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Subject: Fwd: [EXTERNAL] Inuvialuit Submission on the Coastal Plain Oil and Gas Leasing Program Draft EIS
Attachments: ATT00001.htm; IGC-WMAC(NS)-WMAC(NWT)-FJMC submission to BLM March 12 2019.pdf

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From: **Chanda Turner** <igc-js@jointsec.nt.ca>
Date: Wed, Mar 13, 2019 at 10:18 AM
Subject: [EXTERNAL] Inuvialuit Submission on the Coastal Plain Oil and Gas Leasing Program Draft EIS
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Cc: WMAC (NS) <wmacns@wmacns.ca>, Rosemin Nathoo <wmac-bio@jointsec.nt.ca>, Emily Way-Nee <fjmc-rp@jointsec.nt.ca>

Good morning Nicole,

Please find attached a joint comment submission on the Coastal Plain Oil and Gas Leasing Program Draft EIS from wildlife management bodies established under the Inuvialuit Final Agreement. This submission includes comments from the Inuvialuit Game Council, Wildlife Management Advisory Council (North Slope), Wildlife Management Advisory Council (Northwest Territories), and the Fisheries Joint Management Committee. This submission has also been uploaded to the online submission page on the BLM website. Please confirm receipt.

In this submission we identify new information that would have a bearing on the analysis and identify inaccuracies and deficiencies in the Draft EIS. We cite multiple chapters and sections of the Draft EIS in our submission.

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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)

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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 interest 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)).

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.¹

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)² and more recently in Article 15 of the Draft Articles of the International Law Commission on Prevention of Transboundary Harm from Hazardous Activities (2001).³

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).⁴ 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.

¹ <https://digitallibrary.un.org/record/41332>

² Available online <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0152>

³ 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

⁴ <http://www.treaty-accord.gc.ca/text-texte.aspx?id=100687>

- 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....

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.⁵ 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

⁵ <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/memorandum-transboundary-impacts-070197.pdf>

study communities for different reasons. Nuiqsut is included because (at 3-163) “Nuiqsut residents harvest resources that migrate through the area”. Artic 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.

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”⁶ and furthermore that harvesters from relevant communities⁷ 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

⁶ 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 ...”.

⁷ 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.

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 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 communities⁸ 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

⁸ 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.”

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 regards 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 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)⁹

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

⁹ <http://www.treaty-accord.gc.ca/text-texte.aspx?id=100687>

- 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.
- 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 Protocol¹⁰

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)

¹⁰ <http://laws-lois.justice.gc.ca/eng/acts/m-7.01/page-11.html#h-16>

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 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)¹¹

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 Plan¹² 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.”

¹¹ <http://pbsg.npolar.no/en/agreements/agreement1973.html>

¹² http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri_Fangst_Landbrug/Polarbear%202015/CAP/CAP%20Book.pdf

Specifically, with respect to planning and Environmental Impact Assessments, the Action Plan suggests that Parties should:¹³

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 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*¹⁴

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:

¹³ Id at 59.

¹⁴ http://archive.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0

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.”¹⁵

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.

¹⁵ Brisbane, https://www.ramsar.org/sites/default/files/documents/library/key_rec_6.02e.pdf

Both Canada and the United States are party to the International Covenant on Civil and Political Rights (ICCPR).¹⁶ 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. 23.¹⁷ 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.

In its decision in *Poma Poma v Peru* the HRC observed as follows:¹⁸

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,

¹⁶ <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

¹⁷ 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>

¹⁸ Communication No. 1457/2006, 27 March 2009 < <http://juris.ohchr.org/Search/Details/1495>>.

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 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.¹⁹ 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.

¹⁹ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

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”.

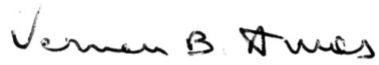
It is our contention, principally for the reasons given in Part 2 of this submission, that the DEIS does not allow us to assess the effect of post-leasing activities on the rights of Canadian Inuvialuit communities as Indigenous peoples under international law and as minorities under international law. 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.

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.

