

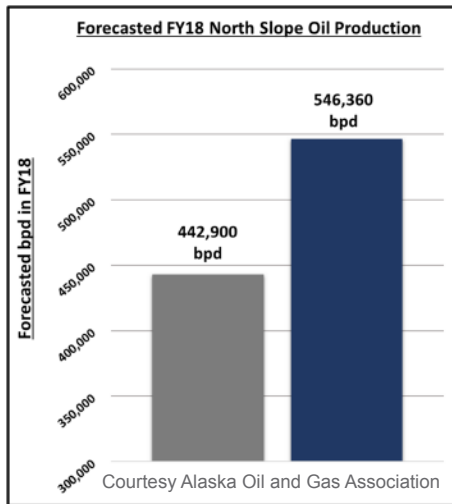
# RESOURCE REVIEW

FEBRUARY 2018 || AKRDC.ORG



## New oil tax bill is big step in wrong direction

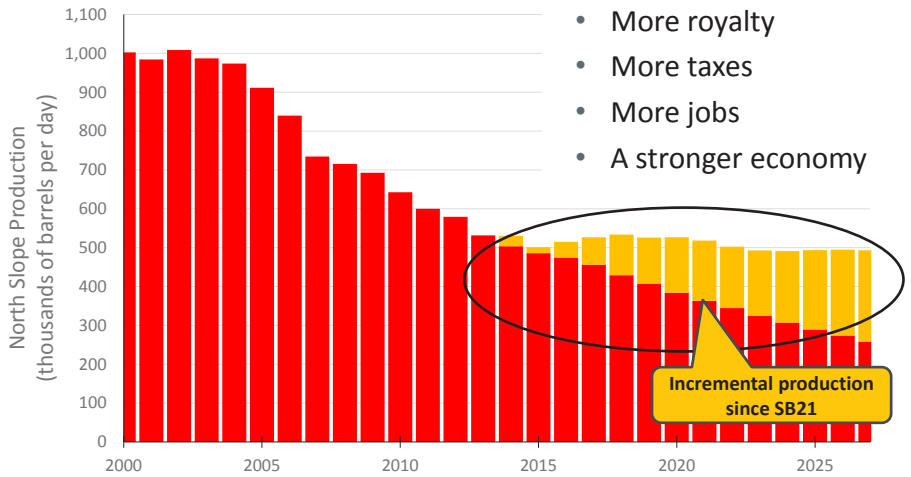
After three years of low oil prices and recession, Alaska is beginning to see signs of an economic recovery on the horizon. Activity on the North Slope is picking up and the price of oil has been rising, recently breaking \$70 a barrel. Job losses in Alaska's big revenue-generating industry are finally stabilizing and for the first time in years, the oil patch in Alaska is optimistic about its future.



The State's Fall 2012 forecast, based on the previous ACES tax system, estimated Fiscal Year 2018 production at 442,900 barrels per day. The most recent forecast, based on the current tax system (SB 21), is estimating FY 18 production at 546,360 bpd, an increase of 103,460 bpd over the 2012 estimate. The increase in production amounts to an additional \$300 million in revenues, which can be used to fund essential state services. SB 21, which became law in 2013 and reaffirmed by voters in 2014, has encouraged new investment, reversing a 6-8 percent annual decline in production.

## Reversing the decline

Courtesy ConocoPhillips Alaska, Inc.



- More oil production
- More royalty
- More taxes
- More jobs
- A stronger economy

## North Slope production is up...SB 21 is working!

Even though the North Slope is on the cusp of significant new investment to bring on promising new oil fields with the potential to sharply increase production, a new bill has been introduced in Juneau to once again increase oil taxes. Industry executives insist the timing of the bill is terrible and it could send an icy chill through a warming investment climate.

House Bill 288 would raise the minimum production tax from four to seven percent, a 75 percent increase, and would be the eighth change in tax policy in 13 years. The bill would increase oil and gas production taxes for a third straight year.

In a late January hearing, industry executives warned that HB 288 would damage Alaska's investment climate and could derail projects.

"By increasing taxes, HB 288 will increase costs; by increasing costs, the bill will reduce competitiveness, and by reducing competitiveness, it will likely reduce investment," said Kara Moriarty, President and CEO of the Alaska Oil and Gas Association. "Reduce investment means fewer jobs, less production, lost revenue, and smaller growth to Alaska's economy,"

Moriarty added.

