November 20, 2020

Inter-American Commission on Human Rights
1889 F Street N.W.
Washington, D.C. 2006
United States

Re: Request for Precautionary Measures Pursuant to Article 25 of the IACHR Rules of Procedure Concerning Serious and Urgent Risks of Irreparable Harm Arising Out of Oil and Gas Leasing in the Coastal Plain of the Arctic Refuge of Alaska

To Whom It May Concern:

The Gwich’in Steering Committee respectfully requests that the Commission call on the United States Government ("the U.S. Government") to adopt precautionary measures to prevent irreparable harm to the Gwich’in Nation resulting from the imminent seismic exploration and oil and gas lease sales in the Coastal Plain of the Arctic Refuge ("the Refuge").

On October 23, 2020, the U.S. Government released a plan of operation and proposed action for the seismic exploration of roughly 451,000 acres in the Gwich’in’s sacred lands, the Coastal Plain of the Arctic Refuge, as well as an additional 92,000 acres of land within a neighboring area of the Refuge. This follows a rushed approval process and opens the Coastal Plain to seismic testing, which introduces new industrial development that will have immediate, serious and long-lasting repercussions for the environment and the Indigenous Peoples like the Gwich’in who hold this land sacred. On November 17, 2020, the U.S. Department of the Interior announced a call for nominations to begin the process of leasing the entirety of the Coastal Plain for development. The U.S. Government does not require any further review or provide an opportunity to halt development once the leases are issued, essentially allowing the leaseholders...
to develop and hold the land in perpetuity without consequence.\(^1\) Once these sales are finalized, it is nearly impossible to cancel them.

These lease sales in the Coastal Plain are proceeding without adequate consultation with the Gwich’in and other Indigenous Peoples. Despite acknowledging the numerous adverse impacts to the physical environment, biological resources and social systems in Alaska and beyond, the U.S. Government selected the most aggressive development plan, both in terms of timelines and in long-term impacts. This too, was done without adequate consultation with the Gwich’in and other affected Indigenous Peoples.

This imminent development by way of seismic testing and the opening of lease sales in the Coastal Plain would cause serious and irreparable harm to these lands that are sacred to the Gwich’in, central to the survival of their people, culture and way of life, and essential to their health. Allowing this land to be developed violates human rights commitments that the United States has made as a member of the Organization of American States (“OAS”) and under multiple international treaties. As such, finalizing the lease sales and proceeding with seismic testing would cause imminent, serious and irreparable harms in violation of the Gwich’in’s rights to health and well-being, religion, culture and subsistence, judicial protection, clean environment and free, prior and informed consent.

1. **Beneficiaries**

The beneficiaries of this request are the Gwich’in Nation and its members. The Gwich’in are Indigenous Peoples that live in 15 communities scattered across a vast area extending from northeast Alaska in the U.S. to the northern Yukon and Northwest Territories in Canada.\(^2\) The current Gwich’in population is between 7,000 to 9,000 people.\(^3\) The Gwich’in are represented by the Steering Committee (“the GSC”) a non-profit organization.\(^4\) In 1988, the Gwich’in Elders and Chiefs gathered for the first time in over 150 years because of the threat of oil and gas development in the Coastal Plain, a land that has been sacred to them since time immemorial. At the gathering, the Gwich’in formed the GSC to act as the unified voice of the Gwich’in to protect the birthing and nursing grounds of the Porcupine Caribou Herd (“the Porcupine Caribou”).\(^5\) The Elders and Chiefs of the Gwich’in Nation gave the GSC the following direction: (1) to go out

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\(^1\) The National Environmental Policy Act (“NEPA”) is only triggered by a “major federal action” (40 C.F.R. § 1508.18). This does not extend to non-discretionary actions, such as the continued extraction of oil and gas after a valid lease is awarded to a private party, likely precluding it from further NEPA mandated environmental analysis.


\(^3\) *Id.*

\(^4\) *Id.*

\(^5\) *Id.*
and tell the world that the Gwich’in are here; (2) to do it in a good way; and (3) to never compromise on their position to protect the sacred calving grounds. The unified voice of the Gwich’in is expressed in a formal resolution to protect the Coastal Plain, *Gwich’in Niintsyaa.* The Resolution is reaffirmed every other year at the biennial Gwich’in Gathering. Recognizing the ongoing threat of development in their sacred land, the GSC formed the Gwich’in Youth Council to help educate the next generation of leaders in the fight to protect the sacred calving grounds of the Porcupine Caribou. The Gwich’in Nation and its members are interconnected with the land, water and animals of the Coastal Plain and, through the GSC and the Gwich’in Youth Council have been advocating for respect of the land and their rights.

