



November 7, 2023

**Submission of The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAC(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAC(NWT)), and Fisheries Joint Management Committee (FJMC)**

This is the submission of The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAC(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAC(NWT)) and the Fisheries Joint Management Committee (FJMC) to the Department of the Interior with respect to the Supplemental Draft Environmental Impact Statement (SDEIS) prepared by the Bureau of Land Management (BLM) and the US Fish and Wildlife Service (USFWS) for the Coastal Plain Oil and Gas Leasing Program, Alaska (August 2023).

We have already made several submissions to the BLM and/or USFWS with respect to the proposed Oil and Gas Leasing Program. These prior submissions include:

- A submission (June 2018) on the notice of intent to prepare an EIS (the Scoping Submission)
- A submission (March 2019) on the original Draft EIS (reproduced as Appendix 2 (and including the above Scoping Submission))
- A submission (October 4, 2021) with respect to the Notice of Intent to Prepare a Supplemental EIS (attached as Appendix 3 to this submission).

We adopt and confirm all of those submissions as part of this submission which introduces additions and refinements consistent with previous ones. Those submissions continue to be relevant to our comments on the current SDEIS and in particular we confirm that the purpose of our submissions has been to ensure that the EIS and any subsequent actions, take full account of:

- All Inuvialuit and Canadian interests that may be affected by the proposed leasing, and
- Our shared interests in the health, resilience and integrity of the shared ecosystem of the north slope of Alaska and Yukon (and related marine areas).

Our submissions have been based on the premise that the Department of the Interior and the BLM and USFWS has a legal obligation to ensure that these interests are scoped into the original EIS and fully addressed in the original EIS and now in this SEIS as well as any subsequent action. We stated that this obligation arises under both United States domestic law and under international law binding upon the United States. The obligations of the United States under international law are informed by both international environmental law and international human rights law and both treaty and customary law. That is still our position. And it is our respectful position that the SEIS as currently drafted does not fully address the legal obligations of the United States.

In our view there are four main reasons for this:

First, the SDEIS fails to refer to and analyse the *specific* obligations of the United States under relevant international environmental treaties.

Second, the SDEIS fails to acknowledge the relevance of the United States' obligations under international human rights law, specifically with respect to the International Covenant on Civil and Political Rights.

Third, the SDEIS fails to assess the risk of *significant* impacts of any of the leasing alternatives on Inuvialuit communities and harvesters.

Fourth, the discussion of the transboundary impacts of the leasing alternatives for Inuvialuit communities and harvesters in the SDEIS continues to be less rigorous than that provided for Alaskan communities.

While we continue to adopt all of our previous submissions, this submission focuses on each of the above deficiencies and recommends how these deficiencies can and should be addressed. In doing so we aim to be responsive to the request for specific comments found at page 2 of volume 1 of the SDEIS. We anticipate that the responses of the two lead agencies will be equally specific.

Finally, we acknowledge that Section 20001 (a) (2) and (b) (2) (A) of PL 115-97 makes it legally binding for the BLM to “establish and administer a competitive oil and gas program for leasing”. We also acknowledge the improvement to the breadth of alternatives, particularly Alternative D for its more restrictive nature. Nevertheless, we have always been and will remain opposed to any development in the Arctic National Wildlife Refuge. Development of any combination of alternatives would completely undermine all four of the original purposes of ANWR under ANILCA and furthermore would jeopardize Inuvialuit and other Canadian Indigenous groups' subsistence harvest rights, food security and cultural identity. Most notably, and as will be elaborated on below, the United States would be ignoring its legal responsibility under several treaties to protect the fragile transboundary ecosystem that supports shared wildlife species including Porcupine caribou, polar bear, migratory birds and several aquatic species, among others. As such, we do not offer direct feedback on any of the proposed alternatives; however, included below is critical feedback to help the BLM and USFWS improve the draft SEIS, which we believe is still critically flawed.

This submission has four parts and three appendices. Part 1 describes who we are. Part 2 adopts the headings outlined above to describe the specific ways in which the SDEIS fails to live up to the obligation of the United States under international law. Part 3 contains technical comments on the information contained in the SDEIS. Part 4 provides concluding statements and signatures.

Appendix 1 reproduces all of the sections of the SDEIS that reference the international legal obligations of the United States. Appendix 2 contains our submission on the original Draft EIS (which includes our Scoping Submission). Appendix 3 is our submission with respect to the Notice of Intent to Prepare a Supplemental EIS.

### **Part 1: Who we are.**

The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAC(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAC(NWT)), and Fisheries Joint Management Committee (FJMC), are wildlife, fish, and marine mammal management bodies established under the Inuvialuit Final Agreement (IFA) – a modern day land claim agreement protected under the Canadian Constitution.

Signed in 1984 between Canada and the Inuvialuit, the agreement was a direct response to Inuvialuit concerns over increased oil and gas development in Canada’s Western Arctic. The IFA sets out Inuvialuit land, harvesting and resource management rights within the Inuvialuit Settlement Region (ISR) – an area that encompasses the coastal plain adjacent to the Arctic National Wildlife Refuge and nearshore and offshore waters from the Yukon/Alaskan border to the Northwest Territories/Nunavut border. One of the primary principles of the IFA is “to protect and preserve Arctic wildlife, environment and biological productivity” (IFA 1.(c)). By upholding this principle, Inuvialuit harvesting and subsistence rights and continued use of the land for traditional practices are maintained.

Under the IFA, Inuvialuit are integrated in wildlife and environmental management bodies (IFA 14.(4)), participating with membership that is equal to that of the federal and territorial governments. The recommendations and decisions of these joint management bodies are a means of protecting and conserving wildlife populations upon which the sustainability of Inuvialuit communities depend. The following sections describe the specific mandates of the four IFA bodies who are signatories to this submission:

#### **Inuvialuit Game Council (IGC)**

The Inuvialuit Game Council represents the collective Inuvialuit interests in wildlife, and all matters related to the management of wildlife and wildlife habitat in the ISR. Under the IFA, the IGC has a specific responsibility to “review and advise government on any proposed Canadian position for international purposes that affects wildlife in the region” (IFA 14.(74)(e)).

## **Wildlife Management Advisory Council – North Slope (WMAC(NS))**

WMAC(NS) provides advice to appropriate ministers and any other appropriate bodies (e.g. screening committees) on all matters relating to wildlife policy and the management, regulation and administration of wildlife, habitat and harvesting for the Yukon North Slope (IFA 12.(57)). Under the IFA, the Yukon North Slope (the area in the northern Yukon north of the height of land between Alaska and Northwest Territories, including the British mountains, Barn Range and Richardson mountains, the coastal plain the adjacent nearshore and offshore waters) and Herschel Island is established as a special conservation area with the primary purpose of conserving wildlife, habitat and traditional subsistence use (IFA 12.(2)). The entire area is comprised of two protected areas: Ivvavik National Park (immediately adjacent to the Arctic National Wildlife Refuge (ANWR) over 10,000 square kilometres and immediately adjacent to the east Aullaviat/Anguniarvik traditional conservation area, some 8,400 square kilometres, that prohibits the disposition of surface and subsurface leases. Any development proposals relating to the Yukon North Slope not requiring surface or subsurface rights have to be screened to determine if they could have significant negative impact to wildlife, habitat or the ability of Inuvialuit to harvest wildlife (IFA 12.(3)(a)).

## **Wildlife Management Advisory Council - Northwest Territories (WMAC(NWT))**

The WMAC(NWT) provides advice to the appropriate ministers and any other appropriate bodies (e.g. screening committees) on all matters relating to wildlife policy and the management, regulation and administration of wildlife, habitat and harvesting in the ISR within the Northwest Territories (IFA 14.(60)). Specifically, the Council provides advice on any proposed Canadian position for international purposes that affects wildlife in the Western Arctic Region and provides advice on measures required to protect habitat that is critical for wildlife and harvesting (IFA 14. (60)(e)&(g)).

## **Fisheries Joint Management Committee (FJMC)**

The FJMC provides advice to the appropriate ministers and any other appropriate bodies (environmental screening committees) on all matters related to fisheries policy and the management, regulation, and administration of fish, marine mammals and their habitats in the ISR, the Western Arctic Region and the Beaufort Sea (IFA 14. 64).

## **Part 2: The SDEIS Fails to Fulfil the Obligations of the United States as matter of international law.**

### **2.1 The SDEIS fails to come to refer to and analyse the *specific* obligations of the United States under relevant international environmental treaties.**

In previous submissions we have identified the following relevant environmental treaties that are binding on the United States:

- Agreement between the Government of Canada and the Government of the United States on the Conservation of the Porcupine Caribou Herd (PCH Agreement)

- Agreement on the Conservation of Polar Bears (ACPB)
- The Migratory Birds Convention and Protocol (MBC & P)
- The Ramsar Wetlands Convention

And we have urged the relevant agencies to take these treaties into account as part of preparing the EIS and now the DSEIS. However, while the current DSEIS references the PCH Agreement, the ACPB, the Ramsar Convention and, collectively, the US’s migratory bird agreements, it does so at a high level of generality that fails to come to grips with the specific obligations contained in these agreements. Appendix 1 contains the relevant discussions from the SDEIS.

It is our respectful submission that this is completely inadequate. Accordingly, we formally request that the lead agencies address the following types of questions when finalizing the SEIS.

**Agreement between the Government of Canada and the Government of the United States on the Conservation of the Porcupine Caribou Herd**

For the PCH Agreement, describe how each of the Alternatives is consistent or not with the recognition in the Preamble of the PCH that:

... “the Porcupine Caribou Herd regularly migrates across the international boundary between Canada and the United States of America and that caribou in their large free-roaming herds comprise a unique and irreplaceable natural resource of great value which each generation should maintain and make use of so as to conserve them for future generations”;

And

... “the importance of conserving the habitat of the Porcupine Caribou Herd, including such areas as calving, post-calving, migration, wintering and insect relief habitat”.

For the PCH Agreement, describe how each of the Alternatives is consistent or not with the objectives of the Agreement, and, in particular,

“To conserve the Porcupine Caribou Herd and its habitat through international co-operation and co-ordination so that the risk of irreversible damage or long-term adverse effects as a result of use of caribou or their habitat is minimized”.

For the PCH Agreement provide an assessment of how the Draft SEIS ensures that “the Porcupine Caribou Herd, its habitat and the interests of users of Porcupine Caribou are given effective consideration in evaluating proposed activities within the range of the Herd” within the meaning of Article 3(b) of the Agreement. The draft SEIS fails to provide an assessment of the significance of the impact of any of the four options for the PCH, its habitat or Indigenous communities in Canada.

For the PCH Agreement provide an assessment of whether the proposed program as implemented through any of the four Alternatives is “likely to cause significant long-term

adverse impact on the Porcupine Caribou Herd or its habitat” within the meaning of Article 3(d) of the Agreement.

For the PCH Agreement provide an assessment of whether the proposed program, as implemented through any of the four Alternatives, is consistent with the obligation to “avoid or minimize activities that would significantly disrupt migration or other important behavior patterns of the Porcupine Caribou Herd or that would otherwise lessen the ability of users of Porcupine Caribou to use the Herd” within the meaning of Article 3(f) of the Agreement. In particular, please explain how each of the Action Alternatives (B, C and D) can be reconciled with this obligation.

### **Agreement on the Conservation of Polar Bears**

As noted in all of our submissions, Article II of the ACPB contains an important commitment to protect the habitat of polar bear as well as the ecosystem of which polar bears are a part.

“Each Contracting Party shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns, and shall manage polar bear populations in accordance with sound conservation practices based on the best available scientific data”.

Please provide an assessment of how each of the four Alternatives is consistent (or not) with the due diligence obligation of the United States to protect the ecosystem and habitat components, including denning sites, of the shared Southern Beaufort population of polar bears - especially given the cultural significance of the polar bear (Nanuq) to the Inuvialuit people and as recognized in the Inuvialuit-Inūpiat Polar Bear Management Agreement.

### **Migratory Birds Convention and Protocol**

For the Migratory Birds Convention and Protocol, please provide an assessment of how each of the leasing Alternatives is consistent (or not) with the underlined portion of the Preamble of this agreement, in that the Governments of the United States and Canada are:

... “committed to the long-term conservation of shared species of migratory birds for their nutritional, social, cultural, spiritual, ecological, economic, and aesthetic values through a more comprehensive international framework that involves working together to cooperatively manage their populations, regulate their take, protect the lands and waters on which they depend, and share research and survey information” (underlining added).

For the MBC & P please indicate how each of the leasing Alternatives is consistent (or not) with the obligations under Article IV (interpreted as due diligence obligations) to the effect that:

“Each High Contracting Power shall use its authority to take appropriate measures to preserve and enhance the environment of migratory birds. In particular, it shall, within its constitutional authority:

- (a) seek means to prevent damage to such birds and their environments, including damage resulting from pollution;
- ... and
- (d) pursue cooperative arrangements to conserve habitats essential to migratory bird populations”.

### **Ramsar Wetlands Convention**

As noted in Appendix 1, the SDEIS mentions the Ramsar Convention only once notwithstanding the fact that 99% of the 1002 area is classified as wetland. Consequently, we recommend that the SEIS be revised to respond to the following comments.

For the Ramsar Wetlands Convention, detail the due diligence obligations of the United States under this agreement and assess each of the leasing Alternatives in light of those due diligence obligations.

More specifically, please detail how each of the leasing options is consistent (or not) with the “wise use” of wetlands as understood by the parties to the Ramsar Convention.

### **Summary**

In sum it is our position that it is not enough for the SDEIS to recite the existence of these four international agreements. The SDEIS must also engage with the actual terms of these agreements and assess each leasing Alternative in light of the due diligence obligations of the United States under those agreements and under customary international law. Such an assessment is necessary in order to ensure that the ultimate Record of Decision is fully informed by the implications of each leasing Alternative for the observance of the legal obligations of the United States.

### **2.2 The SDEIS fails to acknowledge the relevance of the United States’ obligations under international human rights law, specifically with respect to the International Covenant on Civil and Political Rights.**

In previous submissions we have noted that the EIS should pay particular attention to the effects of any development of the 1002 lands that might impair the subsistence harvesting interests of Indigenous communities on both sides of the international boundary. The lead agencies are obliged to do so with respect to the interests of native communities in Alaska by the terms of s 810(a) of ANILCA. But the United States also has a legal obligation to consider the effects of any development of the 1002 lands that might impair the subsistence harvesting interests of Indigenous communities in Canada as a result of the commitments that it has made as a party to the International Covenant on Civil and Political Rights (ICCPR) and in particular the right to culture recognized in Article 27.

The original Final EIS did acknowledge the relevance of the ICCPR in the section of the EIS dealing with cultural resources:

Several international laws also address cultural considerations that are relevant and should be taken into account during the decision-making process: the Migratory Birds Convention and Protocol, Inuvialuit-Iñupiat Polar Bear Management Agreement in the Southern Beaufort Sea, Ramsar Wetlands Convention 1971, *and International Covenant on Civil and Political Rights*. (Emphasis added.)

This was an important acknowledgement even though the Final EIS did not go on to explore the implications of US obligations under the ICCPR. Unfortunately, the current DSEIS does not mention the ICCPR. In other words, the DSEIS is a step backwards not a step forward. This omission is particularly surprising given the importance that the DSEIS otherwise attaches to culture, cultural transmission and subsistence harvesting especially in relation to the interests of indigenous communities in Alaska.

Accordingly, we recommend that the DSEIS be revised to recognize the relevance of the ICCPR as well as the UN Declaration on the Rights of Indigenous Peoples. And further to that we invite the lead agencies to describe how each of the leasing Alternatives is consistent, or not, with the obligations of the United States under Articles 1(2) and Article 27 of the ICCPR and Articles 25, 29(1) and 32(2) of the UN Declaration. Such an assessment is necessary in order to ensure that the ultimate Record of Decision is fully informed by the implications of each option for the observance of the legal obligations of the United States

We rely upon our submissions on the original Draft EIS (attached as Appendix 2) for the proper interpretation of these provisions of the ICCPR and the UN Declaration.

### **2.3 The SDEIS fails to assess the risk of significant impact of any of the leasing alternatives for Inuvialuit communities and harvesters.**

As we have noted in previous submissions, it is not enough for an EIS to describe the impacts of the leasing options for Inuvialuit communities and harvesters; it must also assess the significance of those impacts. This is important for at least three reasons. First, under customary international law, the significance of impact is an important factor in determining what additional duties the source state owes to the state whose interests may be harmed.<sup>1</sup> Second, significance of impact is an important trigger under the terms of the PCH Agreement, specifically paragraphs (d), (e) and (f).

- d. Where an activity in one country *is determined to be likely to cause significant long-term adverse impact* on the Porcupine Caribou Herd or its habitat, the other Party will be notified and given an opportunity to consult prior to final decision.
- e. Activities requiring a Party's approval having a *potential significant impact* on the conservation or use of the Porcupine Caribou Herd or its habitat may require mitigation.

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<sup>1</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)* (2015), [2015] ICJ Rep 665 available online <https://www.icj-cij.org/public/files/case-related/150/150-20151216-JUD-01-00-EN.pdf>



- f. The Parties should avoid or minimize activities that would *significantly disrupt migration or other important behavior patterns of the Porcupine Caribou Herd* or that would otherwise lessen the ability of users of Porcupine Caribou to use the Herd. (Emphases added.)

Third, significance of impact is also important as a matter of international human rights law in order to assess whether interference with cultural rights amounts to a denial of culture within the meaning of Article 27 of the ICCPR.

In general, and except as concerns the need to assess significance of impact for the limited purposes of s 810 of ANILCA, there is very little discussion of the significance of impact in the SDEIS.<sup>2</sup> Such discussion as there is generally relates to the relative impacts associated with the different leasing options or discussion of the relative impacts of leasing activities vs the impacts of climate change. As might be expected, the SDEIS generally confirms that Alternative A will have no impact on transboundary uses although users of transboundary or shared resources may continue to experience impacts from other sources. By the same token, the SDEIS recognizes that the leasing Alternatives that allow the opportunity to lease larger area of the program area (Alternatives B and C) will have greater impacts than Alternative D, especially where those alternatives offer access to leasing opportunities within the calving grounds of the PCH (see especially at 3-321). Similarly, the DSEIS sometimes concludes that the risks posed by climate change will be more significant than that posed by leasing activities (see, for example at 3-268 with respect to the SBS polar bear population and 3-116 with respect to wetlands). A somewhat different point is that the SDEIS sometimes offers the observation that the implications of a particular leasing Alternative may or may not be expected to have population-level impacts.<sup>3</sup> It is unclear to us if the authors of the DSEIS consider this term to be a proxy for a measure of significant impact (at least in relation to biological resources).

But while this relative ranking of the Alternatives is useful, the DSEIS still does not provide an assessment of significance of impact and thus provides no indication of whether or not each of the action Alternatives will trigger the legal thresholds referenced above. Similarly, the relative ranking of risks (eg as between leasing activities and climate change) may be useful but it does not tell us *whether the cumulative effect of these impacts will be significant (or not), nor whether it will trigger the legal thresholds referred to above.*

In sum, we continue to request, as we have in previous submissions, that the revised SEIS reaches conclusions as to the significance of impact with respect to transboundary resources and uses. This is especially important with respect to species that are highly valued by Inuvialuit for cultural and subsistence purposes including but not limited to caribou, polar bear and aquatic species including the beluga whale and Dolly Varden (char).

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<sup>2</sup> One exception is this somewhat speculative comment with respect to *activities within Canada* that may cause significant impacts within the program area: “Transboundary impacts in other locations (e.g., Canada) may significantly affect the abundance of birds in the program area.” At 3-191.

<sup>3</sup> See, for example, the discussion of Arctic cisco (at 3-148), birds (at 3-170), pinnipeds (at 3-253), polar bears (at 3-257), a range of resources (at 3-312), and PCH (at 3-326).

Such an assessment is necessary in order to ensure that the ultimate Record of Decision is fully informed by the implications of each leasing Alternative for the observance of the legal obligations of the United States.

## **2.4 The discussion of the transboundary impacts of the leasing program for Inuvialuit communities and harvesters in the SDEIS continues to be less rigorous than that provided for Indigenous communities in Alaska**

In previous submissions we have emphasised that the United States has a legal obligation under both customary international law and relevant agreements to conduct its assessment of the impact of the leasing Alternatives in a non-discriminatory manner. See in particular our submission on the original Draft EIS. What we mean by this is that the EIS should be equally rigorous in its assessment of the impacts of the leasing alternatives for shared resources and subsistence users and Indigenous communities in Canada as it is for subsistence users and Indigenous communities in Alaska. In other words, the United States cannot effectively discount the negative impacts of the leasing alternatives because those impacts occur within Canada or to resource users and communities in Canada rather than in Alaska. And neither can the United States discount those impacts by failing to assess impacts in Canada in as rigorous a manner as that used to assess impacts in Alaska.

It is our assessment that the SDEIS still fails to meet this standard. Here are some examples.

- As noted in the previous subsection, the SDEIS provides an assessment of significance of impact of the leasing Alternatives for Alaska subsistence communities but fails to do the same for subsistence (or Indigenous) communities in Canada.
- The SDEIS provides an assessment of the importance of subsistence harvests for subsistence communities in Alaska that is significantly more detailed (qualitatively and quantitatively) than is any similar assessment for Indigenous subsistence user communities in Canada. For example, the SDEIS continues to acknowledge that Canadian users account for 85% of the PCH harvest (at 3-305) but there is no detailed assessment of the cultural (sharing), participation, and nutritional significance of this harvest for Indigenous communities in Canada as there is for the caribou study communities in Alaska and especially for the four primary subsistence communities in Alaska (see for example, Arctic Village at 3-297 to 3-299). There are eight Indigenous user communities in Canada, including the Inuvialuit user communities of Aklavik, Inuvik and Tuktoyaktuk.
- The SDEIS is more selective of resource implications for Indigenous communities in Canada than it is for Alaskan communities. For example, at 3-303 the DSEIS confirms that it will provide only an overview of impacts in relation to Arctic cisco, waterfowl and polar bears (and other harvested species are not even mentioned) while focussing on the PCH.
- The SDEIS confirms that “In all cases, future development would affect subsistence uses of resources of major importance for the subsistence study communities ...”. (At 3-308) By contrast, the section on transboundary impacts is more speculative: “Impacts on subsistence may extend outside the US to the Inuvialuit, Gwich’in, and other user groups of Canada.” (At 3-324). Given that the SDEIS has already acknowledged the greater

intensity of the PCH harvest by Indigenous communities in Canada it is hard to see how this more speculative assessment can be justified.

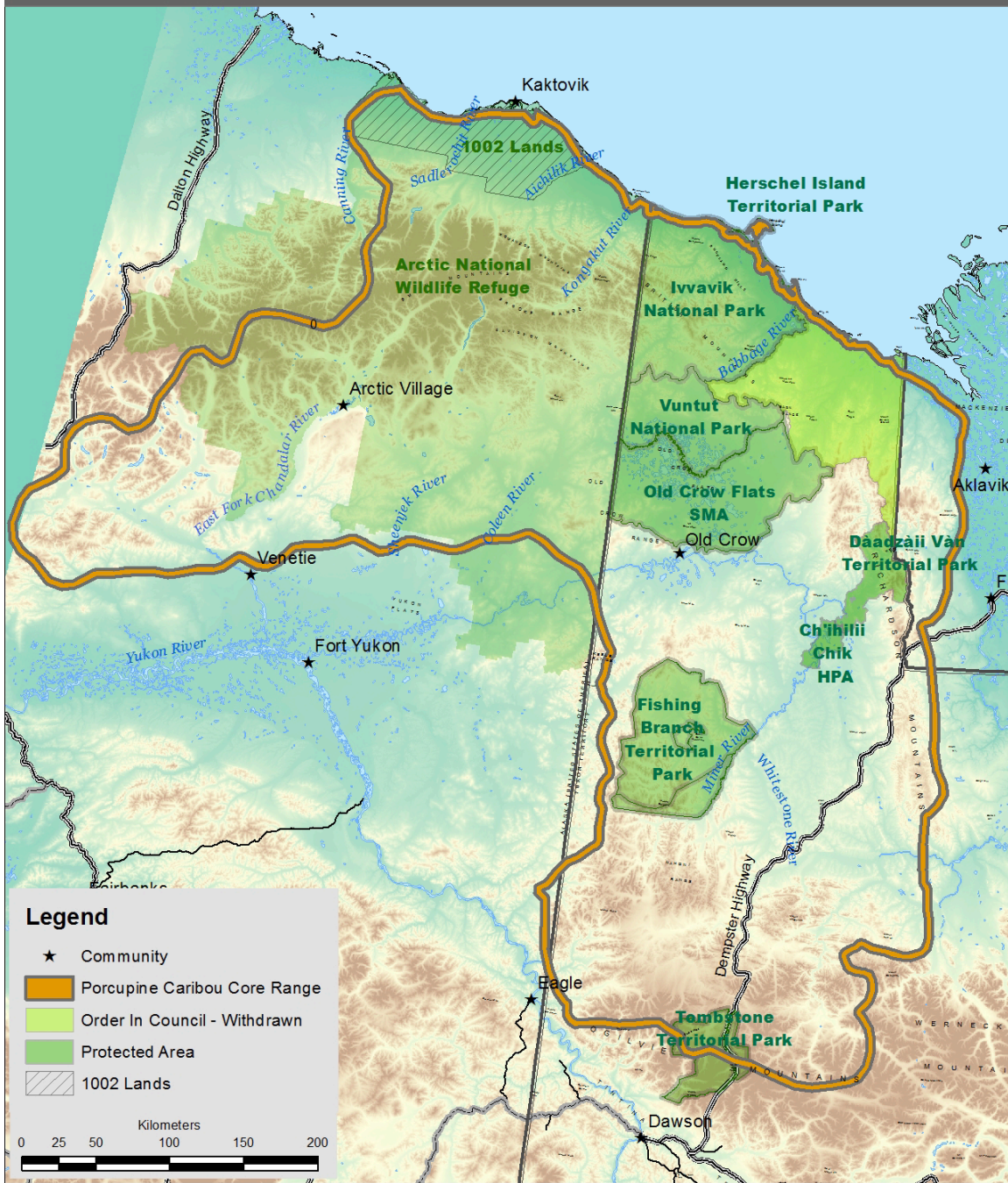
Accordingly, we request that the SDEIS be revised to respond to these concerns since, unless the SDEIS applies the same level of coverage and rigour to its assessment of the transboundary impacts of the leasing Alternatives, the result will necessarily be to discount those transboundary impacts. Notably, Canadian harvest data and traditional knowledge studies for Indigenous user communities of Porcupine caribou and South Beaufort polar bears are available to contribute to a reassessment of transboundary impacts and their significance.