"This goes entirely in the wrong direction," said Scott Jepsen, vice president at ConocoPhillips Alaska in testimony before the House Resources Committee. "It's going to be a disincentive to investment when you most want investment."

Jepsen said HB 288 is a tax increase at low prices. He noted Alaska is on the upper edge of what's competitive at ConocoPhillips, explaining opportunities for investing elsewhere are considerably less expensive.

"The bill will stall the growing momentum in the industry that has and continues to drive Alaska's economy," said Cory Quarles, Alaska Production Manager for ExxonMobil.

Quarles said there is increased interest in Alaska, but the state remains one of the most unstable fiscal environments in the world based on frequent changes in tax policy and the potential of future hikes going forward. He asked policy makers: what do you want to achieve or how competitive do you want to be?

Damian Bilbao, BP Alaska's Vice President of Commercial Ventures, agreed

HB 288 continued on page 4

# State urges U.S. Supreme Court to re-hear Sturgeon case

The State of Alaska in an amicus brief urged the U.S. Supreme Court to hear John Sturgeon’s case and to ultimately overturn the latest Ninth Circuit Court of Appeals decision.

Sturgeon filed his petition for certiorari on January 5, and the State is hopeful that the Supreme Court will once again review important issues related to the State’s right to manage its own submerged lands and navigable waters flowing over the top of those lands.

“Last time Mr. Sturgeon went before the U.S. Supreme Court, the Court sent a very clear message to the Ninth Circuit – you must take Alaska’s unique statutes and history into account,” Attorney General Jahna Lindemuth said. “Instead, the Ninth Circuit completely ignored the Supreme Court’s guidance and expanded a federal doctrine on reserved water rights far beyond its ordinary and

reasonable meaning.”

The case arises out of Sturgeon’s operation of his private hovercraft on the Nation River, a state navigable water running through a federal national park area known as a Conservation System Unit. Sturgeon was using a hovercraft on his annual moose-hunting trip — an activity permitted under state law — when the National Park Service threatened him with a citation for violating a federal ban on hovercraft use in park units. Sturgeon sued, challenging the federal government’s assertion of broad regulatory authority.

This case already made its way to the Supreme Court previously after the Ninth Circuit held in favor of the Park Service, but the Supreme Court in a unanimous decision in favor of Sturgeon sent the case back to the Ninth Circuit with specific guidance on Alaska’s

*Continued to page 3*

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**RESOURCE DEVELOPMENT COUNCIL**

is an Alaskan, non-profit, membership-funded organization comprised of individuals and companies from Alaska’s oil and gas, mining, timber, tourism, and fisheries industries. RDC’s purpose is to link these diverse industries together to encourage a strong, diversified private sector and grow Alaska through responsible resource development.

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**To the U.S. Supreme Court and back again**

Continued from page 2

unique history and federal statutes that apply and asked the Ninth Circuit to review the case again.

Rather than using the Supreme Court’s emphasis on State sovereignty as a guide, the Ninth Circuit held that the federal government has broad authority, stemming from the federal government’s reserved water rights, to regulate navigable waters in federal national park areas in Alaska — despite the State’s ownership of submerged lands. Mr. Sturgeon and the State both believe the Ninth Circuit is wrong.



Sturgeon has requested the U.S. Supreme Court to review the issue for a second time due to the Ninth Circuit’s failure to properly apply the Alaska National Interest Lands Conservation Act (ANILCA) and recognize state management authority over navigable waters in the State.

“The State owes a debt of gratitude to Mr. Sturgeon for continuing this fight, and the least we can do is support him in his efforts and defend the State’s sovereign rights,” Governor Bill Walker said. “We have and will continue working closely with John Sturgeon and his legal team to again seek Supreme Court review of the Ninth Circuit decision. We hope the Court will act to uphold Alaska’s sovereign interest in managing its lands and waters.”

Sturgeon delivered an update on the case to RDC at its February 15 breakfast meeting in Anchorage. He emphasized: “This lawsuit is not so I can use my hovercraft to go moose hunting within a national park or preserve, it is a case about State sovereignty and the promises of Statehood. It is a case about federal overreach. It is a case about the federal government keeping the promises it made in ANILCA to the people of Alaska. It is a case about the federal government keeping the promises it made under the Alaska Native Claims Settlement Act. It is a case to tell the federal government they do have limits and must follow the law like everyone else.”

