water projects on National Forest lands using the Recovery Programs as the means of compliance. Programmatic biological opinions on depletions in the Colorado, Gunnison, and Yampa river basin provide ESA compliance using recovery Program actions for literally hundreds of water projects. These efficiencies would be lost if the Recovery Programs were to cease.

**Question 4:** Is there anything else that should be done to ensure the fish are on the correct pathway to recovery?

**Response:** The Recovery Programs must continue to adaptively manage 1) instream flows and floodplain habitats, 2) control and reduce nonnative predatory fish, 3) operate fish passage and irrigation canal screens, 4) manage the endangered fish stocking program and 5) monitor endangered fish populations. When the Recovery Programs were initiated, relatively little was known about the endangered fish. The Recovery Programs have put substantial effort into research and monitoring to fill in the information gaps. Reclamation and our partners are confident that the efforts of the Recovery Programs to recover the endangered fish are science based and represent the most effective and efficient means of recovering the fish. The Recovery Programs will continue to evaluate the response of the species to recovery actions and to adaptively adjust those measures based on scientific evidence.

**Question 5:** Does the Bureau of Reclamation have other species recovery programs that use revenue generated from hydropower production to pay for the program costs?

**Response:** Yes, but use of power revenues for ESA purposes in Reclamation is not a widespread practice. Congress sets forth the purposes for which power revenues collected from the operation of Reclamation hydropower projects may be used. If authorized by Congress, then Reclamation policies (Reclamation Manual, Policy ENV P04 and PEC P07, "Allocation of Operation, Maintenance, and Replacement Costs") specify that Regional Directors determine whether and how costs of compliance with the ESA) will be allocated among project purposes.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAY 10 2018**



The Honorable Doug LaMalfa  
Chairman  
Subcommittee on Indian, Insular and Alaskan Native Affairs  
Committee on Natural Resources  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Office of Insular Affairs to the questions for the record submitted following the March 20, 2018, oversight hearing on *Policy Priorities for the Administration's FY 2019 Budget for Indian Affairs and Insular Affairs*.

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

for Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Norma Torres  
Ranking Minority Member

Oversight Hearing titled *"Policy Priorities for the Administration's FY 2019 Budget for Indian Affairs and Insular Areas"*

**Responses to Questions from Rep. Gonzalez-Colon, Subcommittee Vice Chair, for Witness Mr. Douglas Domenech, Assistant Secretary – Insular and International Affairs, U.S. Department of the Interior:**

**Question 1.** *Is the prolonged lag between the time of the Palau Compact Agreement being reached and the final legislation of the funds something typical in these processes? What factors cause such delays?*

**Response:** The original Compact Review Agreement (CRA) legislation, when introduced in January 2011, included a provision for the permanent appropriation of all assistance included in the agreement. This meant that all assistance funding would have been appropriated in a single fiscal year, but disbursed at the intervals prescribed in the agreement. The legislative package identified revenue off-sets collected by the Department of the Interior that would have been used to underwrite the CRA.

At that time, Congress had newly imposed budgetary rules that required that a new permanent appropriation should only be enacted in conjunction with the cancellation of an existing permanent appropriation. The inability of the Executive Branch and Congress to find an acceptable path to appropriating the necessary funding is the reason the legislation was not enacted sooner.

We appreciate the action of Congress in the recent Omnibus appropriations bill to appropriate the funding that will now allow us to finally implement the CRA with Palau.

**Question 2.** *When are the respective Compacts of Association next coming up for review? When were they each last reviewed? What is the process for conducting such reviews and approving agreements?*

**Response:** The Compacts of Free Association have indefinite terms and may only be terminated by mutual agreement between the U.S. government and the Federated States of Micronesia, Republic of the Marshall Islands and Palau governments, respectively, in accordance with their respective constitutional processes. An action to terminate the Compacts by the United States would require an act of Congress. In the case of Palau, even in the event of termination, Section 311 of the Compact, which forecloses access to Palau by

other nations' militaries, would remain in effect until 2044. It is important to note that while the Compact agreements do not expire, the provisions of United States financial assistance to each country have limited terms.

Palau's Compact has provisions for review on the fifteenth, thirtieth and fortieth anniversaries of the effective date of the Compact. The CRA represents the product of the fifteenth-year review. In that review, it was agreed that additional U.S. assistance should be provided to Palau. The thirtieth-year review will take place in 2024. Although an element of the reviews includes consideration of Palau's "operating requirements", there is no guarantee that additional assistance will be forthcoming at the end of the thirtieth-year review.

The FSM and RMI Compacts - implemented in 1986 - were reviewed around the conclusion of the first fifteen year funding period in 2001. The results of that review are contained in the "Compacts of Free Association Amendments Act of 2003" (P.L. 108-188), which provided additional funding to the FSM and RMI through 2023. The FSM will receive \$2.1 billion from that agreement, including \$517 million into its Compact trust fund. The RMI will receive \$1.4 billion through 2023, including \$276 million for its trust fund. Each country also receives Supplemental Education Grant funding from the Department of Education and other limited Federal program assistance. Because of the interests of the U.S. in Kwajalein Atoll, special assistance programs for the Kwajalein community remain in effect until 2066.

There are no fixed provisions in the FSM and RMI Compacts for additional reviews of the assistance programs for the FSM and RMI. The Compact trust funds were created to provide a source of funding for the governments after 2023 when the current assistance agreement expires. No other elements of the Compacts of Free Association expire at that date.

The Executive Branch uses an inter-agency procedure for reviewing and approving Compact reviews and amendments. Key players have been the National Security Council, the Office of Management and Budget and the Departments of the Interior, State and Defense, among others. There is currently an inter-agency discussion going forward to review U.S. services and interests as the current FSM and RMI assistance agreements near their ending dates.

**Question 3.** *Please provide us a profile of the current state of the economies of the Freely Associated States, and the trends observed in each during the period since the last review of the respective compacts.*

**Response:** OIA has a technical assistance agreement with the Graduate School USA to produce gross domestic product (GDP) data for the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI) and the Republic of Palau (Palau) as a part of a larger technical aid program to strengthen financial management in the insular areas. Because they



are small and isolated, the FAS economies, especially the FSM and RMI, have remained dependent on U.S. aid. Palau has performed more favorably recently because of a surging tourism sector which caters to increasingly prosperous Chinese tourists.

#### FSM

The FSM has continued to lag in economic growth and the level of real (adjusted for inflation) income to provide an adequate standard of living for its population. One of the direct results has been a steady migration to the United States and its territories, particularly Hawaii and Guam. FSM is in urgent need of the government to organize to make effective use of Compact infrastructure funds. This will have an immediate positive impact on jobs and income. In fact, real GDP in 2016 was the same as in 2015 and lower than in 2011 and 2012. At best, the FSM economy has remained level or declined slightly. Real per capita GDP in 2016 was the same as in 2004, despite emigration.

Fiscally, the country as a whole has managed its fiscal resources responsibly, but the fiscal condition of each of the four states differs significantly from the FSM's national government. The latter enjoys a surplus, while all states but Kosrae have recorded deficits. The FSM state governments which deliver services have been constrained by declining real Compact grants, while the national government has benefited from rising revenues from fishing fees and the captive insurance market.

#### RMI

The RMI economy has generally performed better than the FSM's because it is smaller and under the management of a single central government. Besides, the U.S. Army base at Kwajalein, which employs close to 1,000 persons, contributes directly and indirectly to increased economic activity. Real GDP grew 1.9 percent in 2016, following small declines in 2014 and 2015. The RMI economy grew at reasonably healthy rates in each of the four years before 2014. As a result of growth in the economy, real GDP has increased steadily over the last decade. In 2016, real GDP was 15.6 percent higher than in 2006 and real per capita GDP was almost one percent higher than in 2006. Fiscally, the RMI has managed its resources adequately, despite the fact that continued subsidies to state-owned enterprise (SOE) remain a constraint on the RMI government.

#### Palau

Palau signed the Compact Review Agreement with the United States in fiscal year 2010 and the Congress passed the accompanying U.S. economic aid of \$124 million in 2018. The new aid, which covers the period of 2018-2024, should contribute to an economy that has already performed quite well over the last few years. In 2016, real GDP increased 3.3 percent, following a growth rate of 8.2 percent in 2015. During the period of 2011-2016, the economy of Palau grew at an average of 4.8 percent, a growth rate typical of large and dynamic

economies. The main driver of economic growth over the last several years had been tourism.

**Question 4.** *What has been the tendency about the funds provided to the Freely Associated States - increasing, decreasing, steady?*

**Response:** The Freely Associated States have the advantage of fixed schedules of assistance under the Compacts of Free Association. The FSM and RMI have permanent appropriations, so that the level of funding was known as the agreements were put in place. Those Compacts also have inflation adjustments that account for two-thirds change in annual U.S. GDP. The recent appropriation of funds for the Palau CRA will allow the U.S. and Palau to mutually agree on a schedule to release the \$124 million now available.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAY 14 2018**

The Honorable John Hoeven  
Chairman, Committee on Indian Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to questions received by Mr. Tony Dearman, Director, Bureau of Indian Education, following his September 2017 appearance before your Committee at the hearing "High Risk Indian Programs: Progress and Efforts in Addressing GAO's Recommendations." We apologize for the delay in our response.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional  
and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall  
Vice Chairman

Questions for Mr. Dearman  
From Vice Chairman Udall

**BIE Student Outcomes Data**

1. **The most recent school and Bureau accountability data provided on the BIE website dates to SY2012-2013. The Committee is unaware of any other locations where the Bureau might have published accountability data for the three school years completed since SY2012-2013 concluded and required under Section 1111 of the Elementary and Secondary Education Act through August 1, 2016.**

**Please provide a copy of all statutorily required school accountability data for SY2013-2014, SY2014-2015, and SY2015-2016. If this information is not currently available, please provide a firm timeline of when such information can be made available to the Chairman and the Vice Chairman.**

**Response:** Available data has been reported to the U.S. Department of Education's (ED) EDFacts data collection system. The Bureau is working to update and post additional, required public reporting on school accountability. However, most information has not yet been aggregated and remains partially incomplete. Recently, leadership has refocused attention to increasing data-driven decision-making across the Bureau through improved data collection. As of 2018, the Bureau has hired an Accountability and Assessment Supervisor as well as several Education Research Analysts and has filled six Native American School Information Specialists (NASIS) positions. These personnel are specifically focused on data by expanding technical assistance to schools as well as improving the Bureau's collection and use of key data metrics critical to supporting the needs of students attending BIE-funded schools.

2. **Title I of the Every Student Succeeds Act (ESSA) requires states to design and implement an accountability system to measure school quality and performance in consultation with a variety of stakeholders. The Department of Education (ED) indicates on its website that BIE, acting in its capacity as the State Education Agency (SEA) for BIE-funded schools, provided notice of intent to submit its state accountability plan to ED on September 18, 2017. Yet, as on the date of this hearing, the BIE's webpage on the Bureau's ESSA State Plan is completely blank.**
  - a. **What is the status of the BIE state plan? Please provide a summary of any BIE's coordination between BIE and ED on this issue and a description of all relevant consultations undertaken by BIE to date on development of a state accountability plan.**

**Response:** To meet its obligations under the Elementary and Secondary Education Act of 1966, as amended by the Every Student Succeeds Act (ESEA) and develop a State Plan, the BIE will amend its existing standards, assessments, and accountability regulations through Negotiated Rulemaking (NRM); and solicit stakeholder and tribal input through consultation regarding the BIE State Plan. At a December 8, 2016 meeting between BIE and ED, Education officials expressed a view that the State Plan under ESEA was optional for the BIE. BIE Director Dearman announced the BIE would move forward with developing a State Plan, as approved through rulemaking, as a means to facilitate a transition to ESEA and ensure the development of a coherent federal education system across the twenty-three (23) states in which BIE facilities

operate. The BIE notified ED via email on January 7, 2017 that it would submit a State Plan.

To meet its ESEA obligations and develop a State Plan, the BIE will: (1) amend its existing standards, assessments, and accountability regulations through Negotiated Rulemaking (NRM), and (2) solicit stakeholder and tribal input through consultation regarding the BIE State Plan. On November 9, 2015, the BIE published a notice of intent (80 FR 69161) requesting comments and nominations for tribal representatives for the NRM. Upon transition between Administrations, the initial formulation of the NRM was postponed in order to provide incoming Department staff adequate time to review prior work. As of August 2017, the BIE was provided clearance to move forward with re-initiating the Committee and working and consulting with stakeholders to determine membership and subsequent steps.

The negotiated rulemaking committee was re-advertised in Federal Register notice (82 FR 43199) soliciting nominations on September 14, 2017, with a deadline for submission of nominations by October 16, 2017. The nominations received were reviewed by Department and BIE officials and selected members will be announced through a notice in the Federal Register, which will be available for public review and comment. After such time, a subsequent Federal Register Notice will announce the final NRM members and initial meeting dates.

Ultimately, the NRM will recommend revisions to existing regulations (25 CFR Part 30), replace the No Child Left Behind Act (NCLB) Adequate Yearly Progress regulatory language, and implement the Secretary's statutory responsibility to define the standards, assessments, and accountability system, consistent with the ESEA. The BIE and ED consult and work together on a range of Indian education related issues, through the departments' interagency work group that meets bi-weekly and through direct communication.

**b. Please provide an overview of BIE's efforts to comply with ESSA as a whole and outline how the Bureau has worked with ED to ensure full compliance moving forward.**

**Response:** To meet its obligations, the BIE will: (1) amend its existing standards, assessments, and accountability regulations through negotiated rulemaking, and (2) solicit stakeholder and tribal input through consultation regarding the BIE State Plan. The BIE has elected to adopt a State Plan that will work to improve the BIE's support of Bureau-funded schools. Through tribal consultation and solicitation of stakeholder feedback, the BIE will ensure ESEA requirements are met.

Ultimately, the BIE will carry out its obligations under the ESEA through rules and regulations determined under the NRM, which will recommend revisions to the existing regulations (25 CFR Part 30) to replace the NCLB Adequate Yearly Progress regulatory language and implement the Secretary's statutory responsibility to define the standards, assessments, and accountability system, consistent with the ESEA.

**3. The Navajo Nation reports to my Office that the BIE is currently not efficiently transferring student data required under a signed memorandum of understanding between the Tribe and the Bureau.**

**a. Is BIE working with the Navajo Nation to ensure the spirit and letter of the MOU**

are followed?

**Response:** BIE has and continues to work with the Navajo Nation tribal government as well as Department of Dine Education (DODE) on an ongoing basis as the tribe and its education agency work to clarify their preference for outreach with the BIE. For instance, BIE Associate Deputy Director (ADD) of Navajo Schools has worked to share Partnership for Assessment of Readiness for College and Careers (PARCC) data for SY 2014-2015 (NM only Navajo schools), 2015-2016 and 2016-2017. The Navajo ADD offices have continued to support the Navajo Nation with ongoing NASIS data trainings with meetings held as recently as October 2017. The Navajo Nation is now in the process of amending their Data Agreement to include Personally Identifiable Information (PII) assurance documentation, which was shared with the President of the Navajo Nation at the NIEA convention held in early October 2017.

**b. How is BIE ensuring that tribes with members enrolled in BIE-funded schools have timely access to information necessary to track student outcomes?**

**Response:** The BIE is provided with short-cycle assessment data by Northwest Evaluation Association (NWEA) after each testing window which informs instructional practices and student outcomes. Such data are accessible at school sites by instructors and school leadership. The test results are normally sent to each school site by the vendor, Measured Progress/Smarter Balance, in late June.

In regards to summative data, the BIE has access to state assessment data through schools that receive such information directly; the BIE does not have direct access to all state assessment data and often must request the data from individual schools. Although BIE has Memoranda of Agreement in place for sharing state assessment data for many schools this is not the case for all states in which the BIE operates. As noted in a previous response, the BIE is currently in the process of establishing a Negotiated Rulemaking Committee that will, among other things, determine if the BIE should establish its own unique accountability system under the ESEA, which could improve the BIE's data disaggregation and dissemination capabilities through a uniform system, or continue to operate and serve schools based on the 23 states in which the schools are located.

**c. What mechanisms within BIE are in place to lift tribal accountability to the level of the federally-mandated accountability plans referenced in question (2) above?**

**Response:** Indian Tribes may seek waivers from the BIE's standards, assessment and accountability system requirements, under ESEA section 8204(c). BIE continues to partner with ED to facilitate such waiver requests and provide technical assistance and support to ensure successful transition of such authority to a Tribe. As of 2018, the Navajo Nation and Miccosukee Tribe have waivers approved by the two agencies, which supports local control of education and provides Tribes the flexibility to better meet their local needs. For example, Navajo Nation's agreement includes an alternative system of accountability for schools that allows BIE-funded schools that serve the Tribe but are located in three different states to operate under a uniform system. Currently, BIE Education Resource Center staff provides ongoing technical assistance to tribes with such waivers.

- d. **Does BIE have any other student outcome related data (for example - graduation rate trends, or absenteeism trends in BIE schools) that it can share? If so, please provide it here or provide a firm timeline of when such information can be made available to the Chairman and the Vice Chairman.**

**Response:** The Bureau is working to bring recent data sets up to date. Currently, an analysis of longitudinal data trends is unavailable until such data strands are collected and verified. However, the Bureau has enclosed the following 2015 Bureau of Indian Education Report on Student Achievement and Growth from the Northwest Evaluation Association for the Committee's review. Its results suggest that BIE students have shown some improvements over time in achievement and growth rates, most notably in mathematics and for students attending earlier grade levels. However, gaps persist and BIE remains committed to improving service delivery that will help narrow the gap for students attending Bureau-funded schools.

### **IT Infrastructure Challenges**

1. **One issue BIE school-level leadership has repeatedly raised involves challenges meeting the Bureau's data reporting requests. For example, the administration team at Southwestern Indian Polytechnic Institute (SIPI) never received the credentials they needed to access BIE reporting software. Several folks from the school reached out to regional BIE and BIA staff – who are located in an office right down the road in Albuquerque – but they never received a response.**

- a. **Can you commit to working with SIPI to resolve this systems access issue?**

**Response:** Yes.

- b. **How is your office working to make sure BIE schools have sufficient technical assistance to fully utilize reporting software like Maximo?**

**Response:** BIE has offered technical assistance and training opportunities to BIE schools regarding the use of the Maximo system via five four-day sessions held in Albuquerque, NM as well as across the country at regional trainings.