### **Part 3: Technical Comments**

#### **3.1 Enhanced protections for Porcupine caribou and other North Slope wildlife habitat continue to advance in Canada at a time of possible diminished protection in ANWR with the prospect of future oil and gas lease sales and elevated adverse cumulative impacts resulting from accelerating climate-induced habitat change.**

- Federal, territorial and Indigenous governments and authorities in Canada continue to enhance contiguous protections for Porcupine caribou habitat across the herd's Canadian range, notably in the northern Yukon. (see Map 1 on following page). These include Ivvavik National Park, Vuntut National Park and Old Crow Flats Special Management Area. An agreement to enhance habitat protection for Porcupine caribou and other wildlife across 8,400 square kilometres of the eastern half of the Yukon North Slope (Aullaviat/Anguniarvik) is pending final approval. Under the agreement the area would contribute to meeting Target 1 conservation thresholds and associated commitments under the Convention on Biological Diversity and, more specifically, Objective 2(a) under the International Agreement on the Porcupine Caribou Herd.
- It would be a grave error in judgment to treat Canadian initiatives as habitat "offsets" that would rationalize or mitigate the impacts of decreased protections in ANWR given the unique habitat characteristics and the timing of their seasonal availability in ANWR in supported shared wildlife populations across the adjoining Alaska and Yukon North Slope.

# Porcupine Caribou Core Range and Protected Areas



## **3.2 Technical comments on the treatment of Porcupine caribou in the SDEIS**

### **Interpretation of Harvest data**

It is an improvement that Inuvialuit harvest data has been included in the SDEIS, however we note that there are errors in how it is presented and represented. The harvest table and any corresponding text should identify Inuvialuit harvest as a minimum count and not an estimate. Estimates of harvest were provided in some years during an earlier study of Inuvialuit harvest, however recent data collated by the Porcupine Caribou Management Board (PCMB) are minimum counts of harvested caribou. More specifically, although there is an attempt to collect Porcupine Caribou harvest data from the communities of Aklavik, Inuvik and Tuktoyaktuk, the quality of data varies significantly. Harvest information from Aklavik, in years when available, tends to be relatively accurate although it is still a minimum count. Sampled households can be very high, sometimes exceeding 90% of homes surveyed. Data from Inuvialuit harvesters in the community of Inuvik tends to be sparse and is not an accurate reflection of Inuvialuit users in that community. We know from past work and through communication with Inuvialuit harvesters that harvest from this community is similar to the community of Aklavik, although that can vary and can either be greater or less, pending the seasonal distribution of caribou. Harvest by Inuvialuit hunters from Inuvik is largely not reflected in the harvest numbers presented and would likely be double what is presented in the SDEIS table. Tuktoyaktuk does collect harvest data but generally is not a major harvester of Porcupine Caribou, although the right for those harvesters to take Porcupine Caribou exists, and with improved access to that community provided by the relatively new Inuvik to Tuktoyaktuk Highway, harvest may increase in the future.

### **Identification of calving and post-calving area**

The SDEIS should provide rationale, including biological support, for why the 40% value was selected for frequency of use to identify the core of the PCH calving and post-calving range.

The selection of the calving and post-calving area used to identify the important areas appears to be subjective. The selection is also inadequate to protect the herd from the impacts of oil and gas development as habitats that are frequently used by the herd during calving and post-calving are not identified as important for calving and post-calving functions (e.g., a frequency of 33% which isn't included which would be every third year on average).

In the Yukon, Inuvialuit, through land claims, have permanently protected the majority of the Canadian portion of the herd's calving grounds. Similarly, almost the entire post-calving area within Canada is protected. These areas form the basis for significant protections from development impacts to the PCH during the herd's most sensitive periods in the Yukon. Strong rationale is required to ensure adequate habitats are selected for protection through avoidance stipulations in the leasing program and that very low frequency, but still important habitats are conserved through required operating procedures (ROP)s identified within the SDEIS.

### **Use of most current data**

Much of the Porcupine Caribou Herd (PCH) data in the SDEIS is dated. We are aware of annual data collection programs on herd that are supported through IFA- Implementation funding. We ask that the most current data be used when the final SEIS is issued.

For example, in the SDEIS, data describing calving and post-calving areas are current to 2016. Other movement information on the herd is current to 2018. While we note this data should have been current in the SDEIS we have reviewed, at a minimum we recommend that all data be updated and provided in the final SEIS when issued. We also recommend that all lease stipulations, ROPs and other mitigations and proposed adaptive management including monitoring take the most current data into account.

### **Impact designations**

In the Inuvialuit Settlement Region, the Environmental Impact Screening Committee and the Environmental Impact Review Board are responsible for impact assessment, these co-management bodies arise from the IFA, as such we understand the process by which evaluations of impacts to values from industrial scale projects are made. In our review of impacts to the PCH, very little information is provided to arrive at impact designations. We note that much of the impact assessment does not align with information provided throughout the SDEIS. For example, the Inuvialuit have been party to impact assessment on PCH and the oil and gas leasing program completed by Don Russell and Anne Gunn for the governments of Canada, Yukon and NWT. This work is referenced heavily throughout the SDEIS however it does not appear to be considered in the impact assessment for the herd within the SDEIS. This is disconcerting as the impact assessment forms the basis for understanding risk to the herd and will help with identifying appropriate avoidance, mitigation, and monitoring of the herd. The impact assessment must link back directly to the information provided about the herd throughout the SDEIS. As recognized by the SDEIS, Inuvialuit communities will be the most impacted by this development through impacts to the PCH and indirect impacts to subsistence rights.

### **Industrial mitigations**

Little information is available in the SDEIS on the effectiveness of existing industrial mitigations for the PCH or other barren-ground caribou herds that use oil and gas areas. Even though decades of experience exist from oil and gas programs in Alaska, unfortunately information on industrial mitigations is still lacking. As a result, we are uncertain how effective mitigations will be.

In addition, we know that herds can respond differently to disturbance and have very different habitats from one another. Most experience understanding barren-ground caribou responses to oil and gas activity has been gained from the Central Arctic Herd (CAH) in Alaska. This herd is very different than PCH. PCH number from 121,000 to more than 218,000 as opposed to the

low tens of thousands usually noted in the CAH. PCH aggregate in the summer in groups of tens of thousands, to over a hundred thousand caribou, moving quickly to locations to seek relief from biting insects. PCH aggregations are much larger than the entire CAH. We do not know how aggregations of this size will respond to industrial activities like pipelines, drilling activities, traffic, etc.

The calving and post-calving habitats of the CAH are broad and open, whereas the calving and post-calving habitats of the PCH from the ISR into Alaska are constrained by mountains, resulting in a narrow band of habitat along the coast. This is where Inuvialuit harvest occurs in the summer. The differences in the herds are significant and add to uncertainty of the effectiveness of mitigation. When considering the mitigation hierarchy, avoidance is the best strategy to ensure impacts do not occur to PCH and Inuvialuit harvesting rights.

#### **Part 4: Concluding Statements and Signatures**

The Coastal Plain discussed in this submission is a critically important region to the Inuvialuit of Canada. As described above, the Inuvialuit have long and ongoing relationships with this region and with species that rely upon this habitat, which are rich with history and meaning. The transboundary Arctic Coastal Plain has been part of an international conservation regime for decades, demonstrating the Inuvialuit, Canadian, and United States' interest in and commitment to the conservation of these species and the habitat they depend upon. It is within the collective interests and legal obligations of Canada and the U.S. to ensure the ongoing conservation of wildlife populations dependent upon the Coastal Plain and the maintenance of constitutionally protected Inuvialuit subsistence rights, which are critical to the economic and cultural sustainability of the Inuvialuit people. As such, we reiterate our opposition to any development on the Coastal Plain of the Arctic National Wildlife Refuge.

Signed,



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Chair, Inuvialuit Game Council



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## Appendix 1 (2023): Treatment of International Agreements in the Draft SEIS

There are two sets of comments about international agreements in Chapter 1, the Introduction.

First, the SEIS acknowledges that it received several comments in the scoping process:

**International agreements**—Commenters asked how the BLM would respect and adhere to agreements with Canada, particularly regarding migratory and transboundary species such as the Porcupine Caribou Herd. Commenters noted several agreements and memoranda of understanding of concern. (At 1-6)

Second, the first part of s 1.9 of the SEIS is devoted to international agreements and states as follows:

In implementing the Coastal Plain Oil and Gas Leasing Program, the BLM would comply *with applicable international agreements*; federal, state, and local laws and regulations; and executive orders (EOs). (Emphasis added).

It then goes on to list a number of agreements.

In 1973, the US signed the Agreement on the Conservation of Polar Bears (Range States Agreement). This is an agreement between the governments of Canada, Denmark, Norway, the former Union of Soviet Socialist Republics, and the US, recognizing the responsibilities of circumpolar countries for coordinating actions to protect polar bears. Additionally, signed in 1988 and reaffirmed in 2000 by the Inuvialuit Game Council and the North Slope Borough (NSB) Fish and Game Management Committee, the Inupiat-Inuvialuit Agreement on Polar Bear Management in the Southern Beaufort Sea, is a user-to-user agreement on the conservation of polar bears specific to the Southern Beaufort subpopulation.

In 1987, the US and Canadian governments signed the Agreement between the Government of the United States of America and the Government of Canada on the Conservation of the Porcupine Caribou Herd. The main objectives of the agreement are to conserve the herd and its habitat through international cooperation and coordination. The goal is to minimize the risk of irreversible damage or long-term adverse effects, including cumulative effects, as a result of use of caribou or their habitat. Further, it ensures opportunities for customary and traditional uses of the Porcupine Caribou Herd. The agreement set up the International Porcupine Caribou Board, composed of delegated representatives from both countries, who give advice and recommendations to the countries on the conservation and management of the herd.

The US, Canada, Mexico, Russia, and Japan have also signed treaties protecting birds subject to the Migratory Bird Treaty Act. For a summary of applicable international agreements; federal, state, and local laws, regulations, permits; and EOs, refer to Appendix D. The joint lead agencies will continue to consult with regulatory agencies, as



appropriate, during subsequent NEPA processes before oil and gas activities are authorized, to ensure all requirements are met. (At 1-8).

The draft SEIS does not indicate how it determined which agreements were relevant or why, for example, neither this section nor Appendix D references the Ramsar Convention. The final EIS for the first lease sale did reference the International Covenant on Civil and Political Rights (ICCPR) but there is no reference to the ICCPR in this document.

The discussion of polar bears contains several references to both the Inupiat/Inuvialuit agreement and the ACPB:

Polar bears of the SBS stock range throughout much of the Beaufort Sea, routinely crossing the Alaska/Yukon border; thus, they are a shared resource subject to international agreements between the US and Canada and with other Arctic nations. Post-leasing activities and related impacts affecting bears in the program area have the potential to affect Canadian users of this resource, specifically Canadian First Nations hunters, in the Inuvialuit Settlement Region of northern Yukon and the Northwest Territories.

As described earlier, the subsistence harvest of this stock of bears is managed under the Inuvialuit-Inupiat Agreement established between Indigenous hunters in Alaska and Canada. That harvest is subject to a quota that is based on current assessments of the size, trend, and health of the bear population and is reviewed periodically; therefore, any additional mortality that affects the SBS stocks could have repercussions for the harvest quota and the hunters in both nations who are party to the agreement. Cub mortality could be from oil spills in the marine environment or from females prematurely abandoning undetected dens during 3D seismic exploration. (At 3-266)

The discussion of whales contains one (incorrect<sup>4</sup>) reference to the International Whaling Commission (IWC) established by the International Convention for the Regulation of Whaling.

The proposed action alternatives are not anticipated to have population-level impacts on whales or seals in the program area or along the marine transportation route. *The International Whaling Commission counts the US, Canada, and Russia among its 88 member countries.* It regulates whaling and addresses conservation issues, including bycatch and entanglement, ocean noise, pollution and debris, collision between whales and ships, and sustainable whale watching. There is no similar global commission for pinnipeds; instead they are protected by national laws and bilateral working groups, such as the US-Russia Marine Mammal Working Group. (At 3-266) (Emphasis added).

The Ramsar Wetlands Convention is mentioned in s 3.3.1, Vegetation and Wetlands as follows:

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<sup>4</sup> Canada is not a party to the ICRW and has not been since 1981.

Section 404 of the CWA, ROP management objectives, and the Ramsar Convention (Ramsar Convention Secretariat 2010) prioritize maintaining wetland health and function, while considering opportunities for developing undisturbed areas. (At 3-116)

The Migratory Birds Convention is mentioned indirectly in the section on birds (special status species as follows:

The Migratory Bird Treaty Act and the corresponding Migratory Bird Convention Act and Canada Wildlife Act in Canada protect all migratory birds. The Bald and Golden Eagle Protection Act provides additional protections for eagles. The ESA and the Species At Risk Act in Canada protect threatened and endangered bird species (Table J-10 in Appendix J). (At 3-151)

The discussion of caribou and especially the PCH triggers several discussions of the PCH Agreement. For example, the relevant “transboundary impacts” section states as follows:

The importance of the calving and post-calving season for the Porcupine Caribou Herd means that any potential demographic impacts of development in the program area would have impacts on subsistence and other users in Canada. The Porcupine Caribou Herd is covered by the Agreement between the Government of Canada and the Government of the United States on the Conservation of the Porcupine Caribou Herd. It provides for the coordinated conservation of the herd and established the International Porcupine Caribou Board and the Porcupine Caribou Technical Committee. (At 3-220)

The most detailed discussion of the PCH Agreement is in the section dealing with subsistence use:

Additionally, Gwich'in, Inuvialuit, and other user groups in Canada have cultural, historical (i.e., anytime in the past), and subsistence ties to the Arctic Refuge or the Porcupine Caribou Herd or both. According to the Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd, “when evaluating the environmental consequences of a proposed activity, the Parties will consider and analyze potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou” (Section 3(g)).

Canadian uses of the Porcupine Caribou Herd and other subsistence resources relevant to the program area are addressed under the section below, *Transboundary Subsistence Uses*. (At 3-291-292).

A subsequent discussion in the same section is much more general:

The importance of the Porcupine Caribou Herd and their particular vulnerability to activities in the US or Canada is evident through the establishment of certain agreements. One example is the Porcupine Management Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the

Porcupine Caribou Herd. Other indications of the importance of the Porcupine Caribou Herd is establishment of the Porcupine Caribou Management Board and International Porcupine Caribou Board. Moreover, wildlife refuges and parks, such as Ivavvik National Park, are dedicated to conserving the herd (PCMB 2019, Slope 2006). (At 3-325)

Appendix D on Laws and Regulations contains a section on international agreements. Once again, the discussion is very general.

D 1.1 International Porcupine Caribou Herd Agreement In 1987, the United States (US) and Canadian governments signed the Agreement between the Government of the United States of America and the Government of Canada on the Conservation of the Porcupine Caribou Herd. This bilateral agreement recognizes that the Porcupine Caribou Herd regularly migrates across the international boundary between Canada and the United States. It further recognizes that the herd should be conserved according to ecological principles that emphasize the importance of conserving habitat, including calving, post-calving, migrating, wintering, and seeking insect relief habitat.

The main objectives of the agreement are to conserve the Porcupine Caribou Herd and its habitat through international cooperation and coordination so that the risk of irreversible damage or long-term adverse effects, including cumulative effects, as a result of use of caribou or their habitat is minimized. It also ensures opportunities for customary and traditional uses of the Porcupine Caribou Herd. The agreement set up the International Porcupine Caribou Board, composed of representatives from both countries, who give advice and recommendations to the countries on the conservation and management of the herd. The International Porcupine Caribou Board, in turn, set up the Porcupine Caribou Technical Committee, composed of biologists from each country, to advise them in their recommendations. This agreement was signed by the US on July 17, 1987, in Ottawa, Canada, and entered into force in this country at that time.

#### D.1.2 Agreement on the Conservation of Polar Bears (Range States Agreement)

This is an agreement between the governments of Canada, Denmark, Norway, the former Union of Soviet Socialist Republics, and the US. It recognizes the responsibilities of circumpolar countries for coordinating actions to protect polar bears. The agreement prohibits hunting, killing, and capturing polar bears, except for bona fide scientific and conservation purposes, preventing serious disturbance to the management of other living resources, and by local people under traditional rights. This multilateral agreement also commits each associated country to adhere to sound conservation practices by protecting the ecosystem of polar bears. Special attention is given to denning areas, feeding sites, and migration corridors, based on best available science through coordinated research. The agreement was signed by the US on November 15, 1973, in Oslo, Norway; it was ratified on September 30, 1976, and went into force in this country on November 1, 1976.

#### D.1.3 Inuvialuit-Inūpiat Polar Bear Management Agreement (I-I Agreement)

Signed in 1988 and reaffirmed in 2000 by the Inuvialuit Game Council and the North Slope Borough (NSB) Fish and Game Management Committee, the I-I Agreement is a voluntary user-to-user agreement between Inuvialuit (in Canada) and Iñupiat (in Alaska) hunters. It provides for annual quotas, hunting seasons, protection of polar bears in or during construction of dens, females accompanied by cubs-of-the-year and yearlings, collection of information and specimens to monitor harvest composition, and annual meetings to exchange information on the harvest, research, and management. The I-I also establishes a joint commission to implement the I-I Agreement, and a technical advisory committee, consisting of biologists from agencies D. Laws and Regulations D-2 Coastal Plain Oil and Gas Leasing Program Draft Supplemental Environmental Impact Statement in the US and Canada involved in research and management. Their function is to collect and evaluate scientific data and make recommendations to the joint commission.

#### D.1.4 Memorandum of Understanding for the Conservation and Management of Shared Polar Bear Populations

In 2008, the US and Canada signed a Memorandum of Understanding (MOU) to facilitate and enhance coordination, cooperation, and development of partnerships around the conservation and management of polar bears. The two countries share management responsibilities for the Southern Beaufort Sea polar bear population, and Indigenous peoples from both countries have harvesting rights. The agreement provides a framework for the development and implementation of mutually agreeable immediate, intermediate, and long-term actions that focus on specific components of polar bear conservation. The MOU established a Bilateral Oversight Group whose function is to achieve enhanced, collaborative action on polar bear management and conservation.

## **Appendix 2 (2023): Joint submission on original Draft SEIS**

Submission of The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAC(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAC(NWT)), and Fisheries Joint Management Committee (FJMC)

<b>INTRODUCTION</b>	<b>22</b>
<b>PART 1: WHO WE ARE</b>	<b>23</b>
1.1 Inuvialuit Game Council (IGC)	23
1.2 Wildlife Management Advisory Council – North Slope (WMAC(NS))	24
1.3 Wildlife Management Advisory Council - Northwest Territories (WMAC(NWT))	24
1.4 Fisheries Joint Management Committee (FJMC)	24
<b>PART 2: THE PRINCIPLE OF NON-DISCRIMINATION IN THE CONTEXT OF TRANSBOUNDARY POLLUTION AND IMPACT ASSESSMENT LAW</b>	<b>24</b>
2.1 Description of the principle and its applicability	24
2.2 Review of Sections 3.4.3, 3.4.4, and 3.4.5 of DEIS in consideration of the principle of non-discrimination	26
<b>PART 3: OBLIGATIONS UNDER VARIOUS INTERNATIONAL TREATIES BINDING ON THE UNITED STATES AND CANADA</b>	<b>29</b>
3.1 Agreement between the Government of Canada and the Government of the United States on the Conservation of the Porcupine Caribou Herd (1987)	29
3.2 Migratory Birds Convention and Protocol	31
3.3 The Agreement on the Conservation of Polar Bears (1973)	32
3.4 Ramsar Wetlands Convention, 1971	33
<b>PART 4: INTERNATIONAL HUMAN RIGHTS LAW</b>	<b>34</b>
<b>PART 5. CONCLUDING STATEMENT &amp; SIGNATURES</b>	<b>37</b>
<b>APPENDIX I. DEIS CONSIDERATION OF INUVIALUIT SCOPING SUBMISSION</b>	<b>38</b>
<b>APPENDIX II. ERRORS AND OMISSIONS</b>	<b>43</b>
AIII.1 Errors and Omissions regarding Polar Bears	43
AIII.2 List of omitted resources relevant to the DEIS deficiencies discussed in this submission	44

## Introduction

This is the submission of The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAC(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAC(NWT)) and the Fisheries Joint Management Committee (FJMC) to the Department of the Interior with respect to the Bureau of Land Management's Draft Environmental Impact Statement (DEIS) for the Coastal Plain Oil and Gas Leasing Program, Alaska. The DEIS was published shortly before the holiday season on December 20, 2018.

We also provided detailed comments in June 2018 on the Department's Notice of Intent to prepare the EIS. As we stated at that time, the purpose of that submission was to ensure that the EIS that was to be prepared, and any subsequent actions, take full account of:

- *All Inuvialuit and Canadian interests that may be affected by the proposed leasing*
- *Our shared interests in the health, resilience and integrity of the shared ecosystem of the north slope of Alaska and Yukon (and related marine areas).*

Our original submission on scoping is attached to this submission (Appendix III). That submission was based on the premise that the Department has a legal obligation to ensure that these interests are scoped into the DEIS and fully addressed in any EIS and subsequent action. We stated that this obligation arises under both United States domestic law and under international law binding upon the United States. The obligations of the United States under international law are informed by both international environmental law and international human rights law. That is still our position.

The purpose of this submission is to provide you with our assessment of whether the DEIS fulfils those obligations: the DEIS fails to satisfy the United States' EIS obligations under both US domestic law and under international law. Accordingly, we respectfully request that deficiencies identified in the DEIS be rectified and that no further steps be taken with respect to operationalizing the leasing program unless and until a revised EIS can be prepared and published for further comment. Further, we have assessed whether the DEIS has met the requirements outlined in our scoping submission in Appendix II.

This submission has five parts and three appendices. Part 1 describes who we are. Part 2 discusses the principle of non-discrimination in the context of transboundary pollution and impact assessment law and examines the DEIS in light of that principle. It concludes that the DEIS applies a different standard to the study and consideration of the impact of post-leasing activities on Canadian Indigenous communities than it applies to the impact of these activities on Alaskan Indigenous communities. As a result, it is impossible to draw informed conclusions as to the impact of these activities on Canadian Indigenous communities and specifically Inuvialuit communities that depend upon the Porcupine Caribou Herd (PCH) as well as other shared resources.

Part 3 assesses the DEIS against the obligations owed by the United States under each of the Porcupine Caribou Agreement, the Migratory Birds Convention and Protocol, the Agreement for

the Conservation of Polar Bears and the Ramsar Convention. It concludes that the DEIS for the most part simply fails to acknowledge the relevant international agreements and therefore the responsibility of the United States to uphold their commitments in these agreements. Part 4 reiterates the importance of acknowledging the relevance of international human rights laws and standards in evaluating the DEIS and proposed leasing activities. As with Part 2, this Part concludes that the DEIS fails to assess in any detailed way the impact of post-leasing activities on the rights of Canadian Indigenous communities as Indigenous peoples under international law and as minorities under international law. As a result, it is impossible to assess whether these activities will, *inter alia*, deprive Inuvialuit of their means of subsistence or deny them the access to material elements necessary for them to continue to practice their culture and to transmit that culture to subsequent generations.

Part 5 concludes our assessment. There are three Appendices. Appendix I contains a table examining whether the DEIS considered the specific requests from the Inuvialuit scoping submission. Appendix II lists errors and omissions from the DEIS that we noted. Appendix III is a copy of the Inuvialuit scoping submission.

## **Part 1: Who we are**

The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAC(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAC(NWT)), and Fisheries Joint Management Committee (FJMC), are wildlife, fish, and marine mammal management bodies established under the *Inuvialuit Final Agreement* (IFA) – a modern day land claim agreement protected under the Canadian Constitution.

Signed in 1984 between Canada and the Inuvialuit, the agreement was a direct response to Inuvialuit concerns over increased oil and gas development in Canada’s Western Arctic. The IFA sets out Inuvialuit land, harvesting and resource management rights within the Inuvialuit Settlement Region (ISR) – an area that encompasses the coastal plain adjacent to the Arctic National Wildlife Refuge and nearshore and offshore waters from the Yukon/Alaskan border to the Northwest Territories/Nunavut border. One of the primary principles of the IFA is “to protect and preserve Arctic wildlife, environment and biological productivity” (IFA 1(c)). By upholding this principle, Inuvialuit harvesting and subsistence rights and continued use of the land for traditional practices are maintained.

Under the IFA, Inuvialuit are integrated in wildlife and environmental management bodies (IFA 14(4)), participating with membership that is equal to that of the federal and territorial governments. The recommendations and decisions of these joint management bodies are a means of protecting and conserving wildlife populations upon which the sustainability of Inuvialuit communities depends.