Sturgeon noted that in addition to the State submitting an amicus brief to the high court, eleven Alaska Native corporations have also submitted briefs, along with the Alaska Oil and Gas Association, the Alaska Miners Association, Associated General Contractors Alaska, the Alaska Chamber, The Alaska Forest Association, the Alaska Conservation Trust, the Alaska congressional delegation, Pacific Legal Foundation, the Safari Club International, and RDC.

Sturgeon’s case with the Park Service is now going on 11 years. The lawsuit has cost approximately \$800,000 to date and donors from Alaska and elsewhere have offset a portion of that cost.

The federal government has approached Sturgeon to negotiate a solution, but he pointed out any regulatory settlement isn’t permanent unless passed by Congress and the scope would likely be narrow. A video of his presentation is available at [akrdc.org](http://akrdc.org).

# RDC highlights legislative priorities in Juneau fly-in

RDC board members from across Alaska's resource industries and economic sectors met with legislators and key Walker administration commissioners and officials in its annual Juneau fly-in last month.

Eric Fjelstad, President of RDC, summarized the organization's 2018 legislative priorities and board members participated in lively discussions with the legislative and administrative leadership. The priorities, which include advocating for a long-term fiscal plan and tax policy and regulatory stability that enhances the competitiveness for all industries to attract new investment and grow the economy, can be viewed at: [akrdc.org/legislative-efforts](http://akrdc.org/legislative-efforts).

RDC urged legislators to reject yet another tax increase on the oil industry, warning higher taxes will result in less investment, lower production, and less revenue for the State. Board members noted the latest proposed tax policy bill, if passed by the legislature, would reinforce Alaska's reputation as an unstable place to invest.

RDC also discussed HB 199, which would overhaul state regulations applying to fish habitat. Board members pointed out the bill is bad policy as it would result in additional, unnecessary regulatory burdens on community and resource development projects across Alaska with little to no added benefit to fish habitat. The bill would likely delay, or even halt projects and would send Alaska further down on the regulatory-certainty scale.

The fly-in was sponsored by Alaska Airlines, ASRC Energy Services, ConocoPhillips, Donlin Gold, ExxonMobil, Holland America Line, Lynden, Hecla Greens Creek Mine, Parker Horn Company, Sealaska Corporation, and Usibelli Coal Mine, Inc.



RDC Board members meet with Senator Kevin Meyer to discuss a broad range of issues and the Senate Majority's position on a fiscal plan.



Governor Bill Walker's Chief of Staff Scott Kendall, Commissioner Andy Mack of the Alaska Department of Natural Resources, and the RDC board discuss administrative priorities.

## HB 288: Increased costs and reduced competitiveness, equals less investment, production, and State revenue

Continued from page 1

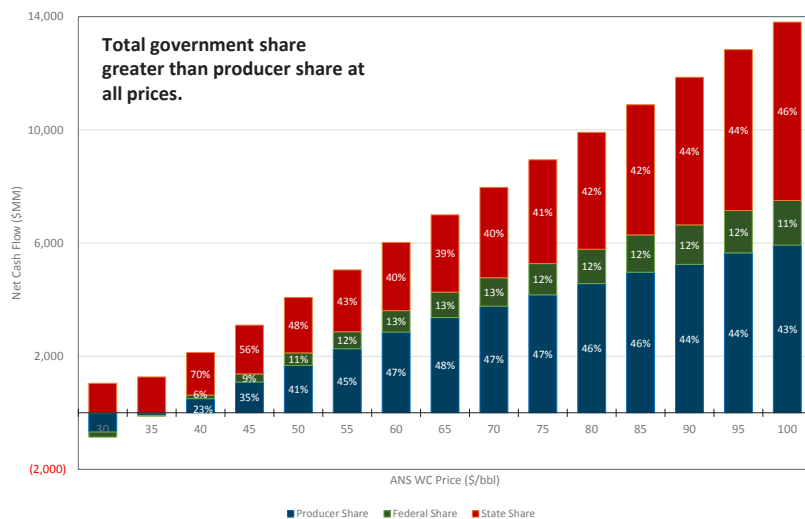
that HB 288 would make Alaska less competitive for investment. He said if Alaska does not remain competitive, investment would flow to more competitive regions.

Meanwhile, Ken Alper, Director of the Alaska Department of Revenue's Tax Division, told the committee the proposed tax increase would have a substantial fiscal impact on producers at low oil prices and that it could unfavorably impact the economics for future projects.

At today's prices, oil revenues are projected to account for 75 percent of the state's unrestricted general fund revenues.