II. Facts

A. The Gwich’in, the Porcupine Caribou Herd and the Coastal Plain

Known to the Gwich’in as “Iizhik Gwats’an Gwandaii Goodlit” or “The Sacred Place Where Life Begins,” the Coastal Plain is interconnected to the Gwich’in’s identity, health, culture and way of life. The Coastal Plain is situated in the northernmost region of Alaska, abutting the Beaufort Sea (see Figure 1). It serves as an ecological haven for a number of migratory species of birds, endangered polar bears and as the annual calving grounds for the Porcupine Caribou. Traveling over 3,000 miles every year, the Porcupine Caribou has the longest land migration of any mammal on Earth. Every spring, the 197,000 Porcupine Caribou travel 400 miles through Canada and Alaska to give birth in the Coastal Plain. The Coastal Plain offers protection to young calves who would otherwise face high mortality from predators, pests and other environmental factors. In addition, the area offers the most nutritious food for mother and calf’s health, allowing them to regain their strength for their travel back to wintering grounds. For these reasons, the Gwich’in consider the Coastal Plain to be so sacred that they do not hunt or step foot in the area, even in times of extreme famine.

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6 *Gwich’in Niintsyaa* 2018, Gwich’in Steering Comm. (June 26, 2018)
8 Coastal Plain Oil And Gas Leasing Program Final Environmental Impact Statement 3-106-3-108 and 3-137, Bureau of Land Mgmt., U.S. Dep’t of the Interior (Sept. 2019)
10 *Id.*
11 FEIS, supra note 8 at 3-140-1.
12 *Caribou,* supra note 9.
The culture, identity and survival of the Gwich’in are all deeply linked to the Porcupine Caribou and have been since time immemorial. Originally migrating on the same path, the Gwich’in settled their villages in areas that provide the best access to the migratory routes of the Porcupine Caribou (see Figure 1). The Gwich’in hunt the Porcupine Caribou as the caribou make their way to the Coastal Plain calving grounds. According to the Gwich’in, “Caribou are not just what we eat; they are who we are. They are in our stories and songs and the whole way we see the world. Caribou are our life. Without Caribou we wouldn’t exist.”\(^\text{13}\) The Gwich’in are caribou people.\(^\text{14}\) According to one Gwich’in creation story, there was a time when the Gwich’in and the Porcupine Caribou could understand one another. During that time, they made a pact that they would always protect one another. The Gwich’in creation story teaches that the Gwich’in always carry a part of the Porcupine Caribou’s heart in their own heart and that the Porcupine Caribou will always carry a piece of the Gwich’in People’s heart in theirs.

For many Gwich’in, caribou comprise 80% of their subsistence diet.\(^\text{15}\) In addition, the Gwich’in rely on the Porcupine Caribou for other necessities such as medicine and materials for boots, traditional dress and tools. Most Gwich’in communities are in rural Alaska and northwest

\(^\text{13}\) *About the Gwich’in, Gwîch’in Steering Comm.*, http://ourarcticrefuge.org/about-the-gwichin/ (last visited Oct. 16, 2020).
\(^\text{14}\) *Id.*
Canada and, as a result of the exorbitant transportation costs, the price of store-bought goods in these regions is prohibitive, especially in relation to the sparse levels of economic opportunity for the communities.\(^{16}\) A decline in the Porcupine Caribou would have a clear impact on the Gwich’in’s physical and mental health. For instance, Gwich’in elders, who have eaten primarily caribou for the entirety of their lives, get sick when their diet lacks regular intake of caribou meat. And when harvests are low, sickness and anxiety in Gwich’in communities increases, especially for those members whose diet is primarily caribou. The Gwich’in have had a physical, spiritual and cultural connection to the Porcupine Caribou since time immemorial. Any harm that befalls the Porcupine Caribou, also befalls the Gwich’in. The Trump Administration’s decision to open up the Coastal Plain for oil and gas development is a direct threat to the Porcupine Caribou and in violation of the human rights of the Gwich’in including their subsistence, health and cultural rights.