The following sections describe the specific mandates of the four IFA bodies who are signatories to this submission:

### ***1.1 Inuvialuit Game Council (IGC)***

The Inuvialuit Game Council represents the collective Inuvialuit interests in wildlife, and all matters related to the management of wildlife and wildlife habitat in the ISR.. Under the IFA, the

IGC has a specific responsibility to “review and advise government on any proposed Canadian position for international purposes that affects wildlife in the region” (IFA 14(74)(e)).

### *1.2 Wildlife Management Advisory Council – North Slope (WMAC(NS))*

WMAC(NS) provides advice to appropriate ministers and any other appropriate bodies (e.g. screening committees) on all matters relating to wildlife policy and the management, regulation and administration of wildlife, habitat and harvesting for the Yukon North Slope (IFA 12(57)). Under the IFA, the Yukon North Slope (the entire northern Yukon between Alaska and Northwest Territories, including the nearshore and offshore waters) is established as a special conservation area with the primary purpose of conserving wildlife, habitat and traditional subsistence use (IFA 12(2)). Any development proposals relating to the Yukon North Slope have to be screened to determine if they could have significant negative impact to wildlife, habitat or the ability of Inuvialuit to harvest wildlife (IFA 12(3)(a)).

### *1.3 Wildlife Management Advisory Council - Northwest Territories (WMAC(NWT))*

The WMAC(NWT) provides advice to the appropriate ministers and any other appropriate bodies (e.g. screening committees) on all matters relating to wildlife policy and the management, regulation and administration of wildlife, habitat and harvesting in the ISR within the Northwest Territories (IFA 14(60)). Specifically, the Council provides advice on any proposed Canadian position for international purposes that affects wildlife in the Western Arctic Region and provides advice on measures required to protect habitat that is critical for wildlife and harvesting (IFA 14 (60)(e)&(g)).

### *1.4 Fisheries Joint Management Committee (FJMC)*

The FJMC provides advice to the appropriate ministers and any other appropriate bodies (environmental screening committees) on all matters related to fisheries policy and the management, regulation, and administration of fish, marine mammals and their habitats in the ISR, the Western Arctic Region and the Beaufort Sea (IFA 14(64)).

The proposed Coastal Plain Oil and Gas Leasing Program has the potential to significantly impact several transboundary wildlife populations shared by Alaska and the Inuvialuit Settlement Region for which the IGC, WMAC (NWT), WMAC (NS), and FJMC have management responsibilities. These include, but are not limited to, Porcupine Caribou, polar bear, beluga and bowhead whales, seals, fish species, migratory bird species, and grizzly bear. Inuvialuit beneficiaries rely on many of these species for subsistence and traditional harvesting.

We begin our assessment of the DEIS by considering the differential and discriminatory way in which the DEIS assesses the impact of post-leasing activities on Canadian Indigenous Communities.

## **Part 2: The principle of non-discrimination in the context of transboundary pollution and impact assessment law**

### *2.1 Description of the principle and its applicability*

There is a general principle of international environmental law that in assessing polluting activities or in assessing the impact of a project or activity on a shared resource, the source



state should pay the same attention to the effect of its activities on neighbouring states who may be affected by the proposed activity as it pays to the effect of the project or activity on its environment and its citizens. This principle is reflected most directly in “Principles of conduct in the field of the environment for the guidance of States in the conservation and harmonious utilization of natural resources shared by two or more States” (1978) as adopted by the United National Environment Program.<sup>5</sup>

Principle 13

It is necessary for States, when considering, under their domestic environmental policy, the permissibility of domestic activities, to take into account the potential adverse environmental effects arising out of the utilizations of shared natural resources, without discrimination as to whether the effects would occur within their jurisdiction or outside it.

The principle is also reflected in the Recommendation of the OECD Council on the Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relation to Transfrontier Pollution (1977)<sup>6</sup> and more recently in Article 15 of the Draft Articles of the International Law Commission on Prevention of Transboundary Harm from Hazardous Activities (2001).<sup>7</sup>

The principle is also reflected (albeit not by name) in the Agreement between the Government of Canada and the Government of the United States on the Conservation of the Porcupine Caribou Herd (1987).<sup>8</sup> The procedural and substantive obligations of this Agreement make it clear that a party to the Agreement that is considering proposed activities within its part of the range must consider the effect of those activities of all of the users of the herd, not just users of the herd that happen to live within the boundaries of the State considering the proposed activity. Implicitly the consideration that is extended to users in the other State must be consideration on a footing of equality with the consideration of users within the State. The following provisions of Article 3 expressly refer to “users of the Herd” or equivalent (emphasis added):

- a) The Parties will ensure that the Porcupine Caribou Herd, its habitat and the interests of users of Porcupine Caribou are given effective consideration in evaluating proposed activities within the range of the Herd.
- b) ...
- c) ....
- d) ...
- e) The Parties should avoid or minimize activities that would significantly disrupt migration or other important behavior patterns of the Porcupine Caribou Herd or that would otherwise lessen the ability of users of Porcupine Caribou to use the Herd.
- f) When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyze potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou....

<sup>5</sup> <https://digitalibrary.un.org/record/41332>

<sup>6</sup> Available online <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0152>

<sup>7</sup> The text of the Draft Articles with commentary is available here

[http://legal.un.org/docs/?path=../ilc/texts/instruments/english/commentaries/9\\_7\\_2001.pdf&lang=EF](http://legal.un.org/docs/?path=../ilc/texts/instruments/english/commentaries/9_7_2001.pdf&lang=EF)

<sup>8</sup> <http://www.treaty-accord.gc.ca/text-texte.aspx?id=100687>

The principle makes intuitive sense. A state should not be allowed to conclude that a project or proposed activity poses an acceptable risk of harm because it has only studied the potential harms that may be felt by the environment and persons on its side of the border. This must be even more the case where a project or activity involves shared resources and even more so where those shared resources are an essential part of the subsistence and cultural life of an Indigenous community or communities.

This principle also seems to inform the Memorandum (July 1, 1997) of the Council of Environmental Quality of the Executive Office of the President, which provides the Council's Guidance to Heads of Agencies on NEPA analysis for Transboundary Impacts.<sup>9</sup> This Guidance informs that "the entire body of NEPA law directs federal agencies to analyze the effects of proposed actions to the extent they are reasonably foreseeable consequences of the proposed action, *regardless of where those impacts might occur*" (emphasis added). In light of this, the CEQ concluded that federal agencies "must include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the United States."

In sum, and as we stated in our submission on scoping, the BLM is bound to include within the scope of the EIA the effect of activities in the 1002 lands which may have implications for shared migratory species, the shared ecosystem of the North Slope and interrelated social, cultural, and economic effects on Indigenous communities in Canada that depend on these resources and the shared ecosystem.

We have reviewed the DEIS with this principle in mind. While it is true that the DEIS makes occasional references to the potential impact of oil and gas activities on migratory resources and thus on Indigenous communities in Canada, the DEIS does not afford these interests equal study, analysis and respect when compared with the interests of Indigenous communities in Alaska.

This fundamental flaw in the DEIS is most evident in section 3.4.3 (Subsistence Use and Resources), section 3.4.4 (Sociocultural Systems) and section 3.4.5 (Environmental Justice). We will discuss the consideration of Canadian Indigenous communities in each of these three sections below.

## *2.2 Review of Sections 3.4.3, 3.4.4, and 3.4.5 of DEIS in consideration of the principle of non-discrimination*

Section 3.4.3 begins with the statement that (at 3-159) "For the purposes of this analysis, there are four primary subsistence study communities: Kaktovik, Nuiqsut, Arctic Village, and Venetie." Kaktovik is included as a primary study community since its residents "are the primary subsistence users of the program area". The other three communities are included as primary study communities for different reasons. Nuiqsut is included because (at 3-163) "Nuiqsut residents harvest resources that migrate through the area". Arctic Village is included (although to the south of the program area) because:

Arctic Village is on the Arctic Refuge boundary, so most subsistence activities do extend into the refuge. Resource uses farthest north toward the program area are sheep and caribou hunting and furbearer harvesting.

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<sup>9</sup> <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/memorandum-transboundary-impacts-070197.pdf>

Arctic Village and other northern Gwich'in people consider caribou their most important food source and refer to themselves as the caribou people (see Section 3.4.4). Caribou from the PCH calve in the program area, and for this reason, it is considered sacred ground to the Gwich'in people ...

Venetie is included for much the same reasons even though located still further south. The DEIS does not include a single Canadian Indigenous community as a primary subsistence study community or offer equivalent in-depth assessment of the effects of post lease activities on any such community even though the report acknowledges (at 3-167) that “the NWT Gwich'in people, the Vuntut Gwich'in people, and the Inuvialuit (*sic*) are the primary users [85%] of the PCH in terms of number of caribou harvested”<sup>10</sup> and furthermore that harvesters from relevant communities<sup>11</sup> might be affected (at 3-167) if “post-lease oil and gas activities changes caribou resource availability or abundance for those users.” The DEIS also acknowledges that those communities (at 3-169) “with a greater reliance on caribou would be more likely to experience potential indirect impacts related to caribou abundance or availability.” The report concludes with respect to communities reliant on the PCH that Kaktovik, Ventie and Arctic Village (although lacking harvest data) would be the most likely Alaskan communities to experience impacts. However, this would be even more so the case (as the report acknowledges) for some Canadian Indigenous communities (3-169):

Compared with these three Alaskan communities, uses of PCH caribou (in terms of number harvested) by the NWT Gwich'in people, Vuntut Gwich'in people, and Inuvialuit user groups are comparable or higher, and communities associated with these user groups—Old Crow, Aklavik, and Fort McPherson—are in the PCH range (Map 3-27 in Appendix A); thus, these Canadian communities would be among the most likely to experience potential indirect impacts due to their proximity to and reliance on the PCH.

Such a conclusion should have prompted DEIS drafters to give much greater consideration to the effects on, at the very least, these three Canadian communities, with a similar level of rigour as was extended to Kaktovik, Nuiqsut, Arctic Village, and Venetie. But the report falls far short of that kind of assessment. Instead, the DEIS includes more cursory references to the impacts of post-leasing activities on Canadian Indigenous communities, occasionally acknowledging that they may be severe. For example, the section on “general development and culture” concludes that (at 3-178):

If changes in resource availability occur on a larger scale, such as changes in migration or overall abundance of the PCH, then communities farther away, particularly those not experiencing increased economic activity and revenues from the increased development, such as Arctic Village, Venetie, and Canadian user groups, could experience greater net impacts on subsistence. As noted in Kofinas et al. (2016) a total loss of caribou harvests would represent a 31 percent

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<sup>10</sup> Indeed (at 3-168) “The most recent data that compare PCH harvests between the US and Canada from 1992 to 1994 (the last time that harvest data were compiled for PCH user groups in Alaska and Canada) indicate that Canadian users accounted for 85 percent of the harvest, and Alaska users were 15 percent of the harvest ...”.

<sup>11</sup> The relevant communities are identified (at 3-167) as Aklavik, Inuvik, and Tuktoyaktuk, Fort McPherson [Tetlit Zeh], Tsiigehtchic), Old Crow, Dawson City and Mayo.” This is the only time that the text of the DEIS references particular Canadian communities aside from one more mention of Aklavik on p.3-170.

decline in subsistence foods for Venetie and a 32 percent decline for Kaktovik. Such a scenario would cause a severe disruption in social ties and cohesion for the study communities.

We note that even though “Canadian user groups” are mentioned in this context, the conclusion is directed at the “study communities”.

The differential treatment of Alaskans and Canadians who may be impacted by the proposed leasing program is even more obvious in the section of the DEIS (3.4.4) dealing with Sociocultural Systems which acknowledges at the outset that (at 3-178):

This section provides a brief overview of sociocultural systems among the Iñupiat and Gwich'in peoples, including history, social/political organization, the mixed cash/subsistence economy, and belief systems. There is an emphasis on the communities closest to the program area: Kaktovik, Nuiqsut, Arctic Village, and Venetie.

As a result of this emphasis there is no discussion of Inuvialuit history, the social and political organization of the Inuvialuit, the mixed cash/subsistence economy of the Inuvialuit or the belief systems of the Inuvialuit and there is no consideration of the impact of post-leasing activities on Inuvialuit socio-cultural systems other than the passing and formulaic reference (at 3-190) to “and other communities that rely on the PCH and CAH.” While this section of the DEIS references Gwich'in peoples, these are all references to Alaskan Gwich'in communities and not to Canadian Gwich'in communities. Certainly, there is no specific consideration of Canadian Indigenous communities in this section of the DEIS.

The inadequate and narrow lens of the four study communities continues in the Environmental Justice section (3.4.5) of the DEIS. As with the previous sections, the DEIS focuses on the four study communities<sup>12</sup> without explaining why Canadian communities that are highly dependent on the PCH are excluded from further analysis. As acknowledged in Section 3.4.3 (at 3-178 and cited above), this section is perhaps where one would expect to find the greatest consideration of Canadian communities, as they will experience no direct benefits of the proposed activities, only the negative impacts. This section of the report contains no reference to or discussion of the impact of post-leasing activities for environmental justice considerations with respect to Canadian Indigenous communities.

In sum, the DEIS offers a qualitatively inadequate analysis of the effect of post-leasing activities on Canadian Indigenous communities although acknowledging that at least some of these communities may be more seriously affected than Alaskan communities. As a result, it is impossible to draw informed conclusions in regard to the impact of these activities on Canadian Indigenous communities, specifically Inuvialuit communities, that depend upon the Porcupine Caribou Herd (PCH) as well as other transboundary resources for subsistence harvest and the dependent social, economic, and cultural continuity.

We are aware from the CEQ's Guidance that “Agencies have expressed concern about the availability of information that would be adequate to comply with NEPA standards” when considering the impacts of projects in another jurisdiction. To that end Appendix II of this

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<sup>12</sup> DEIS at 3-193: “Kaktovik is the closest community to be potentially affected by the leasing program. Based on their identified use of subsistence resources (see Section 3.4.3), the communities of Nuiqsut, Arctic Village, and Venetie are also relevant to the environmental justice analysis.”

submission provides some key sources that the Bureau might wish to examine in order to properly assess the effect of post-leasing activities on Canadian Indigenous communities. Some of those sources include references to traditional knowledge. The Parties to this Submission are open to additional requests for information and references to the extent that we have adequate resources to allow us to respond.

### **Part 3: Obligations under various international treaties binding on the United States and Canada**

This part examines the obligations of the United States under relevant bilateral agreements between the United States and Canada as well as multilateral agreements such as the Agreement on the Conservation of Polar Bears.

#### *3.1 Agreement between the Government of Canada and the Government of the United States on the Conservation of the Porcupine Caribou Herd (1987)<sup>13</sup>*

We highlighted the importance of this Agreement in our scoping submission.

The Preamble to this Agreement (hereafter referred to as ‘the PCH Agreement’) recognizes that the Porcupine Caribou Herd (PCH) is a shared migratory resource and “a unique and irreplaceable natural resource of great value which each generation should maintain and make use of so as to conserve them for future generations”. The Parties also acknowledge “that there are various human uses of caribou and that for generations certain people of Yukon Territory and the Northwest Territories in Canada have customarily and traditionally harvested Porcupine Caribou to meet their nutritional, cultural and other essential needs and will continue to do so in the future ...”.

The substantive provisions of the PCH Agreement include Article 3 on Conservation which imposes the following obligations on both States:

#### **Conservation**

- g) The Parties will take appropriate action to conserve the Porcupine Caribou Herd and its habitat.
- h) The Parties will ensure that the Porcupine Caribou Herd, its habitat and the interests of users of Porcupine Caribou are given effective consideration in evaluating proposed activities within the range of the Herd.
- i) Activities requiring a Party’s approval having a potential impact on the conservation of the Porcupine Caribou Herd or its habitat will be subject to impact assessment and review consistent with domestic laws, regulations and processes.
- j) Where an activity in one country is determined to be likely to cause significant long-term adverse impact on the Porcupine Caribou Herd or its habitat, the other Party will be notified and given an opportunity to consult prior to final decision.
- k) Activities requiring a Party’s approval having a potential significant impact on the conservation or use of the Porcupine Caribou Herd or its habitat may require mitigation.

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<sup>13</sup> <http://www.treaty-accord.gc.ca/text-texte.aspx?id=100687>

- l) The Parties should avoid or minimize activities that would significantly disrupt migration or other important behavior patterns of the Porcupine Caribou Herd or that would otherwise lessen the ability of users of Porcupine Caribou to use the Herd.
- m) When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyze potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou....

We have read the section of the DEIS referencing caribou and especially the Porcupine Caribou Herd (PCH (at 3-103 - 3-122)). This section of the DEIS begins by acknowledging that caribou are an important subsistence resource for Gwich'in and Inupiaq hunters but there is no acknowledgement of their importance for Inuvialuit, and the reference to Gwich'in appears to be to Alaskan Gwich'in Nations only. This section contains no references to the PCH Agreement although there are references to the herd wintering in Yukon (3-104) and occasionally calving in Yukon (3-106).

We have also reviewed, as noted above, the sections of the DEIS dealing with Subsistence Use and Resources (3.3.3), Sociocultural Systems (3.4.4) and section Environmental Justice (3.5.5) and found them to be inadequate to assess the potential impacts of the proposed leasing program on the Inuvialuit.

The only direct reference to the PCH Agreement that we have found in the DEIS is in section 3.4.3 dealing with Subsistence Uses and Resources which contains the acknowledgement that (at 3-160):

According to the Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd, "when evaluating the environmental consequences of a proposed activity, the Parties will consider and analyze potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou" (Section 3(g)). Canadian uses of the PCH are addressed under the section below, Subsistence Uses of the CAH and PCH.

We submit that the claim that "Canadian uses of the PCH are addressed under the section below, Subsistence Uses of the CAH and PCH" is simply not justified by the cursory treatment of "Canadian uses of the PCH" in that section. That section identifies that Canadian Indigenous people take 85% of the harvest but fails to follow through with an assessment of the cultural, social and economic importance of this very significant harvest for Inuvialuit and other Canadian Indigenous communities. Sections 3.4.4 and 3.4.5 similarly fall short of adequate consideration of these potential impacts by failing to mention Canadian users of the PCH at all. In sum, we do not accept that this DEIS serves (Article 3(b)) to "ensure that the Porcupine Caribou Herd, its habitat and the interests of users of Porcupine Caribou are given effective consideration in evaluating proposed activities within the range of the Herd." Further action is required to discharge this obligation. Once that obligation is discharged it will be possible to assess the significance of the impact on the PCH and its habitat (Article 3(d)).

We also note that the DEIS does appear to accept that post-leasing activities may affect the migration patterns of the herd and thus the ability of different communities to harvest the herd

(e.g. at 3-115 and 3-170). This therefore requires further study given the obligation of both Parties to (Article 3(f)) “avoid or minimize activities that would significantly disrupt migration or other important behavior patterns of the Porcupine Caribou Herd or that would otherwise lessen the ability of users of Porcupine Caribou to use the Herd.”

Finally, we note that Article 3(g) requires that the Parties, in evaluating the environmental consequences of a proposed activity, must “consider and analyze potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou ...”. In order to carry out a cumulative impact assessment of affected users of the PCH it is necessary to define those affected users and assess on a community-by-community basis the cumulative impact of the projected post-leasing activities. The DEIS does not do this. The cumulative effects subsections in the DEIS provide, at best, a brief summary of some possible and discrete impacts, not any analysis of synergistic and accumulative effects of these impacts combined, which is the standard for cumulative effects analyses (NRC 2003). The overall treatment of cumulative effects in the DEIS is grossly inadequate and does not discharge the obligation imposed by Article 3(g).

### 3.2 Migratory Birds Convention and Protocol<sup>14</sup>

In our Scoping Submission we observed that the Preamble to the Protocol (which amends the original Convention of 1916) commits the Parties

*... to the long-term conservation of shared species of migratory birds for their nutritional, social, cultural, spiritual, ecological, economic, and aesthetic values through a more comprehensive international framework that involves working together to cooperatively manage their populations, regulate their take, protect the lands and waters on which they depend, and share research and survey information; (emphasis added)*

In addition, the amended Article IV provides that:

*Each High Contracting Power shall use its authority to take appropriate measures to preserve and enhance the environment of migratory birds. In particular, it shall, within its constitutional authority:*

*(a) seek means to prevent damage to such birds and their environments, including damage resulting from pollution;*

*....; and*

*(d) pursue cooperative arrangements to conserve habitats essential to migratory bird populations.*

We have read the section of the DEIS dealing with birds (3-84 – 3-103). At various points this section acknowledges that some of the populations are shared populations and also that some populations are important subsistence resources for North Slope residents (e.g. Common Eider and King Eider at 3-87). However, this section of the DEIS does not reference the Migratory Birds Convention or Protocol or the related North American Waterfowl Management Plan. Nor

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<sup>14</sup> <http://laws-lois.justice.gc.ca/eng/acts/m-7.01/page-11.html#h-16>

does the DEIS offer a systematic account of shared populations or even identify which populations fall within the terms of the Convention and Protocol. Nor does it offer a systematic account of shared populations that are important for subsistence purposes. Nor does it reference the interests of Canadian Indigenous communities in these resources.

We have also reviewed, as noted above, the sections of the DEIS dealing with Subsistence Use and Resources (3.3.3), Sociocultural Systems (3.4.4) and section Environmental Justice (3.5.5). These sections fail to address birds as a subsistence resource for either Alaskan communities or Canadian Indigenous communities.

### *3.3 The Agreement on the Conservation of Polar Bears (1973)<sup>15</sup>*

As noted in our scoping submission, Article II of this Agreement contains an important commitment to protect the habitat of polar bear as well as the ecosystem of which polar bears are a part.

Each Contracting Party shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns, and shall manage polar bear populations in accordance with sound conservation practices based on the best available scientific data.

The recently adopted Circumpolar Action Plan<sup>16</sup> provides that Parties should “Consider the cumulative effects of climate change and human activities on polar bear subpopulations and habitats when making management decisions using tools such as predictive modeling” and should “Identify essential polar bear habitat and redefine it as changes occur over time.” Specifically, with respect to planning and Environmental Impact Assessments, the Action Plan suggests that Parties should:<sup>17</sup>

Use regional land-use planning processes, regional strategic environmental assessments and project environmental assessments to mitigate the effects of mineral and energy development activities on polar bears.

Regarding the section of the DEIS dealing with polar bears (3-123 – 3-129), we note that while the Inupiat-Inuvialuit Agreement on the Southern Beaufort Sea population is referenced, there is no further mention of Inuvialuit harvesting of polar bears or the cultural significance of polar bears and no reference to the Agreement on the Conservation of Polar Bears or to the Circumpolar Action Plan.

We have also reviewed, as noted above, the sections of the DEIS dealing with Subsistence Use and Resources (3.3.3), Sociocultural Systems (3.4.4) and Environmental Justice (3.4.5). There is no discussion of polar bears as a subsistence resource for either Alaskan communities or Canadian Indigenous communities notwithstanding the fact that the Inuvialuit-Inupiat Agreement acknowledges that the continued availability of bears “is essential to maintain the

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<sup>15</sup> <http://pbsg.npolar.no/en/agreements/agreement1973.html>

<sup>16</sup> [http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri\\_Fangst\\_Landbrug/Polarbear%202015/CAP/CAP%20Book.pdf](http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri_Fangst_Landbrug/Polarbear%202015/CAP/CAP%20Book.pdf)

<sup>17</sup> Id at 59.



dietary, cultural, and economic base” of both communities. Neither is there any discussion of any Inuvialuit traditional knowledge of polar bears, such as the Joint Secretariat 2015 book *Inuvialuit and Nanuq: A polar bear traditional knowledge study*.

Furthermore, the cumulative impacts section of the DEIS, starting at p. 3-148 does not adequately or appropriately consider cumulative impacts to polar bears. This is especially important, given that, *as described in the DEIS*, the Southern Beaufort Sea (SBS) polar bear population has experienced a population decline, the region is experiencing rapid sea ice loss and bears are spending much more time on land (p. 3-132 para 4-5), the population has lower body condition ratings than the adjacent Chukchi sea population (p. 3-132 para 4), the 1002 lands is an important terrestrial maternal denning area for SBS polar bears (p. 3-128 para 3), the “high hydrocarbon potential” (HCP) area of the 1002 lands overlaps with the highest use maternal denning area for SBS bears (p. 3-134 para 2), and that due to concerns over climate change impacts to sea ice, and thus polar bear populations, polar bears are listed under the *Endangered Species Act* as Threatened (p. 3-124 para 3) and 77% of the project area is critical habitat for denning (p. 3-128, para 2). To fail to address cumulative impacts to these animals while acknowledging this litany of discrete threats underscores the inadequacy of the DEIS in its treatment of cumulative impacts throughout.

#### *3.4 Ramsar Wetlands Convention, 1971<sup>18</sup>*

As we observed in our Scoping Submission, ninety nine percent of the 1002 area is classified as wetland. Both the United States and Canada are party to the Convention on Wetlands of International Importance especially as Waterfowl Habitat. The Preamble to the Convention contains the following recitals:

*CONSIDERING the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl;*

*BEING CONVINCED that wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable;*

*DESIRING to stem the progressive encroachment on and loss of wetlands now and in the future;*

*RECOGNIZING that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource;*

While most of the obligations under the Convention apply only to listed wetlands, there are some more general obligations such as the obligation under Article 3(1) to “formulate and implement their planning so as to promote ... as far as possible the wise use of wetlands in their territory.”

The term “wise use” is a term of art under the Ramsar Convention. The Parties have elaborated on its meaning in several ways including through the adoption of Recommendation 6.2 (1996) on Environmental Impact Assessment. This Recommendation calls on the Contracting Parties

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<sup>18</sup> [http://archive.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671\\_4000\\_0](http://archive.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0)

“to integrate environmental considerations in relation to wetlands into planning decisions in a clear and publicly transparent manner.”<sup>19</sup>

The DEIS indicates (at 3-67 – 3-68) that:

Most of the landscape in the program area is considered to be jurisdictional wetland (USFWS 2018), and NWI data indicate that at least 96 percent of the program area is classified as wetlands or waters of the US; the 4 percent of the program area that is unmapped is also likely to consist of wetlands or waters (Table 3-16; Map 3-11, Wetlands, in Appendix A).