- c. **How is your office working to make sure data reporting requirements aren't duplicative or unnecessarily burdensome for tribes and schools staff?**

**Response:** BIE leadership does not want such reporting requirements to impede school-level functions or create unnecessary burdens on local staff. As such, BIE leadership is working to ensure compliance and technical assistance teams visit schools in a coordinated manner to increase efficiency in compliance monitoring while decreasing the number of site visits held each year.

2. **GAO has found that BIE's student attendance system had no way to note that an absence was caused by transportation issues. BIE is working to update the data system related to this issue; but this is just one small piece of a larger data and IT issue facing BIE.**

- a. **When will the transportation-related absentee tracking issue identified by GAO in May be fully implemented?**

**Response:** BIE tentatively agreed to GAO-17-423: Tribal Transportation recommendation 7. The BIE is currently exploring the addition of a field within NASIS to capture whether an individual student's absence is due to inclement weather or road conditions. The BIE will consult with the NASIS vendor to discuss the feasibility and cost involved for this additional requirement and consider implementation of recommendation 7 based on this information and available resources.

**b. Please list and explain other data and IT issues that BIE is currently working to improve.**

**Response:** The BIE has formed a bureau-wide working group to improve its data collection, management, and reporting. The working group was formed in early 2017 and was initially tasked with bringing outdated EdFacts data up-to-date. The working group is now performing a bureau-wide data audit and is in the early stages of creating policies and procedures designed to improve the Bureau's collection, management, and reporting of data.



United States Senate  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Questions for the Record  
Budget Hearing: Department of the Interior  
May 10, 2018

**Questions from Chairman Murkowski**

**Murkowski Question 1:** During your time in Alaska you were able to see the North Slope and the part of Alaska that makes the United States an Arctic nation. Can you please describe what is included in your budget request that is specific to Arctic-related activity, or how you view the Department's mission and activities in the Arctic?

**Answer:** More than 20% of all land that the Department of the Interior manages is located in the Arctic, a vast area that amounts to 62% of the U.S. Arctic. The Department's responsibilities in the Arctic include managing responsible on- and off-shore oil, gas and mineral development, managing natural and cultural resources for the benefit of future generations, and upholding Federal trust responsibilities to Alaska natives, among others.

The 2019 budget request for the Department features targeted investments to further the Administration's America First national energy goals. At the same time, this budget reflects the President's commitment to fiscal responsibility. The budget request includes \$111.7 million for the Department's activities in the Arctic, including an increase of \$9.5 million to establish a competitive leasing program in the 1002 Area of the Alaska North Slope, as required by the recently enacted Tax Cuts and Jobs Act, and bolster the Bureau of Land Management's (BLM) capacity for permitting activities in the National Petroleum Reserve-Alaska (NPR-A).

In the last year, the Department has advanced Arctic energy production, as required by Secretarial Order 3352, by improving permitting activities in the NPR-A and initiating new resource assessments for areas of the North Slope, including the 1002 area. The BLM is processing the drilling permit application to enable production at Greater Mosses Tooth 2 and currently analyzing public comments for the project's proposed Draft Supplemental Environmental Impact Statement.

The Bureau of Ocean Energy Management published the Draft Proposed Program for the Outer Continental Shelf 2019-2024 Leasing Program in January of this year, which includes three lease sales each in the Chukchi and Beaufort Seas to enable development of estimated Undiscovered Technically Recoverable Resources of more than 20 million barrels of oil and 100 trillion cubic feet of natural gas.

The BLM recently awarded a task order to plug and abandon five more wells using funds authorized by the Helium Stewardship Act of 2013. Surface work began in the summer of 2017 and subsurface work will be in the winter of 2018-2019.

Recognizing the importance of the Department's trust responsibilities, the President nominated the first Alaska Native to any Senate confirmed position by selecting Inupiat Tara Sweeney to serve as Assistant Secretary of the Interior Department for Indian Affairs. A prominent Alaska Native leader and acclaimed businesswoman with the Arctic Slope Regional Corporation, Ms. Sweeney's confirmation will enhance the quality of life, promote economic opportunity and provide quality educational opportunities for American Indians, Indian Tribes and Alaska Natives, while protecting and improving their trust assets.

**Murkowski Question 2:** I'd like to shift gears a bit and talk about BLM's Wild Horse and Burro Program. As we have discussed many times, growing herds and drought in much of the west is causing the condition of the wild horses to deteriorate, native wildlife and endangered species to be impacted, and the rangelands to be on the verge of collapse. Simply put, the status quo on the range is not ecologically sustainable nor humane. I appreciate the report you submitted to us outlining options to get the program on a sustainable path forward, which clearly lays out the management tools and what they mean in terms of the timeframe for reaching appropriate management levels and cost of the program. Can you discuss the potential consequences of inaction on this issue given the herd numbers and rangeland conditions this year from the perspective of both the impact to the horses and public land resources?

**Answer:** As of March 2018, the BLM estimated that public lands were home to nearly 82,000 wild horses and burros (WHBs), more than three times the national Appropriate Management Level. If nothing is done to limit population growth, public rangelands will continue to be degraded, and WHBs will continue to stray onto other public and private lands searching for forage and/or water.

The current overpopulation of WHBs on the arid rangelands of the West is impacting the health of western rangelands and the quality and quantity of forage and water available for domestic and wildlife species, as well as Federal and State threatened, endangered, and sensitive species. These negative impacts, including to WHBs themselves, will grow more severe across even larger swaths of the western public rangelands if populations continue to expand.

Expanded populations of wild horses increase the likelihood that productive perennial grasses will be converted to low-value exotic annual grasses. This conversion is already occurring in certain areas and is impacting permitted livestock grazing and increasing the risk of wildfires. Furthermore, wild horses outcompete native ungulates for forage and water, and trample stream banks to mud, which may deter hunters, anglers, and native wildlife enthusiasts from visiting public lands. Overpopulated WHB herds are increasing the frequency and number of vehicle/animal collisions, which is a serious safety hazard.

WHB populations cannot be controlled at sustainable levels by predators, weather, or other factors. When over populated, WHB can graze and trample shrubs and grasses to bare ground. WHB overgrazing can also severely damage clean water, sagebrush ecosystem quality, and increase erosion. Every biological population has a specific carrying capacity that represents the maximum population size that can be supported in a particular area without destroying the habitat or becoming "self-limiting", in which animals begin to succumb from lack of food or

water. WHB populations in many areas may have already reached that carrying capacity and if population continues unchecked, western landscapes will become unrecognizably damaged.

**Murkowski Question 3:** I have previously expressed a concern about mitigation requirements that are unreasonable.

- a. Can you share with me your plans for developing a policy for true mitigation that can help shorten permitting times and increase conservation results on the ground?

**Answer:** Executive Order 13783 – “Promoting Energy Independence and Economic Growth” (March 28, 2017) rescinded the *Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment* (November 3, 2015). The Secretary of the Interior subsequently issued Order 3349 on American Energy Independence (March 29, 2017), which directed Department of the Interior (DOI) bureaus to reexamine mitigation policies and practices to better balance conservation strategies and policies with job creation for American families. Pursuant to Secretarial Order 3349, the U.S. Fish and Wildlife Service (FWS) published a notice in the *Federal Register* (FR) on November 6, 2017 (82 FR 51382) requesting additional public comments on the FWS’ 2016 mitigation policies. In addition, in carrying out Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” DOI published a document entitled “Regulatory Reform” in the FR of June 22, 2017 (82 FR 28429), which requested public comment on how DOI can improve implementation of regulatory reform initiatives and policies and identify regulations for repeal, replacement, or modification. The FWS is currently considering revisions to its mitigation policies, in light of the comments received and the Administration’s priorities.

- b. I am pleased that the FWS has for some years been certifying mitigation banks because this brings to light the real issues on a level playing field: what conservation results are good enough for the species, and are these results affordable by the private sector. But not all of these banks are considered as positive factors during listing decisions. In the pending listing decision for the lesser prairie chicken, there are certified banks holding a significant area of the most important habitat but are not "counted" toward the good that might preclude the need to list. What must be done to count all helpful conservation in the listing decision?

**Answer:** The Endangered Species Act requires the FWS to make decisions based on the best scientific and commercial data available, which includes taking into account all conservation efforts being made to protect a species. In determining whether a species meets the definition of an endangered species or a threatened species, the FWS must evaluate all identified threats by considering the effects of the threats and the expected response by the species in light of any actions that could ameliorate the threats, including offsetting habitat loss through conservation banks or other mitigation. Conservation efforts that have a known track record of implementation and effectiveness are considered in the status assessment as to the contribution of each effort and how they ameliorate threats to the species. In contrast, for conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness, the FWS’ 2003 *Policy for Evaluation of Conservation Efforts When Making Listing Decisions* (PECE) identifies criteria that the FWS will use in determining whether formalized conservation efforts that have

yet to be implemented or to show effectiveness may be relied upon in the species' status determination. The criteria identified in PECE are used to evaluate whether we have sufficient certainty in such formalized conservation to inform our listing determination. Once we determine that a conservation effort is sufficiently certain to be implemented and effective, we assess the degree to which it improves the status of the species when drawing our overall conclusion as to whether a species warrants listing or not.

### **Questions from Ranking Member Udall**

**Udall Question 1:** I understand that the BLM analyzed the impacts of the changes the Department is proposing to the 2016 Methane Waste Prevention Rule.

- a. What were the results of that analysis related to the amount of reduced natural gas production, the increase in methane emissions, the increase in wasted natural gas and pollution, and their associated financial costs?

**Answer:** Impact on production – The proposed rule would reverse the estimated incremental changes in crude oil and natural gas production associated with the 2016 rule. Over a 10 year evaluation period (2019-2028), the BLM estimates that 18.4 million barrels of crude oil and 22.7 billion cubic feet (Bcf) of natural gas will be produced and sold (which would have been deferred under the 2016 rule). However, it is estimated that with the proposed rule, there will be 299 Bcf of forgone natural gas production (that would have been produced and sold under the 2016 rule). For context, the per-year averages of these estimated volumes represent a small fraction of a percent of the total U.S. crude oil and natural gas production in 2015.

Impact on methane emissions – The proposed rule would result in forgone methane emissions reductions from the baseline of an estimated 175,000 – 180,000 tons per year. Over the 10 year evaluation period (2019-2028), the forgone methane emissions reductions are estimated to be 1.78 million tons.

Impact on pollutants – The proposed rule would result in forgone Volatile Organic Compound (VOC) emissions reductions of an estimated 250,000 – 267,000 tons per year. Over the 10 year evaluation period (2019-2028), the total forgone VOC emissions reductions are estimated to be 2.59 million tons.

- b. The 2016 rule was initiated to address GAO recommendations to modernize BLM's outdated requirements to reduce the waste of gas production and loss of revenue due the American public. How does the revised rule address the issues identified by GAO to limit waste of the resource and the resulting loss of revenue?

**Answer:** The BLM described in the preamble to the proposed rule that the regulatory landscape has changed. The EPA has finalized regulations (40 CFR, Part 60, Subpart OOOO and Subpart OOOOa) which address losses of natural gas from many of the sources covered by the 2016 rule. The BLM reviewed the statutory and regulatory restrictions on venting and flaring from oil and gas wells in 10 States with the most significant Federal oil and gas production. The BLM notes

these top producing States (New Mexico, Wyoming, Colorado, North Dakota, Utah, California, Montana, Texas, Alaska, and Oklahoma) have instituted regulations addressing methane emissions, and the industry has undertaken voluntary efforts to reduce methane emissions.

- c. How will BLM monitor voluntary efforts by industry to reduce flaring, venting, and leaking of natural gas?

**Answer:** The BLM’s proposed rule does not contain provisions to specifically monitor industry’s voluntary efforts to reduce the venting and flaring of natural gas. However, the BLM will monitor venting and flaring as part of normal inspection and enforcement activities. Furthermore, operators will be required to report all volumes of lost gas under applicable Office of Natural Resources Revenue (ONRR) reporting requirements.

- d. How much revenue will be lost by removing the requirements of the 2016 rule? Please specify a total amount, as well as a breakout for States, Tribes, and the Federal Treasury.

**Answer:** The proposed rule is expected to result in forgone royalty payments to the Federal Government, tribal governments, and States. Over the 10 year evaluation period (2019-2028), total forgone royalty payments of \$26.4 million (NPV using a 7 percent discount rate) or \$32.7 million (NPV using a 3 percent discount rate) are estimated.

The requested breakout is as follows:

**Foregone Royalty over 10 Years (2019-2028)  
(\$ in million)**

	NPV using a 7% discount rate	NPV using a 3% discount rate
Federal Government	\$11.2	\$13.9
Tribes	\$4.0	\$4.9
State governments	\$11.2	\$13.9

- e. The 2016 rule went through a significant public process, with listening sessions across the country, meetings with industry, conservation groups, taxpayer advocates, and Tribes, and a public comment period. Why is the Department not following a similar open and public process for the revised rule being proposed?

**Answer:** The BLM’s proposed rule was published in the Federal Register on February 22, 2018, and was open to public comment for 60 days. During that time, it generated over 600,000 comments from individuals, environmental groups, industry, States, and Tribes. In addition, the BLM notes that it is engaged in ongoing efforts to consult with interested Tribes regarding the proposal revision of the 2016 rule.

- f. The Navajo Nation sent a letter to the Department on April 18, 2018, asking for a forum in which the Navajo people can voice their opinions on changes to the rule and that you

engage in formal tribal consultation. I understand that the public comment period ended on April 23, 2018, but there is no legal reason why a public meeting can't occur after public comment has ended. Will you hold public meetings in the Navajo Nation and elsewhere, and engage in the appropriate tribal consultation before moving ahead with changes to the rule?

**Answer:** The BLM is committed to engaging in meaningful Tribal Consultation. Through a letter dated November 21, 2017, the BLM notified 428 Tribal leaders and representatives of its intent to propose a rule to revise the 2016 rule. In the letter, the BLM offered to participate in an in-person consultation or to accept for consideration written comments, at the recipient's convenience. These letters were sent three months before the BLM published the proposed rule in the Federal Register. The BLM received letters from several Tribes (including the Navajo Nation). The letters included comments on the proposal and, in some cases, requested consultation. The BLM notes that these consultations are ongoing and extend beyond the 60-day comment period afforded to the general public. The BLM is currently reaching out to the Navajo Nation and the other Tribes that requested consultation.

**Udall Question 2:** Both the FY 2018 and FY 2019 President's Budgets have proposed eliminating the U.S. Geological Survey's Geomagnetism Program in order to "address higher priorities." Why is the monitoring of geomagnetic storms, with their potential impact on the electrical power grid, not a priority for the Department? How can Congress and the Department best assure long-term stability for this program? In which general regions of the country should the magnetometer network be expanded and how many additional stations would be needed at what cost?

**Answer:** The USGS Geomagnetism Program is not well aligned with the USGS mission. The program primarily serves the missions of the operational space weather agencies, NOAA (the Space Weather Prediction Center of the National Weather Service) and the Air Force (557<sup>th</sup> Weather Wing). While the real-time magnetic field data produced by USGS magnetic observatories are critical for accurate alerting of geomagnetic storms, the budget focuses on the core mission activities and legislative mandates of the USGS.

The regions that would benefit most from increased coverage are the upper Midwest and Northeast, where models indicate that geomagnetically-induced currents and corresponding risk are expected to be high. As noted in the Federal Space Weather Action Plan, a few additional stations would significantly increase the accuracy of forecasts and alerts. Outside of the contiguous United States, space weather forecasts would be improved with observatories on U.S. territories in the Western Pacific (e.g., Midway Island) and in Antarctica.

**Udall Question 3:** The Department continues to make changes to the proposed new regional boundaries and has not yet offered specific detail on what the other organizational changes associated with the reorganization will be.

- a. What is the Department’s schedule for finalizing a proposal and briefing the Subcommittee on the details of the proposal including, but limited to, (1) a final set of boundaries; (2) a proposed organizational chart, (3) a proposed implementation timeline, including actions expected in future fiscal years; (4) a cost-benefit analysis of the proposed changes; (5) and legal analysis of your authorities to undertake the reorganization generally and make the proposed changes specifically?

**Answer:** Department leadership intends to continue to work with Interior staff, Congress, governors, and stakeholders to develop a fulsome plan for the new organizational structure. The relocation of bureaus will occur in the future, only after such input has been received and after Congress approves any necessary reprogramming request. Each bureau is currently organized with its own chain of command which will not change with the adoption of common regions.

It is expected that communications efforts related to such a reorganization would be sustained over a period of years while the realignment of regions takes effect. While a cost-benefit analysis has not been conducted at this early stage, organizing the Department’s bureaus within common geographic areas will allow for more integrated and better coordinated decision making across bureaus and help streamline operations.

- b. Please provide, as requested during the hearing, a complete list of the Department’s expected tribal consultation sessions regarding the reorganization, including dates, locations, and participating Tribes.

