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**From:** Hayes, Miriam (Nicole) <mnhayes@blm.gov>  
**Sent:** Wednesday, March 13, 2019 8:02 AM  
**To:** coastalplainAR; Sean Cottle  
**Subject:** Fwd: [EXTERNAL] Comment on DEIS concerning Coastal Plain Oil and Gas Leasing Program

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----- Forwarded message -----

From: **Aktionsgruppe Indianer & Menschenrechte** <[post@aktionsgruppe.de](mailto:post@aktionsgruppe.de)>  
Date: Wed, Mar 13, 2019 at 6:45 AM  
Subject: [EXTERNAL] Comment on DEIS concerning Coastal Plain Oil and Gas Leasing Program  
To: <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>, <[blm\\_ak\\_coastalplain\\_EIS@blm.gov](mailto:blm_ak_coastalplain_EIS@blm.gov)>

Dear Ms Hayes,

The US Bureau of Land Management (BLM) released the Draft Environmental Impact Statement (Draft EIS or DEIS) for the Coastal Plain Oil and Gas Leasing Program for public review and comment, seeking feedback on the alternatives to the proposed action within the parameters outlined in the Tax Act.

The three action alternatives in the Draft EIS do not include a „no action“ option. The purpose of the Tax Act is to implement an oil and gas leasing program in the northern part of the Arctic National Wildlife Refuge named Coastal Plain. At least two oil and gas leases have to be put on sale until December 2024. This includes the issue of post-lease activities like seismic and drilling exploration as well as the development and transportation of oil and gas within and to destinations outside the Coastal Plain.

Page 2.1 reads „Any decision that the BLM makes following the analysis in this Leasing EIS must be consistent with PL 115-97.“ Since oil and gas development in the Coastal Plains has direct and indirect impacts on Indigenous Peoples living in this area, not including the „no action“ alternative as a possible outcome for the Final Environment Impact Statement means that the law implies the possibility of not meeting the requirements written down in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly on Sept. 13th, 2007.

In the following comment I will show that the Tax Law is in fact blatantly violating several articles of UNDRIP, i.e. the rights of the indigenous Gwich'in and Inupiat peoples of the United States and Canada, therefore—since the United States of America are charter member of the United Nations—making the oil and gas development plans a „matter(...) of international concern, interest, responsibility and character“ (UNDRIP Annex, A/RES/61/295).

The United States of America, although they voted against it, have reversed their position and now support the Declaration. „It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.“

(<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>).

The FAQ section of the UN website states: „The Declaration, however, is widely viewed as not creating new rights. Rather, it provides a detailing or interpretation of the human rights enshrined in other international human rights instruments of universal resonance—as these apply to indigenous peoples and indigenous individuals. It is in that sense that the Declaration has a binding effect for the promotion, respect and fulfillment of the rights of indigenous peoples worldwide. The Declaration is a significant tool towards eliminating human rights violations against the over 370 million indigenous people worldwide and assisting them and States in combating discrimination and marginalization.“

([https://www.un.org/esa/socdev/unpfii/documents/faq\\_drips\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf))

#### Additional remark regarding the accelerated DEIS procedure:

Several media articles expressed the concern that the process of conducting the Draft EIS and Final EIS would be inappropriately shortened, which would undermine the thorough execution of the necessary research, consultation, documentation and communication with the public (see as an example: „Trump administration is gutting the bedrock of US environmental law“ by Geoffrey Haskett, former U.S. Fish & Wildlife Service director for Alaska, from 7/23/18, The Hill). This was associated with the presidential election in the year 2020 as to accelerate the decision-making and to create irreversible facts regarding oil and gas leases out of political reasons. Since the question if to industrialize the Coastal Plain of the ANWR regards human rights, cultural and natural treasures that origins go back to pre-modern and pre-nation-state times one should assume that a democratic state like the USA takes good care of the decision-making process. Important research is explicitly missing, not yet finished respectively ongoing or outdated, which seems to verify the concern mentioned above.

