



October 4, 2021

Department of the Interior  
BLM, Alaska State Office  
ATTN: Coastal Plain EIS  
222 West 7th Avenue, #13  
Anchorage, Alaska 99513

Delivered electronically to:

<https://www.federalregister.gov/documents/2021/08/04/2021-16572/notice-of-intent-to-prepare-a-supplemental-environmental-impact-statement-for-the-coastal-plain-oil>

To whom it may concern,

**RE: TR'ONDËK HWËCH'IN RESPONSE TO NOTICE OF INTENT TO PREPARE A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT FOR THE COASTAL PLAIN OIL AND GAS LEASING PROGRAM, ALASKA**

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Tr'ondëk Hwëch'in submits this letter in response to the Department of the Interior's "Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska", 86 Fed. Reg. 147 (August 4, 2021).

The purpose of this letter is to (1) reiterate our rights, titles and interests concerning the Porcupine Caribou Herd, (2) summarize our outstanding concerns about oil and gas development in ANWR that were not addressed in 2019 by the last Environmental Impact Statement (EIS), and (3) clarify our expectations on how we wish to be consulted and communicated with going forward to ensure that our concerns are addressed in the draft supplemental EIS.

**Background**

Tr'ondëk Hwëch'in (TH) is a self-governing First Nation based in Dawson, Yukon, Canada. Our traditional territory includes large areas adjacent to the Yukon-Alaska border and provides important winter habitat for Porcupine caribou. Subsequently, the well-being of Tr'ondëk Hwëch'in people continues to depend, in part, on the health of the Porcupine Caribou Herd (PCH). It is well-known that the Coastal Plain of the Arctic

National Wildlife Refuge (ANWR) (the “1002 lands”) provides critical calving, post-calving, and insect-relief habitat for Porcupine caribou<sup>1</sup>.

Activities associated with implementing an oil and gas leasing program on the Coastal Plain have the potential to negatively impact the distribution and population of the PCH and therefore, the subsistence harvesting rights of Tr’ondëk Hwëch’in citizens and other Indigenous people whose traditional territories overlap the range of the Porcupine Caribou Herd.

It is important to note that all First Nations and Inuvialuit within the Canadian range of the Porcupine Caribou Herd are self-governing and have signed land claims treaties with Canadian federal and territorial governments. An important outcome of implementing these Final Agreements is that the most vital portions of the Canadian range of the PCH have been protected from oil and gas development for decades. Furthermore, the Porcupine Caribou Management Board (PCMB) was established under the *Porcupine Caribou Management Agreement* (PCMA) and remains the primary instrument that has been used successfully for over 20 years to cooperatively manage the PCH in Canada. As one of eight Parties<sup>2</sup> to the PCMA, Tr’ondëk Hwëch’in has demonstrated a long-standing commitment to conservation of the Porcupine Caribou Herd.

While the rights granted in these agreements do not extend outside Canada, international treaty obligations exist between our countries regarding the PCH in the *International Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd* (1987) (the “International Porcupine Caribou Treaty”). This agreement serves to promote international cooperation to achieve herd conservation, while recognizing customary and traditional uses of the PCH, including by those identified as Native users under the PCMA. Furthermore, these international treaty obligations are tied to the purposes set forth for ANWR in the *Alaska National Interest Lands Conservation Act* (ANILCA) (1980) Section 303(2)(B):

- “(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic Char and grayling;
- (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;”

It is important that these purposes are not overshadowed by the addition from PL 115-97 (i.e. *Tax Cut and Jobs Act*) to ANILCA Sec. 303(2)(B): “(v) to provide for an oil and gas leasing program on the Coastal Plain”.

### **Tr’ondëk Hwëch’in Concerns and Recommendations**

When large amounts of uncertainty exist, a conservative approach, based on the precautionary principle, is often the best strategy to ensure that negative impacts of development are minimized to the full extent possible.

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<sup>1</sup> Porcupine Caribou Technical Committee, 1993. Sensitive Habitats of the Porcupine Caribou Herd. IPCB. 28 p. <http://www.pcmb.ca/documents/Sensitive%20Habitats%20of%20the%20Porcupine%20Caribou%20Herd%20booklet.pdf>

<sup>2</sup>Also Government of Canada, Government of Yukon, Government of the Northwest Territories, Vuntut Gwichin Government, First Nation of Na-Cho Ny’ak Dun, Inuvialuit Game Council, and Gwich’in Tribal Council

A great deal of uncertainty may potentially be addressed in the draft Supplemental EIS with full and meaningful consideration of a few key elements, which we elaborated on in 2019 with our response to the first EIS. The main points are highlighted again below:

**1. Consider limiting the extent of leasing to the minimum amount of land required by law.**

We acknowledge that Sec. 20001 of PL 115-97 requires the sale of at least two leases by December 22, 2027, and that these leases must be a minimum of 400,000 acres each in areas with the highest hydrocarbon potential. Therefore, to demonstrate a commitment to our international treaty obligations regarding the PCH, the BLM should include a development alternative in the draft supplemental EIS that is limited to 800,000 acres and no more.