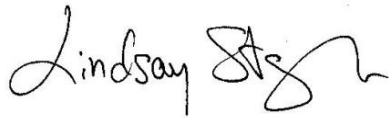
Signed,



Vernon Amos
Chair, Inuvialuit Game Council



Larry Carpenter
Chair, Wildlife Management Advisory
Council (NWT)



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



Alan Kennedy
Chair, Fisheries Joint Management
Committee

Appendix I. 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"> • Porcupine Caribou barren ground caribou herd <ul style="list-style-type: none"> ◦ 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)" 	<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 subsistence use areas and</p>	<p>Inuvialuit traditional use of the Yukon North Slope</p>	<p>Not described or considered in relevant sections of DEIS. cursory mention in Section 3.4.3.</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 best. The list of sources consulted in Section 3.4.2 (3-151) does not</p>

<p>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>			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.	<p>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.</p> <p>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: http://isrtlk.com.</p>
	Impacts on sociocultural systems	Not considered in the DEIS.	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. This is not due to a lack of available information, but rather a lack of consultation and informed analysis.
	Impacts on subsistence resource abundance and availability	Incomplete	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">species-specific measures and plans in Canada for polar bears, grizzly bears, Porcupine caribou, muskoxenprotected 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 Niryutait Marine Protected Area”	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. (https://www.americanprogress.org/issues/green/news/2019/01/10/464819/interior-department-cutting-corners-ignoring-science-arctic-national-wildlife-refuge/)	
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.	<p>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).</p> <p>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.</p>

Appendix II. 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, Tuktoyuktuk 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.

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

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

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.
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Appendix III. 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 route²⁰.

²⁰ 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.

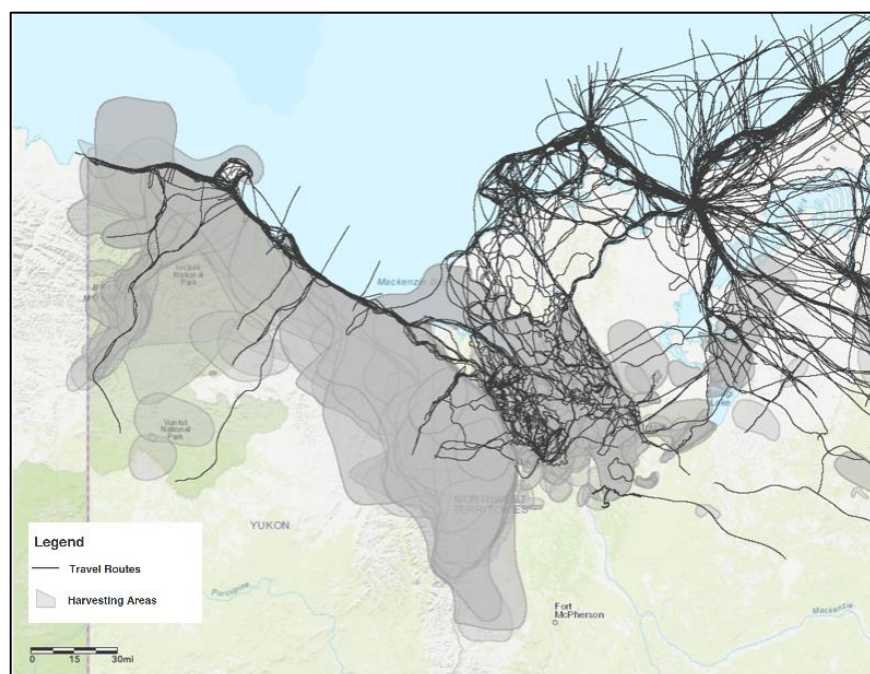


Figure 1. Documented Inuvialuit land use from early 1900 to 1974, reproduced from Freeman (1976)²¹