On top of that, the document shows several obvious inaccuracies in the statements, descriptions, and explanations across the whole Draft EIS, having important—and differing—implications, which indicates either a rushed writing process, a not-thorough-enough proof-reading process or, in the worst case, an attempt to manipulate the reader and to blur/downplay future outcomes of described scenarios. Since the question if to industrialize the Coastal Plain of the ANWR regards the very life and health of citizens of the United States and Canada as well as of animals and plants, this would be very alarming.

The Draft EIS released by the US Bureau of Land Management describes 4 alternatives: Alternative A would mean „No action“, which is explicitly not a choice, B and C would mean 1,563,500 acre of the Coastal Plain offered for oil and gas lease sale (100% of the coastal plain), D would mean 1,037,200 acre offered for lease sale (66%), leaving 34% of the land surface untouched.

The 34% area (526,300 acre) that is left for no lease sale in the Alternative D comprises 476,000 acres of what the Draft EIS calls the „Porcupine Caribou Herd primary calving habitat area“, defined as the area with a higher-than-average density of cows about to give birth during more than 40 percent of the years surveyed. The rest of the so-defined „primary calving habitat area“, 244,600 acre, would be open for lease sale, but would be designated as a „No Surface Occupancy“ area (2-13).

With these three action options B, C, and D, the BLM states to „properly balance oil and gas development with protection of surface resources“ (ES-1; 1-2) and „to protect biological and ecological resources“ (2-2), including Caribou as subsistence resource for the indigenous Gwich'in and Inupiat peoples.

For showing the violation of UNDRIP, it is sufficient to only examine the one alternative with the least impact on the nature, which is Alternative D.

As many comments during the scoping period (and long before) have made clear, the Porcupine caribou calf survival rate is essential for the state, well-being, and thriving of the Porcupine herd, which is itself in many aspects essential for the indigenous peoples that depend on them. The critical threshold, a study found, is 4.6% reduction of calf survival: More dying calves means the number of dying animals will not be compensated by new-born ones and the herd will decline. (Griffith, B., D. C. Douglas, N. E. Walsh, D. D. Young, T. R. McCabe, D. E. Russell, R. G. White, R. D. Cameron, and K. R. Whitten: The Porcupine caribou herd. 2002, pages 8-37 in D. C. Douglas, P. E. Reynolds, and E. B. Rhode (editors): Arctic Refuge coastal plain terrestrial wildlife research summaries. U.S. Geological Survey, Biological Resources Division, Biological Science Report USGS/BRD/BSR-2002-0001). The US Fish & Wildlife Service concludes that, since calving location and vegetation growing conditions appear to affect calf survival and „due to the annual variability in the calving area, the (Porcupine Caribou Herd) needs a large region from which to select the best conditions for calving in a given year.“ (Draft EIS, p. 3-107)

By reducing oil and gas development impacts only on less than half of the Coastal Plain (721,200 acre) and the area with a higher-than-average density of cows about to give birth during more than 40 percent of the years surveyed (a very short period compared to their millennia-old existence), thus leaving the caribou herd not a free choice to choose the area that has the best conditions each year, compared to their ability to naturally spread over the whole Coastal Plain since millennia, will have incalculable impacts on the herd.

Caribou are very sensitive to all infrastructure, pipelines, and noise. It has been seen that caribou stay away from infrastructure up to 20 miles but the Draft EIS calculates with an extremely low displacement of 2.49 miles (3-112). The coast which is important for caribou for insect relief due to windier conditions has in the best alternative for caribou, B, only a 2 miles zone of no infrastructure. The possibility to move over long distances between the nutrient-rich areas and the windier coast in the post-calving period to avoid insect harassment and blood loss (a caribou can lose up to 125 gram per day from insects) will be hindered, which can lead to illnesses and higher mortality.