New prospects, not including ANWR or Smith Bay, could add 400,000-plus barrels per day in new North Slope production within the next seven years. However, industry investors stress that maintaining a competitive fiscal framework in SB 21 is essential in attracting the investment necessary for these projects to go forward.

### Alaska's current share of oil revenues



Estimate generated using Fall 2017 Revenue Source Book assumptions and a 21% federal tax rate for entire fiscal year. State share shown includes tax credits other than per barrel tax credits. State revenue includes income tax, property tax, royalty, and production tax.

Courtesy ConocoPhillips Alaska, Inc.

# Wall Street Journal reacts to EPA's decision on Pebble

In a critical editorial, the Wall Street Journal called out Environmental Protection Agency (EPA) Administrator Scott Pruitt for his decision last month to leave standing a violation of due process toward the proposed Pebble project. The newspaper said Pruitt's decision amounted to a "rubber stamp" of a precedent-setting violation by the "Obama EPA."

In a controversial and unexpected decision, the EPA said it will no longer seek to withdraw the Obama administration's pre-emptive veto of the proposed Pebble copper and gold mine. The Obama EPA issued the unprecedented veto four years ago, essentially blocking the project from the National Environmental Policy Act process in which a company files for permits and undergoes an exhaustive multi-year environmental review from the Army Corps of Engineers. Typically, the EPA weighs in at the end of the review, but in this case it short-circuited the long-established process.

Pebble filed its permit application with the Corps in December. The application included more than a decade of environmental study and research on the project. In January, the Corps announced acceptance of the application, formally beginning the rigorous permitting process on an updated project plan that features a sharply-scaled down mine to fit within previously acceptable standards.



View of the Pebble deposit, located on state land 200 air miles southwest of Anchorage and 230 river miles from Bristol Bay.

Although Pruitt's decision leaves the EPA's veto in place, the agency will allow the Pebble Limited Partnership three years to navigate the Corps process. Pruitt emphasized his decision "neither deters or derails" the process now underway. However, the Journal pointed out: "This is less generous than it sounds. Pebble had already won that right in May 2017, when the EPA settled litigation Pebble brought that had exposed EPA's phony science and the collaboration by EPA employees with anti-mine activists and native tribes to sabotage the project. As part of that settlement, EPA agreed to start formally withdrawing the veto."

The Journal editorial continued:

"Mr. Pruitt's about-face is the sort of arbitrary diktat that undermines capital investment. EPA says its decision to

maintain the veto is based on more than 'one million comments' it has received since this summer that mostly oppose the mine, and Mr. Pruitt's judgment that 'any mining projects in the region likely pose a risk to the abundant natural resources that exist there.'

"Based on what analysis? The Obama EPA ginned up a phony study based on a hypothetical mine to create a worst-case scenario and justify its veto. Even if the public comments are genuine and not part of a spam campaign, they are informed by a faulty, partisan federal effort to discredit the mine.

The broader concern is Mr. Pruitt's embrace of the pre-emptive EPA veto power. This makes the agency a super regulator able to kill any mine, pipeline, bridge or oil well before companies can make a case, and regardless of support by one of the 50 states. The next Democratic EPA will take Mr. Pruitt's precedent and run with it. Many lawyers argue that EPA lacks the statutory power to pre-empt the process, and EPA had never previously exercised a veto like it did with Pebble. If Mr. Pruitt now thinks the EPA has such pre-emptive power, Republicans in Congress need to know."

The Journal said it has no position on the merits of the proposed mine, but it emphasized that "regulatory due process matters."

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## ANWR passage is a monumental achievement

Congress' decision to allow drilling in the Arctic National Wildlife Refuge (ANWR) is a monumental achievement, opening the door to vast opportunities for Alaska and potentially sustaining the state's economy for decades into the future.

Regarding the next steps, the Tax Cuts and Jobs Act directs the Secretary of the Interior to conduct two lease sales on the Coastal Plain of ANWR over the next ten years, the first no later than four years from the bill's passage. The bill also limits surface development to just 2,000 acres of the 19 million acre refuge.

A great deal of administrative work must be done in preparing the lease sales and opponents have vowed to litigate and slow down the process.

Moreover, it is likely to be ten years or

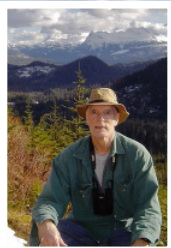
more before Alaska and the nation realizes the tangible benefits from ANWR oil and gas production, but if the process remains on track, the trans-Alaska oil pipeline could see a sharp increase in throughput by the early 2030s, if not sooner.