**2. Commit to long-term, permanent protection for all areas on the Coastal Plain program area that won't be leased.**

This would provide a great deal of clarity for development companies and would prevent unnecessary future investment in exploration activities in areas that won't be leased. Permanent protection would provide a clear signal that BLM is committed to supporting the PCH and all the valued species that rely on the Arctic Coastal Plain.

**3. Give full and meaningful consideration for indirect impacts to all subsistence users throughout the range of the PCH, including Canadian subsistence harvesters.**

The last EIS released in 2019 failed to give effective consideration to the potential indirect impacts to Canadian subsistence users from oil and gas development on the calving and post-calving range of the Porcupine Caribou Herd. This omission undermines the intent behind of the International Porcupine Caribou Treaty (section 3.b.), and demonstrates a lack of understanding and appreciation for customary and traditional uses by Canadian subsistence users. Resolving this omission will require BLM to consult directly with affected Canadian Indigenous communities openly and respectfully. Each community has a unique perspective based on thousands of years of experience and knowledge of caribou and their needs. These consultations could take the form of in-person community meetings and online engagements.

**4. Incorporate a quantitative analysis of impacts to caribou using the best available scientific and traditional knowledge.**

The PCH is one of the most studied caribou herds in the world, and yet there is much we still don't know about how exactly the herd will respond to development especially in combination with accelerated climate change. However, new scientific information has emerged over the past two years which suggests that in the absence of development, the herd will significantly increase its reliance on the Coastal Plain in the coming decades. There is also vast quantities of traditional knowledge that exist within every community that depends on the herd. To be comprehensive, a draft supplemental EIS must give this information more meaningful consideration and inclusion.

**5. Use adaptive management based on proven mitigation measures, systematic monitoring and an abundance of caution.**

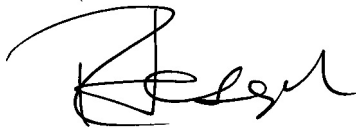
To minimize potential negative impacts of development, it is critical that the draft supplemental EIS is not built on faulty or misleading assumptions. In order to effectively evaluate any proposed mitigations, or monitoring or enforcement measures designed to limit negative impacts, a higher degree of transparency and accountability is required than was seen in the last EIS. Going forward, we expect that all underlying assumptions will be supported by high-quality evidence (either scientific or traditional).

We are confident that if the BLM undertakes all of these recommendations it would still likely be apparent that the residual effects to Porcupine caribou and the people who depend on them will remain unacceptably high. Proceeding with development in the face of these risks undermines the principles of conservation, sustainable development, stewardship and reconciliation that are encompassed in the numerous agreements, treaties, declarations, and policies that our countries have committed to over the past decades. For that reason, Tr'ondëk Hwëch'in remains firmly opposed to any level of development in the critical range of the Porcupine Caribou Herd.

We appreciated the opportunity to provide comments during the process to develop the first EIS; however, going forward, we expect a more meaningful engagement – one where the BLM demonstrates a willingness to fully consider both the vast amounts of traditional knowledge that exists within the range of the PCH, as well as the many ways that Canadian Indigenous communities may be impacted by oil and gas activities within the critical range of the Porcupine Caribou Herd. Effective evaluation of these impacts will require a level of transparency and inclusivity not yet demonstrated by the BLM; however we remain ever hopeful.

The Porcupine Caribou Herd is a unique, irreplaceable, essential ecological and cultural component of the vast landscape through which it ranges. Tr'ondëk Hwëch'in remains committed to the conservation and sustainable management of the Porcupine Caribou Herd. We will continue to advocate for the protection of this important resource, to ensure that future generations will be able maintain a relationship with the herd, and that the landscape will continue to benefit from the existence of this keystone species.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roberta Joseph', written in a cursive style.

Chief Roberta Joseph  
**TR'ONDËK HWËCH'IN**

cc Mr. Joe Tetlich, Chair, Porcupine Caribou Management Board