At the same time, due to new roads in the area, predators from the hillier areas southwards, can get more easily in the Coastal Plain, becoming a greater risk for the caribou herd, especially the cows and calves. Another danger for the mortality is the possibility of invasive species that normally comes along with human presence and more access, roads and vehicles, altering the vegetation and causing illnesses.

Overall, the outlined Alternative B, the caribou-friendliest scenario of all, can have devastating effects on the herd, including the displacement of the herd out of the Plain and the possibility that the caribou are being dispersed.

Furthermore, the impacts of the oil and gas development in the 66% percent area open for lease sale are so severe that they will influence the rest of the Plain, i.e. the 34% „untouched“ area, and the ocean as well. To mention only some of the aspects:

– Seismic tests with long term impacts on the ground, on permafrost, waterflows and destruction of vegetation as well as possibly increasing risks of earthquakes. Since in this area several earthquakes happened during the last years, with an increase of earthquakes in 2018, and since this area has special tectonic characteristics, the risks of earthquakes are unpredictable, the impacts on the environment in combination with development infrastructure a nightmare. There are contradictory statements in the Draft EIS regarding seismic testing (see 3-110: „Future seismic exploration is expected to occur in all portions of the program area that are open to lease sales“ vs. 3-120: „Alternative D would close 476,600 acres of the PCH primary calving habitat area to lease sales; however, seismic activity could occur over the entire program area, with potential impacts on terrestrial mammals, as described above, such as destruction of under-snow small mammal habitat, disturbance of denning mammals, crushing of forage species, alteration of snowmelt timing.“).

– Contamination by oil spills (which is cynically, but truthfully already taken for granted as a certain „percentage spill per drilled barrel oil“) would be devastating for the land, the animals and, because of the connected ecosystem, the area as a whole, with few to no instruments proved in arctic conditions to clean it up quick enough to not destroy the ecosystem forever. The optimistic view of the DEIS when dealing with oil spills shows a blatant neglect of oil spills in the past like the leak in the Trans-Alaska Pipeline System where 267,000 gallons of crude oil were spilled undetected for several days

(Barringer, F., Large oil spill in Alaska went undetected for days. The New York Times, March 15, 2006). Each year 880,000 gallons of oil are left in ocean waters by US drilling operations alone. There is no reason to trust the claimed reliability of the safety of infrastructure and monitoring systems.

– The drilling muds contaminated with toxins like benzene, zinc, arsenic and radioactive materials stay in the surrounding land on a long-term basis. Injections wells that put waste waters and contaminated drilling muds with high pressures into deep soil levels has been associated with higher earthmovement risks. They are planned for the industrialized areas but earthquakes naturally won't be limited to these areas.

– When the air in the other parts of the Coastal Plain is being contaminated by the development industry facilities, contamination of the land and the waters of the whole plain will occur by precipitation, as stated in the DEIS itself: „These post-lease activities would emit air pollutants from a variety of sources during exploration, development, and production. These pollutants could affect air quality and AQRVs on the Coastal Plain and in nearby areas.“ (3-12)

– The DEIS states that the whole subsurface would be open to oil and gas development by horizontal drilling techniques, thus increasing risks of earthquakes on the whole plain including the no-lease-sale area of Alternative D.

– Disturbance from light and from noise will not be limited to the industrialized areas: The noise from airplanes is associated with a reach up to 50 miles in the Draft EIS; also mentioned are helicopters and drill cleaning activities around the pipelines in all areas that are for open for lease sale. The noise from facilities along the coast will cover the 2 mile zone of facility-free area of Alternative D, which is by far not enough for protecting noise sensitive caribou, as stated in the Draft EIS itself. Also, there will be noise from offshore industrie and sea vessels.

– The change of the natural drainage patterns, stream stage and stream flow, stream velocity, groundwater flow, erosion and surface changes will have impact on the no lease sale area. Especially the use of huge amounts of waters (2 Mio. gallons field use per day are estimated (3-64), while less than 2% of the Coastal Plain area is covered by lakes with a total estimated amount of 1.1 billion gallons of water, 3-52) will have an irreversible impact on the overall water quality and on the wetlands of the whole plain, since it is a connected system, as stated in the Draft EIS itself.