**Answer:** As Principal Deputy Assistant Secretary – Indian Affairs John Tahsuda indicated in his May 5, 2018, letter to Tribal Leaders, this consultation began with a listening session, held on June 3, 2018, at the National Congress of American Indians Mid-Year conference in Kansas City, Missouri. Formal consultation sessions have been scheduled for the following dates and locations:

Date	Time	Location	Venue
Tuesday, June 19	9:00 a.m.-1:00 p.m.	New Buffalo, MI	Four Winds-New Buffalo Casino 11111 Wilson Road New Buffalo, MI 49117
Thursday, June 21	9:00 a.m.-1:00 p.m.	Billings, MT	Bureau of Indian Affairs Rocky Mountain Regional Office 2021 4th Avenue, North Billings, MT 59101

Monday, June 25	9:00 a.m.-1:00 p.m.	Albuquerque, New Mexico	National Indian Programs Training Center 1011 Indian School Road, NW Albuquerque, NM 87104
Thursday, June 28	9:00 a.m.- 1:00 p.m.	Jackson, California	Jackson Rancheria Casino Resort 12222 New York Ranch Rd. Jackson, CA 95642
Tuesday, July 24	9:00 a.m.- 1:00 p.m.	Cabazon, California	Morongo Casino Resort and Spa 49500 Seminole Dr. Cabazon, CA 92230
Thursday, August 2	9:00 a.m.- 1:00 p.m.	Juneau, Alaska	Elizabeth Peratrovich Hall 320 W. Willoughby Avenue Juneau, AK 99801
Tuesday, August 7	9:00 a.m.- 1:00 p.m.	Oklahoma City	Embassy Suites Oklahoma City 1815 South Meridian Oklahoma City, OK 73108
Thursday, August 9	1:00p.m.- 4:00p.m.	Choctaw, MS	Pearl River Resort, Golden Moon Hotel & Casino Hwy16W Choctaw, MS 39350

Additional updated information on these sessions can be found at: <https://www.bia.gov/as-ia/raca/doi-reorganization>

c. Is there a plan to solicit public comment on a reorganization proposal? If not, why not?

**Answer:** As indicated in a previous response, our intention is to continue to work with Department staff, Congress, governors, and stakeholders to develop a fulsome plan for the new



organizational structure. Any bureau relocation will occur in the future, only after such input has been received and after Congress approves any necessary reprogramming request. The Department will adhere to the preferences expressed by Tribes. Department employees have also been encouraged to email any ideas on this topic, and a web portal has been established to make available several options for providing feedback on the reorganization.

- d. During the hearing, we talked about the fact that coordination on issues is often challenging because bureaus have to reconcile different statutory missions. How does this reorganization fix that problem? How does the proposed reorganization take into account the different legal authorities and mandates given to separate Interior bureaus?

**Answer:** We believe that organizing the Department's bureaus within common geographic areas will allow for more integrated and better coordinated decision making across bureaus and help streamline operations. Bureaus within a region will also be focusing on common issues, geographies, and landscapes, and thus taking a comprehensive approach instead of a bureau-centric approach.

Moreover, moving decision-making authority to the regions and away from Washington, DC, will allow managers in the field to make better-informed decisions than those made in headquarters, often thousands of miles away, and to implement more responsive decision-making regarding the needs of State and local governments and stakeholders. This responsiveness will also be enhanced by the creation of an Interior Regional Director position, which will serve as an arbitrator, facilitating coordination among bureaus in a region and allowing for a more integrated and better coordinated decision-making process.

- e. How will proposed changes streamline interaction with the non-Interior agencies like the Army Corps, NOAA, and Forest Service, that you've highlighted on the complexity of Federal decision-making? Are you engaging these other agencies and soliciting their input as part of the reorganization planning effort?

**Answer:** We believe that the same benefits of more integrated and better coordinated decision making will result from this reorganization. We will also invite other agencies to co-locate with us or designate liaison officers to each of our common regions.

- f. What are you specifically proposing to spend the \$17.5 million in your budget request for the reorganization on—especially since the plans don't seem final? Are there specific FTE actions, including relocations, assumed as part of this budget proposal?

**Answer:** The funding request included in the FY 2019 DOI budget involves a separate initiative to relocate one or more Bureau headquarters in the west nearer to the DOI lands being managed. At this time, there is no specific proposal for which we would seek Congressional direction. We anticipate the development of specific plans during FY 2019.

- g. How is DOI determining the total costs of the proposed reorganization? Does the plan factor in short- and long-term expenses from relocation costs and other personnel-related actions?

**Answer:** We have not, at this early stage, conducted a cost-benefit analysis, as we think there is little cost associated with changing lines on a map.

- h. Does the Department expect to implement any Reduction-in-Force action to implement any part of the reorganization proposal?

**Answer:** We have no plans to implement a Reduction in Force related to this reorganization.

- i. What kind of cost-benefit analysis is the Department performing on the proposal?

**Answer:** As indicated in response to an earlier question, we have not, at this early stage, conducted a cost-benefit analysis, as we think there is little cost associated with changing lines on a map.

- j. New Mexico's BLM State Office oversees four States—New Mexico, Kansas, Texas and Oklahoma—that face similar land management issues, including oil and gas development. Yet under your most recent proposed map, New Mexico will be in one region, while the other States are in other regions. How will issues that span the boundary between these four States be addressed by your proposal? And why is this new structure more efficient and effective than the status quo?

**Answer:** For those projects, agreements, or plans that are split between two or more regions, the region that is designated the lead region will be the one whose staff and expertise is best positioned to bring the activity to a successful completion. The goal is to have more integrated, responsive, and better coordinated decision making.

- k. There Department has more than 4,000 FTE in New Mexico, including hundreds of employees located at the FWS and BIA regional offices in Albuquerque. Does your proposal include any plans—on a short- or long-term basis—to relocate any of those positions out of State?

**Answer:** Although the objective is to relocate staff resources closer to Interior's stakeholders in the West from the D.C. area, we do not have specific relocation plans at this early stage.

- l. What concerns are you hearing from your employees—and how are you addressing them?

**Answer:** In January 2017 we conducted a two day workshop involving career SES Regional Directors from all of our bureaus, as well as a number of their colleagues from bureau headquarters. During this workshop event we engaged in a conversation about how to best structure and pursue the adoption of common regions. Many of the suggestions coming out of that event were incorporated into the draft map of our proposed Department level regions. In addition, the Secretary, in his visits to DOI field installations around the country, routinely talks to employees about our reorganization proposals. Department employees have also been

encouraged to email any ideas on this topic, and a web portal has been established to make available several options for providing feedback on the reorganization.

**Udall Question 4:**

- a. Please provide a detailed list of agency actions developed in response to each of the four recommendations issued by the Office of the Inspector General on April 10, 2018, regarding Senior Executive Service reassignments. Those recommendations are as follows:

1. Document a plan for reassigning senior executives to ensure accountability for transparent, economical, and efficient Government.

**Answer:** The Department implemented Senior Executive Service (SES) reassignment best practices on April 30, 2018. These included (1) establishing a written record for the SES reassignment before the ERB's notice to the SES employee incorporating the reasons for the reassignment within the notice of the reassignment; (2) communicating the reassignment with the SES employee in a respectful manner; (3) reaching outside of Interior to broaden the executive bench; and (4) building upon plans to increase the number of SES members who are rotating to improve talent development, mission delivery and collaboration in a strategic manner.

2. Communicate with all affected senior executives and supervisors before issuing notifications of reassignment to maintain a transparent reassignment process and to gather the information needed to make informed decisions.

**Answer:** One of the best practices includes communicating the reassignment with the SES employee in a respectful manner. Specifically, it is expected the bureau/office leadership would personally contact and consult with the impacted SES member to discuss and provide the business reason for the reassignment, as well as allow an opportunity for the SES members to express personal issues, preferences and alternatives, if appropriate.

3. Estimate and plan for all costs associated with geographic moves.

**Answer:** The Department of the Interior established a reassignment checklist, which outlines documentation that needs to be provided and criteria that needs to be addressed to the Executive Resources Board when a reassignment is requested. One of the criteria is if the reassignment involves a geographic move, the bureaus' request must acknowledge the bureau/office has planned for the cost of the move and has available funds.

4. Implement the guidance outlined in the OPM's September 9, 2009 memorandum for establishing an ERB, to include developing a formal charter detailing the roles and responsibilities of all members; including a mix of political, nonpolitical, career, and noncareer members; and requiring appropriate documentation.

**Answer:** The Department of the Interior's Executive Resources Board established a charter effective April 27, 2018. The charter outlines roles and responsibilities of all members and outlines standards for documentation of the meetings and retention of records.

- b. Please provide copies of any agency documents developed to govern the Executive Resources Board process specifically or the SES reassignment process generally, including any directives related to records documentation.

**Answer:** All the documents referenced in this response are included: 1) a copy of the memo "Senior Executive Service Reassignment Best Practices" dated April 30, 2018; 2) a copy of the SES Reassignment Checklist; and 3) a copy of the Executive Resources Board Charter.




# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

Memorandum

APR 30 2018

To: Deputy Secretary

From: Acting Deputy Assistant Secretary for Human and Diversity 

Subject: Senior Executive Service Reassignment Best Practices

This memorandum proposes best practices for reassignments of Senior Executive Service (SES) employees both at the individual decision level and the programmatic level.

## Background

The SES was established by Title IV of the Civil Service Reform Act of 1978, which is codified at 5 U.S.C. § 3131. One of the key statutory characteristics of the SES is its mobility. The law specifically provides that the SES shall be administered to “enable the head of an agency to reassign senior executives to best accomplish the agency’s mission.” 5 U.S.C. § 3131(5). Best practices for SES reassignments focus on how coherently and helpfully to implement this broad authority as informed by the sources identified below.

## 1983 General Accounting Office (GAO) Opinion<sup>1</sup>

The GAO issued a 1983 opinion about SES reassignments at the Department of the Interior following the reassignment of 22 SES employees that year pursuant to a Career Enhancement Program (CEP).<sup>2,3</sup> One of the features of the CEP was a focus on SES reassignments between the Department’s bureaus. About 25% of SES employee moves prior to the CEP were between bureaus whereas 64% of the moves under the CEP were between bureaus.

Based on their interviews of SES employees who were reassigned under the CEP, GAO concluded that 19 of them accepted the reassignments without protest and three of them considered their reassignments to be involuntary. Some of the SES employees who were reassigned also believed their reassignments were punitive or politically motivated. GAO also found that there was confusion within the group of SES employees who were reassigned about

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<sup>1</sup> The GAO changed its name to the General Accountability Office in 2004.

<sup>2</sup> Letter from GAO Director William J. Anderson to U.S. Representative Patricia Schroeder, B-2016360, (Nov. 5, 1983) (on file with author).

<sup>3</sup> The Office of Human Resources does not have any records on file that explain the parameters of the CEP. Nevertheless, GAO reports that under the CEP the Assistant Secretary-Policy, Budget, and Administration assigned each bureau a target number of SES employees to be reassigned by September 30, 1983. These targets were based on the number of reassignments that had occurred in the past and the Secretary’s overall goal to reassign 25-35% of executives. The goal was to reassign 31 of the 113 eligible executives (27.4%) but only 22 (19.5%) were ultimately reassigned. Six of the reassignments included geographic moves.

how the CEP actually worked and there was evidence the CEP process was not rigorously followed.<sup>4</sup>

While GAO did not find any violations of law, they did conclude that increased communications between management and SES employees concerning career choices might have helped to alleviate the negative feelings some executives had about reassignments.

### **2014 Senior Executive Association (SEA) Opinion**

The SEA published an opinion regarding the rights of an SES employee pursuant to a reassignment outside of his commuting area on August 1, 2014, that sheds some light on best practices. The SES employee was in his sixties, had served in Federal service for over 25 years, and had financial and family reasons for remaining in the local commuting area.

SEA informed the SES employee that a reassignment outside of a commuting area requires an agency to give an SES employee 60 days of advanced notice and an opportunity to consult beforehand. SEA made clear that consultation does not mean negotiation, however. Rather, management ultimately has the right to reassign the executive against the employee's wishes even outside of a commuting area if there is a legitimate management reason.

Nevertheless, SEA encouraged SES employees to use the consultation period to inform management of their interests and/or concerns (e.g. economic, health, personal) or to provide alternatives to the proposed reassignment (e.g. local reassignment; shorter-term detail; voluntary down-grade; discontinued service retirement, if eligible).<sup>5</sup>

### **Office of Personnel Management (OPM) Guidance**

OPM has promulgated a regulation for implementing SES reassignments that provides agency heads with broad authority to reassign SES employees. "A career SES appointee can be reassigned to *any SES position for which qualified*" (emphasis added) subject to some minimal procedural steps discussed below.<sup>6</sup>

OPM has made clear that the SES was intended to be a corps of senior executives, not technical experts.<sup>7</sup> The executive core qualifications (ECQs) define the competencies needed to build a Federal corporate culture that drives results, serves customers, and builds successful teams and coalitions within and outside the organization. The ECQs are the primary selection criteria for

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<sup>4</sup> According to GAO, Interior reported that the CEP process as one in which SES employees had input by submitting resumes outlining their career goals but only three of the twenty-two reassigned executives submitted a resume, ten never expressed any desire to change positions, and eleven did not know their reassignments related to the CEP. Some SES employees told GAO that they wanted more input in choosing their career paths, especially considering their executive level.

<sup>5</sup> SES employees also have the legal recourse of challenging directed reassignments by appealing to the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Office of Special Counsel.

<sup>6</sup> 5 C.F.R. § 317-901(a).

<sup>7</sup> OPM Guide to the Senior Executive Service, March 2017, at 5.

the SES. While technical job-specific qualifications are important, the essence of the SES is the ability to lead. Most SES employees are therefore qualified for most SES positions.<sup>8</sup>

The procedural steps alluded to above related to notice requirements for reassignments and they differ depending on whether the reassignment is within or outside of the SES employee's commuting area.<sup>9</sup>

- For non-geographic reassignments, an agency *must* give SES employees written notice at least 15 calendar days before the effective date of reassignments within their commuting areas and *may* consult with SES employees before the issuance of the notices. OPM encourages such prior consultation.
- For geographic reassignments, an agency *must* first consult with SES employees on the reasons for reassignments and SES employees' preferences about the proposed reassignments. Agencies *may* (and OPM encourages them to) consider the personal concerns of SES employees in addition to the agency's needs and objectives in deciding on whether to reassign SES employees out of their commuting areas. *Following consultations*, the agency *must* provide SES employees written notice at least 60 calendar days before the effective date of reassignments. Notices *must* include the reasons for the reassignments.

In addition to framing this broad authority to reassign SES employees, OPM has developed guidance that promotes SES movement as part of a continuing executive development. Developmental opportunity options include details, sabbaticals, Intergovernmental Personnel Act assignments outside of the Federal government, significant participation in interagency projects, and reassignments. According to OPM, all SES employees should pursue one of these kinds of developmental opportunities at least once every 3-5 years.<sup>10</sup> In support of the Executive Order "Strengthening the Senior Executive Service", OPM has issued guidance to agencies to develop plans to increase the number of SES members who are rotating to improve talent development, mission delivery, and collaboration. Interior has not yet developed such a plan.

Individual SES employee reassignments will always be an appropriate management tool for the Department to use in order to redirect executive assets where the agency needs them. That tool can be used within the context of a strategic plan for managing SES employees that has the goals of improving talent development, mission delivery, and collaboration.

### **Best Practices for Managing SES Reassignments**

The following list of best practices is based on the above referenced authorities:

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<sup>8</sup> There are some SES positions that require specific technical qualification that not all SES employees possess. SES attorney positions in the Office of the Solicitor, for example, require the SES employee to possess a Juris Doctorate degree in order to authorize them to practice law. Absent narrow exceptions like this, most SES employees are qualified for most SES positions and therefore can be reassigned into them.

<sup>9</sup> OPM SES Desk Guide, December 2016, at 3-2.

<sup>10</sup> Memorandum from Michael W. Hager, Acting OPM Director for Chief Human Capital Officers, re: Guidelines for Broadening the Senior Executive Service, at 2.



1. Establish a written record for the SES reassignment before the ERB's notice to the SES employee; incorporate the reasons for reassignment within the notice of the reassignment.
  - a. This written record should be established before the ERB's notice to the SES employee about the reassignment.
  - b. The ERB's notices must include a legitimate management basis for the decision. This basis can include the foundational reasons for SES mobility such as executive development and enhancing collaboration and innovation.
  - c. To the maximum extent possible, the basis for the reassignment of SES employees should include reasons why they are needed in and/or would be a good fit for the positions into which they are proposed to be reassigned.
  - d. The notice should be reviewed by the Office of the Solicitor for legal sufficiency and the Office of Human Resources-Executive Resources Branch for technical sufficiency prior to ERB action.
  - e. Organizations proposing SES reassignments to the ERB should prepare memos seeking ERB action. Proposed SES reassignments between organizations could be a joint memo from the organizations which would gain and lose the SES employee. At the request of the ERB chair, leadership from the affected organizations could make a brief presentation to the ERB to justify the action.
  - f. SES reassignment proposals will clarify that the bureaus have planned for the costs of reassignments that involve geographic relocations.
2. Communicate about a reassignment with the SES employee in a respectful manner.
  - a. Personal engagement is a sign of respect. Someone in a position of authority should talk to SES employees about reassignments and provide the basis for them before the notice and regardless of the location. This person could be an ERB member, an assistant secretary or equivalent, a bureau director, or the Chief Human Capital Officer.
  - b. Another sign of respect is to listen to the interests of the SES employee who is proposed for reassignment as part of the consultation process, even for proposed reassignments within a commuting area. Management should solicit and consider alternatives SES employees may offer in response to notices of reassignments.
  - c. Management can and should make clear that the reassignment decision is ultimately management's decision, however, so as to avoid confusing the SES employee about the nature of the consultation. The consultation is not a negotiation.
3. Reach outside of Interior to broaden the executive bench.
  - a. Other Federal agencies have experienced executives who could enhance the Interior executive ranks and increase our capacity to work across organizational lines. Interior should develop stronger connections to other agencies, especially other Federal land-management agencies, to promote inter-Departmental executive mobility.
  - b. Interior should actively recruit with other Federal land-management agencies for candidates for our next Senior Executive Service Candidate Development Program (SESCDP) in order to develop future leaders with broad backgrounds. We should also actively seek slots in SESCO classes managed by other Federal Land-management agencies.



4. Build upon plans to increase the number of SES members who are rotating to improve talent development, mission delivery, and collaboration in a strategic manner by providing the ERB with sufficient information to manage executive resources strategically.

## SES Reassignment Checklist

### ***Documentation Required for ERB Request***

- Request memo to the ERB from the Bureau/Office head through the Assistant Secretary or equivalent, as appropriate.
- If the reassignment is between Bureaus/Offices, the reassignment request should be signed by both Bureau/Office heads to indicate concurrence/coordination of the request.
- Written Notice of SES Reassignment from the Bureau/Office head to the executive.
- Copy of the Executive's updated resume.
- Copy of the position description (if the position description is more than 5 years old, the PD should be reviewed and updated with current signatures).
- Copy of the Executive's last performance appraisal.