**B. The U.S. Government is Fast-Tracking Seismic Exploration and Oil and Gas Sales in the Coastal Plain**

After 60 years of protection, the Trump Administration unilaterally opened the Coastal Plain to drilling without sufficient consultation with the Gwich’in and other Indigenous Peoples. In 1960, U.S. President Eisenhower designated the Arctic National Wildlife Refuge a protected area in northern Alaska. This 8.9-million-acre area (approximately 36,000 square kilometers) which encompasses the Coastal Plain, remained protected from all development until recently.\(^{17}\)

In December 2017, the U.S. Congress passed the Tax Cuts and Job Act (“the Tax Act”). The Tax Act included a one-page rider that mandated oil and gas development in the Refuge would take place under the rationale that the profits would offset the deficit from the national tax cuts.\(^{18}\) This analysis was later debunked.\(^{19}\) Nevertheless, the U.S. Congress passed the law with neither adequate or meaningful consultation nor the free, prior and informed consent of the Gwich’in and other Indigenous Peoples in the area.

On December 28, 2018, the U.S. Government issued a draft Environmental Impact Statement and opened up a 45-day public comment period to allow the public to comment

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on the proposed development plan.\textsuperscript{20} This process proved deficient as the U.S. Government shut down for 35 of the 45 days of the comment period and cancelled public meetings.

On September 11, 2019, the U.S. Senate (the upper legislative chamber of the U.S. Congress) introduced a bill that would provide permanent protection to the Coastal Plain, and on September 12, 2019, the U.S. House of Representatives (the lower legislative chamber of the U.S. Congress) passed a bill that would halt any oil and gas development in the Coastal Plain.\textsuperscript{21} In response, the Trump Administration issued a statement: “If these bills were presented to the President, his advisors would recommend he veto them.”\textsuperscript{22} No new action on these bills has been taken by the U.S. Congress, and the Coastal Plain remains unprotected from development.

In September 2019, the U.S. Government released its analysis on the impact of oil and gas development as part of the U.S. statutory requirements for opening the Coastal Plain to development.\textsuperscript{23} The Final Environmental Impact Statement ("FEIS") informs the U.S. Government and public of all potential environmental impacts that come with certain development proposals. Subject to political pressure, the FEIS was fast-tracked and contained numerous errors including changes to scientist’s conclusions, which underestimated the impacts of oil and gas leasing.\textsuperscript{24} For example, investigative journalists uncovered instances where scientists’ conclusions were altered by political officials before the final report was published.\textsuperscript{25} In the FEIS’s discussion of Indigenous Peoples, “[an] anthropologist was surprised to find that large portions of her analysis of potential impacts on Native communities had been removed” in the final version.\textsuperscript{26} These scientists were told by U.S. Government officials not to correct the changes made to their findings.\textsuperscript{27} Still, by its own admissions, the U.S. Government conceded that development will cause declines in the Porcupine Caribou calf survival sufficient to halt herd growth.\textsuperscript{28} These impacts to the Porcupine Caribou are in direct contravention of an

\textsuperscript{21} Arctic Refuge Protection Act, S. 2461, 116 Cong. (2019); Arctic Cultural and Coastal Plain Protection Act, H.R. 1146, 116 Cong. (2019).
\textsuperscript{23} FEIS, supra note 8.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
\textsuperscript{28} Id., supra note 8, at 3-150.
international treaty that the U.S. signed in 1987 with Canada.\textsuperscript{29} The U.S. government also concluded that “broader cultural impacts on belief systems/religious practices would be common . . . [p]articularly for the Gwich'in, who hold the program area as sacred ground to their culture.”\textsuperscript{30} The FEIS also predicted changes that would affect water quality, decreases in water levels for lakes and connected streams or wetlands and increased potential for overbank flooding, produced water spills and petroleum hydrocarbon spills.\textsuperscript{31}

Of the four alternatives for development presented in the FEIS, the U.S. Government selected the most aggressive option with the greatest environmental and social impact.\textsuperscript{32} If allowed to continue, this option will open the entirety of the Coastal Plain to oil and gas development, exceeding what is mandated by the Tax Act. The U.S. Government analyzed, acknowledged, and accepted that this plan for oil and gas development in the Coastal Plain would have numerous adverse impacts to the physical environment, biological resources and social systems in Alaska and beyond. The U.S. Government selected this option without good faith consultation with the Gwich’in or other Indigenous Peoples. Though the U.S. Government is aware that the impacts to the Gwich’in “would be adverse, regional, and long term,” it nevertheless stated that it prefers the most aggressive alternative as it “would make available the largest number of acres for potential leasing and development.”\textsuperscript{33}