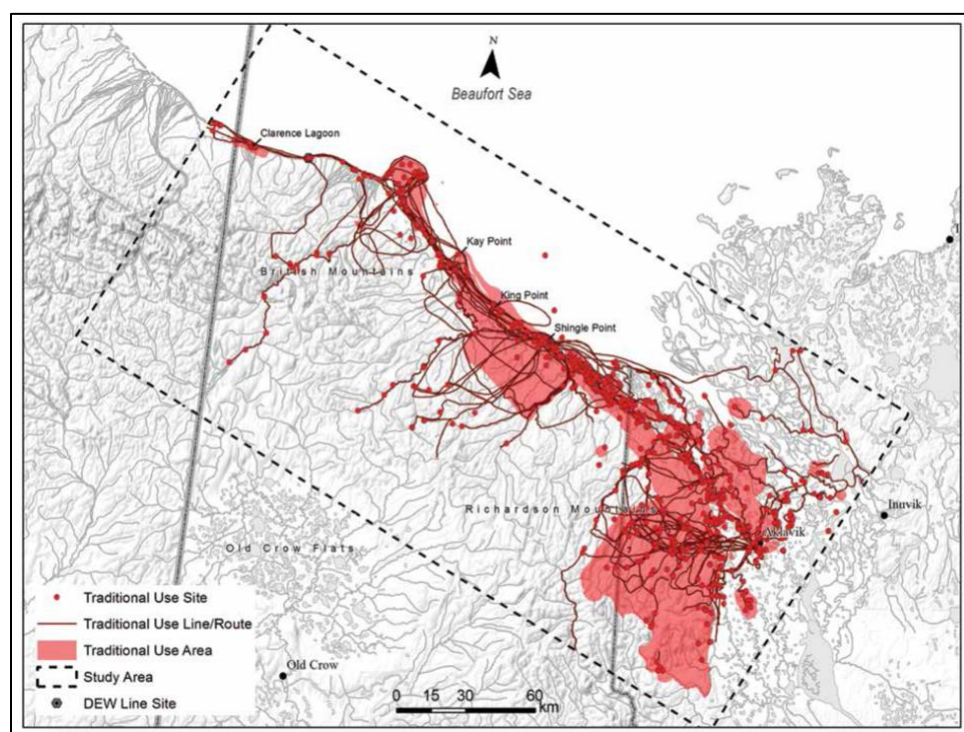


Figure 2. Contemporary Inuvialuit land use of Yukon North Slope by Aklavik residents ²²

²¹ Freeman, M. M. (Ed.). (1976). *Inuit land use and occupancy project: a report*. Supply and Services Canada.

²² 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.

Inuvialuit are active participants in the management of the Coastal Plain. The Aklavik, Inuvik and Tuktoyaktuk Community Conservation Plans²³ (CCPs) and the Yukon North Slope Wildlife Conservation and Management Plan²⁴ 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 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*.

²³ 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, 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 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 Nirvutiniq: 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 Nirvutiniq: 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.

²⁴ 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.

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 year²⁵.

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 animals²⁶.

²⁵ U.S. Fish and Wildlife Service. (2015). *Arctic National Wildlife Refuge revised comprehensive conservation plan, vol. 1*. <https://www.fws.gov/home/arctic-ccp/>

²⁶ Joint Secretariat. (2015). *Inuvialuit and Nanuq: A Polar Bear Traditional Knowledge Study*. Joint Secretariat, Inuvialuit Settlement Region. xx + 304 pp.

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.²⁷ This Memorandum continues to be listed as current on the NEPA.GOV website.²⁸ 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.”

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

²⁷ <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/memorandum-transboundary-impacts-070197.pdf>

²⁸ <https://ceq.doe.gov/guidance/guidance.html>

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 state²¹. 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)²⁹

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:

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.*

²⁹ <http://www.treaty-accord.gc.ca/text-texte.aspx?id=100687>

- 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*³⁰

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.*

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)*

³⁰ <http://laws-lois.justice.gc.ca/eng/acts/m-7.01/page-11.html#h-16>

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*³¹

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 Agreements³²

*Agreement on the Conservation of Polar Bears (1973)*³³

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 Plan³⁴ 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:³⁵

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.

³¹ <http://pbsg.npolar.no/en/agreements/USA-Canada.html>

³² 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.

³³ <http://pbsg.npolar.no/en/agreements/agreement1973.html>

³⁴ http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri_Fangst_Landbrug/Polarbear%202015/CAP/CAP%20Book.pdf

³⁵ Id at 59.

*Ramsar Wetlands Convention, 1971*³⁶

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.”³⁷

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*³⁸ 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.

³⁶ http://archive.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0

³⁷ Brisbane, https://www.ramsar.org/sites/default/files/documents/library/key_rec_6.02e.pdf

³⁸ *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.

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).³⁹ 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. 23.⁴⁰ 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.⁴¹ 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. Concluding Statement & Signatures

³⁹ <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

⁴⁰ 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>

⁴¹ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

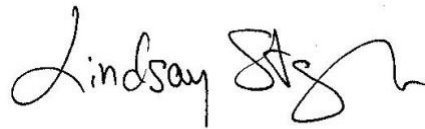
The Coastal Plain discussed in this submission is a critically important region to the Inuvialuit of Canada. As described above, the Inuvialuit have long and ongoing relationships with this region and with species that rely upon this habitat, which are rich with history and meaning. The transboundary 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

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.

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

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.

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.

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 Niryutait 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.

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.

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?

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?

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

2.0 Trade-offs

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

3.0 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?

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

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 Nirvutait 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

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

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

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

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

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

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