Below is a list of the points that need to be included in the request memo to the ERB for SES reassignment requests and written notice of SES reassignment. The Bureau/Office head who is requesting the reassignment should be prepared to discuss all of these points with the ERB.

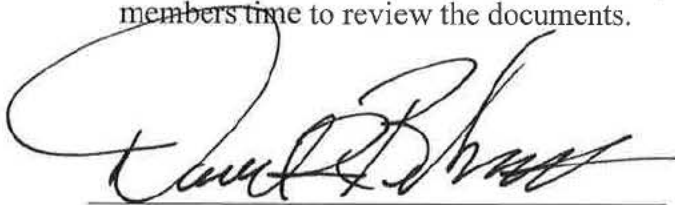
- Potential reassignment has been discussed with the impacted executive.
- Business case to support the reassignment, including a summary of the Executive's experience and skill set, as well as what the executive is expected to bring to the position or what the reassignment will provide the executive in terms of experience/growth.
- How long has the Executive been in their current SES position? How long has the executive been in the SES?
- If a pay increase is being requested, what is the justification to support the pay increase?
- If the reassignment involves a geographic move, the request should indicate that the bureau has planned for the cost of the move.
- If a relocation incentive is being requested, what is the justification to support the relocation allowance? A detailed justification must be provided in the ERB request memo, including the amount, the duration, the length of the service agreement, and the business case to support the request.

**U.S. DEPARTMENT OF THE INTERIOR**  
**EXECUTIVE RESOURCES BOARD CHARTER**

1. **OFFICIAL DESIGNATION.** Executive Resources Board (ERB).
2. **AUTHORITY.** 5 U.S.C. § 3131; Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); 5 C.F.R. § 317.501.
3. **OFFICIAL TO WHOM THE BOARD REPORTS.** The ERB reports to the Secretary.
4. **OBJECTIVES AND SCOPE OF ACTIVITIES.**
  - a. The ERB shall be the single Department-wide board to assist the Secretary in the general management of the Department's executive resources.
  - b. The ERB shall: conduct the merit staffing process for career appointments in the SES, including reviewing the executive qualifications of candidates for career appointment and making written recommendations thereon to the appointing authority (5 U.S.C. 3393(b)); approve the individual development plan of each candidate participating in an SES CDP (5 CFR 412.104(d)); and oversee the development and certification of Presidential Management Fellows (5 CFR 362.204)
  - c. The ERB shall provide oversight of and make recommendations on the various policies, programs, and practices related to the Department's Senior Executive Service (SES), Senior-Level (SL), and Scientific and Professional (ST) employees including but not limited to:
    - i. Personnel merit staffing and placement;
    - ii. Position management;
    - iii. Performance management;
    - iv. Resource utilization;
    - v. Executive development/succession planning; and
    - vi. Executive compensation.
  - d. The ERB shall not have jurisdiction over SES employees in the Office of the Inspector General.
5. **DESCRIPTION OF DUTIES OF MEMBERS.** The Secretary shall select the Chair and Members of the ERB, including the Advisor to the ERB, from among the ranks of the Department's non-career and career SES, SL, and ST employees.
  - a. Chair. The Deputy Secretary serves as the Chair and shall be responsible for:
    - i. Presiding over the ERB;

- ii. Determining the need for and convening ERB meetings;
  - iii. Validating actions that require the full ERB review;
  - iv. Providing expert advisory assistance;
  - v. Assigning actions not requiring full ERB review to the appropriate office or approving such actions (the Chair shall notify ERB members of such actions during the next scheduled ERB meeting);
  - vi. Approving ERB meeting minutes;
  - vii. Ensuring adherence to procedures; and
  - viii. Ensuring timely and sound ERB recommendations and decisions.
- b. Members. The members shall be a mix of non-career and career executives. Members shall be responsible for:
- i. Providing advice to the Chair about executive resource management; and
  - ii. Reviewing and preparing to discuss agenda items before ERB meetings.
- c. Advisor. The Chief Human Capital Officer shall serve as an ERB Advisor and the Deputy Chief Human Capital Officer shall serve as an alternate ERB Advisor. The ERB Advisor shall be responsible for:
- i. Developing, publishing, and distributing the ERB agenda and supporting material to designated board members;
  - ii. Documenting attendance and keeping minutes of ERB meetings;
  - iii. Maintaining a file of applicable regulations, policies, and correspondence pertaining to the ERB functions; and
  - iv. Developing appropriate standard operating procedures to ensure the decisions of the ERB follow sound practices and are properly documented.
- d. Staff. The Office of Human Resources-Executive Resources Division (OHR-ERD) shall provide technical and administrative support to the ERB at the direction of the Chair and the Advisor. The OHR-ERD shall maintain the official records of the ERB for a minimum of two (2) years.

6. **ESTIMATED NUMBER AND FREQUENCY OF MEETINGS.** The ERB shall meet at least quarterly and as otherwise necessary at the discretion of the Chair. ERB members would need to have these documents 5 days before the scheduled meeting to allow ERB members time to review the documents.



Chair, Executive Resources Board

APR 27 2018

Date

- c. What objective criteria is the agency using to decide future SES reassignment decisions—and how is agency leadership ensuring that SES reassignments are being made to leverage the skills of senior employees for the benefit of the agency and provide important leadership and professional development opportunities?

**Answer:** As outlined in the memo “Senior Executive Service Reassignment Best Practices” dated April 30, 2018, reassignments are to be based on legitimate management reasons. Requests for reassignments and reassignment notifications to the SES members are to include reasons why they are needed in and/or would be a good fit for the positions into which they are to be reassigned.

- d. What are the total financial costs to the agency, including relocation costs, associated with the 27 SES reassignments covered by the Inspector General’s report?

**Answer:** Of the 27 SES reassignments covered in the Inspector General’s report, only a small portion actually involved geographic relocations. Transferred Federal employees may receive entitlements such as enroute per diem and transportation for the employee and family, miscellaneous moving expenses related to ending and beginning residence at an old and new duty station, residence transactions (closing costs) related to the sale or purchase of a residence to include lease termination costs, and household goods shipment and regular storage. Transferred employees may also receive discretionary expenses such as a house hunting trip, temporary quarters subsistence expenses, shipment of a personally owned vehicle, use of a relocation services company, and home marketing incentive payments. Transferring employees cost on average about \$90,000 to \$100,000 to geographically relocate, but expenses will vary based on the entitlements that a transferring Federal employee receives.

**Udall Question 5:** Leading up to the March scoping report on sage grouse plan changes, BLM lost thousands of public comments.

- a. How is the Department reevaluating its plan changes now that these comments have been found?

**Answer:** The BLM did not receive public comments from two organizations. We have worked with those two organizations to ensure their input was captured in the BLM’s project record. The missing comments, once received by the BLM, were reviewed, analyzed, and found to be consistent with existing issues identified by other members of the public. These comments did not offer substantive new information or change the scope of issues that the BLM is addressing in its land use plan amendments. The BLM also issued an addendum to its March scoping report reflecting the addition of new comments.

- b. How will the Department remedy the breakdown that occurred in this instance to ensure that a similar event does not occur during future public comment periods?

**Answer:** The BLM takes seriously its obligation to engage with and listen to the American public. In this case, it remains unclear why the BLM never received the automated form letters generated electronically by the two organizations. The BLM reviewed and researched the event and found no flaws with any of the BLM email systems that receive public comments. Going forward, the BLM will use the BLM NEPA Register (generally known as “ePlanning”) which provides a digital receipt upon successful submission of any comments.

- c. How will the revised sage grouse plans released earlier this month, which remove sagebrush focal areas designations and encourage categorical exclusions for development projects, allow the Department to prioritize conserving the big-game winter range and migration corridors on the sagebrush steppe that is the subject of Secretarial Order 3362?

**Answer:** Sagebrush Focal Areas do not contain management actions designed specifically to affect big game habitat. The management flexibility proposed in the Greater Sage Grouse plans still requires the BLM to carefully consider the potential impacts of development activity on sage grouse and sagebrush habitats. None of the management actions proposed in the Greater Sage Grouse plans would preclude the Department’s ability to address and manage big game winter range habitat and migration corridors. Big game habitat and migrations corridors will continue to be managed in sagebrush steppe in accordance with BLM and DOI policy and S.O. 3362.

- d. What is the Department doing to ensure proposed lease sales on public land do not include important migration corridors and crucial winter range for big game species while also pursuing “energy dominance”?

**Answer:** The Department works extensively with State fish and wildlife agencies, the Western Association of Fish and Wildlife Agencies (WAFWA), and other partners to identify, conserve, and enhance important big-game populations, winter range, and migration corridors habitat on Federal lands. Proposed lease sales, like all Federal actions, must be in compliance with the BLM’s approved Resource Management Plans and are subject to interdisciplinary environmental review and analysis for impacts to a variety of resources, including crucial wildlife winter range and migration corridors. Final agency decision documents disclose all impacts of the associated action and include project design features and site-specific implementation requirements to balance winter range and migration corridor habitat conservation and management objectives with energy development.

The Department also helped fund development of WAFWA’s Crucial Habitat Assessment Tool (CHAT), which provides an online map of priority wildlife habitat for use in the Department’s planning and permitting processes. This tool helps agencies avoid or mitigate negative impacts to important wildlife habitat resources.

The BLM is working closely with western States to obtain comprehensive winter range habitat data for bighorn sheep, deer, elk, and pronghorn for use as part of planning and project environmental reviews. States have primary authority over management of wildlife and

designation of crucial wildlife habitat within their boundaries and the Department is proactively working with the States to review and update Federal-State Memoranda of Understanding to reflect new management priorities, improve cross-boundary resource management, and better serve the accomplishment of mutual objectives associated with game species population management and conservation of winter ranges and migration corridors.

- e. The 2015 decision by the Fish and Wildlife Service not to list the greater sage grouse for Endangered Species Act protections was founded on the habitat protections included in Federal land use plans, many of which the Department is proposing to remove in the revised sage grouse plans released earlier this month. Did the Department take into account how the revisions could lead to a warranted decision for the sage grouse when the Fish and Wildlife Service initiates its next five-year review?

**Answer:** The 2018 Greater Sage-Grouse plan amendments seek to improve alignment with State management plans, increase the BLM's management flexibility and improve access to public lands and resources. An important criteria in the BLM's planning efforts is the status of Greater sage-grouse. The Department, State governments and local governments share the management goal of conserving sage grouse and sagebrush ecosystems to avoid the need to list the Greater sage-grouse as a threatened or endangered species. The draft plans remove overlapping designations, clarify management strategies, and better align with the conservation measures of each State. Removing certain plan designations like Sagebrush Focal Areas does not necessarily change the underlying management for the species.

**Udall Question 6:** To date, the only national monuments to be recommended for modifications are Bears Ears and Grand Staircase-Escalante, based on your monuments review in 2017.

- a. Are there any plans to modify any other existing monuments that were reviewed during that process?

**Answer:** As directed by Executive Order 13792, Secretary Zinke reviewed certain designations under the Antiquities Act. As part of this process, the Secretary provided final recommendations to the White House on December 5, 2017. The decision to act on any of these recommendations will ultimately be made by the President.

- b. Over 99% of the 2.8 million comments to the Department related to the national monuments review opposed making changes. Given this overwhelming and near unanimous opposition, how were these public comments considered relative to the interests of those with a desire to develop resources from the land protected within the original monument designations?

**Answer:** Collecting public comments was one of the three primary steps completed as part of the National Monument review process. The first step included gathering facts by examining existing proclamations and object(s) to be protected, and considering segregation of the object(s) to meet the "smallest area compatible" requirement in accordance with the Antiquities Act of 1906. Additional information was collected about the scientific and rational basis for the

boundaries, land uses within the monument, public access concerns, authorized traditional uses, and appropriate environmental and cultural protections. The second step included holding meetings with local, State, tribal, and other elected officials; non-profit groups; and other stakeholders, as well as providing an online format for public comment. The final step included a review of policies on public access, hunting and fishing rights, and traditional uses such as timber production and grazing, economic and environmental impacts, and potential legal conflicts, which culminated into the final December 5, 2017 report. Public comments were considered in concert with the information gathered at other steps in the review process to develop the recommendations included in the final report.

- c. If oil and gas development and uranium mining aren't, in your view, potential activities in Bears Ears, what are the activities you want to allow that wouldn't be permissible under the 2016 designation?

**Answer:** The range of multiple uses that may be allowed within the boundaries of Bears Ears National Monument, as modified on December 4, 2017, and in the surrounding area (some of which may have been included in the 2016 designation) will be determined through the BLM's land use planning process. The BLM's planning process includes public scoping and ample opportunities for public comment and consideration of the interests of local communities.

- d. You've been clear in previous testimony that oil and gas was not part of your "decision matrix" on Bears Ears. Did the access to oil and gas, coal, or other minerals play a role in your recommendation to the President to shrink Grand Staircase-Escalante?

**Answer:** The Order listed several factors to consider when making that determination including the requirements and original objectives of the Antiquities Act, including the Act's requirement that reservations of land not exceed "...the smallest area compatible with the proper care and management of the objects to be protected"; the effects of a designation on the available uses of designated Federal lands, including consideration of the multiple-use policy of section 102(a)(7) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1707(a)(7)), as well as the effects on the available uses of Federal lands beyond monument boundaries.

**Udall Question 7:** Secretary Zinke, I know that you and I share a strong belief in the need to protect horses and I know how much you love them. I am encouraged that BLM's recent report to Congress identifies several non-lethal management techniques that can bring wild horse populations under control – thank you for providing us with options that include strong non-lethal management.

- a. Do you believe there are effective and sustainable options to manage wild horses and burros that do not involve killing them? Certainly, those who are ill or injured may need to be euthanized, but can you offer a way to manage our healthy wild horse population without sales that will lead to their slaughter and without having to destroy tens of thousands of mustangs?



**Answer:** The BLM is developing alternatives to manage wild horses and burros sustainably. A combination of removals, sterilization, and temporary fertility control treatments are necessary to achieve and sustain healthy wild horse and burro populations at appropriate management levels. However, without the currently prohibited management approaches, relying solely on removing more animals from on-range populations than can be placed in private care (adopted or sold) each year will result in significantly increased holding costs now and into the future. Under any of these management scenarios, the BLM is committed to keeping holding costs as low as possible through partnerships, off-range pastures, and innovative efforts to increase the numbers of animals placed into private care.

- b. One of the options detailed in the report is sterilization, which has not been utilized on a large-scale basis by the BLM. How does BLM plan to sterilize horses: what form of sterilization would be used, where will the sterilization be conducted, how will physical suffering be minimized, and what are the project costs?

**Answer:** The BLM is considering three principal surgical methods for large-scale sterilization work. Currently, there is no reliable chemical method to sterilize either mares or stallions. Gelding (castration) and vasectomy are two procedures that can be used to sterilize stallions. Spaying mares by surgically removing their ovaries would be used for sterilizing mares. The per-animal costs for these treatments are approximately \$100-200 for males and \$300-350 for females, which does not include gather and holding costs. Since a stallion and mare are typically treated together, the total cost per pair is approximately \$3,200. However, sterilization of mares remains the more reliable population growth control. Since one male can impregnate multiple mares, sterilization of an even large number of males has not been shown to effectively reduce population growth.

The procedures would take place in temporary holding facilities or in established corrals and would be conducted by veterinarians. The wild horse would be under aseptic conditions, with appropriate administration of anesthesia and analgesia. Animals would be monitored after the procedure for signs of discomfort. Any animals showing signs of post-operative complications would receive treatment as recommended by a veterinarian.

The BLM is initiating a sterilization study of mares in Oregon to research unanswered questions. This research will help assess the large-scale application of the surgical technique used for spaying, duration of recovery, and anticipated complication rates, among other factors. This study will help determine the direction the BLM will take in developing a sterilization program for long-term management of mares on the range. The proposed procedure will follow an animal care and use protocol approved by a university Institutional Animal Care and Use Committee to help ensure humane care during the study.

- c. The report notes that short-term fertility control agents, such as PZP, have not been effective in controlling large horse populations on sizeable Herd Management Areas (HMAs). Please provide information on where fertility controls have been used, noting HMA size and horse population, how many horses were treated, the drug administered, the number of years of control, and an explanation on why the treatment was not effective for each specific HMA.

**Answer:** Through FY 2017, using short-term fertility control (ZonaStat, PZP-22, GonaCon): 36 HMAs have been treated once; 50 HMAs have been treated at least twice, and 8 HMAs have been treated by darting at least once. These HMAs vary in size and numbers of animals treated. Overall, since 2004, the BLM has applied over 7,600 treatments in these 94 HMAs. In general, the difficulty in using short-term fertility control agents to control population sizes falls into three areas:

Logistically Improbable: In order to reduce an HMA's population to its Appropriate Management Level (AML), about 80 percent of the mares must be treated every year to have a population effect. In smaller HMAs, with low AMLs, this can sometimes be possible, depending upon terrain; however, in large HMAs or HMAs with difficult terrain, this can be nearly impossible in any given year, let alone every year. The more the animals are gathered, the more they learn to avoid the gather facilities and move into more remote areas of the HMAs.

Financially Inefficient: Since it would be impossible to gather only mares, and since populations are roughly 50 percent mare/stallion mixes, the BLM has to gather twice as many animals as the number of planned treatments. In addition, since these treatments are only effective for one year, the BLM would need to have funding to do these gathers every year on every HMA, which is logistically improbable. At current population levels and under the best of circumstances, it would take decades and billions of dollars to reach AML using only short-term fertility control treatments.

Darting Mares with short-term Fertility Control: While darting can be effective in small HMAs where animals can be easily approached, this method is not practical in large HMAs, those HMAs where populations far exceed AML, or in those with difficult terrain.

The BLM continues to use these short term fertility control agents as a component of its overall growth suppression strategy. In addition, the BLM continues to fund research projects related to developing longer lasting fertility control vaccines.