We have read the Wetlands section of the report (section 3.3.1). It contains no references to the obligations of the United States under the Ramsar Convention and no reference to the wise use concept of the Convention.

### *3.5 Conclusions with respect to the treaty obligations of the United States*

We conclude that, for the most part, the DEIS simply fails to acknowledge the relevant international agreements and in particular the DEIS fails to discharge US obligations under the terms of the PCH Agreement.

## **Part 4: International Human Rights Law**

In our scoping submission we emphasized that any assessment of the effects of post-leasing activities should pay particular attention to the effects of any development of the 1002 lands that might impair the subsistence harvesting interests of Indigenous communities on both sides of the international boundary.

Both Canada and the United States are party to the International Covenant on Civil and Political Rights (ICCPR).<sup>20</sup> Article 1(2) of that Convention provides that “In no case may a people be deprived of its own means of subsistence.” In addition, Article 27 provides that:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

The Human Rights Committee (HRC) has interpreted the right to culture in Article 27 in broad terms in its General Comment No. 23.<sup>21</sup> Paragraph 7 of that Comment notes that:

7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The

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<sup>19</sup> Brisbane, [https://www.ramsar.org/sites/default/files/documents/library/key\\_rec\\_6.02e.pdf](https://www.ramsar.org/sites/default/files/documents/library/key_rec_6.02e.pdf)

<sup>20</sup> <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

<sup>21</sup> General Comment No. 23: The rights of minorities (Art. 27) : . 08/04/94. CCPR/C/21/Rev.1/Add.5 <http://indianlaw.org/sites/default/files/resources/UN%20OHCHR%20Comments%20on%20Article%2027.pdf>

enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

In its decision in *Poma Poma v Peru* the HRC observed as follows:<sup>22</sup>

7.4 The Committee recognizes that a State may legitimately take steps to promote its economic development. Nevertheless, it recalls that economic development may not undermine the rights protected by article 27. Thus the leeway the State has in this area should be commensurate with the obligations it must assume under article 27. The Committee also points out that measures whose impact amounts to a denial of the right of a community to enjoy its own culture are incompatible with article 27, whereas measures with only a limited impact on the way of life and livelihood of persons belonging to that community would not necessarily amount to a denial of the rights under article 27.5

The HRC has also held that there is a procedural aspect to Article 27. Thus, in *Poma Poma* the Committee took the view that

7.6 .... the admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a minority or indigenous community depends on whether the members of the community in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy. The Committee considers that participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community. In addition, the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members.

In *Poma Poma* the HRC concluded that the State was in breach of its Article 27 obligations.

7.7 In the present case, the Committee observes that neither the author nor the community to which she belongs was consulted at any time by the State party concerning the construction of the wells. Moreover, the State did not require studies to be undertaken by a competent independent body in order to determine the impact that the construction of the wells would have on traditional economic activity, nor did it take measures to minimize the negative consequences and repair the harm done. The Committee also observes that the author has been unable to continue benefiting from her traditional economic activity owing to the drying out of the land and loss of her livestock. The Committee therefore considers that the State's action has substantively compromised the way of life and culture of the author, as a member of her community. The Committee concludes that the activities carried out by the State

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<sup>22</sup> Communication No. 1457/2006, 27 March 2009 < <http://juris.ohchr.org/Search/Details/1495>>.

party violate the right of the author to enjoy her own culture together with the other members of her group, in accordance with article 27 of the Covenant

While *Poma Poma* deals with the obligations of the State to Indigenous communities within its territory, human rights are universal and the responsibility of the State (here the United States) is engaged if activities which it proposes to authorize within its territory serve to undermine or deny the human rights of Indigenous communities in an adjacent State.

Both Canada and the United States have also endorsed the United Nations Declaration on the Rights of Indigenous Peoples.<sup>23</sup> Article 25 of that Declaration provides that:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

In addition, Article 29(1) provides (in part) that:

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Finally, Article 32(2) provides that:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

The obligations in Article 32(2) are owed to “indigenous peoples concerned” which must refer to peoples who may be affected by a proposed project or activities that may affect their lands, territories “and other resources”.

It is our contention, principally for the reasons given in Part 2 of this submission, that the DEIS does not allow us to assess the effect of post-leasing activities on the rights of Canadian Inuvialuit communities as Indigenous peoples under international law and as minorities under international law. While the sections of the DEIS dealing with Subsistence Use and Resources (3.3.3), Sociocultural Systems (3.4.4) and Environmental Justice (3.5.5) touch on these issues the DEIS completely fails (as we have already noted in Part 2) to assess how these post-leasing activities will affect communities beyond the four study communities. As a result, we are not in a position to assess whether these activities will, *inter alia*, deprive the Inuvialuit of their means of subsistence, or deny them access to the material elements necessary for them to continue to practice their culture and to transmit that culture to subsequent generations.

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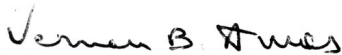
<sup>23</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

## Part 5. Concluding Statement & Signatures

The Coastal Plain discussed in this submission is a critically important region to the Inuvialuit of Canada. The Inuvialuit have a long and ongoing relationship with this region and with species that rely upon this habitat, which are rich with history and meaning. The transboundary Arctic Coastal Plain has been part of an international conservation regime for decades, demonstrating the Inuvialuit, Canadian, and United States' interest in and commitment to the conservation of these species and the habitat they depend upon. It is within the collective interests and legal obligations of Canada and the US to ensure the ongoing conservation of wildlife populations dependent upon the Coastal Plain and the maintenance of Inuvialuit subsistence rights, which are critical to the economic and cultural sustainability of the Inuvialuit people.

It is our assessment that the DEIS fails to fulfill the United States' EIS obligations under both US domestic law and under international law and fails to recognize the transboundary nature of the Arctic Coastal Plain. Accordingly, we respectfully request that measures be taken to rectify the deficiencies identified and that no further steps be taken with respect to operationalizing the leasing program unless and until a supplementary EIS can be prepared and published for further comment.

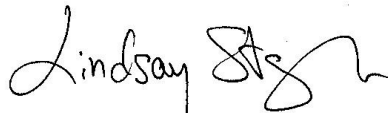
Signed,



Vernon Amos  
Chair, Inuvialuit Game Council



Chair, Wildlife Management Advisory  
Council (NWT)



Lindsay Staples  
Chair, Wildlife Management Advisory  
Council (North Slope)  
Larry Carpenter



Alan Kennedy  
Chair, Fisheries Joint Management  
Committee

## Appendix I (2019 submission). DEIS Consideration of Inuvialuit Scoping Submission

Inuvialuit Scoping Submission Ask	DEIS Consideration	Additional Notes	
<p>1.1 How will the leasing program, including the requirement to hold no fewer than two lease sales area-wide, leasing alternatives, post-lease activities, including seismic and drilling exploration, development, additional road and air access, and transportation of oil and gas in and from the Coastal Plain (hereafter referred to the leasing program and related activities) affect population dynamics, behaviour, distribution and health of shared wildlife populations and the quantity, quality, availability and connectivity of their habitats (critical habitat and habitat effectiveness) with special attention to each of the following:</p> <ul style="list-style-type: none"> <li>• Porcupine Caribou barren ground caribou herd <ul style="list-style-type: none"> <li>○ including core Porcupine Caribou calving areas, sensitive habitats and summer/winter range</li> </ul> </li> <li>• migratory birds</li> <li>• grizzly bears, wolverine, muskox</li> <li>• polar bear, including critical denning areas</li> <li>• beluga whale</li> <li>• bowhead whale</li> <li>• ringed seal</li> <li>• Shared fish stocks including Arctic char, Dolly Varden char and Cisco</li> <li>• listed U.S. and Canadian species-at-risk including: buff-breasted sandpiper, rusty blackbird; short-eared owl, dolly Varden char, red knot, polar bear, peregrine falcon, olive-sided flycatcher, ivory gull, grey whale, bowhead whale, barn swallow, bank swallow</li> <li>• cited candidate species for listing under either U.S. or Canada’s species-at-risk acts (grizzly bear, wolverine, barren-ground caribou, red-necked phalarope)”</li> </ul>	<p>Incomplete.</p>	<p>The DEIS contains very little quantitative data or analysis pertaining to any of these species. The vast majority of information in the DEIS is qualitative and does no more than summarize potential impacts to each of the above listed species. Canadian listed and candidate species at risk are not mentioned in that specific context.</p> <p>We note the section on the Porcupine Caribou Herd as being particularly deficient in terms of both errors and omissions, and point the BLM to this source: Russell, D., and A. Gunn. 2019. Vulnerability analysis of the Porcupine Caribou Herd to potential development of the 1002 lands in the Arctic National Wildlife Refuge, Alaska. Report prepared for: Environment Yukon, Canadian Wildlife Service, and GNWT Department of Environment and Natural Resources. 143 pp.</p> <p>We have additional specific comments related to polar bear, written below this table.</p>	
<p>1.2 How will the <i>leasing program and related activities</i> affect Canadian</p>	<p>Inuvialuit traditional use of the Yukon North Slope</p>	<p>Not described or considered in relevant sections of DEIS.</p>	<p>Despite multiple assertions that the EIS reviewed scoping submission comments, references to Inuvialuit subsistence, sociocultural, and historic use of the North Slope are cursory at</p>

<p>subsistence use areas and Inuvialuit subsistence activities dependent on shared wildlife populations? Are subsistence use areas and subsistence activities likely to be generally in better or worse condition after the project is over? What are the potential impacts to food security, health and well-being for Inuvialuit, including an assessment of economic impacts?</p> <p>Canadian subsistence use areas and Inuvialuit subsistence activities are described in the documents listed in Appendix A1.</p> <p>The next column breaks this complex request out into sub-sections.</p>		Cursory mention in Section 3.4.3.	best. The list of sources consulted in Section 3.4.2 (3-151) does not include any Inuvialuit sources as referred to in the scoping submission. The list of relevant regulations for evaluating the effects on cultural resources (3-151) does not include any relevant international agreements or treaties (see Part 4, above).
	Inuvialuit cultural resources and traditional knowledge of the Yukon North Slope	Not described or considered in relevant sections of DEIS. Cursory mention in Section 3.4.3.	Canadian users are not mentioned in Sections 3.4.2: Cultural Resources or 3.4.4: Sociocultural Systems. For Alaskan communities, it is stated that ethnographic cultural resources have "not been documented [...] under the existing regulatory frameworks" (3-156). Despite this assertion, traditional knowledge has been extensively documented in the Inuvialuit Settlement Region, the Gwich'in Settlement Area, and Alaska. Some of this documentation was referred to in our scoping submission (Appendix I). None of this available information was consulted.
	Impacts on sociocultural systems	Not considered in the DEIS.	The list of sources in appendix III is only a small subset of the available documented information on the cultural resources of the affected communities. Much more information on cultural resources in the Inuvialuit Settlement Region is available in the ISR Traditional Knowledge Catalogue: <a href="http://isrtlk.com">http://isrtlk.com</a> .
	Impacts on subsistence resource abundance and availability	Incomplete	The DEIS lacks any thorough analysis of the social consequences of developing traditional lands or disrupting transboundary subsistence resource availability. Section 3.4.4 lacks any adequate analysis of the complex sociocultural importance of subsistence and traditional lands. Social consequences are briefly addressed under "Disruptions to Subsistence Activities and Uses" (3-190), but Canadian users are not mentioned. <b>This is not due to a lack of available information, but rather a lack of consultation and informed analysis.</b>
			The DEIS states that 85% of PCH harvest takes place in Canada (3-167), but the impact on Canadian subsistence is not addressed to the same level as for the Alaskan communities. No analysis was undertaken on the impact to other important subsistence populations, such as the Southern Beaufort Sea polar bear population. We have addressed these deficiencies in more detail in Part 2, above.

			Subsistence is a complex economic, social, cultural, and spiritual system which interacts with traditional knowledge and the contemporary health of modern northern communities. It cannot, by definition, be treated in isolation. Impacts to Canadian subsistence are omitted from the DEIS Sections: Cultural Resources (3.4.2), Sociocultural Systems (3.4.4), Environmental Justice (3.4.5), Economy (3.4.10), Public Health (3.4.11), or Unavoidable Adverse Effects (3.5). Its absence in these sections is a major omission.
	Food Security	Not considered in the DEIS	Several mechanisms exist to assess the importance of subsistence harvest to food security, and the potential impacts of the development on food security, in terms of meat and replacement income. Food security also includes complex socioeconomic sharing relationships within and between communities on both sides of the border. We have included several references below on these considerations. Analysis of impacts to Inuvialuit food security is absent from the DEIS.
	Economic Impacts	Not considered in the DEIS	The DEIS states that “development could potentially affect subsistence uses of resources of major importance” (3-197). Impacts to subsistence resources are unquestionably economic, with wide social consequences. However, economic impacts on Inuvialuit communities were omitted from the DEIS. As the DEIS states, distant user communities will not experience any economic benefits if development proceeds (3-178) but they will face economic consequences due to disruption of subsistence resource availability and the traditional transboundary sharing economy. The DEIS further affirms that "Canadian communities would be among the most likely to experience potential impacts due to their proximity to and reliance on the PCH" (3-170), but does not analyze these disproportionate impacts. It is also silent on compensation for these potential adverse economic impacts.
	Public health and wellbeing	Not considered in the DEIS	The DEIS omits any analysis on the impacts of reduced food security, access to nutritious traditional foods, economic impacts, and reduced social cohesion, on public health and well-being. Beyond the vague phrase "cultural sustenance" (3-240), the DEIS makes no reference to the social determinants of health. The



			importance of subsistence and cultural resources are clearly documented in socioeconomic research (see references below). Given the potential impacts of the proposed developments on the critical habitat of several important harvested animal populations, and, by extension, the traditional resource abundance and availability to Indigenous harvesters (see Russell & Gunn, 2019), rigorous sociological work must be carried out to assess the actual potential impact on the health of Inuvialuit, Inupiat, and Gwich'in communities.
1.3 How will the <i>leasing program and related activities</i> affect present and future terrestrial and marine conservation measures in Canada, including: <ul style="list-style-type: none"> <li>• species-specific measures and plans in Canada for polar bears, grizzly bears, Porcupine caribou, muskoxen</li> <li>• protected areas, conservation areas and special use areas, including Ivvavik National Park, Herschel Island Territorial Park, the eastern Yukon North Slope (under withdrawal for conservation purposes), Vuntut National Park, Old Crow Special Management Area, Tarium Nirvutait Marine Protected Area”</li> </ul>	Not considered in the DEIS.	No Canadian plans or measures were referred to in the DEIS and thus impacts to present and future terrestrial and marine conservation measures in Canada were not considered. See Appendix A1 from our scoping submission for references.	
1.4 How will the <i>leasing program and related activities</i> contribute to or detract from measures in the Yukon, Northwest Territories and Canada-wide to reduce greenhouse gas emissions?	Not considered in the DEIS.	We note that potential errors in the DEIS’ calculating of GHG emissions as a result of the proposed project activities have been published. <a href="https://www.americanprogress.org/issues/green/news/2019/01/10/464819/interior-department-cutting-corners-ignoring-science-arctic-national-wildlife-refuge/">https://www.americanprogress.org/issues/green/news/2019/01/10/464819/interior-department-cutting-corners-ignoring-science-arctic-national-wildlife-refuge/</a>	
1.5 How may continuing climate change affect, and interact with (including cumulative effects) the <i>leasing program and related activities</i> and their effects on the ecology of the program area and their implications for 1.1 – 1.7?	Incomplete.	Cumulative effects (especially as they pertain to ongoing climate change) are not adequately considered or analyzed throughout the DEIS. At best, the species-specific sections summarize the possible effects from the proposed project and other outside activities and make qualitative statements about cumulative impacts. No rigorous cumulative effects analysis that considers synergistic and accumulative effects has been undertaken (NRC 2003). Cumulative	

		effects on Canadian environmental measures and plans are not considered.
1.6 How might other environmental conditions affect the <i>leasing program and related activities</i> and program effects on the ecology of the program area for 1.1 – 1.4?	Incomplete.	Climate change impacts to the leasing program and related activities are considered in a limited and qualitative manner. The treatment of this issue in the DEIS is insufficient.
1.7 How might these prospects (consider each of 1.1 – 1.6) be different with selected leasing alternatives?	Incomplete.	The treatment of this issue in the DEIS is insufficient, given the above-noted deficiencies.
2.1 Have the proposed trade-offs been discussed and/or accepted through any open and participative processes?	Not considered in the DEIS.	The Inuvialuit were not engaged in discussions of proposed trade-offs of the alternatives.
3.1 What are the overall long term advantages and disadvantages for the program area, larger region, United States, and Canada of proceeding now with the proposed leasing program option versus delaying the program, or proceeding with other possible timing, scale, pace and/or components?	Incomplete.	Alternatives B through D2 appear to be arbitrarily set by the BLM and it appears that all alternatives other than A are above and beyond what is required by the Tax Cuts and Jobs Act of 2017, Public Law 115-97 (PL 115-97). Proceeding with the project vs. not proceeding at all is not an option considered by the DEIS. This appears to be because BLM considers the Tax Cuts and Jobs Act of 2017, Public Law 115-97 (PL 115-97) to be binding, thus disqualifying the ‘no action’ alternative (Alternative A). Alternatives B through D2 do not consider delaying the program but they do consider timing, scale and components of the proposed activities.

## Appendix II (2019 submission). Errors and Omissions

### All.1 Errors and Omissions regarding Polar Bears

We have noted the following errors and omissions from the DEIS concerning polar bear:

- Map 3-24 in Appendix A is incorrectly sourced. This map appears to be a combination of Figures 4 and 5 from the USFWS (2018) summary of research on the coastal plain of ANWR. The stars in this map are mislabeled – they are actual polar bear dens as discovered using VHF collars, from 1982-2010. The yellow lines in the map are the estimate of suitable polar bear denning habitat from Durner 2006
- USFWS (2018) includes a map of fall polar bear distribution from 2010-2013, which was originally published in Atwood *et al* (2016). This map was not included in the DEIS but should have been, as it helps illustrate what polar bear habitat use may look like during the project activities. This is an omission.
- Some academic papers on sea ice dynamics are missing from the DEIS, including Stern and Laidre 2016; Stroeve et al 2014. The inclusion of these sources would strengthen the ‘climate change’ and ‘cumulative impacts’ sections of the DEIS as it pertains to polar bear and other marine mammals.
- In climate change- marine mammals (starting on p. 3-131), increased onshore denning is not listed as a major behavioural change for polar bears resulting from declining sea ice cover. This is an omission.
- In polar bear – critical habitat (p. 3-127), it is not mentioned that 77% of the project area falls within polar bear denning critical habitat (it is later mentioned in the maternal denning section). This is an omission.
- P. 3-131 in climate changes states that “The ongoing declines in the extent and duration of sea-ice cover present the greatest source for possible population-level impacts on marine mammals over the next 20 years, although the impacts are not entirely clear.”
  - The USFWS (2018) report concludes that “Collectively, these results suggest that the use of land by polar bears as summer refugia and for denning in winter will likely continue to increase with additional loss of sea ice. Although the effects that increased land use may have on nutrition, energetics, and reproduction are not fully understood, it is worth noting that the Southern Beaufort Sea subpopulation of polar bears has experienced a recent decline in abundance (Bromaghin and others, 2015).”
  - The DEIS lacks this level of detail and specificity. The DEIS should be corrected to provide further detail on projected changes in the Southern Beaufort Sea polar bear population and how the project activities may affect or exacerbate these changes.
- The Inuvialuit-Inupiat polar bear agreement states that “(d) The settlements and their outpost camps whose hunting practices may be affected by this Agreement are Barrow, Nuiqsut, Wainwright, Atkasuk and Kaktovik in the United States and Inuvik, Aklavik, Tuktoyaktuk and Paulatuk in Canada.” The impacts to Inuvialuit subsistence use of polar bears from the proposed project activities are not considered in the DEIS. This is an omission.

*All.2 List of omitted resources relevant to the DEIS deficiencies discussed in this submission:*

**Polar bear:**

McKinney, M., Atwood, T.C., Iverson, S.J., and Peacock, E., 2017, Onshore food subsidies add complexity to the response of Alaska polar bears to climate change: *Ecosphere*, v. 8, p. e0.633, doi:10.1002/ecs2.1633.

This omitted reference is important because it describes the drivers behind polar bear distribution while on shore, which is relevant for the DEIS.

Reed, J., and Duplisea, D., 2017, Guided recreational polar bear viewing 2015–2016 summary report: Fairbanks, Alaska, Arctic National Wildlife Refuge, 15 p., accessed November 27, 2017, at [https://www.fws.gov/uploadedFiles/Region\\_7/NWRS/Zone\\_1/Arctic/PDF/2015-16%20PBV%20Summary%20Report.pdf](https://www.fws.gov/uploadedFiles/Region_7/NWRS/Zone_1/Arctic/PDF/2015-16%20PBV%20Summary%20Report.pdf).

This omitted reference is especially important because it deals with the emerging polar bear photo-tourism economy in Kaktovik. The DEIS fails to mention impacts to this aspect of the Kaktovik economy.

Rogers, M.C., Peacock, E., Simac, K., O'Dell, M.B., and Welker, J.M., 2015, Diet of female polar bears in the southern Beaufort Sea of Alaska—Evidence for an emerging alternative foraging strategy in response to environmental change: *Polar Biology*, v. 38, p. 1,035–1,047.

Stern, H.L., and Laidre, K.L, 2016, Sea ice indicators of polar bear habitat: *The Cryosphere*, v. 10, p. 2,027–2,041.

Stroeve, J.C., Markus, T., Boisvert, L., Miller, J., and Barrett, A., 2014, Changes in Arctic melt season and implications for sea ice loss: *Geophysical Research Letters*, v. 41, p. 1216–1225.

Species at Risk Committee. 2012. Species Status Report for Polar Bear (*Ursus maritimus*) in the Northwest Territories. Species at Risk Committee, Yellowknife, NT.  
[https://www.nwtspeciesatrisk.ca/sites/default/files/polar\\_bear\\_nwt\\_status\\_report\\_dec\\_2012\\_0.pdf](https://www.nwtspeciesatrisk.ca/sites/default/files/polar_bear_nwt_status_report_dec_2012_0.pdf)

Joint Secretariat. 2017. Inuvialuit Settlement Region Polar Bear Joint Management Plan. Joint Secretariat, Inuvialuit Settlement Region. vii + 66 pp.  
[https://www.nwtspeciesatrisk.ca/sites/default/files/isr\\_polar\\_bear\\_joint\\_management\\_plan\\_2017\\_final.pdf](https://www.nwtspeciesatrisk.ca/sites/default/files/isr_polar_bear_joint_management_plan_2017_final.pdf)

Joint Secretariat. 2015. Inuvialuit and Nanuq: A Polar Bear Traditional Knowledge Study. Joint Secretariat, Inuvialuit Settlement Region. xx + 304 pp.  
[file:///Users/wmacns/Downloads/394\\_polar-bear-tk-report-low-res%20\(1\).pdf](file:///Users/wmacns/Downloads/394_polar-bear-tk-report-low-res%20(1).pdf)

***Inuvialuit traditional use of the Yukon North Slope:***

- Wildlife Management Advisory Council (North Slope) and Aklavik Hunters and Trappers Committee. 2018. Yukon North Slope Inuvialuit Traditional Use Study. Wildlife Management Advisory Council (North Slope), Whitehorse, Yukon. 124 + xvi pp.
- Yukon Government. (2006). Herschel Island Qikiqtaruk Territorial Park Management Plan. Yukon Government, Whitehorse, YT. iv + 54 pp. [http://www.env.gov.yk.ca/publications-maps/documents/herschel\\_management\\_plan.pdf](http://www.env.gov.yk.ca/publications-maps/documents/herschel_management_plan.pdf)
- The Aklavik Hunters and Trappers Committee, Aklavik Community Corporation, The Wildlife Management Advisory Council (NWT), The Fisheries Joint Management Committee and the Joint Secretariat. (2018). Aklavik Community Conservation Plan, Akaqvikiut Nunamikini Nunutailivikautinich: A plan to provide guidance regarding the conservation and management of renewable resources and lands within the Inuvialuit Settlement Region in the vicinity of Aklavik, Northwest Territories. Joint Secretariat, Inuvik, NT. 195 pp.
- The Tuktoyaktuk Hunters and Trappers Committee, Tuktoyaktuk Community Corporation, The Wildlife Management Advisory Council (NWT), The Fisheries Joint Management Committee and the Joint Secretariat. (2018). Tuktoyaktuk Community Conservation Plan, Akaqvikiut Nunamikini Nunutailivikautinich: A plan to provide guidance regarding the conservation and management of renewable resources and lands within the Inuvialuit Settlement Region in the vicinity of Tuktoyaktuk, Northwest Territories. Joint Secretariat, Inuvik, NT. 195 pp.
- The Inuvik Hunters and Trappers Committee, Inuvik Community Corporation, The Wildlife Management Advisory Council (NWT), The Fisheries Joint Management Committee and the Joint Secretariat. (2018). Inuvik Community Conservation Plan, Akaqvikiut Nunamikini Nunutailivikautinich: A plan to provide guidance regarding the conservation and management of renewable resources and lands within the Inuvialuit Settlement Region in the vicinity of Inuvik, Northwest Territories. Joint Secretariat, Inuvik, NT. 195 pp.
- Wildlife Management Advisory Council (North Slope). (1996, 2003). Yukon North Slope Wildlife Management and Conservation Plan: The Land and the Legacy - Taimanga Nunapta Pitqusia: Volume I and II. Wildlife Management Advisory Council (North Slope), Whitehorse, YT. 44 pp. and vi 74 pp.
- Usher, P. 2002. Inuvialuit use of the Beaufort Sea and its resources, 1960-2000. *Arctic* 55(1): 18-22.

