



CoastalPlain_EIS, BLM_AK <blm_ak_coastalplain_eis@blm.gov>

[EXTERNAL] TWS Scoping Comments on BLM Arctic Refuge Leasing EIS

1 message

Nicole Whittington-Evans <nicolewe@tws.org>

Tue, Jun 19, 2018 at 12:19 PM

To: "Blm_ak_coastalplain_EIS@blm.gov" <Blm_ak_coastalplain_EIS@blm.gov>

Nicole –

Please see the attached TWS Arctic Refuge Scoping comments on the BLM Arctic Refuge Leasing EIS. Thank you very much for this opportunity to comment.

Nicole Whittington-Evans

Alaska Regional Director

The Wilderness Society | Alaska Regional Office

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www.wilderness.orgFacebook: www.facebook.com/TheWildernessSocietyTwitter: twitter.com/Wilderness*We protect wilderness and inspire Americans to care for our wild places***1806 TWS Arctic Refuge Scoping Comments_Final.pdf**

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June 19, 2018

Nicole Hayes
Attn: Coastal Plain Oil and Gas Leasing Program EIS
222 West 7th Ave., Stop #13
Anchorage, Alaska 99513
Blm_ak_coastalplain_EIS @blm.gov

Submitted via email

Re: Scoping Comments on Notice of Intent to Prepare an Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program

Dear Ms. Hayes,

On behalf of The Wilderness Society (“TWS”) and our more than one million members and supporters, please accept these scoping comments in response to the April 20, 2018 Notice of Intent to Prepare an Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska, 83 Fed. Reg. 17562 (“leasing EIS”). As described in detail below, TWS has worked to protect the Arctic National Wildlife Refuge for over 80 years. As the wildest and most ecologically and culturally significant undeveloped landscape in North America, the Refuge is no place for oil and gas development. This pristine and fragile ecosystem is the crown jewel of our national wildlife system. TWS opposes any and all oil and gas leasing, exploration, and development activities in the Refuge.

Since our founding in 1935, TWS has held close ties to what is now the Arctic National Wildlife Refuge. TWS founder Robert Marshall, for example, spent time in the Arctic and advocated for its protection at the same time he was establishing our organization. Starting in 1920, renowned biologist Olaus Murie studied caribou for many years and throughout the seasons in what is now the Arctic National Wildlife Refuge, and later was joined by his wife Mardy Murie, for his field research. They documented the area’s bountiful wildlife and pristine habitat and after joining TWS, first as a Council Member in 1937, and ultimately as the Executive Director, Olaus, and his wife Mardy, embarked on a campaign in the 1950s to protect this magnificent landscape in northeast Alaska. After years of tirelessly campaigning with the support of TWS and many other people and organizations, Olaus and Mardy were able to secure designation of the area as the Arctic National Wildlife Range in 1960 to “preserv[e the] unique wildlife, wilderness and recreational values” of the area.¹

Two decades later, TWS worked with a large coalition of conservation and Alaska Native partners to secure passage of the Alaska National Interest Lands Conservation Act (ANILCA), which designated and

¹ Public Land Order 2214, Establishing the Arctic National Wildlife Range (Dec. 1, 1960).

expanded the Arctic Range as today's Arctic National Wildlife Refuge to ensure conservation of its unmatched fish, wildlife, habitat, subsistence, and water resources and to fulfill international treaty obligations related to fish, wildlife, and habitat.² TWS has worked tirelessly ever since to defend the Refuge from the threat of oil and gas development, including by establishing an Anchorage office in the mid-1980s and, more recently, successfully advocating for the U.S. Fish & Wildlife Service to recommend the Coastal Plain and other areas of the Refuge for wilderness designation. Throughout every stage, TWS has worked closely with the Gwich'in people to protect their subsistence way of life and the resources on which it depends, including healthy fish and plant populations, the over 200,000-animal Porcupine Caribou Herd, clean air and water, and an intact and undisturbed ecosystem.