- d. One of the options detailed in the report is international transfers for humanitarian efforts or economic development. What new legal authorities are necessary to implement these transfers? How will BLM guarantee that animals transferred overseas be treated humanely and prevent those animals from being slaughtered or destroyed inappropriately? How will animals be transported and what are the prospective associated costs?

**Answer:** Legal authority to transfer wild horses and burros to nonprofit organizations or other countries for humanitarian purposes or to promote economic development outside the United States would be required. Purchasers must sign a clause certifying humane treatment of the animal; however, the BLM would have limited authority to enforce any agreement that other countries or citizens of those countries might make. Thorough vetting and building relationships with horse communities in these countries can help alleviate some concerns regarding the humane treatment of any animals going overseas. Transportation could take any number of forms and would depend upon multiple factors, but could occur via ship, aircraft, or truck.

Transportation costs vary widely depending on method and distance. The BLM is currently preparing a Request for Information that will be used to collect information from potential contractors related to transporting animals humanely over long distances to other countries.

**Udall Question 8:** The best available science, as assessed by the Western Association of Fish and Wildlife Agencies, has found that contact between bighorn sheep and domestic sheep poses a significant threat of transmission of respiratory disease to bighorn sheep and subsequent die-off.

- a. How is BLM following its guidance to achieve a “high degree of confidence that there is low to no risk” to bighorn sheep when domestic sheep grazing is authorized or renewed?

**Answer:** BLM guidance, 1730 - Management of Domestic Sheep and Goats to Sustain Wild Sheep, includes goals and objectives within land use plans, implementation-level plans, and land use authorizations to support sustainable wild sheep and wild sheep habitat in fulfillment of the BLM’s multiple-use and sustained yield mission. The BLM promotes sound management of domestic sheep and goats to sustain wild sheep and bureau-wide consistency to reduce the potential for contact between wild sheep and domestic sheep or goats that could result in disease transmission between the species. The BLM considers the potential for disease transmission in NEPA analyses. Wild sheep and domestic sheep and goat management activities are planned, implemented, monitored, and evaluated in consideration of current and desired conditions and the potential for future changes in landscape and environmental conditions.

- b. How is BLM effecting the separation of domestic sheep or goats from bighorn sheep on public lands and minimizing contact between the species?

**Answer:** To reduce the potential for disease transmission, the BLM considers (1) habitat distribution; (2) connectivity; (3) wild sheep occurrence; (4) wild sheep population numbers; (5) proximity of wild sheep populations to areas authorized for domestic sheep and goat grazing or trailing; (6) risk of inter-species contact; (7) domestic sheep and goat allotment boundaries and seasons of use; (8) domestic livestock operational needs; and (9) other pertinent parameters affecting the BLM’s ability to provide for effective separation when authorizing domestic sheep and goat uses on BLM lands.

- c. Is there any effective means to reduce the potential for disease transmission between the species other than physical separation? Is BLM analyzing the risk of contact before authorizing domestic sheep grazing and trailing in bighorn sheep habitat?

**Answer:** In addition to physical separation, temporal separation is included among tools for reducing potential for disease transmission.

Presently, a risk analysis is conducted when domestic sheep or goat grazing authorizations, including trailing, or other activities, are under consideration when (1) land use plans are developed, including revisions, relevant amendments, and implementation-level plans; (2) issuing or renewing domestic sheep or goat grazing permits; and (3) when risk has not previously

been analyzed or when new/updated science, information, analysis tools, models, or maps could substantially affect the results of a previous risk analysis, as determined by the BLM authorized officer (normally the BLM field manager). At the outset of planning and when identifying the range of alternatives in the NEPA review, the level of analysis should be commensurate with the presumed degree of risk for inter-species contact and potential disease transmission determined with coordination with partner agencies, Tribes, and permittees, and lessees.

- d. How is BLM ensuring that contact will not occur and that grazing allotments are not authorized in occupied wild sheep range?

**Answer:** Once the risk of contact between wild sheep and domestic sheep or goats is identified for a specific area, and for the range of alternatives in NEPA, the BLM authorized officer evaluates the identified level or extent of risk and determines if domestic sheep or goat grazing can occur and still achieve effective separation from wild sheep. The decision includes an assessment of how management practices and topographic features are expected to provide for effective separation as documented in the applicable NEPA analyses and decision documents for proposed activities. The higher the level of risk, the more likely that management practices or project design features will be incorporated into decisions to achieve effective separation. This includes not authorizing domestic sheep or goat grazing or trailing in high risk areas.

- e. What is the BLM doing to follow this Committee's direction related to bighorn sheep conservation and reducing conflict with domestic sheep grazing allotments on public land?

**Answer:** The Federal Land Policy and Management Act (FLPMA) directs BLM to provide opportunity to the public and affected interests, including domestic sheep grazing permittees, to participate in the analysis and decision-making processes for public land uses. Early and timely communication with other Federal agencies, States, Tribes, local governments, permittees, lessees, and partner organizations can identify areas where use conflicts or potential for conflicts may exist. These opportunities can also provide timely discussion to address or mitigate identified conflicts. Regulation and policy requires consultation, coordination and cooperation with these agencies, groups, and affected interests when renewing grazing permits. Public involvement primarily occurs through the NEPA and decision-making process. In addition, the BLM, with partner organizations, provides outreach to the public through educational efforts.

- f. How are grazing authorizations being implemented to ensure that effective separation results in a high degree of confidence that there is a low risk of contact with bighorn sheep?

**Answer:** BLM guidance for the management of domestic sheep and goats includes goals and objectives within land use plans, implementation-level plans, and land-use authorizations to support sustainable wild sheep and wild sheep habitat in fulfillment of the BLM's multiple-use and sustained yield mission. A risk analysis is conducted when domestic sheep or goat grazing authorizations, including trailing, or other activities, are under consideration during (1) land-use plan development, including revisions, relevant amendments, and development of implementation-level plans; (2) issuance or renewal of domestic sheep or goat grazing permits;

and (3) when the risk has not previously been analyzed or when new/updated science, information, analysis tools, models, or maps could substantially affect the results of a previous risk analysis, as determined by the BLM authorized officer (normally the BLM field manager). The potential risk of wild sheep contact or interaction with domestic sheep or goats will be analyzed using the best available science and information, best available models, and updated habitat maps. Grazing authorizations are implemented using this guidance to ensure that effective separation results in a high degree of confidence that there is a low risk or no risk of contact with bighorn sheep.

g. Are there high risk of contact allotments that have been reauthorized?

**Answer:** Risk is assessed and documented at the field office level. The information would need to be retrieved from field offices that manage bighorn sheep habitats and permitted domestic livestock grazing.

h. How many current grazing allotments directly overlap bighorn sheep occupied habitat? How does BLM review allotment renewals for risk of contact?

**Answer:** Eighty-five allotments with authorized domestic sheep or goat use overlap occupied bighorn sheep habitats. Domestic sheep grazing permits for allotments with bighorn sheep habitats are usually reviewed as part of the grazing permit renewal process. Reviews may occur at other times if high risk contact issues develop.

i. Is BLM renewing allotments that have been documented as high risk for contact?

**Answer:** When allotments are documented as high risk for contact, the associated permit(s) become priority for completing NEPA, for developing alternatives to current grazing, and for implementing actions to achieve effective separation. These alternatives may include changing timing of livestock use, closing portions of the allotment where risk of contact is high, closing the entire allotment to domestic sheep or goat use, or changing the type of use from sheep/goats to cattle. Permits may be modified to achieve effective separation. The BLM, along with partners such as the Wild Sheep Foundation, have worked with permittees to relinquish their domestic sheep permit, or where appropriate, to change from sheep to cattle grazing use.

j. How many allotments up for renewal in 2018 have been reauthorized and how many remain?

**Answer:** The BLM grazing administration database documents the number of grazing permit expirations and renewals. Grazing permits and allotments do not have a one-to-one correlation. Some permits have multiple allotments. Many allotments have multiple permits.

During fiscal year 2018, 1,985 permits are scheduled to expire. Reauthorization of these permits is done in accordance with the Federal Land Policy and Management Act (FLPMA) authority (Section 3023 of Public Law 113-291, NDAA 2015 amending Section 402 of FLPMA) and processed and issued with environmental analysis and other regulatory and legal requirements fulfilled.

- k. How many of those already renewed included new environmental analysis and how many of those remaining will receive environmental analysis?

**Answer:** At end of May 2018, 797 permits have been issued with environmental analysis and legal and regulatory requirements completed. An additional 568 permits are expected to be issued with environmental analysis and legal and regulatory requirements completed by the end of the fiscal year.

**Udall Question 9:**

- a. Under the December 22, 2017 M-Opinion related to incidental take and the Migratory Bird Treaty Act (MBTA), if another Deepwater Horizon or Exxon Valdez accident led to the death of millions of birds, and it was later determined that the responsible party was grossly negligent in taking basic steps to prevent the accident, would that no longer violate the MBTA's prohibition on taking?

**Answer:** The M-Opinion concludes that the MBTA does not apply when the intent and underlying purpose is not to take birds. Protections of publicly held natural resources, including migratory birds, under other authorities (such as the Comprehensive Environmental Response Compensation and Liability Act, Oil Pollution Act, and Clean Water Act) will still apply in these situations. Parties responsible for these incidents will still be held accountable under the incidental take prohibitions in the Endangered Species Act and Bald and Golden Eagle Protection Act, as well as any applicable State laws. The M-Opinion applies to all industries equally, and the Department will continue to work with our industry partners to minimize impacts on migratory birds, whenever proponents or operators are willing to work with us toward this goal.

- b. Under the December 22, 2017 M-Opinion related to incidental take and the Migratory Bird Treaty Act (MBTA), if an oil company knows that keeping an oil pit uncovered will kill thousands of migratory birds and a \$50 protective cover on the oil pit will prevent the massive harm, can the company now ignore this simple, inexpensive remedial measure and face no consequences?

**Answer:** Under the Department of the Interior's current interpretation of the MBTA, the mortality of birds caused by an activity that is not intended to kill birds would not be considered prohibited take. We will continue to work with industry and other partners who wish to minimize the impact on migratory birds from development and activities that may result in unintended or incidental migratory bird capture or mortality.

- c. How is the December 22, 2017 M-Opinion consistent with our treaty obligations with Canada and Mexico?

**Answer:** None of the four bilateral, migratory bird treaties that the U.S. holds with Canada, Mexico, Japan and Russia explicitly mentions prohibitions of take that is not fully intentional.

Each prohibits the deliberate take of protected birds and describes a close season, during which such take may not occur. The Migratory Bird Treaty Act of 1918, which is the U.S. implementing legislation for these four treaties, does not explicitly include incidental take nor explicitly exclude it from the list of prohibited acts in 16 U.S.C. 703.

- d. Will plea agreements previously entered into for unlawful incidental take under the MBTA that have ongoing effect continue to be enforced? Will the Department seek to undo those plea agreements?

**Answer:** There are no plans in place to undo plea agreements finalized prior to issuance of the M-Opinion.

- e. Did the Department engage in any analysis on the potential impact of this policy change on the populations of migratory birds and which species might be most affected? Did the Department consider any alternative approach that might have alleviated legitimate industry concerns?

**Answer:** The M-Opinion is not a formal policy or project that is subject to such analysis under existing Federal statute. Any project or step-down regulation developed from this interpretation of the MBTA would be subjected to formal analysis under applicable Federal statutes.

**Udall Question 10:** Congress provided \$333 million to the Department for LWCF programs in FY 2018. The Department's FY 2019 Budget includes \$2.3 million for inholdings and exchanges at the Fish and Wildlife Service and proposes \$25 million in rescissions of unobligated balances across the bureaus.

- a. How do you reconcile these funding amounts with your public statements of support for LWCF and your direct knowledge of the economic benefits this program brings to local communities?

**Answer:** I have been a long-time supporter of the LWCF program, and continue to be. The President's 2019 Budget focuses available funds on the protection and management of existing lands and assets. DOI manages more than 480 million acres of Federal land. Acquiring new lands is a lower priority than funding ongoing operations and maintenance and there is no request for major land acquisition projects in the President's 2019 budget request.

- b. Do Federal acquisitions that reduce the checkerboard pattern of land ownership, or improve public access make management of Federal lands more or less efficient?

**Answer:** Federal land acquisition can be important for public access to recreational activities and increasing administrative efficiencies. The checkerboard system has made it difficult sometimes to transit between Forest Service and BLM lands, and you need a bridge to go between the two. However, we also need to focus limited resources on the assets we already own. The President's 2019 Budget focuses available funds on the protection and management of existing lands and assets. Recognizing this, the 2019 budget includes a proposal to reauthorize

the Federal Land Transaction Facilitation Act. This important authority allows Interior to dispose of lands with low conservation values and use the proceeds to acquire lands with high conservation values.

- c. You have stated that we are loving our public lands to death. In that context, doesn't it make sense to acquire lands or conservation easements that open up more recreation and hunting access points, in order to increase the American public's recreational opportunities, ease the impacts of overuse, and keep pace with the growing usage of our public lands?

**Answer:** Land acquisition is a tool to consider, but in a constrained fiscal environment we need to take care of lands and assets we already own. Acquiring new lands is a lower priority than funding ongoing operations and maintenance.

- d. I am concerned that the Department has been slow to spend funds provided for Federal land acquisition projects through the Land and Water Conservation Fund. By my count, the Department is sitting on more than \$400 million dollars' worth of LWCF funds that Congress designated for specific projects in fiscal year 2018 and in previous years. These projects were identified by the Department as being important to protect sensitive landscapes or improve access for hunting and fishing and other recreation. Will the Department move forward on LWCF projects without further delay so we can protect these special places?

**Answer:** The Department will implement projects consistent with the 2018 enacted appropriations bill.

#### **Udall Question 11:**

- a. It is my understanding that you committed to Governor Scott that there would be no new oil and gas platforms off the coast of Florida. But you've also said that Florida is not exempt from the ongoing planning process. How are those statements complementary and how is your promise to the governor not pre-decisional? Why are you not giving similar commitments to other States that aren't interested in new drilling?

**Answer:** Section 18 of the Outer Continental Shelf Lands Act prescribes the major steps involved in developing the National OCS Program, including extensive opportunities for public comment. BOEM seeks a wide array of input during development of a National OCS Program, including information on the economic, social, and environmental values of all OCS resources. BOEM also seeks input on the potential impact of oil and gas exploration and development on other resource values of the OCS and the marine, coastal, and human environments. The Secretary will continue to review incoming information to inform his decisions on areas to be included or excluded from the National OCS Program.



- b. You have also said that there's little recoverable oil and gas from Maine to Maryland, and that new drilling in the Pacific Northwest is politically untenable. So why did you publicly state that Florida's Atlantic Coast, where there is recoverable resource, is off the table, but all the other States must wait for the studies to come back to show that there's no oil and gas?

**Answer:** BOEM has been engaging with State, local, and community stakeholders to obtain additional information for the Secretary to consider regarding environmental resources, other uses of the areas, and where potential interest in leasing exists, among other things. Inclusion of areas in the Draft Proposed Program (DPP) does not necessarily mean those areas will remain in the Proposed Program or Proposed Final Program for oil and gas leasing. The Secretary will continue to review incoming information to inform his decisions on areas to be included or excluded from the National OCS Program.

- c. What activities is the Department engaged in to evaluate the current organization of BOEM and BSEE as separate bureaus? If the Department decides to propose changes to their current structures, will you undertake a significant public process of public listening sessions, meetings with industry, taxpayer advocates, impacted States, and conservation stakeholders?

**Answer:** As part of the reorganization plan to improve overall operations, we are evaluating the structures of BOEM and BSEE. During this process, we are engaging with staff throughout the Department and will continue to do so as we move forward. No decisions have been made.

**Udall Question 12:** You have previously testified that it is sometimes difficult to delist or downlist a species that has recovered. I agree with you that we want animals to be successfully recovered and get off the list. How will the Department undertake such efforts with a Budget Request that includes a \$36 million cut to the programs that are necessary for delisting, downlisting, and recovery?

**Answer:** The funding levels in the President's FY 2019 budget request for the Ecological Services activity will allow FWS to address priorities including developing recovery plans, conducting five-year status reviews, and acting on recommendations to delist or downlist species in cooperation with other DOI bureaus, Federal agencies, States, and other stakeholders.

**Udall Question 13:** On April 20<sup>th</sup>, the Bureau of Land Management issued the Notice of Intent to prepare an environmental impact statement for leasing the Coastal Plain. Your agency has requested \$9.5 million toward this project. I would like to explore how this money would be spent.

- a. Can you explain to us how the resources requested in the budget will go toward the goals of robust tribal consultation and involvement? Will you be holding scoping meetings in all of the Gwich'in villages? How many government-to-government meetings do you plan to hold with each Tribe and how often will you hold them? Will you be translating

all of the materials into Gwich'in to that it can be understood? How will you plan to engage the Gwich'in villages in Canada that also rely on the Porcupine Caribou Herd?

**Answer:** The BLM held several meetings within Alaska Arctic communities prior to publication of the Notice of Intent to develop the Coastal Plain Oil and Gas Leasing Program EIS. Since publication of the Notice of Intent, the BLM has held government-to-government consultations, Alaska Natives Claims Settlement Act (ANCSA) Corporation consultations, and scoping meetings in the villages of Kaktovik, Arctic Village, Venetie, Utqiagvik, Fairbanks, Anchorage, and Washington, DC. Invitations for government-to-government consultation were sent to 15 villages. Currently, six villages have indicated they would like to be consulted. Government-to-government consultation will continue throughout the life of the project.

The Department is researching the feasibility of translating scoping materials into Iñupiaq and Gwich'in. We have ensured that Iñupiaq or Gwich'in translators are present for scoping meetings in Arctic communities.

The Gwich'in villages in Canada may participate in any of the public processes.

In addition, the Department intends to consult the International Porcupine Caribou Board in accordance with the international agreement between Canada and the United States for the conservation of the Porcupine Caribou Herd, and in accordance with Alaska National Interest Lands Conservation Act (ANILCA).