***Inuvialuit cultural resources and traditional knowledge of the Yukon North Slope & Impacts on sociocultural systems:***

Joint Secretariat. (2015). Inuvialuit and Nanuq: A Polar Bear Traditional Knowledge Study. Joint Secretariat, Inuvialuit Settlement Region. xx + 304 pp.

<https://wmacns.ca/resources/inuvialuit-and-nanuq-polar-bear-traditional-knowledge-study/>

Wildlife Management Advisory Council (North Slope) and the Aklavik Hunters and Trappers Committee. (2008). Aklavik local and traditional knowledge about grizzly bears of the Yukon North Slope: Final Report. Whitehorse, Yukon: Wildlife Management Advisory Council (North Slope).

[https://wmacns.ca/documents/82/272\\_WMAC09136rpt\\_griz\\_knwldg\\_web3.pdf](https://wmacns.ca/documents/82/272_WMAC09136rpt_griz_knwldg_web3.pdf)

Wildlife Management Advisory Council (North Slope) and Aklavik Hunters and Trappers Committee. (2018). Inuvialuit Traditional Knowledge of Wildlife Habitat, Yukon North Slope. Wildlife Management Advisory Council (North Slope), Whitehorse, Yukon. vi + 74 pp. [https://wmacns.ca/documents/326/habitat\\_YNS.pdf](https://wmacns.ca/documents/326/habitat_YNS.pdf)

Aklavik Hunters and Trappers Association (AHTA) (2009). Aklavik Local and Traditional Knowledge about Porcupine Caribou. Whitehorse: WMAC (North Slope).

Wildlife Management Advisory Council (North Slope). 2012. Herschel Island Qikiqtaryuk: A natural and cultural history of Yukon's Arctic island. Edited by C.R. Burn.

Parlee, B., Thorpe, N., and McNabb, T. 2013. Traditional knowledge: barren-ground caribou in the Northwest Territories. Edmonton: University of Alberta.

Gunn, A., Arlooktoo, G., Kaomayok, D. 1988. The contribution of the ecological knowledge of Inuit to wildlife management in the Northwest Territories. In Traditional Knowledge and Renewable Resource Management in Northern Regions, edited by M.M.R. Freeman and L.N. Carbyn. Edmonton: Boreal Institute for Northern Studies.

Gwich'in Renewable Resource Board (GRRB). 1997. Nanh' Kak Geenjit Gwich'in Ginjik (Gwich'in Words About the Land). Inuvik NT: Gwich'in Renewable Resource Board.

Gwich'in Renewable Resource Board (GRRB). 2001. Gwindoo Nanh' Kak Geenjit Gwich'in Ginjik (More Gwich'in Words About the Land). Inuvik NT: Gwich'in Renewable Resource Board.

Inuvialuit Game Council and Porcupine Caribou Management Board. 2011. Traditional Knowledge of Porcupine Caribou from Tuktoyaktuk. In PCMB Annual Harvest Meeting Minutes. Inuvik: Yukon Government.

Katz, S. 2010. Traditional knowledge on caribou ecology: vegetation -- caribou -- wolf food chain. Inuvik: Aurora Research Institute. Accessed 2019 from <https://nwtresearch.com/sites/default/files/traditional-knowledge-on-caribou-ecology.pdf>

Kendrick, A. 2003. Caribou co-management in northern Canada: fostering multiple ways of knowing. In Navigating Social-Ecological Systems, edited by F. Berkes, J. Colding and C. Folke. Cambridge: Cambridge University Press.

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- Padilla, E. and Kofinas, G. 2012. Documenting traditional knowledge of caribou leaders for the Porcupine caribou herd in Dawson City, Old Crow and Fort McPherson. Whitehorse: PCMB.
- Padilla, E. 2012. Caribou leadership: a study of traditional knowledge, animal behaviour and policy. MSC, University of Fairbanks, Alaska.
- Salokangas, R. 2010. Tuktoyaktuk hunters perceptions of changes that impact caribou and the community - report for the Tuktoyaktuk Hunters and Trappers Committee. Edmonton: University of Alberta.
- Wray, K. 2010. Ways we respect caribou: hunting in Tetlit Zheh. Vol. (MSc. Thesis). Edmonton: University of Alberta.
- Wray, K. and Parlee, B. 2013. Ways we respect caribou: Teetl'it Gwich'in rules-in-use. Arctic 65(4).
- Yukon Land Use Planning Council (2006). Porcupine caribou herd - Yukon key areas inventory and Old Crow traditional knowledge database. Whitehorse: Government of Yukon.

***Impacts on subsistence resource abundance and availability:***

- Russell, D., and A. Gunn. 2019. Vulnerability analysis of the Porcupine Caribou Herd to potential development of the 1002 lands in the Arctic National Wildlife Refuge, Alaska. Report prepared for: Environment Yukon, Canadian Wildlife Service, and GNWT Department of Environment and Natural Resources. 143 pp.
- PCMB (Porcupine Caribou Management Board). 2010. Harvest Management Plan for the Porcupine Caribou Herd in Canada.  
<http://www.pcmb.ca/documents/Harvest%20Management%20Plan%202010.pdf>

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- Canadian Arctic Resources Committee (CARC). 2007. What price the caribou? Northern Perspectives, 31(1): 1-39.
- Dana, L., Anderson, R., and Meis-Mason, A. 2009. A study of the impact of oil and gas development on the Dene First Nations of the Sahtu (Great Bear Lake) Region of the Canadian Northwest Territories. Journal of Enterprising Communities: People and Places in the Global Economy, 3(1): 94-117.

- Egeland, G.M., Johnson-Down, L., Cao, Z.R., Sheikh, N., and Weiler, H. 2011. Food insecurity and nutrition transition combine to affect nutrient intakes in Canadian Arctic communities. *The Journal of Nutrition*.
- Usher, P., Duhaime, G., and Searles, E. 2003. The household as an economic unit in Arctic Aboriginal communities, and its measurement by means of a comprehensive survey. *Social Indicators Research* 61(2): 175-202.
- Snyder, R., Williams, D., and Peterson, G. 2003. Culture loss and sense of place in resource valuation: Economics, anthropology and indigenous cultures. *Indigenous peoples: Resource Management and Global Rights*
- Natcher et al. 2016. Maintaining Indigenous Food Traditions in Border Regions of Northern Canada
- Tobi Jeans 2012. The Cross-Border Dimensions of Vuntut Gwitchin Food Security
- Kruse 1991, Alaska Inupiat Subsistence and Wage Employment Patterns: Understanding Individual Choice
- BurnSilver et al. (2016) Are Mixed Economies Persistent or Transitional? Evidence using social networks from Arctic Alaska

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- Marmot M, Wilkinson RG. *Social determinants of health*. 2nd. ed. Oxford: Oxford University Press; 2006. 380 pp.
- Richmond, 2009. The social determinants of Inuit health: a focus on social support in the Canadian Arctic. *International Journal of Circumpolar Health* 68:5: 471-487
- Lucyk and McLaren 2017. Taking stock of the social determinants of health: a scoping review
- \*Most sources of traditional knowledge above include information on the importance of subsistence to health and wellness.

***Cumulative Effects***

- Council on Environmental Quality. 1997. Considering Cumulative Effects Under the National Environmental Policy Act . [https://ceq.doe.gov/publications/cumulative\\_effects.html](https://ceq.doe.gov/publications/cumulative_effects.html)
- National Research Council (NRC). 2003. *Cumulative Environmental Effects of Oil and Gas Activities on Alaska's North Slope*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/10639>.



## **Appendix III (2019 submission). Scoping Submission**

### **Submission of The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAc(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAc(NWT)), and Fisheries Joint Management Committee (FJMC)**

This is the submission of The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAc(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAc(NWT)) and the Fisheries Joint Management Committee (FJMC), to the Department of the Interior’s “Notice of Intent to Prepare an Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska” (2018), 83 Federal Register 17562.

This submission has five parts and an appendix. Part 1 describes who we are and the scope of the submission. Part 2 addresses shared Inuvialuit and Canadian interests that may be affected by the proposed leasing. Part 3 examines the obligation under US law to consider these interests as part of scoping and as part of all subsequent EIS related activities. Part 4 examines the obligation under international law to consider these interests as part of scoping and as part of all subsequent EIS related activities. Part 5 provides a concluding statement. Appendix 1 provides a non-exhaustive list of issues to be considered and some guiding questions for how the EIS might address the interests conveyed in this submission.

## **Part 1: Who we are & Scope of Submission**

### **Who we are**

The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAc(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAc(NWT)), and Fisheries Joint Management Committee (FJMC), are wildlife, fish, and marine mammal management bodies established under the Inuvialuit Final Agreement (IFA) – a modern day land claim agreement protected under the Canadian Constitution.

Signed in 1984 between Canada and the Inuvialuit, the agreement was a direct response to Inuvialuit concerns over increased oil and gas development in Canada’s Western Arctic. The IFA sets out Inuvialuit land, harvesting and resource management rights within the Inuvialuit Settlement Region (ISR) – an area that encompasses the coastal plain adjacent to the Arctic National Wildlife Refuge and nearshore and offshore waters from the Yukon/Alaskan border to the Northwest Territories/Nunavut border. One of the primary principles of the IFA is “to protect and preserve Arctic wildlife, environment and biological productivity” (IFA 1.(c)). By upholding this principle, Inuvialuit harvesting and subsistence rights and continued use of the land for traditional practices are maintained.

Under the IFA, Inuvialuit are integrated in wildlife and environmental management bodies (IFA 14.(4)), participating with membership that is equal to that of the federal and territorial governments. The recommendations and decisions of these joint management bodies are a means of protecting and conserving wildlife populations upon which the sustainability of Inuvialuit communities depends.

The following sections describe the specific mandates of the four IFA bodies who are signatories to this submission:

#### *Inuvialuit Game Council (IGC)*

The Inuvialuit Game Council represents the collective Inuvialuit interests in all matters related to the management of wildlife and wildlife habitat in the ISR. Under the IFA, the IGC has a specific responsibility to “review and advise government on any proposed Canadian position for international purposes that affects wildlife in the region” (IFA 14.(74)(e)).

#### *Wildlife Management Advisory Council – North Slope (WMAC(NS))*

WMAC(NS) provides advice to appropriate ministers and any other appropriate bodies (e.g. screening committees) on all matters relating to wildlife policy and the management, regulation and administration of wildlife, habitat and harvesting for the Yukon North Slope (IFA 12.(57)). Under the IFA, the Yukon North Slope (the entire northern Yukon between Alaska and Northwest Territories, including the nearshore and offshore waters) is established as a special conservation area with the primary purpose of conserving wildlife, habitat and traditional subsistence use (IFA 12.(2)). Any development proposals relating to the Yukon North Slope have to be screened to determine if they could have significant negative impact to wildlife, habitat or the ability of Inuvialuit to harvest wildlife (IFA 12.(3)(a)).

#### *Wildlife Management Advisory Council - Northwest Territories (WMAC(NWT))*

The WMAC(NWT) provides advice to the appropriate ministers and any other appropriate bodies (e.g. screening committees) on all matters relating to wildlife policy and the management, regulation and administration of wildlife, habitat and harvesting in the ISR within the Northwest Territories (IFA 14.(60)). Specifically, the Council provides advice on any proposed Canadian position for international purposes that affects wildlife in the Western Arctic Region and provides advice on measures required to protect habitat that is critical for wildlife and harvesting (IFA 14. (60)(e)&(g)).

#### *Fisheries Joint Management Committee (FJMC)*

The FJMC provides advice to the appropriate ministers and any other appropriate bodies (environmental screening committees) on all matters related to fisheries policy and the management, regulation, and administration of fish, marine mammals and their habitats in the ISR, the Western Arctic Region and the Beaufort Sea (IFA 14. 64).

## **Scope of Submission**

This submission is in response to the Department of the Interior’s “Notice of Intent To Prepare an Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska” (2018), 83 Federal Register 17562. The proposed Coastal Plain Oil and Gas Leasing Program has the potential to significantly impact several transboundary wildlife populations shared by Alaska

and the Inuvialuit Settlement Region that IGC, WMAC(NWT) and WMAC(NS) have management responsibilities for. These include, but are not limited to, Porcupine Caribou, polar bear, beluga and bowhead whales, seals, fish species, migratory bird species and grizzly bear. Inuvialuit beneficiaries rely on many of these species for subsistence and traditional harvesting.

The Notice of Intent provides in part that:

*The BLM is undertaking a Coastal Plain Oil and Gas Leasing EIS to implement the leasing program pursuant to the Tax Act (Pub. L. 115–97, Dec. 22, 2017). The Leasing EIS will serve to inform BLM’s implementation of the Tax Act, including the requirement to hold not fewer than two lease sales area-wide. It may also inform post-lease activities, including seismic and drilling exploration, development, and transportation of oil and gas in and from the Coastal Plain. Specifically, the Leasing EIS will consider and analyze the potential environmental impacts of various leasing alternatives, including the areas to offer for sale, and the terms and conditions (i.e., lease stipulations and best management practices) to be applied to leases and associated oil and gas activities to properly balance oil and gas development with existing uses and conservation of surface resources, and to limit the footprint of production and support facilities on Federal lands to no more than 2,000 surface acres. The area comprising the Coastal Plain includes approximately 1.6 million acres within the approximately 19.3 million-acre Arctic National Wildlife Refuge.*

The purpose of the public scoping process is to determine concerns and to identify the significant issues related to implementing an oil and gas leasing program within the Coastal Plain. Our submission includes information that we hope will influence the development of the proposed action and alternatives and guide the environmental analysis.

Under the Notice of Intent, the BLM is supposed to work collaboratively with interested parties to identify the management decisions best suited to local, regional, and national needs and concerns, as well as to develop a proposed action and alternatives consistent with the following criteria:

- *The EIS will consider all Federal lands and waters within the area defined by Congress as the Coastal Plain;*
- *The EIS will address oil and gas leasing and will use scoping to identify issues, impacts and potential alternatives to be addressed;*
- *Under the Tax Act, not fewer than two lease sales, each to include not fewer than 400,000 acres area-wide of the areas with the highest potential of hydrocarbons, must occur by December 2024;*
- *The BLM will consider subsistence resources and users, as well as potential actions to minimize adverse impacts to subsistence in accordance with section 810 of the Alaska National Interest Lands Conservation Act (ANILCA); and*
- *The EIS will appropriately consider the surface management of the Coastal Plain*

We understand that the term “Coastal Plain” refers to the 1002 Lands located within the Arctic National Wildlife Refuge (ANWR). The purpose of this submission is to ensure that the EIS that is prepared, and any subsequent actions, take full account of:

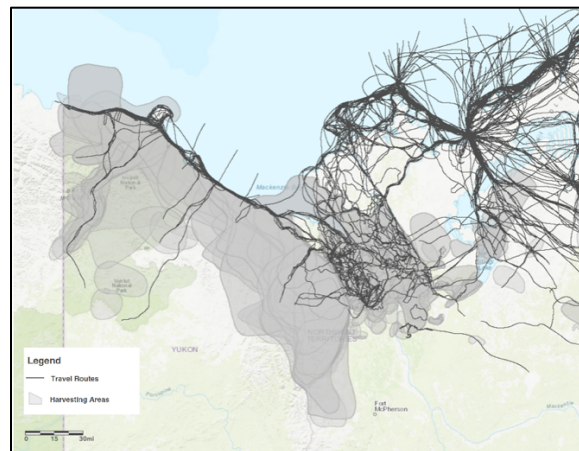
- *All Inuvialuit and Canadian interests that may be affected by the proposed leasing*
- *Our shared interests in the health, resilience and integrity of the shared ecosystem of the north slope of Alaska and Yukon (and related marine areas).*

The submission takes the view that the Department has an obligation to ensure that these interests are scoped into the EIS and fully addressed. This obligation arises under United States domestic law and under international law.

## **Part 2: Shared Inuvialuit and Canadian Interests**

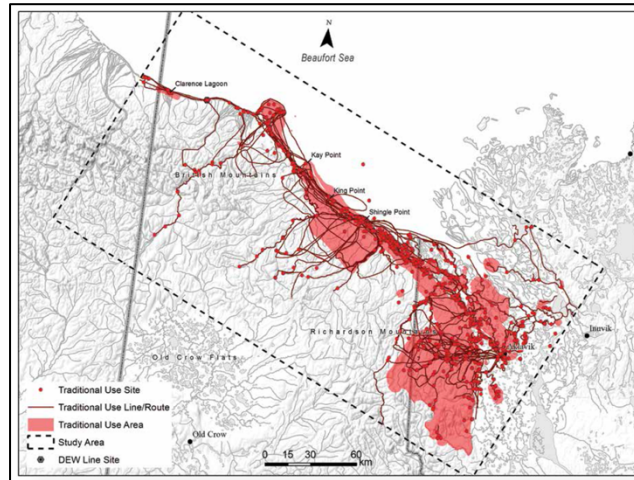
The 1002 area within ANWR is part of the contiguous Arctic Coastal Plain that stretches from eastern Alaska across to the Mackenzie Delta in the Northwest Territories. Inuvialuit have lived on both sides of the Canada/U.S. border on the Arctic Coastal Plain for millennia. Indeed, the ancestors of many Inuvialuit families were born on Barter Island and strong family connections to Kaktovik relatives remain today. Participation in land claims processes with their respective countries resulted in the current designations of Inupiat (U.S.) and Inuvialuit (Canada). However, as Inuit, families and communities have shared connections to the land and wildlife resources of the 1002 area of the Coastal Plain and depend on them for subsistence and cultural purposes.

Maps from the Inuit Land Use and Occupancy project produced in the 1970s (Figure 1) as well as recent Inuvialuit Land use and occupancy maps produced by WMAC(NS) and the Aklavik Hunters and Trappers Committee (Figure 2) document historic and contemporary use of the Coastal Plain in Canada. Travel routes into Alaska were outside of the geographical scope of these studies, but movement across the border by boat is a regular occurrence for Inuvialuit and Inupiat who visit family and friends. Many Aklavik Inuvialuit tell stories about travelling, watching the weather, safe havens, and changing conditions along the 200 km of coastline from Herschel Island to Kaktovik. There are also many well-known and documented burial places, cabin sites, and other cultural use sites all along this important traditional travel route<sup>24</sup>.



<sup>24</sup> Wildlife Management Advisory Council (North Slope) and Aklavik Hunters and Trappers Committee. 2018. *Yukon North Slope Inuvialuit Traditional Use Study*. Wildlife Management Advisory Council (North Slope), Whitehorse, Yukon. 124 + xvi pp.

**Figure 1.**  
land use from early  
reproduced from



Documented Inuvialuit  
1900 to 1974,  
Freeman (1976)<sup>25</sup>

**Figure 2.** Contemporary Inuvialuit land use of Yukon North Slope by Aklavik residents <sup>26</sup>

Inuvialuit are active participants in the management of the Coastal Plain. The Aklavik, Inuvik and Tuktoyaktuk Community Conservation Plans<sup>27</sup> (CCPs) and the Yukon North Slope Wildlife Conservation and Management Plan<sup>28</sup> identify Ivvavik National Park and the area east of the Babbage River withdrawn from disposition for oil and gas and mineral exploration and development as having specific conservation value to Inuvialuit residents, based on its importance to Porcupine caribou, furbearers, waterfowl, grizzly bear, Dall's sheep, raptors, and fish. The CCPs provide management recommendations from the community working groups for

<sup>25</sup> Freeman, M. M. (Ed.). (1976). *Inuit land use and occupancy project: a report*. Supply and Services Canada.

<sup>26</sup> Wildlife Management Advisory Council (North Slope) and Aklavik Hunters and Trappers Committee. 2018. *Yukon North Slope Inuvialuit Traditional Use Study*. Wildlife Management Advisory Council (North Slope), Whitehorse, Yukon. 124 + xvi pp.

<sup>27</sup> The Aklavik Hunters and Trappers Committee, Aklavik Community Corporation, The Wildlife Management Advisory Council (NWT), The Fisheries Joint Management Committee and the Joint Secretariat. (2016). *Aklavik Community Conservation Plan, Akaqviki miut Nunamikini Nunutailivikautinich: A plan to provide guidance regarding the conservation and management of renewable resources and lands within the Inuvialuit Settlement Region in the vicinity of Aklavik, Northwest Territories*. Joint Secretariat, Inuvik, NT. 195 pp.

The Inuvik Hunters and Trappers Committee, Inuvik Community Corporation, The Wildlife Management Advisory Council (NWT), The Fisheries Joint Management Committee and the Joint Secretariat. (2016). *Inuvik Community Conservation Plan, Inuvium Angalatchivingit Niryutinik: A plan to provide guidance regarding the conservation and management of renewable resources and lands within the Inuvialuit Settlement Region in the vicinity of Inuvik, Northwest Territories*. Joint Secretariat, Inuvik, NT. 192 pp.

The Inuvik Hunters and Trappers Committee, Inuvik Community Corporation, The Wildlife Management Advisory Council (NWT), The Fisheries Joint Management Committee and the Joint Secretariat. (2016). *Tuktoyaktuk Community Conservation Plan, Tuktuuyaqtuum Angalatchivingit Niryutinik: A plan for the conservation and management of renewable resources and lands within the Inuvialuit Settlement Region in the vicinity of Tuktoyaktuk, Northwest Territories*. Joint Secretariat, Inuvik, NT. 227 pp.

<sup>28</sup> Wildlife Management Advisory Council (North Slope). (1996, 2003). *Yukon North Slope Wildlife Management and Conservation Plan: The Land and the Legacy - Taimanga Nunapta Pitqusia: Volume I and II*. Wildlife Management Advisory Council (North Slope), Whitehorse, YT. 44 pp. and vi 74 pp.

this region and other important areas for individual species as part of the integrated wildlife management system in the Inuvialuit Settlement Region.

It is imperative to recognize that Inuvialuit use of the North Slope and coastal lands and waters goes beyond its representation on maps; Inuvialuit have a deep cultural connection to these lands and the resources they support. Inuvialuit traditional knowledge is a rich, contextual, and continuous body of knowledge that is the cumulative knowledge, experience, and wisdom of generations. This knowledge and understanding of the region and its wildlife must be considered in the evaluation of the effects of a leasing program.

In addition to the protections for Inuvialuit subsistence rights provided in the IFA, significant international agreements were developed and signed in order to protect critical transboundary populations and ensure their conservation. They include:

- *Convention for the Protection of Migratory Birds in the United States and Canada*;
- *Agreement on the Conservation of Polar Bears* (1973);
- *1987 Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd* (hereafter referred to as the *International Porcupine Caribou Agreement*);
- *Inuvialuit- Inupiat Polar Bear Management Agreement in the Southern Beaufort Sea* (1988) (hereafter referred to as the *Inuvialuit- Inupiat Polar Bear Management Agreement*);
- *Inuvialuit-Inupiat Beaufort Sea Beluga Whale Agreement* (2000); and
- *2008 Memorandum of Understanding between Environment and Climate Change Canada and the United States Department of the Interior for the Conservation and Management of Shared Polar Bear Populations*.

By signing these agreements, all parties – including the United States Government – recognized the significance of these populations and agreed to uphold the goals and values described within them. For the Inuvialuit, these transboundary populations and the agreements that conserve them are critically important for the protection of their subsistence rights in Canada. They provide food security for isolated communities and harvesting practices continue the important ongoing connection of Inuvialuit to the land that has sustained them for generations.

The Porcupine Caribou herd is particularly important to the Inuvialuit for subsistence and cultural practices. The *Porcupine Caribou Management Agreement* (“PCMA”) is part of the Inuvialuit Final Agreement and identifies goals and principles of herd conservation and management in Canada. Canada’s commitment to protecting critical habitat and sustainable herd management of the Porcupine Caribou herd is established in the IFA through the creation of Ivvavik National Park (IFA 12.(5)), the withdrawal of all lands on the Yukon North Slope east of the Babbage River from development (IFA 12.(4)) and, through the PCMA, the establishment of the Porcupine Caribou Management Board.

The PCMA also provides the rationale for agreements with other “jurisdictions where lands support the herds and the caribou are harvested for subsistence.” The 1002 area of the Coastal Plain includes the US portion of the Porcupine Caribou calving grounds, which are critical to the sustainability of the herd. The PCMA provided the foundation for the *International Porcupine Caribou Agreement* between Canada and the United States.

Since the late 1970s, debate around development of the 1002 area and its impact on the sustainability of the Porcupine Caribou herd has been a conversation shared by both signatories

to the *International Porcupine Caribou Agreement*. The 1002 lands contain approximately 78% of the core calving area and supports significant post-calving aggregations. The United States Fish and Wildlife Service asserts that the annual variability in where the herd calves indicates that the Porcupine Caribou require access to the entirety of the area used for calving to select the best habitat for the conditions in a given year<sup>29</sup>.

The 1002 area is also critical to the long-term wellbeing of snow geese as it contains preferred staging habitat used by over 100,000 birds per year. In addition, there are 57 recorded species of migratory birds that use the coastal plain and barrier islands on a regular basis. These are shared populations that are important species to both Inuvialuit and all Canadians, as recognized by the *Convention for the Protection of Migratory Birds in the United States and Canada*.

The 1002 area is also habitat for the Southern Beaufort population of polar bears. The 1988 *Inuvialuit-Inupiat Polar Bear Agreement* recognizes the shared subsistence and cultural interests of the Inuvialuit and the Inupiat in this transboundary population and its population and harvest management. Polar bears are highly valued in Inuvialuit mythology, spirituality, storytelling, art, song and other forms of cultural expression, and the well-being of this population is extremely important because of the ongoing relationship Inuvialuit have with these animals<sup>30</sup>.