The Draft EIS explicitly acknowledges the spiritual and cultural importance for the Gwich'in nation as the Iizhik Gwats'an Gwandaii Goodlit, „the sacred place where life begins“ and states that development in the Coastal Plain can not only mean a decline for the herd and a decline in the harvest, with serious effects on food security, health and material well-being (due to costly store-bought food substitute). It would also mean psychological impacts, less gathering activities with traditional food sharing, destruction of social bonds, a loss of cultural identity and self-conception.

The Gwich'in Steering Committee, who is at the very front fighting against the development, states that there have been no real meaningful consultations at eye level and no „free, prior and informed consent“ about the development plans. Furthermore, the Draft EIS only partly discusses the meaning of the herd for the Gwich'in communities on the Canadian side for whom the herd is as essential in physical, cultural and spiritual regard.

Therefore, the relevant part in the Tax Act as well as the approach of the US government violates several articles of the United Nations Declaration on the Rights of Indigenous Peoples, including (but not exclusively) Article 25, that states: „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.“

Article 19 emphasizes the responsibility of state governments: „States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.“

Article 32.2 stresses more explicitly: „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“, which has not been and is not happening in this case. Article 29. 2 outlines „States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.“

It is important to act with uttermost attention because this issue is about a millennia old herd and migration and subsistence patterns, dealt with by the government of a comparatively very young country, acting out of comparatively short term interests (100 years). Before one has not a deeper understanding how all parts function together (for example the importance of the caribou migration for the ecosystem of the whole continent) one should not intervene. Indigenous elders say that with oil and gas development the herd and the Gwich'in culture will die. Before the opposite is not proved one should not move forward. Migrating birds, fish, caribou, plants, water, ocean make all a balanced complex system and are an integral part of the planet's ecosystem.

Apart from the impact on the climate due to CO2 emissions the development would have, there is a global movement in the moment towards a different approach to the energy resources question (cities like Oslo and Copenhagen show this: Oslo is already CO2 neutral, Copenhagen will be this in 5 years from now). According to the IPCC there are only 7 years for changing the world's energy use or the climate change impacts on the whole world will be out of control. US politicians already change their energy agenda because they see the big costs of dealing with climate change impacts in their states and communities. US Democrats in the Congress and several presidential candidates support the „Green New Deal“ to make the USA climate neutral in 10 years. This would have a big impact on the conventional oil and gas industry.

The Coastal Plain could help to mitigate the worst climate change impact on animals and plants, as an untouched natural oasis where they can adjust to new climate conditions.

Furthermore, it is morally not acceptable to take away traditional lands from people with a millennia old indigenous tradition who are so hurt and traumatized by the colonization and from whom so much has been taken away in the recent history, and to steal them the opportunity to heal and live on according to their old traditions, to endanger and traumatize them furthermore by stealing them one of the still existent opportunities to live a subsistence life. This, the respect, meaningful consultations between equals is what our democratic belief calls for.

To stand up for the Coastal Plain of the Arctic National Wildlife Refuge and the calving grounds of the Porcupine caribou herd is a duty for the international community, since every indigenous tribe „contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind.“ (UNDRIP Annex)

Thank you for your time and consideration of this extremely important matter.

Yours

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Aktionsgruppe Indianer & Menschenrechte e.V. (AGIM) ist ein gemeinnütziger Verein (gegr. 1986) zur Unterstützung der Rechte der indigenen Völker Nordamerikas und Herausgeberin des Magazins COYOTE.

AGIM e.V. (Action Group for Indigenous and Human Rights, est. 1986) is a non-profit human rights organization dedicated to supporting the right to self-determination of Indigenous peoples in North America. We publish a quarterly magazine COYOTE.

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