- b. Please describe division of resources between the agencies, including the role of Fish & Wildlife Service in regards to an oil and gas program on the Coastal Plain and what next steps that agency will be taking. Please also explain how you are involving the local Alaska Fish and Wildlife Service employees in the development and review of the environmental impact statement to ensure that the information is generated by those with the expertise and knowledge of the Arctic Refuge.

**Answer:** The BLM is the lead Federal agency for the Coastal Plain Oil and Gas Leasing Program EIS; the U.S. Fish and Wildlife Service (FWS) is a cooperating agency. The BLM will prepare the leasing document, consistent with 43 CFR 3130 regulations. As a cooperating agency, the FWS is integral to the identification of existing environmental information, development of alternatives, lease stipulations, best management practices, and review of draft products, including the draft and final EISs. BLM Alaska's interdisciplinary team is working closely with the Alaska Region FWS subject matter experts regarding each resource in which they have subject matter expertise, which includes weekly meetings to share information. In addition, FWS participates in all scoping meetings for the EIS. FWS leadership participates in Question & Answer (Q&A) panels with DOI and BLM representatives during scoping meetings, and FWS staff answers questions from stakeholders during the Open House events, as appropriate.

- c. Have your agencies identified the scientific information that needs to be updated so that it can evaluate the impacts of all phases of oil and gas? What are those scientific needs; please describe them in detail? What environmental studies will DOI complete before

evaluating and issuing any seismic authorizations? How are you ensuring adequate time to collect that information or conduct the necessary studies when the agency is also pursuing a one-year timeline? How much of the requested \$9.5 million dollars will go toward gathering the missing scientific information?

**Answer:** The BLM is refining its funding estimates for all anticipated activities needed to establish the competitive oil and gas leasing program in the Coastal Plain, including funds needed to complete the Coastal Plain Oil and Gas Leasing Program EIS. NEPA requires analysis and use of existing information. Should the BLM require additional resource information or monitoring needs to analyze subsequent project proposals, they will be identified in the Record of Decision (ROD). Currently, the BLM does not anticipate additional studies prior to the environmental analysis for future geophysical permits.

**Udall Question 14:** On March 31, 2018, Secretary Zinke amended Department Order 3345, which purported to delegate a "[a]ll functions, duties, and responsibilities" of the Assistant Secretary for Fish and Wildlife and Parks to Susan Combs, Senior Advisory to the Secretary. Please provide a comprehensive list of agency matters in which Ms. Combs has participated since March 31, 2018 under functions, duties, and responsibilities normally assigned to the Assistant Secretary for Fish and Wildlife and Parks.

**Answer:** Ms. Combs, as the Senior Advisor to the Secretary, exercising the authority of the Assistant Secretary for Fish and Wildlife and Parks, has been providing policy guidance and direction for the U.S. Fish and Wildlife Service and National Park Service as appropriate. She has also had responsibility for programs associated with the management and conservation of natural resources, lands and cultural facilities associated with the National Park and National Refuge Systems, and the conservation and enhancement of fish, wildlife and natural habitats.

**Udall Question 15:** On August 31, 2017, Deputy Secretary David Bernhardt issued Department Order 3355, which established new rules for the Department's obligations under the National Environmental Policy Act. Please provide a list of all Environmental Impact Statements, at any stage of drafting, that the Department is now preparing and considers governed by the rules set forth in Section 4(a) of the Order. Of this list, please describe (1) which Environmental Impact Statements have thus far prompted requests for deviation from the rules described in Section 4(a); (2) the outcome of those requests, and; (3) the person evaluating, granting, or denying those requests.

**Answer:** As part of implementing the Order, the Department is working to standardize internal review, coordination, and tracking of actions in progress.

**Udall Question 16:** Please explain, with specificity, the means by which the Royalty Policy Committee deliberates and votes on proposed policy recommendations to the Secretary.

**Answer:** On March 29, 2017, Secretary Zinke signed the Charter reconstituting the Royalty Policy Committee (Committee) in accordance with the Federal Advisory Committee Act (FACA). The Committee provides advice to the Secretary, through the Counselor to the Secretary for Energy Policy, on current and emerging issues related to energy and mineral resource development on Federal and Indian lands.

The Committee's membership is composed of four sectors: State governments, Tribal Governments, industry, and public interest/academia. In order for the Committee to reach decisions, there must be at least a majority of members present from each sector. In developing its advice and recommendations for the Department, the Committee strives to operate by consensus and with transparency. We post the agenda; meeting materials and minutes; and lists of attendees on the Committee website at [www.doi.gov/rpc](http://www.doi.gov/rpc).

The Committee has formed three Subcommittees: Fair Return & Value; Planning, Analysis, & Competitiveness; and Tribal Energy. Within each of these Subcommittees are numerous work groups that research and develop preliminary proposals for subcommittee consideration. In addition to the voting members of the full Committee, Committee alternates and subject matter experts serve on the Subcommittees and work groups. Neither the Subcommittees nor the work groups are decision-making bodies. To encourage transparency, each Subcommittee provides updates at the public meetings of the full Committee, summarizing its discussions and activities for incorporation in the Committee's public record.

Draft recommendations are developed by a Subcommittee, generally based on the research of the work groups. Once consensus is reached within the Subcommittee regarding a draft recommendation, it may be presented at the next public Committee meeting for the consideration of the full Committee. Meetings are announced at least 15 days in advance in the *Federal Register*, and meeting materials are posted on the Committee's website, in accordance with FACA regulations. At every public meeting of the full Committee, there is an opportunity for the public to present written or oral comments. The Committee also may invite one or more technical experts to present relevant information on specific agenda topics at full Committee meetings. These experts, however, only participate as presenters; they do not act as members of the Committee, and do not participate in Committee deliberations or decision-making concerning potential advice or recommendations to the agency.

At the public meeting, the Committee members discuss and deliberate the merits of any draft recommendations presented by the subcommittees. The Committee may accept, reject, edit, or return a draft recommendation back to the subcommittee presenting it for further work. Only once consensus has been reached among the members of the full Committee, after deliberation and discussion in a public meeting, may the draft recommendation be approved by the Committee and delivered to the Secretary as the Committee's recommendation.

**Udall Question 17:** As you know, the BLM's Resource Advisory Councils are made up of expert members of the public that advise the BLM on how policy and land management decisions impact various local interests. They are, in my opinion, one of the best tools we have to successfully integrate public input into Interior's decision-making. Many of these RACs,

however, waited for their charter renewals until just recently and have had no ability to advise your Department for over a year of this administration. Additionally, you have directed the public to address the political goals of this administration rather than serving as voices of the community, as their creation was intended. Can you explain the reasoning behind directing public advisory boards to advance certain political goals? Does this mean you will only listen to members of the public that are in line with this administration's policy agenda?

**Answer:** One of the Department's top priorities is to restore trust and be a good neighbor. The BLM recognizes the important role the Resource Advisory Councils (RACs) have in the lives of Americans. RACs must operate in a manner that is productive, transparent, and in compliance with the Federal Advisory Committee Act and other Federal regulations. The new charters provide clarity for RAC members and the advisory role they play for the Secretary of the Interior (Secretary) in accomplishing the Department's mission. By providing input on Secretary's and Executive Orders, where applicable, the RACs serve as important forums to listen to local communities and stakeholders regarding the business of the Department and the impact that Federal actions have on the public lands. The Department continues to renew the charters of the RACs so that all Americans have opportunities to provide input on the way the Department conducts stewardship. The continuing approval of nominations will have a balanced membership representing a variety of stakeholders and interests, as specified in Federal laws and regulations.

**Udall Question 18:** You recently appointed 15 representatives of the outdoor recreation industry to the "Made In America Outdoor Recreation Advisory Committee." According to documents obtained by *The Washington Post*, these new representatives include three people whom department officials flagged as potentially having a conflict of interest on the matter.

- a. Can you explain these conflicts of interest and pending lawsuits and what you are doing to address them?

**Answer:** The Department believes that you are referring to a list of possible committee members in which four had been identified under the heading "Potential Conflict of Interest" as being either concessioners or advocates for concessioner interests. In this context, the concessioners are private businesses typically operating within a National Park, whose financial interests may be affected by NPS actions and so may have their own interests in mind regarding certain issues. As is routinely the case for the Department's advisory committees, these and similar potential conflicts are addressed in the "Made in America" Outdoor Recreation Advisory Committee's charter in a provision that requires the recusal of a committee or subcommittee member from any specific party matter in which the member has a direct financial interest. This provision is at paragraph 13 of the committee's charter, with the heading "Ethics Responsibilities of Members."

- b. Can you speak to the committee's composition almost entirely of industry representatives--some with multi-billion dollar contracts--who stand to profit from your policy decisions?

**Answer:** With its focus on public-private partnerships, the “Made in America” Outdoor Recreation Advisory Committee is specifically intended to address issues relating to the leveraging of the private sector in support of improving access to, and the facilities available on, the nation’s public lands and waterways. As such, it is both necessary and desirable to engage with senior leaders in such industries to develop the optimal recommendations for Departmental actions to improve its programs. While the Department believes the mission of the committee is such that there is limited risk that committee members will be able to affect their own financial interests, to the extent that such concerns are raised, the committee members will be subject to recusal under paragraph 13 of the Committee’s charter, as discussed above.

- c. How will you ensure that the public’s interest and ownership of Federal lands and waters are prioritized and protected when such a large percentage of your advisors are driven by corporate profits?

**Answer:** Under applicable law, the committee’s functions are strictly advisory; any recommendations or advice it provides may only be implemented through additional action by the Department. In deciding on the appropriate action to take with respect to any particular recommendation, the Department takes seriously and will adhere to the principle that public service is a public trust and the ethics prohibition of the use of public office for private gain. This, along with any other procedural steps applicable to the proposed action, will ensure the proper prioritization of the public’s interest and ownership of Federal lands and waters.

**Udall Question 19:** Mr. Secretary, according to CNN, you recently stated "diversity isn't important," "I don't care about diversity," and "I don't really think that's important anymore." This followed a report that a disproportionate amount of career staffers you have reassigned have been minorities--nearly a third being Native American alone. How can you possibly reconcile this attitude with the [mission](#) stated on your website that the Department of Interior “protects and manages the Nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities”? Isn’t it clear that honoring America’s diverse cultural heritage is critical to fulfilling the mission of the Department you lead?

**Answer:** As you correctly noted, the Department’s commitment to diversity is embedded in our mission and within our workforce. DOI’s employees are on the front-lines everyday providing the American people critical services and support every day and throughout our nation. Secretary Zinke has demonstrated his commitment to Equal Employment Opportunity and diversity in the workplace through several high-profile initiatives such as tasking a working group to develop and implement bureau action plans related to the employees’ survey on harassment in the workplace, and a Civil Treatment training course for all SES and supervisors to bolster the Department’s efforts to create a work environment free from harassment. DOI’s new anti-harassment policy and bureaus’ action plans are also in alignment with the Equal Employment Opportunity Commission’s risk factors for harassment. For additional information, please see <https://www.doi.gov/employees/anti-harassment/>.

The Department continues to implement its Diversity and Inclusion (D&I) Strategic Plan. The D&I Strategic Plan sets specific goals, objectives, and performance measures, which ensure that the Department secures a high-performing workforce drawn from all segments of society; cultivates a culture that encourages collaboration, flexibility, and fairness; and institutionalizes diversity and inclusion as a key strategic priority across all of the Department's programs. In furtherance of the D&I Strategic Plan, the Bureau EEO Offices, and Human Resources Offices continue to develop and maintain partnerships and alliances with diverse professional organizations and educational institutions.

The Department leverages these relationships to reach a broader and more diverse pool of applicants for employment. In FY 2017, these organizations included, among others: League of United Latin Americans Citizens, Urban American Outdoors, Society for Advancement of Chicanos/Hispanics and Native Americans in Science, Minorities in Agriculture, Natural Resources and Related Sciences, Historically Black Colleges and Universities (HBCUs), and other Minority Serving Institutions. The Department continues share the power and diversity of its workforce through its social media presence to strengthen the Department's brand in improving recruitment and outreach efforts. The Department now has the capability to reach all colleges and universities and to expose the general public and the next generation of conservation stewards to its various functions and multitude of career opportunities. The Department continues to celebrate and support diversity in our workforce so DOI's mission can be accomplished.

**Udall Question 20:** During testimony last month in front of the Senate Energy and Natural Resources Committee you singled out pass programs for fourth graders, veterans, seniors and disabled people as rationale for your proposal to raise fees in our National Parks. What plans do you have to continue the very popular Every Kid in a Park program which encourages 4th graders to visit our public lands and has leveraged millions of private sector funding to defray transportation costs for low-income children?

**Answer:** The Department plans to continue support for the Every Kid in a Park program in 2018.

### **Questions from Vice Chairman Leahy**

**Leahy Question 1:** One of the missions of the National Wildlife Refuge System is to protect cultural resources on conserved land. The Missisquoi National Wildlife Refuge in Vermont has played a critical role in conserving Native American burial sites contiguous with the Refuge, helping to defuse difficult private land management controversies, while also protecting wildlife habitat. The Silvio O. Conte National Wildlife Refuge Comprehensive Conservation Plan even includes the following as part of its Vision Statement: "Working with our partners, we are inspired to protect and enhance the natural and cultural richness throughout the watershed."

- a. Considering the National Wildlife Refuge System commitment to cultural resources, and past successes in conserving Native American sites in Vermont, how will the Conte Refuge assess its conservation role in not only valuable natural resources, but also the ancient petroglyphs sacred to the State recognized Abenaki Tribe at the confluence of the West River and Connecticut River in Vermont?

**Answer:** Cultural resources protection, including Native American Sacred Sites, is an ongoing commitment of the U.S. Fish and Wildlife Service, including the Silvio O. Conte National Fish and Wildlife Refuge.

**Leahy Question 2:** You have been very clear about the priority that you place on increasing the efficiency of the Department of the Interior, and achieving that through a significant reorganization of regional geographies. A few draft plans have been circulated. One showed Vermont divided between two expansive new regions, which concerns me greatly. A second map, though lacking detail, appears to show Vermont split between the New England and Mid-Atlantic sub-regions.

- a. Does your reorganization plan for the Department of the Interior divide Vermont between two regions or two sub-regions? How does dividing one of the smallest States in the country such that two different DOI bureaus will be needed to coordinate delivery of services increase the Department's efficiency?

**Answer:** The Department took a science-based approach in developing these unified boundaries, and we are taking input from employees, States, Congress, and other stakeholders to develop a fulsome plan for the new organizational structure. While in some cases a State may be included in more than one of the new regions, experiences in the Bureau of Reclamation and Army Corps of Engineers indicate that such an arrangement works. The goal of the reorganization is to have more integrated, responsive, and better coordinated decision making.

**Leahy Question 3:** There have been recent reports that you have regularly used a personal email account to conduct official business. Under 44 U.S. Code § 2911, you must forward "a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record."

- a. Have you and are you currently complying with the law by forwarding any such records within the mandatory 20 day time period under our public records laws?

**Answer:** Yes

**Leahy Question 4:** I understand that in response to a recent D.C. Circuit Court opinion, the U.S. Fish and Wildlife Service (USFWS) is revising the procedure for assessing applications for the importation of elephant trophies and is currently considering trophy imports on an application-by-application basis.



- a. Since that D.C. Circuit Court opinion was issued on December 22, 2017, how many applications has the USFWS received for the importation of elephant trophies?

**Answer:** The Service has received 67 applications to import elephant trophies since the D.C. Circuit Court opinion was issued on December 22, 2017.

- b. How many of those applications for elephant imports been approved? What final decisions are still forthcoming or pending for those applications?

**Answer:** None of these applications has been approved or denied, as they are still under review (see below).

- c. The President has stated before that he “didn’t want elephants killed and stuffed and have the tusks brought back” into this country. What is your point of view on this matter? Will those case-by-case applications take into account the President’s position?

**Answer:** Import of African elephant sport-hunted trophies is allowed under the ESA, CITES, and the African Elephant Conservation Act when specific regulatory criteria are met. The FWS will grant or deny permits to import sport-hunted trophies on a case-by-case basis pursuant to its statutory authorities. As part of the permitting process, the FWS reviews each application received for import of such trophies and evaluates the information provided in the application as well as other information available to the FWS.

**Leahy Question 5:** During your testimony before the Subcommittee, when discussing the Migratory Bird Treaty Act (MBTA) you gave an example of “accidental take,” where you described a hypothetical scenario where a representative from an oil company that “is driving on a road in Montana and hits a bird in the windshield, accidentally.” Surely it is highly unlikely that in this hypothetical, with no other contributing circumstances, the individual would be held criminally liable. However, if that same oil company leaves its oil pits uncovered, even after thousands of birds have died there and the best available science says those pits should be covered as basic management practices, that is a different matter.

- a. Do you view the death of birds in those uncovered oil pits as an “incidental take” the same way you had with the accidental example you gave that oil company driving on a Montana road? Or should that oil company, with the uncovered oil pit, be held liable under the MBTA because it knowingly caused the take of birds because it was entirely foreseeable and expected to occur?

**Answer:** The M-Opinion concludes that take (pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt any of these actions) of migratory birds protected under the Migratory Bird Treaty Act (MBTA) that is not the purpose of the activity that resulted in take, is not prohibited under the MBTA. If the intent of the oil company is not to take birds, then any take resulting from exposed oil pits would be considered incidental and therefore not prohibited under the MBTA. However, as before the M-Opinion was released, the U.S. Fish and Wildlife Service

will continue to investigate and work with the Department of Justice to prosecute cases of prohibited take on a case-by-case basis. We will continue to work with industry and other partners who wish to minimize the impact on migratory birds from development and activities that may result in unintended or incidental migratory bird capture or mortality.

**Leahy Question 6:** I hear many concerns raised by Vermonters that under your leadership the Department of the Interior is not committed to keeping America's Federal lands public for the benefit of all Americans and instead is interested in privatizing our national parks and public lands.

- a. Do you oppose any and all proposals to privatize, sell off, or transfer America's public lands out of public ownership?

**Answer:** I adamantly oppose the wholesale sale or transfer of public lands out of public ownership. I do support the use of authorizations, such as the Federal Land Transaction Facilitation Act, which allow for the sale of low conservation value lands so proceeds can be used to acquire higher conservation value lands.