If the coastal plain lands are developed, it is likely that associated transportation and coastal development will impact marine resources. Five species of whitefish including Arctic Cisco migrate along the Alaska/Canada coast and are important subsistence food resources in both countries. These coastal zones are important summering areas for all Dolly Varden char populations that are resident to the streams and rivers of the Alaska/Canada North Slope and the west side of the Mackenzie Delta. Dolly Varden is a valued subsistence and sport fishing species for residents and visitors to these areas. Shared marine mammal populations also use these coastal waters including ringed seal, bearded seal, beluga whale and bowhead whale. Beluga whale are recognized as an importance shared subsistence species for the Inuvialuit and Inupiat and are jointly managed through the *Inuvialuit-Inupiat Beaufort Sea Beluga Whale Agreement*. There are many other species that are important to the Inuvialuit that move freely across the Arctic North Slope, including grizzly bears (further details provided in Appendix 1). Since the establishment of the Arctic National Wildlife Refuge, these transboundary populations have had the benefit of many international treaties and conservation initiatives to ensure their ongoing sustainability. These agreements and the land-based conservation initiatives taken by countries on both sides of the border show the value that Inuvialuit and the Canadian government place on its uniqueness and ensuring the ongoing biological diversity and productivity of the North Slope.

### **Part 3: United States Domestic Law**

This submission relies on a Memorandum (July 1, 1997) of the Council of Environmental Quality of the Executive Office of the President, which provides the Council's Guidance to Heads of Agencies on NEPA analysis for Transboundary Impacts.<sup>31</sup> This Memorandum continues to be listed as current on the NEPA.GOV website.<sup>32</sup> This Guidance makes it

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<sup>29</sup> U.S. Fish and Wildlife Service. (2015). *Arctic National Wildlife Refuge revised comprehensive conservation plan, vol. 1*. <https://www.fws.gov/home/arctic-ccp/>

<sup>30</sup> Joint Secretariat. (2015). *Inuvialuit and Nanuq: A Polar Bear Traditional Knowledge Study*. Joint Secretariat, Inuvialuit Settlement Region. xx + 304 pp.

<sup>31</sup> <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/memorandum-transboundary-impacts-070197.pdf>

<sup>32</sup> <https://ceq.doe.gov/guidance/guidance.html>



abundantly clear that NEPA does not “define agencies’ obligations to analyze effects of actions by administrative boundaries.” Instead, “the entire body of NEPA law directs federal agencies to analyze the effects of proposed actions to the extent they are reasonably foreseeable consequences of the proposed action, *regardless of where those impacts might occur.*” (emphasis added) In light of this, the CEQ concluded that federal agencies “must include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the United States.”

The CEQ Guidance goes on to note that agencies should use the scoping process (40.CFR s.1501.7) to identify those actions that may have adverse environmental effects. The CEQ cautions that agencies “should be particularly alert to actions that may affect migratory species, air quality, watersheds, and other components of the natural ecosystem that cross borders, as well as to interrelated social and economic effects. Should such potential impacts be identified, agencies may rely on available professional sources of information and should contact agencies in the affected country with relevant expertise.”

In sum, the BLM is bound to include within the scope of the EIA the effect of activities in the 1002 lands which may have implications for shared migratory species, the shared ecosystem of the North Slope and interrelated social and economic effects on indigenous communities dependent on these resources and the shared ecosystem.

## **Part 4: International Law**

This part examines the obligations of the United States under relevant bilateral agreements between the United States and Canada, multilateral agreements such as the Agreement on the Conservation of Polar Bears, and under customary international law. It concludes with a discussion of the relevance of international human rights law.

Before turning to the treaties however it is important at the outset to note that the CEQ itself recognizes the relevance of customary international law at both procedurally and substantively. Thus, the CEQ acknowledges that:

*It has been customary law since the 1905 Trail Smelter Arbitration that no nation may undertake acts on its territory that will harm the territory of another state<sup>21</sup>. This rule of customary law has been recognized as binding in Principle 21 of the Stockholm Declaration on the Human Environment and Principle 2 of the 1992 Rio Declaration on Environment and Development. This concept, along with the duty to give notice to others to avoid or avert such harm, is incorporated into numerous treaty obligations undertaken by the United States. Analysis of transboundary impacts of federal agency actions that occur in the United States is an appropriate step towards implementing those principles.*

### **Relevant Bilateral Agreements**

*Agreement between the Government of Canada and the Government of the United States on the Conservation of the Porcupine Caribou Herd (1987)<sup>33</sup>*

The Preamble to this Agreement recognizes that the Porcupine Caribou Herd (PCH) is a shared migratory resources and “a unique and irreplaceable natural resource of great value which each generation should maintain and make use of so as to conserve them for future generations”. The substantive provisions of the Agreement include Article 3 on Conservation the entirety of which is relevant to this proposed leasing activity. Article 3 includes the following requirements:

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<sup>33</sup> <http://www.treaty-accord.gc.ca/text-texte.aspx?id=100687>



## **Conservation**

- n) *The Parties will take appropriate action to conserve the Porcupine Caribou Herd and its habitat.*
- o) *The Parties will ensure that the Porcupine Caribou Herd, its habitat and the interests of users of Porcupine Caribou are given effective consideration in evaluating proposed activities within the range of the Herd.*
- p) *Activities requiring a Party's approval having a potential impact on the conservation of the Porcupine Caribou Herd or its habitat will be subject to impact assessment and review consistent with domestic laws, regulations and processes.*
- q) *Where an activity in one country is determined to be likely to cause significant long-term adverse impact on the Porcupine Caribou Herd or its habitat, the other Party will be notified and given an opportunity to consult prior to final decision.*
- r) *Activities requiring a Party's approval having a potential significant impact on the conservation or use of the Porcupine Caribou Herd or its habitat may require mitigation.*
- s) *The Parties should avoid or minimize activities that would significantly disrupt migration or other important behavior patterns of the Porcupine Caribou Herd or that would otherwise lessen the ability of users of Porcupine Caribou to use the Herd.*
- t) *When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyze potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou.*
- u) *The Parties will prohibit the commercial sale of meat from the Porcupine Caribou Herd.*

## *Migratory Birds Convention and Protocol<sup>34</sup>*

The Preamble to the Protocol (which amends the original Convention of 1916) notes that the Parties are committed

*... to the long-term conservation of shared species of migratory birds for their nutritional, social, cultural, spiritual, ecological, economic, and aesthetic values through a more comprehensive international framework that involves working together to cooperatively manage their populations, regulate their take, protect the lands and waters on which they depend, and share research and survey information; (emphasis added)*

In addition, the amended Article IV provides that:

*Each High Contracting Power shall use its authority to take appropriate measures to preserve and enhance the environment of migratory birds. In particular, it shall, within its constitutional authority:*

- (a) seek means to prevent damage to such birds and their environments, including damage resulting from pollution;*
- (b) endeavour to take such measures as may be necessary to control the importation of live animals and plants which it determines to be hazardous to the preservation of such birds;*
- (c) endeavour to take such measures as may be necessary to control the introduction of live animals and plants which could disturb the ecological balance of unique island environments; and*

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<sup>34</sup> <http://laws-lois.justice.gc.ca/eng/acts/m-7.01/page-11.html#h-16>

*(d) pursue cooperative arrangements to conserve habitats essential to migratory bird populations.*

While there is no express mention of a duty to conduct an environmental assessment of activities that may affect migratory birds as defined by the Convention and Protocol, this instrument clearly recognizes that both Parties have a shared interest in the health of these populations. Furthermore, and using the logic of the CEQ, it is relatively easy to *imply* a duty to conduct an EIA. After all, if there is a duty to prevent damage to the environment of migratory birds, there must be a corresponding obligation to understand the impacts of proposed activities on those environments, otherwise it will not be possible to operationalize the duty to prevent damage.

*Memorandum of Understanding between Environment Canada and the United States Department of the Interior for the Conservation and Management of Shared Polar Bear Populations (2008)*

The MOU expressly states that it is not legally binding but it clearly recognizes that both Canada and the United States have a shared interest in the health of the Southern Beaufort Sea (SBS) population of bears which utilizes both the coastal plain and the adjacent offshore areas.

*Inuvialuit - Inupiat Polar Bear Management Agreement in the Southern Beaufort Sea*<sup>35</sup>

This is an agreement between the two user groups of the SBS population of polar bears. The agreement is principally concerned to ensure that harvest of bears remains within sustainable limits, but the agreement also acknowledges more generally that the continued availability of bears “is essential to maintain the dietary, cultural, and economic base” of both communities .

### **Inuvialuit-Inupiat Beaufort Sea Beluga Whale Agreement**

This is an agreement between the two user groups of the Beaufort Sea populations of Beluga whales. The agreement recognizes the management plans established by each group and establishes a Commission to ensure the exchange of information and the establishment of joint research and management programs to ensure the sustainability of the shared stocks.

### **Multilateral Agreements**<sup>36</sup>

*Agreement on the Conservation of Polar Bears (1973)*<sup>37</sup>

Article II of this Agreement contains an important commitment to protect the habitat of polar bear as well as the ecosystem of which polar bears are a part.

*Each Contracting Party shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns, and shall manage polar bear populations in accordance with sound conservation practices based on the best available scientific data.*

Once again, there is no specific reference to the need to conduct an EIA for projects that may affect sole or shared populations of polar bear, but such an obligation can be implied.

The recently adopted Circumpolar Action Plan<sup>38</sup> provides that Parties should “Consider the cumulative effects of climate change and human activities on polar bear subpopulations and

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<sup>35</sup> <http://pbsg.npolar.no/en/agreements/USA-Canada.html>

<sup>36</sup> In addition to the ACPB and Ramsar Convention, Canada is also a party to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context and the Convention on Biological Diversity. The US is not a party to either agreement and thus they are not considered further here.

<sup>37</sup> <http://pbsg.npolar.no/en/agreements/agreement1973.html>

<sup>38</sup> [http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri\\_Fangst\\_Landbrug/Polarbear%202015/C](http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri_Fangst_Landbrug/Polarbear%202015/C)

habitats when making management decisions using tools such as predictive modeling” and should “Identify essential polar bear habitat and redefine it as changes occur over time.” Specifically with respect to planning and EIAs the Action Plan suggests that Parties should:<sup>39</sup>

Use regional land-use planning processes, regional strategic environmental assessments and project environmental assessments to mitigate the effects of mineral and energy development activities on polar bears.

*Ramsar Wetlands Convention, 1971*<sup>40</sup>

Ninety nine percent of the 1002 area is classified as wetland. Both the United States and Canada are party to the Convention on Wetlands of International Importance especially as Waterfowl Habitat. The Preamble to the Convention contains the following recitals:

*CONSIDERING the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl;*

*BEING CONVINCED that wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable;*

*DESIRING to stem the progressive encroachment on and loss of wetlands now and in the future;*

*RECOGNIZING that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource;*

While most of the obligations under the Convention apply only to listed wetlands there are some more general obligations such as the obligation under Article 3(1) to “formulate and implement their planning so as to promote ... as far as possible the wise use of wetlands in their territory.”

The term “wise use” is a term of art under the Ramsar Convention. The Parties have elaborated on its meaning in a number of ways including through the adoption of Recommendation 6.2 (1996) on Environmental Impact Assessment. This Recommendation calls on the Contracting Parties “to integrate environmental considerations in relation to wetlands into planning decisions in a clear and publicly transparent manner.”<sup>41</sup>

## **Customary International Law**

As noted above, the CEQ had already recognized by 1997 that customary international law required a State to conduct an EIA where an activity in State A might have implications for State B. Developments and judicial statements since then have simply reinforced this conclusion. For example, in the *Pulp Mills Case*<sup>42</sup> the International Court of Justice reasoned as follows:

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<sup>39</sup> Id at 59.

<sup>40</sup> [http://archive.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671\\_4000\\_0](http://archive.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0)

<sup>41</sup> Brisbane, [https://www.ramsar.org/sites/default/files/documents/library/key\\_rec\\_6.02e.pdf](https://www.ramsar.org/sites/default/files/documents/library/key_rec_6.02e.pdf)

<sup>42</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* <http://www.icj-cij.org/en/case/135/judgments>  
See also Principle 17 of the Rio Declaration, Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

*In this sense, the obligation to protect and preserve, under Article 41 (a) of the Statute, has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource. Moreover, due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if a party planning works liable to affect the régime of the river or the quality of its waters did not undertake an environmental impact assessment on the potential effects of such works.*

## **International Human Rights Law**

The analysis above has principally focused on international environmental law and the law of shared resources but international human rights also supports the analysis and confirms that any assessment should pay particular attention to the effects of any development of the 1002 lands that impair the subsistence harvesting interests of indigenous communities on both sides of the international boundary.

Both Canada and the United States are party to the International Covenant on Civil and Political Rights (ICCPR).<sup>43</sup> Article 1(2) of that Convention provides that “In no case may a people be deprived of its own means of subsistence.” In addition, Article 27 provides that

*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

The Human Rights Committee has interpreted the right to culture in Article 27 in broad terms in its General Comment No. 23.<sup>44</sup> Paragraph 7 of that Comment notes that:

*7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.*

Both Canada and the United States have also endorsed the United Nations Declaration on the Rights of Indigenous Peoples.<sup>45</sup> Article 25 of that Declaration provides that:

*Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.*

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<sup>43</sup> <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

<sup>44</sup> General Comment No. 23: The rights of minorities (Art. 27) : . 08/04/94. CCPR/C/21/Rev.1/Add.5  
<http://indianlaw.org/sites/default/files/resources/UN%20HCHR%20Comments%20on%20Article%2027.pdf>

<sup>45</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

In addition, Article 29(1) provides (in part) that:

*Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.*

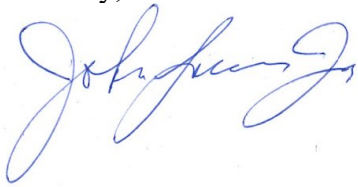
While there is no specific reference to an EIA in this instrument, these provisions establish at a minimum that States have a due diligence duty to assess whether the activities that they authorize will have an impact on the rights of indigenous communities.

## **Part 5. Concluding Statement & Signatures**

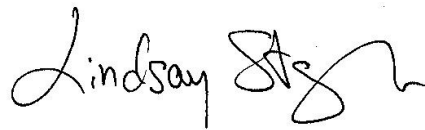
The Coastal Plain discussed in this submission is a critically important region to the Inuvialuit of Canada. As described above, the Inuvialuit have long and ongoing relationships with this region and with species that rely upon this habitat, which are rich with history and meaning. The transboundary Arctic Coastal Plain has been part of an international conservation regime for decades, demonstrating the Inuvialuit, Canadian, and United States' interest in and commitment to the conservation of these species and the habitat they depend upon. It is within the collective interests and legal obligations of Canada and the U.S. to ensure the ongoing conservation of fish and wildlife populations dependent upon the Coastal Plain and the maintenance of Inuvialuit subsistence rights, which are critical to the economic and cultural sustainability of the Inuvialuit people.

We thank you for your consideration of our interests as presented above and will continue to engage in the Environmental Impact Statement process.

Sincerely,



John Lucas Jr  
Chair  
Inuvialuit Game Council



Lindsay Staples  
Chair  
Wildlife Management Advisory Council  
(North Slope)



Larry Carpenter  
Chair  
Wildlife Management Advisory Council  
(Northwest Territories)



David V. Gillman  
Chair  
Fisheries Joint Management Committee

APPENDIX 1 (Scoping submission)

*Inuvialuit, Yukon, Northwest Territories and Canadian Interests Potentially Affected by the Coastal Plain Oil and Gas Leasing Program, Alaska*

**Major categories of interest-based issues affecting the Inuvialuit Settlement Region, and other regions of Yukon, Northwest Territories and Canada, and associated questions for the EIS to address.**

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***1. Biophysical, ecological and socio-ecological systems and traditional activities***

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1.1 How will the leasing program, including the requirement to hold no fewer than two lease sales area-wide, leasing alternatives, post-lease activities, including seismic and drilling exploration, development, additional road and air access, and transportation of oil and gas in and from the Coastal Plain (hereafter referred to the *leasing program and related activities*) affect population dynamics, behaviour, distribution and health of shared wildlife populations and the quantity, quality, availability and connectivity of their habitats (critical habitat and habitat effectiveness), with special attention to each of the following:

- Porcupine Caribou barren ground caribou herd
  - including core Porcupine Caribou calving areas, sensitive habitats and summer/winter range
- migratory birds
- grizzly bears, wolverine, muskox
- polar bear, including critical denning areas
- beluga whale
- bowhead whale
- ringed seal
- Shared fish stocks including Arctic char, Dolly Varden char and Cisco
- listed U.S. and Canadian species-at-risk including: buff-breasted sandpiper, rusty blackbird; short-eared owl, dolly Varden char, red knot, polar bear, peregrine falcon, olive-sided flycatcher, ivory gull, grey whale, bowhead whale, barn swallow, bank swallow
- cited candidate species for listing under either U.S. or Canada's species-at-risk acts (grizzly bear, wolverine, barren-ground caribou, red-necked phalarope)

For each species listed above, consider the impacts on the capacity of these resources to meet present and future needs of Inuvialuit and other Canadian subsistence users as per their subsistence rights, as well as subsistence user communities in Alaska, based on the documents listed in Appendix A1.

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1.2 How will the *leasing program and related activities* affect Canadian subsistence use areas and Inuvialuit subsistence activities dependent on shared wildlife populations? Are subsistence use areas and subsistence activities likely to be generally in better or worse condition after the project is over? What are the potential impacts to food security, health and well-being for Inuvialuit, including an assessment of economic impacts?

Canadian subsistence use areas and Inuvialuit subsistence activities are described in the documents listed in Appendix A1.

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1.3 How will the *leasing program and related activities* affect present and future terrestrial and marine conservation measures in Canada, including:

- species-specific measures and plans in Canada for polar bears, grizzly bears, Porcupine caribou, muskoxen
- protected areas, conservation areas and special use areas, including Ivvavik National Park, Herschel Island Territorial Park, the eastern Yukon North Slope (under withdrawal for conservation purposes), Vuntut National Park, Old Crow Special Management Area, Tarium Niriyutait Marine Protected Area

See Appendix A1 for a list of existing management and conservation plans for wildlife and habitat in Canada to consider in this assessment.

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1.4 How will the *leasing program and related activities* contribute to or detract from measures in the Yukon, Northwest Territories and Canada-wide to reduce greenhouse gas emissions?

See Appendix A1 for a list of existing management and conservation plans for wildlife and habitat in Canada to consider in this assessment.

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1.5 How may continuing climate change affect, and interact with (including cumulative effects) the *leasing program and related activities* and their effects on the ecology of the program area and their implications for 1.1 – 1.7?

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1.6 How may other environmental conditions affect the *leasing program and related activities* and program effects on the ecology of the program area for 1.1 – 1.4?

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1.7 How might these prospects (consider each of 1.1 – 1.6) be different with selected leasing alternatives?

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## ***2.0 Trade-offs***

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2.1 Have the proposed trade-offs been discussed and/or accepted through any open and participative processes?

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## ***3.0 Alternatives***

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3.1 What are the overall long term advantages and disadvantages for the program area, larger region, United States, and Canada of proceeding now with the proposed leasing program option versus delaying the program, or proceeding with other possible timing, scale, pace and/or components?

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## **Appendix A1: Reference Documents**

### *Park/Regional Management Plans:*

Yukon Government. (2006). *Herschel Island Qikiqtaruk Territorial Park Management Plan*.

Yukon Government, Whitehorse, YT. iv + 54 pp. [http://www.env.gov.yk.ca/publications-maps/documents/herschel\\_management\\_plan.pdf](http://www.env.gov.yk.ca/publications-maps/documents/herschel_management_plan.pdf)

Parks Canada. (2007). *Ivvavik National Park of Canada: Management Plan*. Parks Canada, Gatineau, QC. vii + 73 pp. <https://www.pc.gc.ca/en/agence-agency/bib-lib/~media/77C45C06474B405C8AF2C38F625EDA6C.ashx>

DFO. (2010). *Monitoring indicators for the Tarium Niriyutait Marine Protected Area (TNMPA)*.

DFO Can. Sci. Advis. Sec. Sci. Advis. Rep. 2010/059. [http://www.dfo-mpo.gc.ca/csas-sccs/publications/sar-as/2010/2010\\_059-eng.html](http://www.dfo-mpo.gc.ca/csas-sccs/publications/sar-as/2010/2010_059-eng.html)



Wildlife Management Advisory Council (North Slope). (1996, 2003). *Yukon North Slope Wildlife Management and Conservation Plan: The Land and the Legacy - Taimanga Nunapta Pitqusia: Volume I and II*. Wildlife Management Advisory Council (North Slope), Whitehorse, YT. 44 pp. and vi 74 pp.

*Species-Specific Management Plans:*

Wildlife Management Advisory Council (North Slope). (2018). *Framework for the Management of Yukon North Slope Muskox*. The Wildlife Management Advisory Council (North Slope), Whitehorse, YT. iii + 24 pp. [https://wmacns.ca/documents/328/WMACNS\\_-\\_Framework\\_for\\_the\\_Management\\_of\\_North\\_Slope\\_muskox.pdf](https://wmacns.ca/documents/328/WMACNS_-_Framework_for_the_Management_of_North_Slope_muskox.pdf)

Joint Secretariat. (2017). *Inuvialuit Settlement Region Polar Bear Joint Management Plan*. Joint Secretariat, Inuvialuit Settlement Region. vii + 66 pp. [http://www.nwtspeciesatrisk.ca/sites/default/files/isr\\_polar\\_bear\\_joint\\_management\\_plan\\_2017\\_final.pdf](http://www.nwtspeciesatrisk.ca/sites/default/files/isr_polar_bear_joint_management_plan_2017_final.pdf)

First Nation of NaCho Nyäk Dun, Gwich'in Tribal Council, Inuvialuit Game Council, Tr'ondëk Hwëch'in, Vuntut Gwitchin Government, Government of the Northwest Territories, Government of Yukon, and Government of Canada. (2010). *Harvest Management Plan for the Porcupine Caribou Herd in Canada*. Porcupine Caribou Management Board, Whitehorse, YT. 45 pp.

<http://www.pcmb.ca/documents/Harvest%20Management%20Plan%202010.pdf>

Environment and Climate Change Canada. (2017). *Management Plan for the Peregrine Falcon anatum/tundrius (Falco peregrinus anatum/tundrius) in Canada*. Species at Risk Act Management Plan Series. Environment and Climate Change Canada, Ottawa. iv + 28 pp.

[https://www.registrelep-sararegistry.gc.ca/document/default\\_e.cfm?documentID=2741](https://www.registrelep-sararegistry.gc.ca/document/default_e.cfm?documentID=2741)

Nagy, J. A., & Branigan, M. (1998). *Co-management plan for grizzly bears in the Inuvialuit Settlement Region, Yukon Territory and Northwest Territories*. Government of the Northwest Territories, Department of Resources, Wildlife, and Economic Development, Inuvik, NT.

<https://wmacns.ca/resources/co-management-plan-grizzly-bears/>

*Inuvialuit Traditional Use & Knowledge:*

Wildlife Management Advisory Council (North Slope) and Aklavik Hunters and Trappers Committee. (2018). *Yukon North Slope Inuvialuit Traditional Use Study*. Wildlife Management Advisory Council (North Slope), Whitehorse, Yukon. 124 + xvi pp.

<https://wmacns.ca/resources/?id=77>

Joint Secretariat. (2015). *Inuvialuit and Nanuq: A Polar Bear Traditional Knowledge Study*. Joint Secretariat, Inuvialuit Settlement Region. xx + 304 pp.

<https://wmacns.ca/resources/inuvialuit-and-nanuq-polar-bear-traditional-knowledge-study/>

Wildlife Management Advisory Council (North Slope) and the Aklavik Hunters and Trappers Committee. (2008). *Aklavik local and traditional knowledge about grizzly bears of the Yukon North Slope: Final Report*. Whitehorse, Yukon: Wildlife Management Advisory Council (North Slope). [https://wmacns.ca/documents/82/272\\_WMAC09136rpt\\_griz\\_knwldg\\_web3.pdf](https://wmacns.ca/documents/82/272_WMAC09136rpt_griz_knwldg_web3.pdf)

Wildlife Management Advisory Council (North Slope) and Aklavik Hunters and Trappers Committee. (2018). *Inuvialuit Traditional Knowledge of Wildlife Habitat, Yukon North Slope*. Wildlife Management Advisory Council (North Slope), Whitehorse, Yukon. vi + 74 pp.

[https://wmacns.ca/documents/326/habitat\\_YNS.pdf](https://wmacns.ca/documents/326/habitat_YNS.pdf)



*Climate Change Documents:*

Government of the Northwest Territories. (2017). *2030 NWT Climate Change Strategic Framework*. <http://www.enr.gov.nt.ca/en/services/climate-change/2030-nwt-climate-change-strategic-framework>

Yukon Government. (2009). *Yukon Government Climate Change Action Plan*. Yukon Government, Whitehorse, YT. 45 pp. [http://www.env.gov.yk.ca/publications-maps/documents/YG\\_Climate\\_Change\\_Action\\_Plan.pdf](http://www.env.gov.yk.ca/publications-maps/documents/YG_Climate_Change_Action_Plan.pdf)

## **Appendix 3 (2023): joint submission with respect to the Notice of Intent to Prepare a Supplemental EIS.**

### **Submission of The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAC(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAC(NWT)), and Fisheries Joint Management Committee (FJMC)**

**October 4<sup>th</sup>, 2021**

This is the submission of The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAC(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAC(NWT)) and the Fisheries Joint Management Committee (FJMC), 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" (2021), 86 Federal Register 41989.