During the drafting of the FEIS, the U.S. Government claimed it adequately consulted by sending letters to five tribal governments on March 2, 2018, and eight additional letters on April 23, 2018.\textsuperscript{34} Additionally, the FEIS lists 15 consultation meetings conducted with various tribal governments throughout its drafting.\textsuperscript{35} In organizing these meetings, the U.S. Government failed to coordinate with the Gwich’in to determine a time that would work best for them. For example, the U.S. Government informed the Gwich’in of a meeting only one week in advance and scheduled it during the same time the Gwich’in were honoring their traditional Chief, an event that takes months to plan.\textsuperscript{36} Despite this conflict, the U.S. Government held the meeting and

\textsuperscript{29} The U.S. and Canada have signed a treaty to ensure its migratory route remains protected on both sides of the U.S./Canadian border. This treaty was entered into nearly 30 years ago and has legally binding treaty status in the U.S. and Canada. Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd, E100687 - CTS 1987 No. 31 (July 18, 1987) https://www.treaty-accord.gc.ca/text-texte.aspx?id=100687.
\textsuperscript{30} FEIS, supra note 8, at 3-216.
\textsuperscript{31} Id. at 3-69.
\textsuperscript{33} FEIS, supra note 8, at 3-217.
\textsuperscript{34} Id. at 1-5.
\textsuperscript{35} Id.
Gwich’in leaders made an effort to attend. During a public forum held on February 7, 2019, the Gwich’in expressed numerous concerns, but were not included in the final report.\(^{37}\) In addition, the U.S. Government left out entire Gwich’in villages, including communities in Canada who have been living in these areas since time immemorial. These consultations can hardly be described as genuine consultations as established by international human rights norms.\(^{38}\) The U.S. Government shared its plans for oil and gas development with the Gwich’in and other affected Indigenous groups without giving the Gwich’in the opportunity to make a different proposal or suggest an alternative.

On August 7, 2020, the U.N. Committee on the Elimination of Racism and Discrimination (“CERD”) responded to a petition the GSC had filed in November of 2019 and announced that it was launching an inquiry into the U.S. Government’s human rights violations.\(^{39}\) CERD’s inquiry highlights concerns that planned development by the U.S. Government was “conducted without the free, prior and informed consent of and adequate consultation with Gwich’in, despite the serious harm such extractive activities could allegedly cause.”\(^{40}\) CERD requested that the U.S. Government submit “a response to the above allegations and concrete measures taken in this regard before 30 October 2020.”\(^{41}\) To the GSC’s knowledge, the U.S. Government has not submitted a response.

On August 17, 2020, the United States released the Coastal Plain Oil and Gas Leasing Program Record of Decision (“the ROD”)\(^{42}\), which put the U.S. Government on a fast track for lease sales. The Gwich’in are only mentioned once in the ROD, which states:

“One particular aspect of this consideration is the cultural importance of the Porcupine caribou herd to Native communities in both Alaska and Canada, which the Gwich’in have stated is “central to their cultural identity,” in addition to the importance of the herd to many Inupiat and Gwich'in for biological sustenance.”\(^{43}\)

\(^{37}\) Id.


\(^{40}\) Id.

\(^{41}\) Id.

\(^{42}\) ROD, supra note 32.

\(^{43}\) Id. at 16.
Despite this acknowledgement, the U.S. Government continues to pursue oil and gas exploration and development in violation of the rights of the Gwich’in.

On October 23, 2020, the U.S. Government released a plan of operation and proposed action for the seismic exploration of a third of the Coastal Plain and 92,000 acres of additional land within the Refuge.44 This approval process was rushed, only allowing for a rushed two-week public comment period in the midst of the U.S. presidential election and the global pandemic.45 Despite the rushed process, over 78,000 comments were submitted.46 And yet, if approved, the seismic activity could begin as early as December 2020.