The passage of the tax bill opening the non-wilderness 1002 Area to energy development was a major victory for Alaska's congressional delegation.

"This is a watershed moment for Alaska and all of America," said U.S. Senator Lisa Murkowski. "We have fought to open the 1002 Area for a very long time, and now, our day has finally arrived. Alaskans can now look forward to our best opportunity to refill the pipeline, thousands of jobs that will pay better wages, and potentially \$60 billion in royalties for our state alone."

"For decades, Alaskans have fought for the right and opportunity to allow Alaska to develop the 1002 Area so that we can strengthen our communities and build a better life for our children," said U.S. Senator Dan Sullivan. "But, for decades we have been denied that right. Today that has changed."

U.S. Congressman Don Young said the bill's passage was an "historic moment for Alaskans," pointing out that "Congress specifically set aside the 1002 Area for responsible resource development and it was always intended to unleash American potential energy production." Young has fought 40 years to open ANWR and the bill's passage is an important step in the process.



# BALLOT INITIATIVE IS A SOLUTION IN SEARCH OF A PROBLEM

Guest Opinion by Owen Graham

Protecting salmon habitat is a proud accomplishment of many industries in Alaska, including the timber industry, since long before Statehood. However, the Alaska Forest Association opposes the proposed fish habitat ballot measure that would re-write habitat standards and more.

The proposed measure goes too far and will negatively impact the timber industry, as well as our communities across Alaska. It poses a grave threat to all of Alaska's resource industries and our economy.

In the early 1950s prior to beginning timber harvesting operations, the loggers walked salmon streams with state and federal agents to discuss stream protection measures. Alaska's statutes in Title 16 and Title 41 spell out the stream protection rules that all businesses must follow. These existing laws, regulations and best management practices are working.

In Southeast Alaska, decades of timber harvesting and mining have long coexisted with fishing. In fact, according to the Alaska Department of Fish and Game, the salmon escapements in the Stoney Creek and Harris River watersheds have more than doubled since the early 1950s. That would not have happened if the stream habitat had been harmed. These are two of the most heavily developed watersheds in Southeast Alaska.

The Alaska Forest Resources and Practices Act (FRPA) is designed specifically to protect fish habitat and water quality. The

FRPA includes continuous compliance and effectiveness monitoring to ensure that the resource protection goals are met.

A legislative proposal (HB 199) as well as the proposed ballot initiative would increase the state regulatory burden and needlessly impose additional costly, time consuming restrictions and permitting requirements on Alaska's resource industries, as well as communities.

Alaska's resource industries already take strong measures to protect stream habitat and water quality, just as the timber industry has done for decades. There has been no demonstrated need for increased stream protection legislation or regulations. Further, an initiative process, no matter how well intended, is not the proper way to force legislation or determine resource allocation. Ballot initiatives too often result in unanticipated consequences.

The proposed initiative is a solution in search of a problem. It poses a grave threat to Alaska's resource-based economy and will likely deepen our fiscal crisis at a time when the state is facing a serious and prolonged recession.

The State should instead be working to expand and diversify all of our state and local economies because the mining, oil and gas, timber and tourism industries are not incompatible with fishing. The record speaks for itself, given our strong and healthy world-class fisheries.

Owen Graham is the Executive Director of the Alaska Forest Association.

## RDC 2018 Juneau Fly-in



At left, Rep. Chris Tuck, House Speaker Bryce Edgmon, and Rep. Geran Tarr, Co-Chair of the House Resources Committee, address RDC. In center, Rep. Andy Josephson, Co-chair of the House Resources Committee, discusses fiscal issues with RDC president Eric Fjelstad. At right, RDC board member Glenn Reed, Pacific Seafood Processors Association, expresses concern on proposed regulations.



Above, Karl Hanneman of Tower Hill Mines expresses concern on HB 199, which would re-write fish habitat regulations, to Representative Louise Stutes, in center photo. At far right, RDC board members Ethan Schutt, Sam Mazzeo, Wendy Lindskoog, John Shively, and Stephanie Madsen participate in the discussions.



# INDUSTRY DIGEST



## RDC supports Donlin Gold project permits

In public testimony and written comments, RDC urged the Alaska Department of Environmental Conservation to approve a proposed Alaska Pollutant Discharge Elimination System draft permit for the Donlin Gold project, as well as a waste management permit.

The permits ensure protection of water quality and human health, places limits of the types and amounts of pollutants that can be discharged and outlines best management practices to which the mine must adhere.