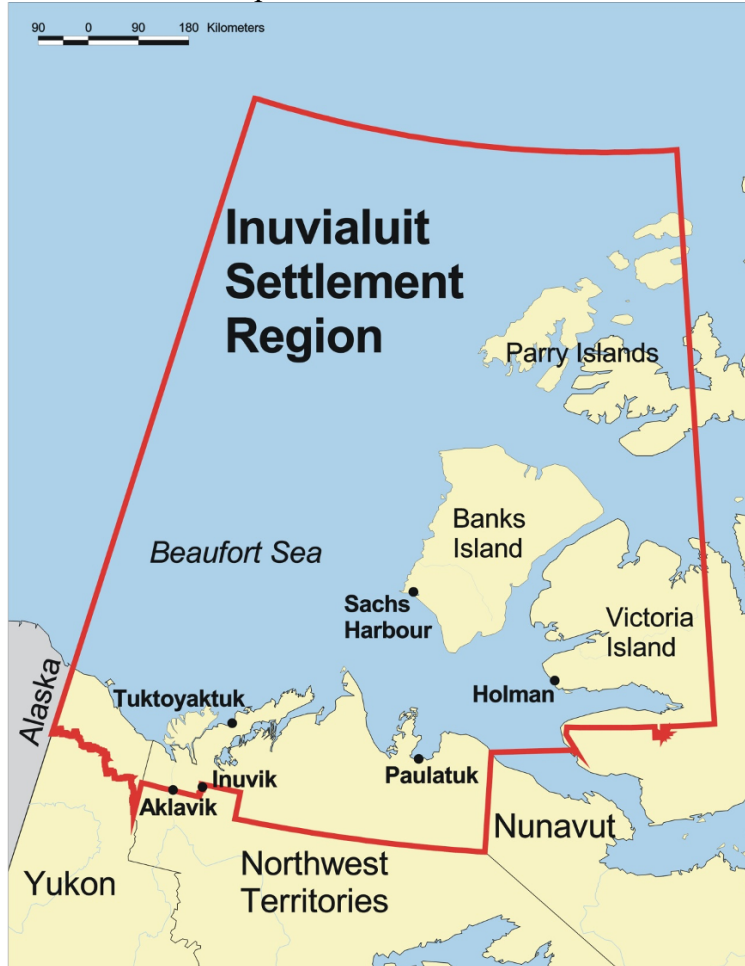
This submission has five parts and an appendix. Part 1 describes who we are and the scope of the submission. Part 2 addresses shared Inuvialuit and Canadian interests that may be affected by the *Tax Act, Pub. L. 115–97, Dec. 22, 2017*. Part 3 examines the obligation under US law to consider these interests as part of scoping and as part of all subsequent EIS related activities. Part 4 examines the obligation under international law to consider these interests as part of scoping and as part of all subsequent EIS related activities. Part 5 describes how the previous Environmental Impact Statement (EIS) and Record of Decision were legally deficient. Part 6 provides a concluding statement. **Appendix 1 provides a non-exhaustive list of issues to be scoped into the supplemental EIS and some guiding questions for how the EIS might address the interests conveyed in this submission.** Appendix 2 lists relevant Plans that should be considered.

#### **Part 1: Who we are & Scope of Submission**

##### **Who we are**

The Inuvialuit Game Council (IGC), Wildlife Management Advisory Council (North Slope) (WMAC(NS)), Wildlife Management Advisory Council (Northwest Territories) (WMAC(NWT)), and Fisheries Joint Management Committee (FJMC), are wildlife, fish, and marine mammal management bodies established under the Inuvialuit Final Agreement (IFA) – a modern day land claim agreement protected under the Canadian Constitution. Signed in 1984 between Canada and the Inuvialuit, the agreement was a direct response to Inuvialuit concerns over increased oil and gas development in Canada's Western Arctic. The IFA sets out Inuvialuit land, harvesting and resource management rights within the Inuvialuit Settlement Region (ISR) – an area that encompasses the coastal plain adjacent to the Arctic National Wildlife Refuge and nearshore and offshore waters from the Yukon/Alaskan border to the Northwest Territories/Nunavut border (Figure 1). One of the primary principles of the IFA is "to protect and preserve Arctic wildlife, environment and biological productivity" (IFA 1.(c)).

By upholding this principle, Inuvialuit harvesting and subsistence rights and continued use of the land for traditional practices are maintained.



**Figure 1.** The Inuvialuit Settlement Region, which spans the Yukon and Northwest Territories and abuts Alaska, including the Arctic National Wildlife Refuge.

Under the IFA, Inuvialuit are integrated in wildlife and environmental management bodies (IFA 14.(4)), participating with membership that is equal to that of the federal and territorial governments. The recommendations and decisions of these joint management bodies are a means of protecting and conserving wildlife populations (many of which are shared populations with Alaska) upon which the sustainability of Inuvialuit communities depends.

The following sections describe the specific mandates of the four IFA bodies who are signatories to this submission:

#### *Inuvialuit Game Council (IGC)*

The Inuvialuit Game Council represents the collective Inuvialuit interests in all matters related to the management of wildlife and wildlife habitat in the ISR. Under the IFA, the IGC has a specific responsibility to “review and advise government on any proposed Canadian position for international purposes that affects wildlife in the region” (IFA 14.(74)(e)).

#### *Wildlife Management Advisory Council – North Slope (WMAC (NS))*

WMAC(NS) provides advice to appropriate ministers and any other appropriate bodies (e.g. screening committees) on all matters relating to wildlife policy and the management, regulation

and administration of wildlife, habitat and harvesting for the Yukon North Slope (IFA 12.(57)). Under the IFA, the Yukon North Slope (all lands between the jurisdictional boundaries of Alaska and the Yukon Territory and the Northwest Territories, north of the height of land dividing the watersheds of the Porcupine River and the Beaufort Sea, and including adjacent nearshore and offshore waters and islands) is established as a special conservation area with the primary purpose of conserving wildlife, habitat and traditional subsistence use (IFA 12.(2)). Any development proposals relating to the Yukon North Slope have to be screened to determine if they could have significant negative impact to wildlife, habitat or the ability of Inuvialuit to harvest wildlife (IFA 12.(3)(a)).

#### *Wildlife Management Advisory Council - Northwest Territories (WMAC (NWT))*

The WMAC(NWT) provides advice to the appropriate ministers and any other appropriate bodies (e.g. screening committees) on all matters relating to wildlife policy and the management, regulation and administration of wildlife, habitat and harvesting in the ISR within the Northwest Territories (IFA 14.(60)). Specifically, the Council provides advice on any proposed Canadian position for international purposes that affects wildlife in the Western Arctic Region and provides advice on measures required to protect habitat that is critical for wildlife and harvesting (IFA 14. (60)(e)&(g)).

#### **Fisheries Joint Management Committee (FJMC)**

The FJMC provides advice to the appropriate ministers and any other appropriate bodies (environmental screening committees) on all matters related to fisheries policy and the management, regulation, and administration of fish, marine mammals and their habitats in the ISR, the Western Arctic Region and the Beaufort Sea (IFA 14. 64).

### **Scope of Submission**

This submission is 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" (2021), 86 Federal Register 41989. A Coastal Plain Oil and Gas Leasing Program has the potential to significantly impact several transboundary wildlife populations shared by Alaska and the Inuvialuit Settlement Region that, for which IGC, WMAC(NWT) and WMAC(NS) have management responsibilities. These include, but are not limited to, Porcupine Caribou, polar bear, black bear, beluga and bowhead whales, seals, fish species, migratory bird species and grizzly bear. The *Inuvialuit Final Agreement* directs those with wildlife management responsibilities to manage on a population basis. Further, Inuvialuit beneficiaries and other claimant groups rely on many of these species for subsistence and traditional harvesting.

The Notice of Intent provides in part that:

*In accordance with Secretary's Order 3401, Comprehensive Analysis and Temporary Halt on all Activities in the Arctic National Wildlife Refuge Relating to the Coastal Plain Oil and Gas Leasing Program, the Bureau of Land Management (BLM) Alaska State Office, Anchorage, Alaska, intends to prepare a Supplemental Environmental Impact Statement (EIS) to the September 2019 Coastal Plain Oil and Gas Leasing Program EIS. The Supplemental EIS will provide a comprehensive analysis of the potential environmental impacts of the Program, including by addressing the deficiencies identified in Secretary's Order 3401.*

*The Supplemental EIS will evaluate impacts to various surface resources*

*including, but not limited to, caribou, polar bears, birds, vegetation, and surface waters including wetlands, as well as to other uses of the Coastal Plain, including subsistence uses. The Supplemental EIS will also consider impacts from greenhouse gas emissions from any Leasing Program.*

The purpose of the public scoping process is to determine concerns and to identify the significant issues, including any legal deficiencies in the Final EIS, related to implementing an oil and gas leasing program within the Coastal Plain. Our submission includes information that will be helpful in the development of the proposed action and alternatives and guide the environmental analysis.

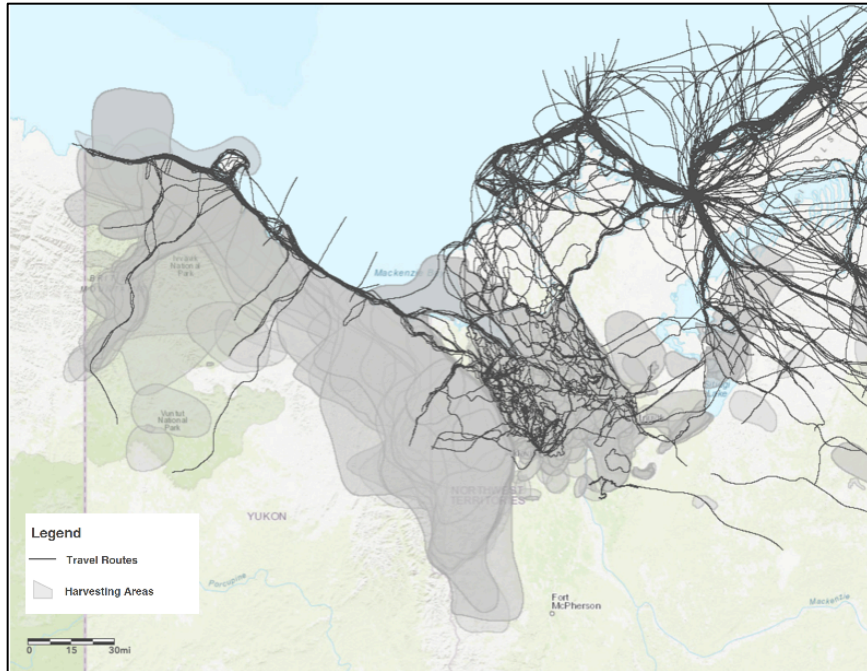
## **Part 2: Shared Inuvialuit and Canadian Interests**

The 1002 area within ANWR is part of the contiguous Arctic Coastal Plain that stretches from eastern Alaska across to the Mackenzie Delta in the Northwest Territories. Inuvialuit and their ancestors have lived on both sides of the Canada/U.S. border on the Arctic Coastal Plain for millennia. The ancestors of many Inuvialuit families were born on Barter Island and strong family connections to Kaktovik relatives remain today. Participation in land claims processes with their respective countries resulted in the current designations of Iñupiat (U.S.) and Inuvialuit (Canada). However, as Inuit, families and communities have shared connections to the land and wildlife resources of the 1002 area of the Coastal Plain and depend on them for subsistence and cultural purposes.

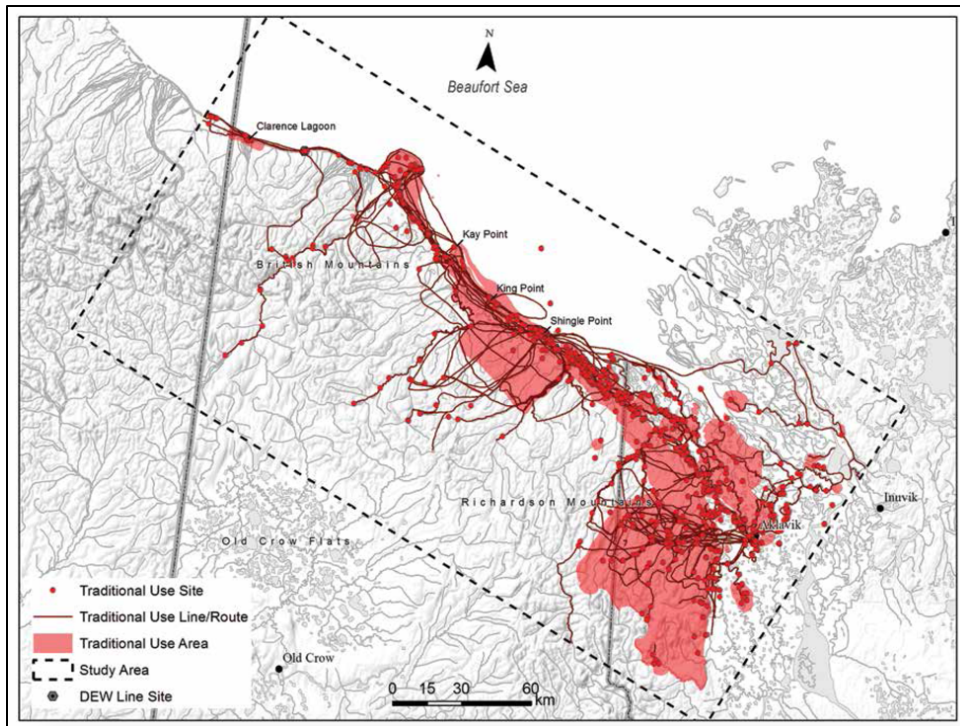
Maps from the Inuit Land Use and Occupancy project produced in the 1970s (Figure 1) as well as recent Inuvialuit Land use and occupancy maps produced by WMAC(NS) and the Aklavik Hunters and Trappers Committee (Figure 2) document historic and contemporary use of the Coastal Plain in Canada. Travel routes into Alaska were outside of the geographical scope of these studies, but movement across the border by boat and snow mobile is a regular occurrence for Inuvialuit and Iñupiat who visit family and friends. Many Aklavik Inuvialuit tell stories about travelling, watching the weather, safe havens, and changing conditions along the 200 km of coastline from Qikiqtaruk (Herschel Island) to Kaktovik. There are also many well-known and documented burial places, cabin sites, and other cultural use sites all along this important traditional travel route<sup>46</sup>.

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<sup>46</sup> Wildlife Management Advisory Council (North Slope) and Aklavik Hunters and Trappers Committee. 2018. *Yukon North Slope Inuvialuit Traditional Use Study*. Wildlife Management Advisory Council (North Slope), Whitehorse, Yukon. 124 + xvi pp.



**Figure 2.** Documented Inuvialuit land use from early 1900 to 1974, reproduced from Freeman (1976)<sup>47</sup>



<sup>47</sup> Freeman, M. M. (Ed.). (1976). *Inuit land use and occupancy project: a report*. Supply and Services Canada.

**Figure 3.** Contemporary Inuvialuit land use of Yukon North Slope by Aklavik residents <sup>48</sup>

Inuvialuit are active participants in the management of the Coastal Plain. The Aklavik, Inuvik and Tuktoyaktuk Community Conservation Plans<sup>49</sup> (CCPs) and the Yukon North Slope Wildlife Conservation and Management Plan<sup>50</sup> identify Ivvavik National Park and the area east of the Babbage River withdrawn from disposition for oil and gas and mineral exploration and development as having specific conservation value to Inuvialuit, based on its importance to Porcupine caribou, furbearers, waterfowl, grizzly bear, Dall's sheep, raptors, and fish. The CCPs provide management guidelines from the community working groups for this region and other important areas for individual species as part of the integrated wildlife management system in the Inuvialuit Settlement Region.

It is imperative to recognize that Inuvialuit use of the North Slope and coastal lands and waters goes beyond its representation on maps; Inuvialuit have a deep cultural connection to these lands and the resources they support. Inuvialuit traditional knowledge is a rich, contextual, and continuous body of knowledge that is the cumulative knowledge, experience, and wisdom of generations. This knowledge and understanding of the region and its wildlife must be considered in the evaluation of the effects of a leasing program.

In addition to the protections for Inuvialuit subsistence rights provided in the IFA, significant international agreements were developed and signed in order to protect critical transboundary populations and ensure their conservation. They include:

- *Convention for the Protection of Migratory Birds in the United States and Canada*;
- *Agreement on the Conservation of Polar Bears* (1973);
- *1987 Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd* (hereafter referred to as the *International Porcupine Caribou Agreement*);
- *Inuvialuit- Iñupiat Polar Bear Management Agreement in the Southern Beaufort Sea* (1988) (hereafter referred to as the *Inuvialuit- Iñupiat Polar Bear Management Agreement*);

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<sup>48</sup> Wildlife Management Advisory Council (North Slope) and Aklavik Hunters and Trappers Committee. 2018. *Yukon North Slope Inuvialuit Traditional Use Study*. Wildlife Management Advisory Council (North Slope), Whitehorse, Yukon. 124 + xvi pp.

<sup>49</sup> The Aklavik Hunters and Trappers Committee, Aklavik Community Corporation, The Wildlife Management Advisory Council (NWT), The Fisheries Joint Management Committee and the Joint Secretariat. (2016). *Aklavik Community Conservation Plan, Akaqviki miut Nunamikini Nunutailivikautinich: A plan to provide guidance regarding the conservation and management of renewable resources and lands within the Inuvialuit Settlement Region in the vicinity of Aklavik, Northwest Territories*. Joint Secretariat, Inuvik, NT. 195 pp.

The Inuvik Hunters and Trappers Committee, Inuvik Community Corporation, The Wildlife Management Advisory Council (NWT), The Fisheries Joint Management Committee and the Joint Secretariat. (2016). *Inuvik Community Conservation Plan, Inuvium Angalatchivingit Niryutinik: A plan to provide guidance regarding the conservation and management of renewable resources and lands within the Inuvialuit Settlement Region in the vicinity of Inuvik, Northwest Territories*. Joint Secretariat, Inuvik, NT. 192 pp.

The Inuvik Hunters and Trappers Committee, Inuvik Community Corporation, The Wildlife Management Advisory Council (NWT), The Fisheries Joint Management Committee and the Joint Secretariat. (2016). *Tuktoyaktuk Community Conservation Plan, Tuktuuyaqtuum Angalatchivingit Niryutinik: A plan for the conservation and management of renewable resources and lands within the Inuvialuit Settlement Region in the vicinity of Tuktoyaktuk, Northwest Territories*. Joint Secretariat, Inuvik, NT. 227 pp.

<sup>50</sup> Wildlife Management Advisory Council (North Slope). (1996, 2003, 2021[draft]). *Yukon North Slope Wildlife Management and Conservation Plan*. Wildlife Management Advisory Council (North Slope), Whitehorse, YT. *Multiple documents*.



- *Inuvialuit-Inūpiat Beaufort Sea Beluga Whale Agreement* (2000); and
- *2008 Memorandum of Understanding between Environment and Climate Change Canada and the United States Department of the Interior for the Conservation and Management of Shared Polar Bear Populations*.

By signing these agreements, all parties – including the United States Government – recognized the significance of these populations and agreed to uphold the goals and values described within them. For Inuvialuit, these transboundary populations and the agreements that conserve them are critically important for the protection of their subsistence rights in Canada. They provide food security for isolated communities and harvesting practices continue the important ongoing connection of Inuvialuit to the land that has sustained them for generations.

The Porcupine Caribou herd is particularly important to the Inuvialuit for subsistence and cultural practices. The *Porcupine Caribou Management Agreement* (“PCMA”) is part of the Inuvialuit Final Agreement and identifies goals and principles of herd conservation and management in Canada. Canada’s commitment to protecting critical habitat and sustainable herd management of the Porcupine Caribou herd is established in the IFA through the creation of Ivvavik National Park (IFA 12.(5)), the withdrawal of all lands on the Yukon North Slope east of the Babbage River from development (IFA 12.(4)) and, through the PCMA, the establishment of the Porcupine Caribou Management Board.

The PCMA also provides the rationale for agreements with other “jurisdictions where lands support the herds and the caribou are harvested for subsistence.” The 1002 area of the Coastal Plain includes the US portion of the Porcupine Caribou calving grounds, which are critical to the sustainability of the herd. The PCMA provided the foundation for the *International Porcupine Caribou Agreement* between Canada and the United States.

Since the late 1970s, debate around development of the 1002 area and its impact on the sustainability of the Porcupine Caribou herd has been a conversation shared by both signatories to the *International Porcupine Caribou Agreement*. The 1002 lands contain a large percentage of the core calving area and supports significant post-calving aggregations. The United States Fish and Wildlife Service asserts that the annual variability in where the herd calves indicates that the Porcupine Caribou require access to the entirety of the area used for calving to select the best habitat for the conditions in a given year<sup>51</sup>.

A recent (2019) science-based risk assessment of the vulnerability of Porcupine Caribou to oil and gas development in the 1002 lands of ANWR provides further significant evidence for scoping consideration<sup>52</sup>. This work considered various scenarios and the development alternatives presented in the draft EIS. The risk assessment determined that such a program would considerably increase the risk of herd decline under many of the scenarios, with consequences for harvest management and food security.

The 1002 area is also critical to the long-term wellbeing of snow geese as it contains preferred staging habitat used by over 100,000 birds per year. In addition, there are 57 recorded species of migratory birds that use the coastal plain and barrier islands on a regular basis. These are shared

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<sup>51</sup> U.S. Fish and Wildlife Service. (2015). *Arctic National Wildlife Refuge revised comprehensive conservation plan, vol. 1*. <https://www.fws.gov/home/arctic-ccp/>

<sup>52</sup> Russell D. and A. Gunn. (2019). *Vulnerability analysis of the Porcupine Caribou Herd to potential development of the 1002 lands in the Arctic National Wildlife Refuge, Alaska*. Report prepared for: Environment Yukon, Canadian Wildlife Service, and GNWT Department of Environment and Natural Resources. ix + 135pp



populations that are important species to both Inuvialuit and all Canadians, as recognized by the *Convention for the Protection of Migratory Birds in the United States and Canada*.

The 1002 area also provides critical maternal denning habitat for the Southern Beaufort population of polar bears and the importance of the Arctic coastal plain in Alaska for denning has been increasing in recent decades. The 1988 *Inuvialuit-Iñupiat Polar Bear Agreement* recognizes the shared subsistence and cultural interests of the Inuvialuit and the Iñupiat in this transboundary population and its population and harvest management. Polar bears are highly valued in Inuvialuit mythology, spirituality, storytelling, art, song and other forms of cultural expression, and the well-being of this population is extremely important because of the ongoing relationship Inuvialuit have with these animals<sup>53</sup>.

If the coastal plain lands are developed, it is likely that associated transportation and coastal development will impact marine resources. Five species of whitefish including Arctic Cisco migrate along the Alaska/Canada coast and are important subsistence food resources in both countries. These coastal zones are important summering areas for all Dolly Varden populations that are resident to the streams and rivers of the Alaska/Canada North Slope and the west side of the Mackenzie Delta. Dolly Varden is a valued subsistence and sport fishing species for residents and visitors to these areas. Shared marine mammal populations also use these coastal waters including ringed seal, bearded seal, beluga whale and bowhead whale. Beluga whale are recognized as an important shared subsistence species for the Inuvialuit and Iñupiat and are jointly managed through the *Inuvialuit-Iñupiat Beaufort Sea Beluga Whale Agreement*. There are many other species that are important to the Inuvialuit that move freely across the Arctic North Slope, including grizzly bears (further details provided in Appendix 1). Since the establishment of the Arctic National Wildlife Refuge, these transboundary populations have had the benefit of many international treaties and conservation initiatives to ensure their ongoing sustainability. These agreements and the land-based conservation initiatives taken by countries on both sides of the border show the value that Inuvialuit and the Canadian government place on the uniqueness of the Arctic North Slope and ensuring its ongoing biological diversity and productivity.

### **Part 3: United States Domestic Law**

This submission relies on a Memorandum (July 1, 1997) of the Council of Environmental Quality of the Executive Office of the President, which provides the Council's Guidance to Heads of Agencies on NEPA analysis for Transboundary Impacts.<sup>54</sup> This Memorandum continues to be listed as current on the NEPA.GOV website.<sup>55</sup> This Guidance makes it abundantly clear that NEPA does not "define agencies' obligations to analyze effects of actions by administrative boundaries." Instead, "the entire body of NEPA law directs federal agencies to analyze the effects of proposed actions to the extent they are reasonably foreseeable consequences of the proposed action, *regardless of where those impacts might occur.*" (emphasis added) In light of this, the CEQ concluded that federal agencies "must include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the United States."

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<sup>8</sup> Joint Secretariat. (2015). *Inuvialuit and Nanuq: A Polar Bear Traditional Knowledge Study*. Joint Secretariat, Inuvialuit Settlement Region. xx + 304 pp.

<sup>54</sup> <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/memorandum-transboundary-impacts-070197.pdf>

<sup>55</sup> <https://ceq.doe.gov/guidance/guidance.html>

The CEQ Guidance goes on to note that agencies should use the scoping process (40.CFR s.1501.7) to identify those actions that may have adverse environmental effects. The CEQ cautions that agencies “should be particularly alert to actions that may affect migratory species, air quality, watersheds, and other components of the natural ecosystem that cross borders, as well as to interrelated social and economic effects. Should such potential impacts be identified, agencies may rely on available professional sources of information and should contact agencies in the affected country with relevant expertise.”

In sum, the BLM is bound to include within the scope of the EIA the effect of activities in the 1002 lands which may have implications for shared migratory species, the shared ecosystem of the North Slope and interrelated social and economic effects on indigenous communities dependent on these resources and the shared ecosystem.