TWS's mission is to protect wilderness and inspire Americans to care for our wild places. The Arctic Refuge is our nation's wilderness refuge and a national treasure. There is nothing more important to us than protecting the Refuge from industrial development that would forever scar its unparalleled wilderness, wildlife, and subsistence resources. The December 2017 passage of the Tax Cuts and Jobs Act, which directed the Bureau of Land Management (BLM) to establish an oil and gas leasing and development program for the Refuge's sensitive Coastal Plain, represents an unprecedented assault on the Refuge, the Gwich'in, our organization, and the millions of Americans who cherish it as one of the last great expanses of untouched wilderness.

TWS intends to focus its significant legal, policy, technical, and scientific expertise on BLM's current leasing EIS process, as well as any parallel or subsequent administrative processes to hold lease sales or authorize exploration or development activities. That expertise includes PhD scientists specializing in caribou biology and arctic fish biology and hydrology, public health and subsistence experts, and a legal team with over five decades of combined experience in public lands management and policy. Utilizing that expertise, TWS contributed significant content to the comprehensive scoping comments also submitted today by Trustees for Alaska and approximately two dozen organizations, including TWS. That letter articulates, among other things, our expectation that BLM conduct a thorough, rigorous, and science-based analysis of all reasonably foreseeable direct, indirect, and cumulative environmental, cultural, and socio-economic impacts associated with all phases of an oil and gas program, including exploration, leasing, development, and reclamation. An adequate public process and environmental analysis will necessarily require the agency to take sufficient time to remedy numerous significant data and information gaps that are essential to informed decision-making, to fully engage Alaska Native and Canadian First Nation tribes in a manner that suits their unique sovereign needs and interests, and to ensure compliance with the numerous legal obligations – statutory, regulatory, policy, and treaty based – designed to protect and preserve the Arctic Refuge and its resources.

In addition to highlighting the important content in the Trustees et al. comment letter, we want to take this opportunity to submit additional information about the United States' obligations under the 1987 International Porcupine Caribou Herd Agreement and BLM's corresponding obligation, as part of the leasing EIS process, to fully consider and satisfy the various requirements of that agreement. Those obligations are described in detail in an attachment to this letter. As with the content in the Trustees et al. letter, we expect the BLM to fully address all issues and information raised in that attachment.

We would also like to reiterate and emphasize the need for the BLM to fully address climate change in its analysis of the proposed leasing program. The agency must quantify potential lifecycle greenhouse gas emissions, analyze the associated climate impacts, consider mitigation measures, and evaluate

² See ANILCA § 303(2)(B).

socio-economic impacts using the social cost of carbon and social cost of methane across all alternatives.³

Finally, we want to reiterate that the public lands and resources of the Arctic National Wildlife Refuge are an international treasure that simply must be conserved for future generations. It is the very last place we should destroy for oil and gas development – particularly where that development is unnecessary and not economically justified. Any valid scientific review will show that developing oil and gas on the Coastal Plain will have unavoidable and un-mitigatable destructive impacts on Arctic Refuge wilderness, wildlife, water, habitat, and subsistence uses, and on the climate. To that end, BLM must fully analyze, and should select, a no action/no leasing alternative.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Whittington-Evans". The signature is fluid and cursive, with the first name "Nicole" being more prominent.

Nicole Whittington-Evans
Alaska Director
The Wilderness Society

³ See the Trustees et al. letter and the letter “Quantifying and Monetizing Greenhouse Gas Emissions from the Coastal Plain Oil and Gas Leasing Program” submitted by Environmental Defense Fund, Institute for Policy Integrity, and others for a more robust discussion of the agency’s climate analysis obligations.

Attachment: Porcupine Caribou Herd Conservation Agreement Issues

The EIS must consider many complex transboundary issues involving the environmental and socio-economic-cultural values and relationships that could be affected by an oil and gas leasing program in the Arctic Refuge. Some of these issues are treaty-based – most notably the Porcupine Caribou Herd Conservation Agreement between U.S. and Canada – while other issues stem from NEPA obligations to consider transboundary environmental and associated socio-economic effects. It is critically important for the BLM to cooperate and coordinate closely on these transboundary issues with relevant Canadian government officials, agencies, and indigenous peoples – as well as with the U.S. Fish and Wildlife Service, the U.S. State Department, and other federal and state agencies, and with Gwich'in representatives and other affected Native Alaskans.