The seismic exploration will result in a massive amount of industrial activity on the sacred calving grounds of the Porcupine Caribou in the Coastal Plain. The proposed plan includes the use of multiple trucks sending 64,000 pounds of force and vibrations into the ground.47 This type of exploration can have serious, immediate and lasting impacts on land and resources that the Gwich’in rely on to sustain their way of life including denning polar bears, the fragile tundra and the Porcupine Caribou. In fact, the land still bears scars from seismic activity that took place over 40 years ago.48

On November 17, 2020, the U.S. Government provided notice of a call for nominations for a lease sale.49 It is believed that the U.S. Government is inappropriately fast-tracking the lease sale process ahead of the transition of administration because once the sales are finalized it will be nearly impossible to cancel them.50 The Biden Administration, which will take office in January 2021, has already expressed opposition to drilling and, in its environmental plan, has affirmatively stated its plans to permanently protect the Refuge.51

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46 Joint Statement, Comments re: Kaktovik Inupiat Corporation’s Application to Conduct Seismic Exploration in the Arctic National Wildlife Refuge (DOI-BLM-AK-R000-2021-001-EA) (Nov. 6, 2020) [See Appendix].
47 Id.
48 Jeff Richardson, Proposed seismic surveys in Arctic Refuge likely to cause lasting damage, UNIV. OF ALASKA FAIRBANKS (June 9, 2020) https://news.uaf.edu/proposed-seismic-surveys-in-arctic-refuge-likely-to-cause-lasting-damage/.
With the call for nominations for lease sales, a 30-day period has opened whereby companies can submit sealed bids on the different tracts. At the end of the 30-day period, on December 17, 2020, the U.S. Government can announce an official lease sale. Upon conclusion of the 30-day comment period for the lease sale notification, the U.S. Government can hold a lease sale, as soon as January 15, 2020; thereby holding the sale a mere 5 days before the inauguration of the Biden Administration. While there are requirements that the U.S. Government review public comments, there is no requirement that it change the course of action based on the comments received. Once the leases are issued, there is no further review and no opportunity to halt the development in the 85-year lifetime of the extraction. In addition, the leaseholders will have a vested property interest, holding the oil or gas lease in perpetuity which would make it extremely hard for the U.S. Government to rescind the oil and gas leases. Because of the political motivation to finalize all sales before January 2021, the speed at which the lease sale process may occur, and the difficulty in canceling these leases should they be finalized, the harm to the Gwich’in has truly become imminent. It is clear that the U.S. Government understands the impact that oil and gas exploration and development will have on the Gwich’in but continues to barrel ahead in violation of their human rights.

In response to the ROD, four lawsuits have been filed in domestic court. This includes a lawsuit filed by the GSC, a lawsuit filed by environmental groups in the U.S. District Court in Alaska alleging violations of a number of domestic laws, a lawsuit filed by a coalition of 15 states alleging violation of multiple environmental violations, and a lawsuit filed by the tribal governments of the Native Village of Venetie Tribal Government, Arctic Village Council, and Venetie Village Council against the Secretary of the Interior and the Trump Administration to protect the Coastal Plain. However, these lawsuits focus on domestic violations of environmental policy and do not litigate the human rights violations of the Gwich’in as Indigenous Peoples. Additionally, lawsuits are lengthy and unpredictable and, as demonstrated with the Dakota Access Pipeline litigation, the project and development can be initiated and completed, and harm perpetuated while the domestic litigation is still ongoing. 

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52 Union Oil v. Morton, 512 F.2d 743 (9th Cir. 1975).
As the COVID-19 pandemic has raged this year, the Trump Administration has continued to press forward on extraction projects near Indigenous Peoples amidst stay at home orders and nonessential worker restrictions implemented throughout the country. In President Trump’s Executive Order 13927 to “accelerate the Nation’s economic recovery from the COVID-19 emergency,” environmental review processes were waived to speed construction. Oil development in the Coastal Plain was specifically included on this list of projects requiring reduced scrutiny. This fast-tracking of development is only one example of many, and these timelines make it difficult for Indigenous communities, who are disproportionately impacted by COVID-19, to meaningfully gather and comment on proposed projects.

The U.S. Government is moving forward on oil and gas development despite the fact that two-thirds of American voters oppose the development and various private entities, including 27 financial institutions, have released policies stating they will not provide project-level financing for oil and gas development in the Refuge. In addition, the Tanana Chiefs, representing 42 federally-recognized Tribes in Alaska, have expressed their support for protection. These decisions to push forward on controversial, nonessential projects during a global crisis illuminate the bad faith with which the U.S. Government interfaces with Indigenous Peoples.