**Leahy Question 7:** The new "Made in America" Outdoor Recreation Advisory Committee announced in March appears to be comprised mostly of members who have a financial interest in the Department's policy decisions. In fact, your own staff had flagged that some of those members had potential conflicts of interest, but they were still selected to serve on the Advisory Committee.

- a. Are you stacking this advisory Committee with industry interests set to profit off of policy changes?

**Answer:** With its focus on public-private partnerships, the Made in America advisory committee is specifically intended to address issues relating to the leveraging of the private sector in support of improving access to, and the facilities available on, the nation's public lands and waterways. As such, it is both necessary and desirable to engage with senior leaders in such industries to develop the best advice and recommendations for Departmental actions to improve its programs. The Department did not select members simply because their industry may profit, but rather based on their diverse backgrounds and expertise in recreational industries.

- b. Why did Department officials reject for this Advisory Committee nearly every proposed individual who works in non-motorized outdoor recreation activities such as mountain climbing, hiking and kayaking?

**Answer:** The Department did not specifically reject such interests for the committee. Rather, the Department selected, consistent with applicable regulations, members with a balanced set of viewpoints with respect to the function to be performed, which is to provide advice regarding the

private sector's views on possible public-private partnerships to improve accessibility and infrastructure on public lands and waters.

**Leahy Question 8:** Vermont's climate is changing and the same can be said for the rest of the country. Throughout the northeastern U.S., spring arrives earlier, bringing more precipitation and more frequent heavy rainstorms. Summers are hotter and drier, while winter weather grows more unpredictable from year to year. Severe storms increasingly cause floods that damage property and infrastructure. In the coming decades, changing climate is likely to harm ecosystems, disrupt agriculture and winter recreation, and increase some risks to human health.

- a. Do you agree with the scientific consensus that climate change is real and caused by human activities?

**Answer:** I agree the climate is changing, although it has always changed. Whether man is the direct result, how much of that result is, that's still a question.

- b. How are you addressing the causes and impacts of climate change when managing our public lands and natural resources?

**Answer:** Interior is taking action to in a changing climate. For example, it is clear elevated temperatures and longer seasons are a factor leading to more forest fires and an extended fire season. Interior is taking active management approaches as a stewardship strategy to reduce the impact of wildfire.

### **Questions from Senator Daines**

**Daines Question 1:** Montana Tribes need strong, permanent leadership in positions that serve Indian country. That includes an Assistant Secretary for Indian Affairs, and national and regional BIA directors. Can I get your assurance that you are working diligently to fill the position of BIA director with a permanent leader who has a deep understanding of the challenges Montana Tribes face?

**Answer:** BIA works to enhance the quality of life, promote economic opportunity, and carry out the Federal responsibility to protect and improve the trust assets of American Indians, Indian Tribes and Alaska Natives throughout the country. I am well aware of the important role the BIA Director fills in providing the necessary leadership for this work, and I assure you that I am diligently working to fill this position with a leader who has a thorough understanding of issues affecting all Tribes, including those in Montana.

**Daines Question 2:** The Department's September 2017 workplace survey details an estimated 40.2% of BIA employees experienced one or more forms of harassment over the course of a year. What are you doing, as Secretary, to combat harassment within the Bureau of Indian Affairs?

**Answer:** BIA leadership developed and is now implementing an action plan in response to the 2017 Work Environment Survey. The action plan includes provisions requiring all supervisors to complete civility training; establishing an ombudsman for both BIA and BIE; issuing a new Indian Affairs harassment prevention policy; and fully implementing the Department's Personnel Bulletin 18-01 – Prevention and Elimination of Harassing Conduct. We are monitoring receipt and review of the Department's policy through a system that requires IA employees to certify when they have read the policy. BIA and BIE HR offices are also submitting monthly reports to the Department on all current, open misconduct cases, including those dealing with harassing conduct. Through these efforts, and my consistent messaging on this topic, we are establishing a zero tolerance for harassment across Interior.

**Daines Question 3:** The DOI workplace report excluded accounts of harassment within the Bureau of Indian Education because you didn't receive enough responses from BIE personnel. Mr. Secretary, how are you working to increase reporting across DOI agencies and especially at BIE so that DOI staff, which at BIE includes educators and school administrators, don't suffer in silence?

**Answer:** We are working with the Associate Chief Information Officer for AS-IA to identify solutions to the IT challenges experienced during the 2017 Work Environment Survey. Although BIE did not have a response rate high enough to generate data, we believe it is appropriate to apply the BIA Work Environment Survey action plan items to BIE to ensure that we combat harassment throughout both bureaus.

### **Questions from Senator Rubio**

**Rubio Question 1:** What is the current status of the Department's National Outer Continental Shelf Proposed Program for 2019-2024 being developed by the Bureau of Ocean Energy Management, and do offshore areas off of Florida factor into that program?

**Answer:** In its analyses to support upcoming decisions on the Proposed Program, BOEM is continuing to assess information gathered from Governors, the public and others on the 25 planning areas presented in the Draft Proposed Program (a map of the planning areas can be found at: <https://www.boem.gov/National-Program-Learn/>). The next step in the process is to publish a Proposed Program and Draft Environmental Impact Statement, both of which will be available for public comment. Additional public meetings will also occur after their publication.

Process –The National OCS Program includes the following steps (note that timing could change):

- Request for Information and Comments -- published July 2017, followed by a 45-day public comment period that resulted in the submission of approximately 816,000 comments.

- Draft Proposed Program (DPP) -- published Jan 2018 with a 60-day comment period that resulted in the submission of approximately 1.86 million comments. (23 public meetings were held during this time.)
- Notice of Intent to prepare the Programmatic Environmental Impact Statement -- published January 2018 with a 60 day comment period.
- Proposed Program (PP) -- expected to publish late 2018 with a 90-day comment period.
- Publication of the Draft Programmatic Environmental Impact Statement -- expected to publish late 2018 with a 90-day comment period.
- Proposed Final Program (PFP) -- expected late 2019.
- Publication of the Final Programmatic Environmental Impact Statement -- expected late 2019.
- Approval of a Final Program (occurs at least 60 days after submittal of PFP to the President and Congress).

This process provides the opportunity for the Secretary to winnow the number of lease sales and areas under consideration based on the analyses and public input that accompanies each proposal. For further information, a flow chart of the above process can be found at: <https://www.boem.gov/BOEM-OCS-Oil-Gas-Leasing-Process/>.

**Rubio Question 2:** To what degree has DOI communicated with the Department of Defense and considered potential conflicts and interference to the Joint Gulf Range Complex from drilling and pre-drilling activities in the Eastern Gulf of Mexico?

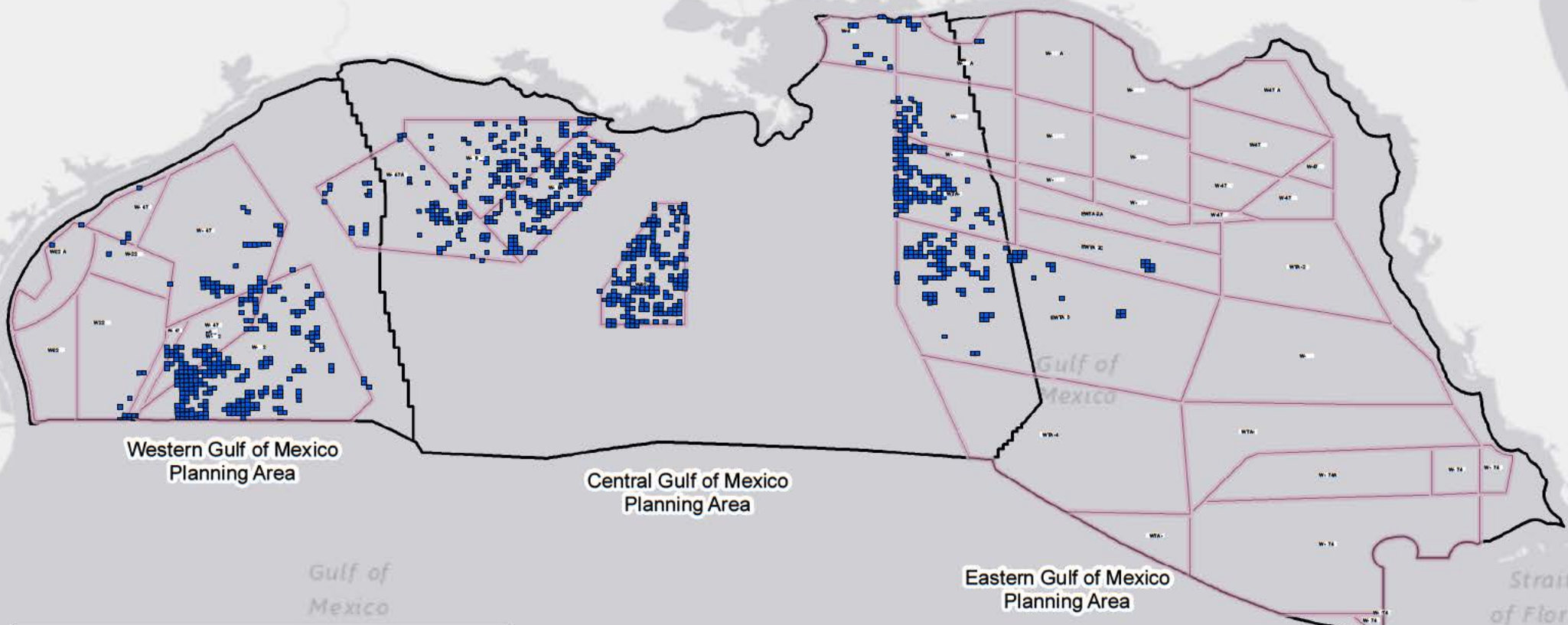
**Answer:** DOI and BOEM work cooperatively with the Department of Defense (DOD) at the planning, development, and operational stages of OCS oil and gas leasing activities to ensure that each agency meets its mission while not unduly interfering with the other's activities. This has been accomplished for more than 30 years under a 1983 Memorandum of Agreement (MOA) between DOI and DOD. The coordination and consultation mechanisms set forth in the MOA have enabled DOI and BOEM to meet the goal outlined in the OCS Lands Act to make OCS resources available for expeditious and orderly development, and have enabled DOD to meet its critical national defense and security mission.

Through implementation of the MOA, BOEM-authorized oil and gas activities and DOD operations have co-existed for decades on the U.S. OCS. For example, there are currently 28 OCS conventional energy leases in the Eastern Gulf of Mexico Planning Area (two of these leases straddle the Central Gulf of Mexico/Eastern Gulf of Mexico boundary). Please refer to the included map that illustrates the Gulf of Mexico active leases within military warning areas. In addition to these leases, there are 321 leases in the Western Gulf of Mexico Planning Area and 759 in the Central Gulf of Mexico Planning Area that have some form of military-related stipulation(s). BOEM typically mitigates the potential for multiple use conflicts with DOD activities by including stipulations in its Gulf of Mexico oil and gas leases.

With regard to the 2019-2024 National OCS Oil and Gas Leasing Program, BOEM and DOD have held a number of meetings and have been closely coordinating to help ensure that the Secretary of the Interior has the information needed about DOD's OCS activities when

determining the areas to be included or excluded from the National OCS Program. On February 1, 2018, DOD provided comments in response to the publication of the Draft Proposed Program to inform DOI that a detailed assessment of the compatibility of military and OCS oil and gas development activities in the DPP areas will be provided to DOI; and in April, BOEM held a webinar to discuss and provide detail about offshore oil and gas technology and development activities to help inform this compatibility assessment. BOEM looks forward to receiving this input and continuing to engage with DOD during the 2019-2024 National OCS Program development process.

# Gulf of Mexico Active Leases Within Military Warning Areas



	Active Leases within Military Warning Areas (as of 4 June 2018): 1105
	Eastern Gulf of Mexico: 26
	Central Gulf of Mexico: 759
	Western Gulf of Mexico: 320
	Military Warning Area(s) - Gulf of Mexico
	OCS Planning Area(s)

N

0 50 100 150 200  
Kilometers

0 50 100 150 200  
Miles

**Rubio Question 3:** Given that BOEM's own data suggests that the Straits of Florida Planning Area has less than negligible development value even at extremely high oil prices, would you oppose a Congressional moratorium on oil and gas development in this area? What about in Federal waters of the South Atlantic Planning Area off the coast of Florida?

**Answer:** Section 18 of the OCSLA provides for a multi-phased process with several opportunities for public input and analysis of eight factors in relation to oil and gas activities in the OCS. This process allows for consideration of, and response to, changed circumstances, new information, and other factors that would be unavailable under a blanket moratorium.

**Rubio Question 4:** Can you comment on the importance of partnerships with State and local governments in managing the impacts of species, like old-world climbing fern in the Loxahatchee National Wildlife Refuge, Burmese pythons in Big Cypress National Preserve, or indo-pacific lionfish in Biscayne National Park?

**Answer:** Working with partners such as State and local governments is paramount when trying to manage the impacts of invasive species throughout the United States, including old-world climbing fern in the Loxahatchee National Wildlife Refuge, Burmese pythons in Big Cypress National Preserve, and indo-pacific lionfish in Biscayne National Park. Invasive species do not respect geopolitical boundaries and partnerships to prevent, eradicate, and control invasive species are most effective. Partnering allows for the sharing of the information, skills, tools, and technologies that enable everyone in an area to effectively prevent, eradicate, and control invasive species. Effective partnerships integrate efforts from the local to national scales, which helps to greatly enhance the effectiveness of prevention and early detection and rapid response measures which are the most cost effective way to manage invasive species.

**Rubio Question 5:** With what additional authorities can Congress provide the Department to ensure maximum efficacy and efficiency in targeting and eliminating invasive species populations in vulnerable ecosystems within Federal lands and waters?

**Answer:**

Reauthorize Title 18 of the Lacey Act: The injurious wildlife provision of the Lacey Act is an important management tool that the FWS uses to prevent the introduction and spread of invasive species in the United States. However, as a result of an April 7, 2017, D.C. Circuit Court of Appeals decision, transportation of injurious wildlife between the 49 States within the continental United States is no longer prohibited. The D.C. Circuit Court of Appeals decision diminishes the ability of the FWS to manage the establishment and spread of terrestrial and aquatic invasive species in the United States. Additional steps that could be taken to strengthen and modernize the injurious wildlife provisions of the Lacey Act could include: 1) emergency listing authority for species that pose an imminent threat; and 2) prohibiting importation of wildlife not yet in trade until they have been assessed for injuriousness.



Reauthorize the National Invasive Species Act: Since the Act was reauthorized in 1996, major advances in scientific knowledge associated with the introduction, management, and impact of aquatic nuisance species across the Nation have been achieved. Reauthorizing the Act would provide an opportunity to incorporate new approaches to prevent, control, and manage aquatic nuisance species, in particular programs focused on prevention, early detection and rapid response to control or eradicate high-risk and newly detected invasions, public outreach and education, and research.

**Rubio Question 6:** The most recent report from the Department of the Interior's Office of the Inspector General, which analyzed the proposed entry fee and commercial use authorization (CUA) program changes, specifically recommended making modest increases and holding extensive dialogue with the travel and tourism industry before making changes. Was the current proposal developed in keeping with such recommendations? How often do you plan to re-evaluate entry fees and CUA program changes going forward?

**Answer:** The NPS has engaged with the travel industry over the past several years about the need to update entrance fee rates, which had not changed since 1998, as well as creating consistency in the CUA program. This interaction with industry groups like the National Tour Association included multiple meetings between senior managers, as well as NPS representation at events like the U.S. Travel Association's International Pow Wow, the travel industry's premier international marketplace and the largest generator of travel to the U.S. Once the NPS finalized the changes, it provided the travel industry 18 months of notice prior to implementing the changes. The NPS will re-evaluate commercial tour entrance fees every three years. Similarly, the NPS intends to evaluate road-based commercial tour CUA application and management fees periodically to ensure parks are meeting the legal requirement to recover administrative and management costs and may adjust CUA fees accordingly.

**Rubio Question 7:** Will park entrance fees for group tours be pre-calculated based on vehicle configuration or will operators need to calculate the fees based on the people actually participating on each trip?

**Answer:** The park entrance fees for group tours will be calculated based on the number of customers on board the vehicle (driver and guide/s are excluded).

**Rubio Question 8:** What authority do individual Park Superintendents have to propose and modify entrance fees and CUA program changes? To what degree do Park Superintendents have authority or responsibility to mitigate impacts of any entrance fee or CUA changes on park users?

**Answer:** The NPS has been working toward full implementation of a standard pricing model that groups parks by legislative designation to determine appropriate fees. Fee changes may be proposed by park superintendents or by NPS or Departmental management and always involve public engagement pursuant to the requirements of the Federal Land Recreation Enhancement

Act (FLREA). Commercial tour entrance fees are set at the national level for consistency; superintendents do not have the ability to independently modify those fees.

The NPS set the fees and process for road-based commercial tours to ensure fairness and consistency after feedback and discussions with industry representatives.

### **Questions from Senator Feinstein**

**Feinstein Question 1:** I am deeply concerned that the National Park Service is moving toward phasing out historic grazing and ranching at the Point Reyes National Seashore in a manner that is inconsistent with Congressional intent.

The National Park Service is currently working on a General Management Plan Update for ranching activities at Point Reyes National Seashore pursuant to a legal settlement from July 2017. Per the settlement, the Park Service has 4 years to complete this update to the management plan. However, I am deeply concerned that the Park Service may propose eliminating ranching altogether, which is not what Congress intended when initially designating the National Seashore.

- a. Do you believe that historic ranching and dairy activities should be maintained at Point Reyes National Seashore?

**Answer:** The Department has consistently supported ranching at Point Reyes National Seashore. Pursuant to a settlement agreement stemming from litigation that began in 2016, the NPS is required to complete a General Management Plan Amendment and Environmental Impact Statement, including analysis of no ranching, reduced ranching, and no dairy alternatives. The NPS will also evaluate alternatives that continue ranching. The settlement agreement also authorized the park to issue interim leases, covering the period through mid-July 2022, to all park ranchers engaged in the settlement agreement.