A statutory purpose of the Arctic Refuge is “to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats.” ANILCA, Sec. 303(2)(B)(ii). **The BLM must identify and abide by the international treaties and treaty obligations that are relevant to fish and wildlife and their habitats in the Arctic Refuge. In the EIS and in any decisions related to the Arctic Refuge, BLM must fully analyze and ensure compliance with all treaty obligations.**

The International Agreement for the Conservation of the Porcupine Caribou Herd (Agreement) was signed on July 17, 1987, by U.S. Secretary of the Interior Don Hodel and his Canadian counterpart Thomas McMillan (<http://www.treaty-accord.gc.ca/text-texte.aspx?id=100687>). The Agreement recognizes 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.” The Agreement further recognizes “the importance of conserving the habitat of the Porcupine Caribou Herd, including such areas as calving, post-calving, migration, wintering and insect relief habitat.” The Agreement specifically defines the herd’s habitat as “the whole or any part of the ecosystem, including summer, winter and migration range, used by the Porcupine Caribou Herd during the course of its long-term movement patterns.”

While attempting to develop an oil and gas leasing program for the Coastal Plain, BLM must ensure compliance with the International Agreement for the Conservation of the Porcupine Caribou Herd between the United States and Canada. As discussed below, the treaty provisions raise a number of specific issues that BLM must explicitly address and consider in the EIS.

1. Treaty Conservation Objective and Obligations

Under the Agreement, the first objective agreed to by the U.S. and Canada is “[t]o 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.”

BLM must explain, specifically, how the agency and other U.S. agencies will cooperate and coordinate with Canadian government officials, agencies, and indigenous peoples in the EIS process. Will the BLM explicitly invite Canadian agencies and indigenous peoples to participate as cooperating agencies?

BLM must explain how the proposed oil and gas leasing program and alternatives in the EIS will conserve the Porcupine Caribou Herd and its habitat so that the risk of irreversible damage or long-term adverse effects is minimized.

The agreed-upon “conservation” obligations of the two countries are specifically spelled out in the following seven clauses of Article 3 of the Agreement – all of which are pertinent to and must be addressed by the EIS.

“1. The Parties will take appropriate action to conserve the Porcupine Caribou Herd and its habitat.”

BLM must address how the proposed oil and gas leasing program and alternatives in the EIS will conserve the Porcupine Caribou Herd and its habitat.

“2. 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.”

The EIS must explicitly and effectively consider the Herd, its habitat and the interests of users of Porcupine Caribou in evaluating proposed oil and gas leasing activities within the range of the Herd.

“3. 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.”

The EIS must identify the activities associated with the proposed oil and gas program and alternatives that could have potential impact on the conservation of the Porcupine Caribou Herd or its habitat.

The EIS must also identify the domestic laws, regulations, and processes with which the impact assessment and review of the EIS must be consistent, and the manner in which consistency will be achieved.

“4. 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.”

It is highly likely that oil and gas leasing and subsequent activities will have significant long-term adverse impacts on the Herd and its habitat. BLM should, therefore, notify and consult with Canada while developing the Draft EIS – well in advance of making a final decision. Waiting to consult until just prior to a final decision would be inadvisable and would likely require the BLM to go back to the drawing board with a Supplemental Draft EIS to address Canadian information, concerns, and recommendations regarding conservation of the Herd and its habitat.

BLM must detail how the EIS will relate to the process by which Canada will be notified and given an opportunity to meaningfully consult prior to a final decision.

“5. 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.”

Complying with this treaty obligation requires BLM to consider mitigation to protect the Herd. The EIS must analyze and determine what mitigation is required to avoid significant impact of the proposed oil and gas leasing program or alternatives on the Porcupine Caribou Herd or its habitat.

“6. 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.”

The EIS must evaluate and detail the methods used to evaluate whether the proposed oil and gas leasing program and alternatives would significantly disrupt migration or other important behavior patterns of the Herd or otherwise lessen the ability of users of Porcupine Caribou to use the Herd.

The EIS must also evaluate and detail the methods used to evaluate how the proposed oil and gas leasing program and alternatives avoid or minimize the above impacts.

“7. 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.