#### **Part 4: International Law**

This part examines the obligations of the United States under relevant bilateral agreements between the United States and Canada, multilateral agreements such as the Agreement on the Conservation of Polar Bears, and under customary international law. It concludes with a discussion of the relevance of international human rights law.

Before turning to the treaties however it is important at the outset to note that the CEQ itself recognizes the relevance of customary international law at both procedurally and substantively. Thus, the CEQ acknowledges that:

*It has been customary law since the 1905 Trail Smelter Arbitration that no nation may undertake acts on its territory that will harm the territory of another state. This rule of customary law has been recognized as binding in Principle 21 of the Stockholm Declaration on the Human Environment and Principle 2 of the 1992 Rio Declaration on Environment and Development. This concept, along with the duty to give notice to others to avoid or avert such harm, is incorporated into numerous treaty obligations undertaken by the United States. Analysis of transboundary impacts of federal agency actions that occur in the United States is an appropriate step towards implementing those principles.*

#### **Relevant Bilateral Agreements**

*Agreement between the Government of Canada and the Government of the United States on the Conservation of the Porcupine Caribou Herd (1987)*<sup>56</sup>

The Preamble to this Agreement recognizes that the Porcupine Caribou Herd (PCH) is a shared migratory resource and “a unique and irreplaceable natural resource of great value which each generation should maintain and make use of so as to conserve them for future generations.” The substantive provisions of the Agreement include Article 3 on Conservation the entirety of which is relevant to this proposed leasing activity. Article 3 includes the following requirements:

##### **Conservation**

- v) *The Parties will take appropriate action to conserve the Porcupine Caribou Herd and its habitat.*

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<sup>56</sup> <http://www.treaty-accord.gc.ca/text-texte.aspx?id=100687>

- w) *The Parties will ensure that the Porcupine Caribou Herd, its habitat and the interests of users of Porcupine Caribou are given effective consideration in evaluating proposed activities within the range of the Herd.*
- x) *Activities requiring a Party's approval having a potential impact on the conservation of the Porcupine Caribou Herd or its habitat will be subject to impact assessment and review consistent with domestic laws, regulations and processes.*
- y) *Where an activity in one country is determined to be likely to cause significant long-term adverse impact on the Porcupine Caribou Herd or its habitat, the other Party will be notified and given an opportunity to consult prior to final decision.*
- z) *Activities requiring a Party's approval having a potential significant impact on the conservation or use of the Porcupine Caribou Herd or its habitat may require mitigation.*
- aa) *The Parties should avoid or minimize activities that would significantly disrupt migration or other important behavior patterns of the Porcupine Caribou Herd or that would otherwise lessen the ability of users of Porcupine Caribou to use the Herd.*
- bb) *When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyze potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou.*
- cc) *The Parties will prohibit the commercial sale of meat from the Porcupine Caribou Herd.*

#### *Migratory Birds Convention and Protocol<sup>57</sup>*

The Preamble to the Protocol (which amends the original Convention of 1916) notes that the Parties are committed

*... to the long-term conservation of shared species of migratory birds for their nutritional, social, cultural, spiritual, ecological, economic, and aesthetic values through a more comprehensive international framework that involves working together to cooperatively manage their populations, regulate their take, protect the lands and waters on which they depend, and share research and survey information; (emphasis added)*

In addition, the amended Article IV provides that:

*Each High Contracting Power shall use its authority to take appropriate measures to preserve and enhance the environment of migratory birds. In particular, it shall, within its constitutional authority:*

- (a) seek means to prevent damage to such birds and their environments, including damage resulting from pollution;*
- (b) endeavour to take such measures as may be necessary to control the importation of live animals and plants which it determines to be hazardous to the preservation of such birds;*
- (c) endeavour to take such measures as may be necessary to control the introduction of live animals and plants which could disturb the ecological balance of unique island environments; and*
- (d) pursue cooperative arrangements to conserve habitats essential to migratory bird populations.*

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<sup>57</sup> <http://laws-lois.justice.gc.ca/eng/acts/m-7.01/page-11.html#h-16>

While there is no express mention of a duty to conduct an environmental assessment of activities that may affect migratory birds as defined by the Convention and Protocol, this instrument clearly recognizes that both Parties have a shared interest in the health of these populations. Furthermore, and using the logic of the CEQ, it is relatively easy to *imply* a duty to conduct an EIA. After all, if there is a duty to prevent damage to the environment of migratory birds, there must be a corresponding obligation to understand the impacts of proposed activities on those environments, otherwise it will not be possible to operationalize the duty to prevent damage.

*Memorandum of Understanding between Environment Canada and the United States  
Department of the Interior for the Conservation and Management of Shared Polar Bear  
Populations (2008)*

The MOU expressly states that it is not legally binding but it clearly recognizes that both Canada and the United States have a shared interest in the health of the Southern Beaufort Sea (SBS) population of bears which utilizes both the coastal plain and the adjacent offshore areas.

*Inuvialuit - Iñupiat Polar Bear Management Agreement in the Southern Beaufort Sea*<sup>58</sup>

This is an agreement between the two user groups of the SBS population of polar bears. The agreement is principally concerned with ensuring that harvest of bears remains within sustainable limits, but the agreement also acknowledges more generally that the continued availability of bears “is essential to maintain the dietary, cultural, and economic base” of both communities.

**Inuvialuit - Iñupiat Beaufort Sea Beluga Whale Agreement**

This is an agreement between the two user groups of the Beaufort Sea populations of Beluga whales. The agreement recognizes the management plans established by each group and establishes a Commission to ensure the exchange of information and the establishment of joint research and management programs to ensure the sustainability of the shared stocks.

**Multilateral Agreements**<sup>59</sup>

*Agreement on the Conservation of Polar Bears (1973)*<sup>60</sup>

Article II of this Agreement contains an important commitment to protect the habitat of polar bear as well as the ecosystem of which polar bears are a part.

*Each Contracting Party shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns, and shall manage polar bear populations in accordance with sound conservation practices based on the best available scientific data.*

Once again, there is no specific reference to the need to conduct an EIA for projects that may affect sole or shared populations of polar bear, but such an obligation can be implied.

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<sup>58</sup> <http://pbsg.npolar.no/en/agreements/USA-Canada.html>

<sup>59</sup> In addition to the ACPB and Ramsar Convention, Canada is also a party to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context and the Convention on Biological Diversity. The US is not a party to either agreement and thus they are not considered further here.

<sup>60</sup> <http://pbsg.npolar.no/en/agreements/agreement1973.html>

The Circumpolar Action Plan (2015)<sup>61</sup> provides that Parties should “Consider the cumulative effects of climate change and human activities on polar bear subpopulations and habitats when making management decisions using tools such as predictive modeling” and should “Identify essential polar bear habitat and redefine it as changes occur over time.” Specifically with respect to planning and EIAs the Action Plan suggests that Parties should:<sup>62</sup>

*Use regional land-use planning processes, regional strategic environmental assessments and project environmental assessments to mitigate the effects of mineral and energy development activities on polar bears.*

In 2020, the Polar Bear Range States<sup>63</sup> adopted the CAP 2020-2023 Implementation Plan<sup>64</sup>. This Implementation Plan describes the key objectives and actions for the Range States from 2020-2023. One of these key objectives is to “ensure the conservation of essential habitat for polar bears.”

*Ramsar Wetlands Convention, 1971*<sup>65</sup>

Ninety nine percent of the 1002 area is classified as wetland. Both the United States and Canada are party to the Convention on Wetlands of International Importance especially as Waterfowl Habitat. The Preamble to the Convention contains the following recitals:

*CONSIDERING the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl;*

*BEING CONVINCED that wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable;*

*DESIRING to stem the progressive encroachment on and loss of wetlands now and in the future;*

*RECOGNIZING that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource;*

While most of the obligations under the Convention apply only to listed wetlands there are some more general obligations such as the obligation under Article 3(1) to “formulate and implement their planning so as to promote ... as far as possible the wise use of wetlands in their territory.”

The term “wise use” is a term of art under the Ramsar Convention. The Parties have elaborated on its meaning in a number of ways including through the adoption of Recommendation 6.2 (1996) on Environmental Impact Assessment. This Recommendation calls on the Contracting

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<sup>61</sup>[http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri\\_Fangst\\_Landbrug/Polarbear%202015/CAP/CAP%20Book.pdf](http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri_Fangst_Landbrug/Polarbear%202015/CAP/CAP%20Book.pdf)

<sup>62</sup> Id at 59.

<sup>63</sup> The Polar Bear Range States are the countries that signed the 1973 *Agreement on the Conservation of Polar Bears*, and include the US and Canada. In 2015, the Range States released a Circumpolar Action Plan (CAP) for polar bear conservation; the Range States are now implementing the CAP. The Range States have acknowledged the importance of traditional knowledge for conserving polar bears in a 2013 declaration.

<sup>64</sup> <https://polarbearagreement.org/index.php/circumpolar-action-plan/2-year-implementation-plans/cap-2020-2023-implementation-plan#objective-5-manage-human-bear-interactions-to-ensure-human-safety-and-to-minimize-polar-bear-injury-or-mortality>

<sup>65</sup> [http://archive.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671\\_4000\\_0](http://archive.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0)

Parties “to integrate environmental considerations in relation to wetlands into planning decisions in a clear and publicly transparent manner.”<sup>66</sup>

## Customary International Law

As noted above, the CEQ had already recognized by 1997 that customary international law required a State to conduct an EIA where an activity in State A might have implications for State B. Developments and judicial statements since then have simply reinforced this conclusion. For example, in the *Pulp Mills Case*<sup>67</sup> the International Court of Justice reasoned as follows:

*In this sense, the obligation to protect and preserve, under Article 41 (a) of the Statute, has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource. Moreover, due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if a party planning works liable to affect the régime of the river or the quality of its waters did not undertake an environmental impact assessment on the potential effects of such works.*

## International Human Rights Law

The analysis above has principally focused on international environmental law and the law of shared resources but international human rights also supports the analysis and confirms that any assessment should pay particular attention to the effects of any development of the 1002 lands that impair the subsistence harvesting interests of indigenous communities on both sides of the international boundary.

Both Canada and the United States are party to the International Covenant on Civil and Political Rights (ICCPR).<sup>68</sup> Article 1(2) of that Convention provides that “In no case may a people be deprived of its own means of subsistence.” In addition, Article 27 provides that

*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

The Human Rights Committee has interpreted the right to culture in Article 27 in broad terms in its General Comment No. 23.<sup>69</sup> Paragraph 7 of that Comment notes that:

*7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way*

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<sup>66</sup> Brisbane, [https://www.ramsar.org/sites/default/files/documents/library/key\\_rec\\_6.02e.pdf](https://www.ramsar.org/sites/default/files/documents/library/key_rec_6.02e.pdf)

<sup>67</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* <http://www.icj-cij.org/en/case/135/judgments> See also Principle 17 of the Rio Declaration, Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

<sup>68</sup> <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

<sup>69</sup> General Comment No. 23: The rights of minorities (Art. 27) : . 08/04/94. CCPR/C/21/Rev.1/Add.5 <http://indianlaw.org/sites/default/files/resources/UN%20OHCHR%20Comments%20on%20Article%2027.pdf>

*of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing, hunting, or trapping and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.*

Both Canada and the United States have also endorsed the United Nations Declaration on the Rights of Indigenous Peoples.<sup>70</sup> Article 25 of that Declaration provides that:

*Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.*

In addition, Article 29(1) provides (in part) that:

*Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.*

While there is no specific reference to an EIA in this instrument, these provisions establish at a minimum that States have a due diligence duty to assess whether the activities that they authorize will have an impact on the rights of Indigenous communities.

## **Part 5: Legal Deficiencies of the previous Environmental Impact Statement and Record of Decision**

Under the Notice of Intent, the BLM has stated that “The BLM will work collaboratively with interested parties to identify the management decisions best suited to local, regional, and national needs and concerns.”

The purpose of this section is to identify how the previous EIS did not consider the following points:

- *All Inuvialuit and Canadian interests that may be affected by the proposed leasing*
- *Our shared interests in the health, resilience and integrity of the shared ecosystem of the north slope of Alaska and Yukon (and related marine areas).*

Through these omissions, the previous EIS was legally deficient. During the earlier EIS process, the Department had an obligation to ensure that these interests were scoped into the EIS and fully addressed. This obligation arises under United States domestic law and under international law. In particular, the BLM has three main duties in undertaking an Environmental Impact Statement. First, it has a duty to assess the effects of the proposed leasing decision in a non-discriminatory manner: i.e. it has a duty to accord equal weight to impacts whether those impacts would or could be experienced in Canada or in the United States (the Duty of Non-Discrimination). Second, the US has duties arising under a number of agreements (bilateral or multilateral) and in particular under the Agreement between the Government of Canada and the Government of the United States on the Conservation of the Porcupine Caribou Herd (1987) (PCH Agreement).<sup>1</sup>

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<sup>70</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

Third, as a party to the International Covenant on Civil and Political Rights (ICCPR)<sup>1</sup> the United States has an obligation not to deny an Indigenous minority the right to enjoy its own culture. It is our view that the previously published final EIS and the Record of Decision (RoD) were not consistent with US obligations under each of these headings because they fail to reach a conclusion as to the significance of the transboundary impacts that they identify. While the EIS *documents* transboundary impacts it fails to *assess the significance* of those impacts, and as a result the documents fail to assess the implications of the leasing decision in a non-discriminatory manner. This is: (1) inconsistent with the duty to consider transboundary impacts on an equal footing, (2) it is inconsistent with the requirements of the PCH Agreement, and (3) it is inconsistent with US obligations under Article 27 of the ICCPR.

As the BLM prepares to undertake a supplementary analysis of the potential environmental impacts of the proposed oil and gas program, we are hopeful that the above obligations and the issues shared herein will form a meaningful component of the scoping and assessment process. This process should include respectful and effective consultation with Inuvialuit representatives and communities; such consultations are necessary for ensuring the aforementioned obligations are met. For example, the final EIS and the RoD did not discharge US obligations under the PCH Agreement when it comes to cumulative effects on Inuvialuit subsistence and culture. The cumulative effects assessment was superficial and insufficient. A wealth of existing information and meaningful engagement with Inuvialuit organizations and co-management bodies can support cumulative effects assessment under the supplemental EIS process.

## **Part 6. Concluding Statement & Signatures**

The Coastal Plain discussed in this submission is a critically important region to the Inuvialuit of Canada. As described above, the Inuvialuit have long and ongoing relationships with this region and with species that rely upon this habitat, which are rich with history and meaning. The transboundary Arctic Coastal Plain has been part of an international conservation regime for decades, demonstrating the Inuvialuit, Canadian, and United States' interest in and commitment to the conservation of these species and the habitat they depend upon. It is within the collective interests and legal obligations of Canada and the U.S. to ensure the ongoing conservation of wildlife populations dependent upon the Coastal Plain and the maintenance of Inuvialuit subsistence rights, which are critical to the economic and cultural sustainability of the Inuvialuit people.

We thank you for your consideration of our interests as presented above and will continue to engage in the supplementary Environmental Impact Statement process.

Sincerely,





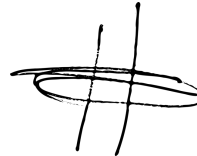
Dennis Arey  
Chair  
Inuvialuit Game Council



Jennifer Smith  
Chair  
Wildlife Management Advisory Council  
(North Slope)



Larry Carpenter  
Chair  
Wildlife Management Advisory Council  
(Northwest Territories)



Herb Nakimayak  
Chair  
Fisheries Joint Management Committee

## **APPENDIX 1 (Scoping): Issues to Scope in to the Supplemental EIS**

*Inuvialuit, Yukon, Northwest Territories and Canadian Interests Potentially Affected by the Coastal Plain Oil and Gas Leasing Program, Alaska*

**Major categories of interest-based issues affecting the Inuvialuit Settlement Region, and other regions of Yukon, Northwest Territories and Canada, and associated questions for the EIS to address.**

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### ***1. Biophysical, ecological and socio-ecological systems and traditional activities***

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1.2 How will the leasing program, including the requirement to hold no fewer than two lease sales area-wide, leasing alternatives, post-lease activities, including seismic and drilling exploration, development, additional road and air access, and transportation of oil and gas (including possible spills) in and from the Coastal Plain (hereafter referred to the *leasing program and related activities*) affect population dynamics, behaviour, distribution and health of shared wildlife populations and the quantity, quality, availability and connectivity of their habitats (critical habitat and habitat effectiveness), with special attention to each of the following:

- Porcupine Caribou barren ground caribou herd
  - including core Porcupine Caribou calving areas, sensitive habitats and summer/winter range
- migratory birds
- grizzly bears, wolverine, muskox
- polar bear, including critical denning areas
- beluga whale
- bowhead whale
- ringed seal
- Shared fish stocks including Arctic char, Dolly Varden and Cisco
- listed U.S. and Canadian species-at-risk including: grizzly bear, wolverine, buff-breasted sandpiper, rusty blackbird; short-eared owl, Dolly Varden, red knot, polar bear, peregrine falcon, olive-sided flycatcher, ivory gull, grey whale, bowhead whale, barn swallow, bank swallow, red-necked phalarope, gypsy cuckoo bumble bee
- cited candidate species for listing under either U.S. or Canada's species-at-risk acts (barren-ground caribou), ringed seal
- Other to consider: black bear, muskrat, fox (arctic, red, and cross), beaver, rabbit, plants such as cloud berry, blue berry, black berry.

In addition to potential effects on each species, for each species listed above, consider the impacts on the capacity of these resources to meet present and future needs of Inuvialuit and other Canadian subsistence users as per their subsistence rights, as well as subsistence user communities in Alaska, based on the documents listed in Appendix 2.

The value of the ecosystem as a whole should be considered, as well as its interconnectedness with traditional activities, food security, and neighboring systems. This should be examined in a quantitative analysis of cumulative effects that also considers projected climate change impacts.

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1.6 How will the *leasing program and related activities* affect Canadian subsistence use areas and Inuvialuit subsistence activities dependent on shared wildlife populations?

1.6.1 Are subsistence use areas and subsistence activities likely to be generally in better or worse condition after the project is over?

1.6.2 If these activities are to be impacted, will they return to a baseline state after the project is over, and if so, how long would this take?

1.6.3 What are the potential impacts to food security, health and well-being for Inuvialuit, including an assessment of economic impacts? Scope in a quantitative assessment of cumulative impacts to food security, health and well-being for Inuvialuit that considers climate change.

1.6.4 The supplementary EIS should consider how it aligns with (1) the duty to consider transboundary impacts on an equal footing, (2) the requirements of the PCH Agreement, and (3) US obligations under Article 27 of the ICCPR.

Canadian subsistence use areas and Inuvialuit subsistence activities are described in the documents listed in Appendix 2.

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1.7 How will the *leasing program and related activities* affect present and future terrestrial and marine conservation measures in Canada, including:

- species-specific measures and plans in Canada for polar bears, grizzly bears, Porcupine Caribou, muskoxen, Dolly Varden, and any/all of the species listed in 1.1
- protected areas, conservation areas and special use areas, including Ivvavik National Park, Herschel Island-Qikiqtaruk Territorial Park, Aullaviat/Aunguniarvik: the eastern Yukon North Slope (under withdrawal for conservation purposes), Vuntut National Park, Old Crow Special Management Area, Tarium Niryutait Marine Protected Area

See Appendix 2 for a list of existing management and conservation plans for wildlife and habitat in Canada to consider in this assessment.

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1.8 How will the *leasing program and related activities* contribute to or detract from measures in the Yukon, Northwest Territories and Canada-wide to reduce greenhouse gas emissions?

See Appendix 2 for a list of existing climate change plans and measures to consider in this assessment.

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1.9 How might continuing climate change affect, and interact with (including cumulative effects) the *leasing program and related activities* and their effects on the ecology of the program area and their implications for 1.1 – 1.7?

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1.8 How might other environmental conditions affect the *leasing program and related activities* and program effects on the ecology of the program area for 1.1 – 1.4?

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1.9 How might these prospects (consider each of 1.1 – 1.6) be different with selected leasing alternatives?

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## ***2.0 Trade-offs***

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2.1 Have the proposed trade-offs been discussed and/or accepted through any open and participative processes?

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### ***3.0 Alternatives***

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3.1 What are the overall long term advantages and disadvantages for the program area, larger region, United States, and Canada of proceeding now with the proposed leasing program option versus delaying the program, or proceeding with other possible timing, scale, pace and/or components?

3.2 Consider a ‘no leasing’ alternative.

For all alternatives, complete a quantitative cumulative effects analysis that takes into account the predicted impacts of climate change.

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## APPENDIX 2 (Scoping): Reference Documents

### *Park/Regional Management Plans:*

- Yukon Government. (2006). *Herschel Island Qikiqtaruk Territorial Park Management Plan*. Yukon Government, Whitehorse, YT. iv + 54 pp. [http://www.env.gov.yk.ca/publications-maps/documents/herschel\\_management\\_plan.pdf](http://www.env.gov.yk.ca/publications-maps/documents/herschel_management_plan.pdf)
- Parks Canada. (2007). *Ivvavik National Park of Canada: Management Plan*. Parks Canada, Gatineau, QC. vii + 73 pp. <https://www.pc.gc.ca/en/agence-agency/bib-lib/~media/77C45C06474B405C8AF2C38F625EDA6C.ashx>
- DFO. (2010). *Monitoring indicators for the Tarium Niryutait Marine Protected Area (TNMPA)*. DFO Can. Sci. Advis. Sec. Sci. Advis. Rep. 2010/059. [http://www.dfo-mpo.gc.ca/csas-sccs/publications/sar-as/2010/2010\\_059-eng.html](http://www.dfo-mpo.gc.ca/csas-sccs/publications/sar-as/2010/2010_059-eng.html)
- DFO, & FJMC. (2013). *Tarium Niryutait Marine Protected Areas Monitoring Plan*. Fisheries and Oceans Canada and Fisheries Joint Management Committee. Wildlife Management Advisory Council (North Slope). (1996, 2003). *Yukon North Slope Wildlife Management and Conservation Plan: The Land and the Legacy - Taimanga Nunapta Pitqusia: Volume I and II*. Wildlife Management Advisory Council (North Slope), Whitehorse, YT. 44 pp. and vi 74 pp.

### *Species-Specific Management Plans and Studies:*

- Russell, D., and A. Gunn. 2019. Vulnerability analysis of the Porcupine Caribou Herd to potential development of the 1002 lands in the Arctic National Wildlife Refuge, Alaska. Report prepared for: Environment Yukon, Canadian Wildlife Service, and GNWT Department of Environment and Natural Resources. ix + 135 pp.
- Wildlife Management Advisory Council (North Slope). (2018). *Framework for the Management of Yukon North Slope Muskox*. The Wildlife Management Advisory Council (North Slope), Whitehorse, YT. iii + 24 pp. [https://wmacns.ca/documents/328/WMACNS\\_-\\_Framework\\_for\\_the\\_Management\\_of\\_North\\_Slope\\_muskox.pdf](https://wmacns.ca/documents/328/WMACNS_-_Framework_for_the_Management_of_North_Slope_muskox.pdf)
- Joint Secretariat. (2017). *Inuvialuit Settlement Region Polar Bear Joint Management Plan*. Joint Secretariat, Inuvialuit Settlement Region. vii + 66 pp. [http://www.nwt-species-at-risk.ca/sites/default/files/isr\\_polar\\_bear\\_joint\\_management\\_plan\\_2017\\_final.pdf](http://www.nwt-species-at-risk.ca/sites/default/files/isr_polar_bear_joint_management_plan_2017_final.pdf)
- First Nation of NaCho Nyäk Dun, Gwich'in Tribal Council, Inuvialuit Game Council, Tr'ondëk Hwëch'in, Vuntut Gwitchin Government, Government of the Northwest Territories, Government of Yukon, and Government of Canada. (2010). *Harvest Management Plan for the Porcupine Caribou Herd in Canada*. Porcupine Caribou Management Board, Whitehorse, YT. 45 pp. <http://www.pcmb.ca/documents/Harvest%20Management%20Plan%202010.pdf>
- Environment and Climate Change Canada. (2017). *Management Plan for the Peregrine Falcon anatum/tundrius (Falco peregrinus anatum/tundrius) in Canada*. Species at Risk Act Management Plan Series. Environment and Climate Change Canada, Ottawa. iv + 28 pp. [https://www.registrelep-sararegistry.gc.ca/document/default\\_e.cfm?documentID=2741](https://www.registrelep-sararegistry.gc.ca/document/default_e.cfm?documentID=2741)
- Nagy, J. A., & Branigan, M. (1998). *Co-management plan for grizzly bears in the Inuvialuit Settlement Region, Yukon Territory and Northwest Territories*. Government of the Northwest Territories, Department of Resources, Wildlife, and Economic Development, Inuvik, NT. <https://wmacns.ca/resources/co-management-plan-grizzly-bears/> DFO. (2018).

Draft: created by Nigel Bankes, not endorsed by any party, September 24, 2023

*Integrated Fisheries Management Plan for Dolly Varden (Salvelinus malma malma) of the Gwich'in Settlement Area and Inuvialuit Settlement Region Northwest Territories and Yukon North Slope 2018–2022. Feb. 8 2018 Draft.*

Polar Bear Range States. (2015). *Circumpolar Action Plan: Conservation Strategy for the Polar Bear*. Retrieved from available: [http://naalakkersuisut.gl/~~/media/Nanoq/Files/AttachedFiles/Fiskeri\\_Fangst\\_Landbrug/Polarbear2015/CAP/CAPBook.pdf](http://naalakkersuisut.gl/~~/media/Nanoq/Files/AttachedFiles/Fiskeri_Fangst_Landbrug/Polarbear2015/CAP/CAPBook.pdf)

FJMC. (2013). *Beaufort Sea Beluga Management Plan. 4th Amended Printing*. Inuvik, NT: Fisheries Joint Management Committee.

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