III. This Situation Merits the Granting of Precautionary Measures

The Rules of Procedure of the Inter-American Commission allow for precautionary measures in “serious and urgent situations presenting a risk of irreparable harm to persons…”

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57 The Time We Are In, FIRST PEOPLES WORLDWIDE (April 2, 2020) https://www.colorado.edu/program/fpw/2020/04/02/time-we-are.
60 Id.
A. Seriousness

A “serious ... situation” “refers to a grave impact that an action or omission can have on a protected right.”  

It is nearly certain that, absent some intervention, the U.S. Government will approve seismic exploration and finalize lease sales in the Coastal Plain. Once it has done so, serious and irreversible harm to the Gwich’in is inevitable.

1. Serious threats to the Gwich’in’s rights to health and well-being as well rights to religion, culture, subsistence and their way of life

The calving grounds of the Coastal Plain are sacred ancestral land to the Gwich’in. The Gwich’in’s identity and way of life depends on their relationship to the sacred land, its cultural and religious significance, and its ability to educate, feed and heal them. For this reason, opening the Coastal Plain to oil and gas development would violate the Gwich’in’s human rights and rights as Indigenous Peoples. The GSC requests that this Commission view the U.S. Government’s actions in Alaska in light of its status as a signatory to a number of OAS treaties, as well as commitments it has made under other international human rights bodies.

A threat to the Porcupine Caribou is a threat to the Gwich’in way of life and threatens their food security. Development of the Coastal Plain would hurt the Porcupine Caribou population and have an unpredictable effect on their migration, making it increasingly difficult for the Gwich’in to harvest the Porcupine Caribou in numbers that sustain them. The U.S. Government has acknowledged that “[t]he relative lack of cash to support subsistence activities would make [the Gwich’in] more vulnerable to changes in the availability of resources, such as caribou . . . [b]ecause residents have less capacity to travel great distances in search of subsistence resources or to purchase alternative foods that are less desirable.” Any reduction in Porcupine Caribou numbers that makes hunting more difficult will alter the subsistence culture that the Gwich’in have lived for generations. A reduction in the consumption of traditional foods will also be detrimental to the health of the Gwich’in, as it has led to higher rates of disease in other Alaskan

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65 Id. at Art. 25.2a.
66 This Commission has done so on other occasions when reviewing the United States. E.g., African Americans, Police Use of Force, and Human Rights in the United States, OEA/Ser.L/V/II. Doc. 156 26 (Nov. 2018) (“In its legal analysis, the IACHR takes into consideration the United States’ obligations as a party to certain UN human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), [and] the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)”).
67 FEIS, supra note 8, at 3-338.
communities and to food insecurity. Harming the food supply, health and subsistence culture of the Gwich’in contravenes human rights commitments that the U.S. Government has previously made, including those under the International Covenant on Civil and Political Rights.

Oil and gas development in the Coastal Plain threatens the Gwich’in’s right to culture because it threatens the survival of the Porcupine Caribou; damage to the Porcupine Caribou would endanger the Gwich’in’s identity and threaten their way of life because their spiritual connection is so central to their culture. The Coastal Plain is instrumental to the survival of the Porcupine Caribou; it is also essential to the survival of the Gwich’in. Any kind of development on this land would be an act of desecration. In particular, the calving and migration period is important to the Gwich’in culture, not only for the food, but also for the passing on of knowledge, dances and ceremony. The impacts of drilling on the Coastal Plain and on the Porcupine Caribou will deny current and future generations of Gwich’in children the right to learn, practice and perpetuate their religious and cultural beliefs if the Porcupine Caribou population were to be harmed or reduced. And because the Coastal Plain is considered a sacred territory, any sort of physical invasion (drilling, building of roads, pipelines, seismic testing, etc.) would harm the protection of this area, and critically undermine the Gwich’in’s right to religion now and in the future. The U.S. Government has acknowledged that, among other things, development will impact these cultural practices in Gwich’in communities. While this statement does not capture the full impact of development, it is telling that the U.S. tacitly acknowledges that development violates the religious freedom and cultural expression rights of the Gwich’in.