In October 2017, the NPS released a conceptual range of six alternatives for public comment, with an initial proposal that would allow existing ranch families to continue beef cattle and dairy ranching operations under agricultural lease/permits with 20-year terms. The NPS expects to initiate the formal National Environmental Policy Act process in the fall of 2018.

**Feinstein Question 2:** On September 1, 2017, the Office of the Solicitor issued an opinion (M-37048) that permanently withdrew a previous opinion (M-27025) and superseded a third opinion (M-36964) with respect to the Department of the Interior's interpretation of the General Railroad Right-of-Way Act of March 3, 1875.

This new opinion followed the temporary suspension and withdrawal of M-37025 on June 30, 2017 in order to "determine if the analysis set forth in the opinion is complete and whether post-2011 decisions should be factored into the opinion."

The new opinion (M-37048) stated: “*For the reasons set forth below, this memorandum concludes that the rights-of-way granted to railroad companies under the 1875 Act allow railroad companies to lease portions of their easements to third parties without permit or grant from the Bureau of Land Management ("BLM"), provided that such leases are limited to the surface, broadly defined, of the easement and do not interfere with the continued use of the easement as a railroad.*”

I am deeply concerned that through this new opinion, the Department is abdicating its role as a steward of public land and no longer ensuring that railroads only permit use of their right-of-way for railroad purposes. It is critical that railroad rights-of-way not be abused and become a new loophole in environmental laws.

- a. What specifically prompted the Solicitor’s office to initiate the June 30, 2017 review of M-37025 and M-36964?

**Answer:** As explained in the June 30, 2017, memo from the Office of the Solicitor that temporarily suspended M-37025, court action since issuance of M-37025 in 2011 prompted a review of M-37025 to determine if the analysis set forth in the opinion was complete and whether the post-2011 decisions should be factored into the opinion. Specifically, the memo noted that the U.S. Supreme Court discussed in detail the General Railroad Right-of-Way Act of March 3, 1875 in *Marvin M. Brandt Revocable Trust v. United States*, 134 S. Ct. 1257 (2014) and that the 1875 Act, as well as other rights-of-way grants, were at issue in California State Court (*Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc.*) and a U.S. District Court (*Serrano et al. v. Union Pacific Railroad Co., et al.*).

- b. I am concerned about potential conflicts of interest. Were any waivers sought or granted for the individuals involved in this review at every level of the Department?

**Answer:** No waivers were sought or granted for the individuals involved in this review at any level of the Department.

**Feinstein Question 3:** On September 14, 2016, the Bureau of Land Management issued the Record of Decision for the Desert Renewable Energy Conservation Plan Land Use Plan Amendment (DRECP) after nearly a decade of careful negotiations with a broad range of desert community stakeholders. The DRECP Record of Decision amended the California Desert Conservation Area (CDCA) Plan, Bishop Resource Management Plan (RMP), and the Bakersfield RMP in the Mojave and Colorado/Sonoran Desert regions of southern California.

However, pursuant to the March 2017 Executive Order 13783, “Promoting Energy Independence and Economic Growth”, the Bureau of Land Management issued a notice in the Federal Register on February 2, 2018 to begin public comment on a review and potential revision of the DRECP.

- a. What factors will be utilized in this decision-making process?

**Answer:** Executive Order 13783, “Promoting Energy Independence and Economic Growth,” directs Federal agencies to review all actions that could “potentially burden the development or use of domestically produced energy resources.” To meet the requirements of EO 13783, the Bureau of Land Management (BLM) and interested stakeholders are reviewing the DRECP to identify any potential burdens on domestic renewable energy production in California.

Since February 2, 2018, the BLM hosted eight public meetings and received more than 25,000 public comments on the Notice of Intent to consider amending the three land use plans that underlie the DRECP. The BLM also received a number of letters, which they are reviewing carefully, from members of Congress and local governmental officials.

The BLM will use this information to help set the parameters and scope of the review. As part of the review, they will evaluate whether additional flexibility is needed to accommodate renewable energy development and multiple use. Public participation is vital to this process.

b. What is the timeline for when the review will be completed?

**Answer:** The BLM plans to publish a scoping report that summarizes the public comments later this year.

c. I am concerned about potential conflicts of interest. Were any waivers sought or granted for the individuals involved in this review at every level of the Department?

**Answer:** The Department’s ethics policy requires all DOI employees, including those of the BLM, to proactively identify potential conflicts of interest and respond appropriately if any are identified. The Department and the BLM have not identified any employees working on the DRECP review with any conflicts of interest.

**Feinstein Question 4:** I understand that the Department has implemented a new, centralized grant review process that has created significant delays in awarding appropriated funding to outside partner organizations for the purposes intended by Congress.

I have heard from several California non-profit organizations that these excessive delays in funding have had a crippling impact on organizations that partner with the Department to provide critical services and employment opportunities to small, often rural communities, such as the Conservation Corps.

a. How many Department staff are involved in this seemingly large undertaking?

**Answer:** In addition to the grant program managers, the awards are reviewed and approved by the relevant Assistant Secretaries. At the Departmental level, a coordinator reviews the final package before awards are made.

b. What has been the result of this review to date?

**Answer:** The Department awards billions in grants and cooperative agreements each year and the process provides a valuable check.

c. When will the Department's review be completed?

**Answer:** The review is ongoing and there is no completion date.

**Feinstein Question 5:** Thank you for your March 23, 2018 response to my December 20, 2017 letter requesting the Department of the Interior establish an interagency working group. I appreciate your stated commitment to continue to support the State of California's efforts, as well as to work with local agencies and other institutions.

However, I am disappointed that the Department will not create an interagency task force, which would help to streamline the multiple Federal agencies' relationship with State and local agencies.

a. How is the Department fulfilling the commitments it made in the August 31, 2016 Memorandum of Understanding (MOU) executed between the Department of the Interior and California Natural Resources Agency, specifically, the objectives listed in Section IV A, D and E of the MOU?

**Answer:** Interior's bureaus continue to coordinate on a routine basis with the State of California and with local agencies. We maintain a presence in the Salton Sea basin, and bureau representatives routinely participate in coordination and technical meetings, including State Salton Sea Management Program meetings, Salton Sea Authority meetings, and DOI-State coordination meetings. Senior level officials, including Regional and Deputy Regional Directors as well as headquarters-level officials as necessary, remain involved in discussions to an extent that will facilitate decision-making when the State begins project implementation. Regional DOI representatives have reached out to engage other Federal entities (including the EPA and Corps of Engineers) as well.

Field and regional-level meetings between various Federal and State agencies are occurring in order to organize information, authorities and possible funding streams that will best meet the needs of the Salton Sea as State-led projects become ready for permitting and implementation. In addition, Interior is coordinating with partners on multiple projects, including completing the Red Hill Bay Shallow Marine Habitat project to meet habitat improvement requirements and dust suppression on exposed playa; providing recreational boat access to the Sea, which is currently restricted due to declining water levels; partnering on efforts to reduce air quality emissions and subsequent human health impacts through projects such as determining if ground water can be used to reduce dust on existing exposed playa; and constructing wetlands such as the Holtville-Alamo River wetlands to improve water quality and support selenium reduction.

### **Questions from Senator Van Hollen**

**Van Hollen Question 1:** Below I have an excerpt from the Committee transcript where we discussed the Migratory Bird Treaty Act (MBTA) and future claims seeking fines or penalties for violations of MBTA after an oil spill.

***Van Hollen:** Let me ask you another question related to damage from oil spills. I understand that changes you've made with a reinterpretation of the Migratory Bird Act would mean oil companies responsible for oil spills would no longer have to pay damages for massive loss of bird life under the Migratory Bird Treaty. That was the finding, is that correct?*

***Zinke:** That is not correct.*

In this question, you assert that it is not correct that under the new legal opinion, or M-Opinion, of the Migratory Bird Treaty Act, oil companies responsible for oil spills would no longer have to pay damages for the massive loss of bird life under the MBTA.

However, on April 11, 2018, U.S. Fish and Wildlife Service Principal Deputy Director Greg Sheehan issued a Guidance Memo to Service Directorate on the recent M-opinion affecting the Migratory Bird Treaty Act. The memo includes a 5 page attachment entitled "Frequently Asked Questions Regarding Implementation of the M-Opinion". I have attached that document for your reference.

Question 5 of that Frequently Asked Questions Document poses the question, "How does the M-Opinion affect the Natural Resources Damage Assessment program (i.e., specifically related to oil spills)?"

And the answer specifically states: "In practice, however, the M-opinion will have an effect on future claims seeking fines or penalties for violations of the MBTA from companies responsible for oil spills and hazardous releases. In addition to pursuing damage claims under the NRDAR program, the Department has pursued MBTA claims against companies responsible for oil spills that incidentally killed or injured migratory birds. That avenue is no longer available."

Mr. Secretary, the Guidance Memo issued to the U.S. Fish and Wildlife Service Directorate makes it clear that the Department will no longer have the avenue to pursue damage claims under the MBTA against companies responsible for oil spills that incidentally killed or injured migratory birds. Please clarify for the record whether, going forward, the Department will be able to secure fines or penalties for violations *of the Migratory Bird Treaty Act* against companies responsible for an oil spill that incidentally and non-intentionally kills birds similar to the BP Deepwater Horizon disaster of 2010, which killed an estimated 1,000,000 migratory birds.

**Answer:** In practice, the new M-Opinion means that if an oil or hazardous chemical release occurs and is not done with the intent of taking migratory birds, the MBTA does not apply. Protections of publicly held natural resources, including migratory birds, under other authorities (such as the Comprehensive Environmental Response Compensation and Liability Act, Oil Pollution Act, and Clean Water Act) will still apply in these situations. Parties responsible for

these incidents will still be held accountable under the incidental take prohibitions in the Endangered Species Act and Bald and Golden Eagle Protection Act, as well as any applicable State laws. The M-Opinion applies to all industries equally, and the Department will continue to work with our industry partners to minimize impacts on migratory birds, whenever proponents or operators are willing to work with us toward this goal.

### **Questions from Senator Merkley**

**Merkley Question 1:** I am concerned about the pressing need to improve public safety and fund Tribal police in Indian Country. This is an issue that affects every Tribe across Oregon and the country. While more funding is needed across the board, there is also a disparity between Tribes in the allocation of Federal dollars for law enforcement. A 2017 BIA report to Congress found that funding for public safety runs \$1 billion short each year. This problem is worse for Tribes under State jurisdiction through PL 83-280 and Tribes with compacts under PL 93-638.

For instance, in my State of Oregon, many restored Tribes do not receive funding that Tribes that were never terminated receive. The Confederated Tribes of Grand Ronde, for example, employ seven full-time sworn officers and provide 24/7 coverage enforcing Oregon State law over an area over 100 square miles. Yet they are not eligible for base operations funding through BIA.

This committee included language in the FY18 Omnibus highlighting this problem and asking BIA to conduct an analysis of the issue and report back to Congress. What is the status of this report? Can I count on you to work with me on this important issue going forward?

**Answer:** The BIA is reviewing the issue to develop the report.

**Merkley Question 2:** In the FY2017 Omnibus, Congress included language requesting that the Bureau of Indian Affairs (BIA) provide a needs assessment for law enforcement and operations and maintenance needs at treaty fishing sites on the Columbia River.

The BIA was supposed to provide that assessment to Congress within 60 days. 730 days later that assessment still has not been provided to Congress. The FY18 Omnibus noted the BIA's failure to provide the report and requested in again. I have been told that BIA has finally completed, but not released, the report.

I have personally visited some of these sites and have witnessed firsthand the horrendous conditions they must endure because the Federal government has failed to meet its obligations.

When will BIA be providing the requested needs assessments to Congress?

**Answer:** The report will be transmitted to Congress once review is completed.

How will the BIA be incorporating the outcome of this needs assessment into future budget proposals?

**Answer:** We are committed to providing resource stewardship and protection throughout Indian Country. Budget formulation decisions are based on delivering services that provide benefits to the greatest number of Tribes nationwide.

### **Questions from Senator Reed**

**Reed Question 1:** Rhode Island's success in establishing the nation's first commercial offshore wind energy project was based in large part on significant outreach to existing ocean stakeholders, including commercial and recreational fishermen, to identify and work through any concerns early in the process. Based on comments from Rhode Island fishermen, this is not occurring under the Bureau of Ocean Energy Management's (BOEM) new expedited leasing process. What actions will BOEM take to increase engagement with Rhode Island fishermen at each stage of the leasing process to offset adverse impacts to the fisheries economy?

**Answer:** Stakeholder engagement is integral to BOEM's renewable energy planning and leasing efforts. BOEM recognizes that fishermen are an important ocean user group that may be affected by offshore renewable energy development. Throughout the entire process, including early planning, leasing, and then review of lessee wind facility plans and the construction and operations phase, BOEM strives to engage fishermen. This is done through meetings, workshops, and soliciting input into project siting, best management practices, and research and monitoring. BOEM shares the results of research and monitoring during public forums, and by making the material available on our website. These meetings, workshops, and public forums may be regionally or project/site-specific focused. Between 2012 and 2014, BOEM held nine fisheries best management practices workshops throughout the Mid-Atlantic and Northeast regions, which resulted in the development of five best management practices and mitigation measures for the offshore wind industry to address potential use conflicts with fishing. More recently, BOEM sponsored a National Academies Atlantic Offshore Renewable Energy Development and Fisheries Workshop in November 2017. BOEM also participated in the Southern New England Offshore Wind Energy Science Forum in December 2017, which focused on developments related specifically to the Block Island Wind Farm project. Most recently, BOEM held two open houses concurrent with regional fishery management council meetings to solicit comments on four offshore wind-related notices open for public comment in April 2018, as well as a workshop in New Jersey in May 2018 to gather additional information regarding leasing in the New York Bight. To help coordinate the renewable energy planning and leasing efforts and to implement one of the previously mentioned best management practices, BOEM requires that developers provide a fisheries liaison, and has also published guidance to lessees regarding fisheries communication plans, which BOEM continues to evaluate based on feedback received from the fishing industry.

BOEM currently has several projects in the post-leasing phase. For example, BOEM has started the environmental review process for the Vineyard Wind project Construction and Operations Plan. BOEM is considering the comments received during the public scoping meetings to



inform the impacts to fishing. BOEM will also hold public hearings on the draft EIS to get public feedback on information related to potential impacts from the project. All of this information will inform the final EIS, and ultimately the BOEM decision regarding the project.

There is no new BOEM-initiated expedited leasing process; the planning and leasing process is a coordinated and comprehensive process that takes several years to complete and includes multiple opportunities for stakeholder engagement (see <https://www.boem.gov/Regulatory-Roadmap/>). During each of these opportunities BOEM will endeavor to ensure that fisheries constituents have the ability to provide comment. At a minimum, BOEM will ensure that affected fishery management councils are notified of the opportunity to provide comment via direct email and via updates at regularly scheduled fishery management council meetings. Additional outreach may include meeting with State-led fishery groups and having a fisheries outreach table at relevant task force meetings. Throughout its process, BOEM holds public meetings in order to inform what areas should be considered for leasing, and what impact leasing decisions will have on fishery resources and fishing. Depending on the potential impact of leasing to fishing communities, BOEM may schedule additional meetings in fishing port towns and specifically seek the participation of the fishing industry.

BOEM conducts its leasing process in consultation with Intergovernmental Renewable Energy Task Forces. Meetings of the Task Forces are open to members of the public, where they may communicate independently with BOEM and other agencies participating in the Task Force concerning issues pertaining to the leasing proposal. BOEM and other agencies meet with public stakeholder groups to address their comments and concerns (e.g., the Rhode Island Fishery and Habitat Advisory Boards and the Massachusetts Habitat and Fisheries Working Groups). BOEM also regularly updates the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council's Habitat Advisory Panel, and the Atlantic States Marine Fisheries Commission on the status of projects and opportunities for public comment.

**Reed Question 2:** Oil and gas drilling off the coast of New England could have devastating consequences for Rhode Island's coastal habitats as well as the State's coastal economy. Our coastal waters are home to plant and animal species that rely on a healthy marine ecosystem. Our region is also known for its proud fishing heritage, which could be quickly destroyed if an oil spill were to occur. Our coastal economies generate more than \$17 billion for New England annually and support more than 240,000 jobs in tourism and other industries. You have previously indicated that President Trump directed you to reestablish our nation's offshore oil and gas leasing program in a way that "takes into consideration the local and State voice." Given the overwhelming State and local opposition to drilling off the coast of Rhode Island, will you commit to exempting the State from any new oil or gas leases as a part of this Administration's offshore drilling plan?

**Answer:** Section 18 of the OCS Lands Act details the decision-making process governing development of a National OCS Program. The Secretary must consider eight factors when determining the size, timing, and location of potential oil and gas lease sales among the different

areas of the OCS but has the discretion to reach a reasonable determination based on his consideration of these factors.

The public comments from the Draft Proposed Program (DPP) and information from the Proposed Program analysis and the draft Programmatic EIS will further inform the Secretary's consideration of OCS areas for potential leasing. Inclusion of an area at the DPP or Proposed Program phase is not a final indication it will be included in the final approved Program or offered in a lease sale.

Additional decision points remain in the process. The next step in the process is to publish a Proposed Program and Draft Environmental Impact Statement, both of which will be available for public comment. Additional public meetings will also occur after their publication. Below are the milestones remaining in the development of the 2019-2024 National OCS Program.

- Proposed Program (PP) -- expected to publish late 2018 with a 90-day comment period.
- Publication of the Draft Programmatic Environmental Impact Statement -- expected to publish late 2018 with a 90-day comment period.
- Proposed Final Program (PFP) -- expected late 2019.
- Publication of the Final Programmatic Environmental Impact Statement -- expected late 2019.
- Approval of a Final Program (occurs at least 60 days after submittal of PFP to the President and Congress).

This process provides the opportunity for the Secretary to winnow the number of lease sales and areas under consideration based on the analyses and public input that accompanies each proposal. For further information, a flow chart of the above process can be found at: <https://www.boem.gov/BOEM-OCS-Oil-Gas-Leasing-Process/>.