As stated in the permits, the authorized discharge of treated wastewater will result from a net positive balance thus necessitating the need to discharge excess water. According to the permits, the proper treatments will be in place, and there will be no mixing zone.

The permits are two of over 60 major state and federal authorizations required under Alaska's rigorous permitting process.

## Ambler Mining District Industrial Access Project EIS

In comments submitted to the U.S. Bureau of Land Management (BLM), RDC encouraged the federal agency to include social and economic benefits, as well as other opportunities that access to the Ambler Mining District may create, in the proposed Ambler Mining District Industrial Access Project Environmental Impact Statement (EIS). RDC emphasized that potential benefits for both local communities and the state should be fully considered in the EIS process.

RDC also urged BLM to apply the proper section, Title II of the Alaska National Interest Lands Conservation Act (ANILCA) to the proposed access project. RDC noted the EIS, through ANILCA, will determine the best route, as well as the best terms and conditions for a permit.

## Support expressed for permit at Pebble project

RDC urged the Alaska Department of Natural Resources (DNR) to approve the renewal of a Miscellaneous Land Use Permit for the Pebble project in Southwest Alaska.

RDC pointed out that the renewal of the permit for the project will not only ensure continued exploration of a much-needed resource, but also send a message that Alaska's rigorous permitting process is predictable and stable as the state's mineral resources compete for investment around the globe.

DNR, in an unusual step against its normal practice, chose to grant the last permit for only one year. RDC noted exploration is subject to inspection and compliance, and believes that the project has and will continue to conduct exploration responsibly. According to public records, the project has been inspected 57 times since 2003 and regulators have found the project to be in compliance.

RDC Executive Director Marleanna Hall expressed concern that the State is setting a precedent for establishing new, unnecessary delays for projects and creating additional financial burdens to both the state and project proponents, especially during a difficult fiscal time.

## U.S. coal production increased in 2017

U.S. coal production, exports, and prices increased in 2017, according to the Energy Information Administration (EIA). The EIA expects total 2017 U.S. coal production to be 773 million short tons (MMst), 45 MMst higher than in 2016 and the largest year-over-year tonnage increase since 2001. An increase in demand for U.S. coal exports more than offset a slight decline in U.S. coal consumption.

## Interior releases new NPR-A and Beaufort Sea assessment

U.S. Secretary of the Interior Ryan Zinke released an updated resource assessment for the National Petroleum Reserve-Alaska (NPR-A), the Western Beaufort Sea, adjacent State and Native corporation lands, and State waters, which estimates the mean undiscovered, technically recoverable resources both on and offshore to include 17.6 billion barrels of oil and more than 50 trillion cubic feet of gas.

Zinke ordered the new assessment last year after new discoveries changed geologic knowledge of the area. Zinke said the new assessment shows that the North Slope will remain an important energy hub for decades in order to meet the energy needs of the nation.

The assessment was conducted by the Bureau of Ocean Energy Management (BOEM), the Bureau of Land Management (BLM), and the U.S. Geological Survey (USGS). The USGS led onshore efforts, and BOEM led offshore efforts with data contributed by BLM. Additional information was provided by State and industry partners.

Onshore, the USGS estimates a mean of 8.7 billion barrels of oil and 25 trillion cubic feet of gas. This is a significant increase from the 2010 assessment, which estimated a mean of 1.5 billion barrels of oil.

Offshore, BOEM's revised estimates of mean undiscovered technically recoverable resources in the Beaufort Sea Outer Continental Shelf Planning Area are 8.9 billion barrels of oil and 27.7 trillion cubic feet of gas. BOEM's updated assessment resulted in a net increase of nearly 700 million barrels of oil equivalent over BOEM's 2016 Beaufort Sea Planning Area assessment.

The estimated undiscovered oil resources are significantly higher than previous estimates, mainly because two geologic formations in the NPR-A host recent oil discoveries that are larger than anticipated. The current USGS estimate is more than six times the previous USGS assessments of the Central North Slope (2005) and NPR-A (2010).

The next USGS assessments to be announced in Alaska are of the Alaska 1002 Area and the area west of the NPR-A.

## ISER study sees overall construction spending up in 2018

Overall construction spending in Alaska in 2018 will rise by at least four percent, boosted by a strong rise in spending by the oil industry, according to a new study by the Institute of Social and Economic Research (ISER). Oil industry spending is expected to increase to \$2.6 billion. Defense spending in Alaska is also expected to rise while a number of other sectors are spending less.



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