The EIS must explicitly consider and analyze potential impacts, including cumulative impacts, of the proposed oil and gas leasing program and alternatives to the Herd, its habitat, and affected users of Porcupine Caribou.

2. International Porcupine Caribou Board

The Agreement also establishes a bilateral advisory board – the International Porcupine Caribou Board – consisting of eight members (four from each country). The Agreement states that the Board “will make recommendations and provide advice on those aspects of the conservation of the Herd and its habitat that require international co-ordination,” including, for example, “the identification of sensitive habitat deserving special consideration.” Under the Agreement, the two countries will “promptly notify the Board of proposed activities that could significantly affect the conservation of the Porcupine Caribou Herd or its habitat and provide an opportunity to the Board to make recommendations.” The two countries are not required to abide by any Board recommendations, but they are expected to “consider and respond” to any such recommendations.

BLM must detail the process by which it will undertake to engage with this Board in the development of the EIS. The U.S. and Canada must comply with the Agreement and utilize the Board to obtain its recommendations and advice regarding the proposed oil and gas leasing program in the Coastal Plain. In doing so, it is critically important that the Board have adequate opportunity to collect, share, and discuss all the relevant and most up-to-date information pertaining to the effects of oil and gas development on the Herd and to make its recommendations before the BLM completes and releases the Draft EIS for public comment. Otherwise, the agency’s proposed action and alternatives will not reflect the input and recommendations of the Board and, likewise, the public will not be able to comment on the alternatives and the analysis of environmental effects in the Draft EIS in light of the Board’s input and recommendations. If the Draft EIS precedes the Board’s recommendations and advice, then the BLM will most likely have to produce a Supplemental Draft EIS and circulate it for public comment.

The Agreement specifies several topics for the Board to address in its recommendations and advice. These topics raise relevant issues that should be considered in the EIS:

1. “the sharing of information and consideration of actions to further the objectives of this Agreement at the international level”

Canadian information about the Herd, its habitat needs, its potential sensitivity to disturbance from oil and gas development, and subsistence uses of the Herd must be collected, detailed and utilized in the EIS.

2. “the actions that are necessary or advisable to conserve the Porcupine Caribou Herd and its habitat”

BLM must evaluate and incorporate into the EIS alternatives and analysis the Board's recommended actions to conserve the Herd.

3. "co-operative conservation planning for the Porcupine Caribou Herd throughout its range"

The EIS must describe the current status of co-operative conservation planning for the Herd in Canada and Alaska and how the proposed oil and gas leasing program and alternatives could affect current conservation plans.

4. "when advisable to conserve the Porcupine Caribou Herd, recommendations on overall harvest and appropriate harvest limits for each of Canada and the United States of America taking into account the Board's review of available data, patterns of customary and traditional uses and other factors the Board deems appropriate"

The EIS must discuss and analyze the potential impacts of the proposed oil and gas leasing program and alternatives on overall harvest levels and levels in Canada and Alaska, including the impacts from a major reduction in harvest levels on subsistence users in Alaska and Canada.

The EIS should also detail the patterns of customary and traditional uses of the Herd in both Canada and Alaska, and discuss potential impacts on those uses.

5. "the identification of sensitive habitat deserving special consideration"

In 1993, the Board published a report, *Sensitive Habitats of the Porcupine Caribou Herd*.¹ The introduction of the report states, "From now on every time some activity is proposed for a part of the herd's range, everybody will check this report to see what effects the activity will have on the caribou. This report will be used to protect the Porcupine Caribou Herd by helping people decide what kind of activities could be allowed in the herd's range without harming the caribou." The report also identifies the Coastal Plain as an area of utmost importance and sensitivity.

BLM must utilize the information and findings in the Board's 1993 report on sensitive habitat in the EIS, and address whether the report still reflects the best available scientific information about the Herd and its sensitive habitat, whether the report needs to be updated by the Board, and whether new science needs to be developed to identify sensitive habitat deserving special consideration.

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<http://www.pcmb.ca/documents/Sensitive%20Habitats%20of%20the%20Porcupine%20Caribou%20Herd%20booklet.pdf>.

The EIS must also give special consideration to the sensitive habitat of the Herd, as identified by the Board and required under the treaty, including detailing how it is giving this special consideration.