In addition to the harm that the drilling would cause the Porcupine Caribou and the sacred land, the oil and gas development in the Coastal Plain will lead to industrialization of the area and put the Indigenous women at risk. By leasing land in a manner that creates personal risks to the

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69 “In no case may a people be deprived of its own means of subsistence.” ICCPR Art. 1(2). See also ADRDM Art. XI; ICERD Art. 5(e)(iv); UNDRIP Arts. 20(2), 24(1-2), 26.
70 FEIS, supra note 8, at 3-241.
71 ADRDM Arts. III, XIII; ICCPR Arts. 18(1), 27; ICERD Arts. 5(d)(vii), 5(e)(vi); UNDRIP Arts. 11(1), 12(1), 31(1).
72 In her 2017 report, the Special Rapporteur on the rights of indigenous peoples noted that oil and gas leasing approvals do not take into consideration the impact that a short-term influx of well-paid men into isolated Indigenous communities has on the rate of sex trafficking, illegal prostitution and violence against Indigenous women. Rep. of the Special Rapporteur on the rights of indigenous peoples, ¶ 14, U.N. Doc. A/HRC/36/46/Add.1 (2017). This type of harm to Indigenous women has been seen in other areas of the country that have increased or developed oil production. After the discovery of oil in the Bakken Formation of North Dakota in 2006, the region experienced an increase in people flocking to the area and more importantly the creation of man camps, “and, in recent years, has experienced an exponentially increasing level of violence against Native women.” Kimberly Martin et al., Violent Victimization Known to Law Enforcement in the Bakken Oil-Producing Region of
safety and security of individuals, the U.S. is failing to meet commitments it has made under the American Declaration on the Rights and Duties of Man (ADRDM) and a number of other human rights treaties and documents.\textsuperscript{73}

These violations threaten the Gwich’in’s right to health and well-being as it relates to mental health and substance abuse as well. The current suicide rate for Alaskan Native people is 42.5/100,000 compared to the overall rate of 12.08/100,000 for the general U.S. population.\textsuperscript{74} Increased suicide rates have been shown to be associated with “feelings of hopelessness, confusion, and panic in [Alaskan Native] communities that have experienced multiple traumas, as well as the loss of cultural values and traditions that could otherwise provide anchors of strength in crises.”\textsuperscript{75} Development in the Coastal Plain not only impacts the Gwich’in’s culture, way of life, access to clean environment and safety, but also contributes to the increased rates in mental health and substance abuse issues.

This Commission has previously stated that, “since the requirement to ensure their ‘survival’ has the purpose of guaranteeing the special relationship between [Indigenous] peoples with their ancestral territories, reasonable deference should be given to the understanding that the indigenous and tribal peoples themselves have in regards to the scope of this relationship, as authorized interpreters of their cultures.”\textsuperscript{76} The Commission has explained that States have a mandatory duty \textit{not} to approve “any project that would threaten the physical or cultural survival of the group.”\textsuperscript{77} Here, the Gwich’in have clearly indicated that oil and gas development in the Coastal Plain violates each of these rights, threatening the sacred calving grounds of the Porcupine Caribou. The U.S. Government has agreed that this development would have direct impacts on this land and on the Gwich’in’s way of life, but in contravention of its human rights commitments continues to call for lease sales and seismic testing in this area and pursue the most destructive option.


\textsuperscript{74} Substance Abuse and Mental Health Administration, Suicide Clusters within American Indian and Native Alaskan Communities: A Review of the Literature and Recommendations SAMHSA (2017) available at https://store.samhsa.gov/system/files/sma17-5050.pdf.

\textsuperscript{75} Id. at 5


\textsuperscript{77} Id. at para. 160.
2. **Serious threats to the Gwich’in People’s right to clean environment**

Development in the Coastal Plain will exacerbate the impacts of global climate change, which has a heightened and disproportionate impact on Indigenous Peoples, particularly in places like Alaska. The Arctic, in particular, “is a region of rapid change, with consequences for all life on Earth.” Native villages are eroding into the sea, permafrost melt is making infrastructure insecure and food sources are disappearing. The Coastal Plain is no different, but development will make these changes worse for the environment and the Gwich’in.

Beyond being the calving grounds for the Porcupine Caribou, the Coastal Plain is the most important denning site for polar bears in the United States. Additionally, 42 fish species, over 40 land and marine mammals and over 200 resident and migratory bird species rely on the Refuge, which also serves as a seasonal home for birds traveling from every U.S. state. The U.S. Government has recognized a number of geological hazards within the Coastal Plain, including earthquakes, surface faults, landslides, land subsidence, flooding, sea ice ride-up and override, coastal erosion and storm surges. Oil and gas development in the Coastal Plain is expected to increase the rate and degree of risk regarding these hazards. Development harms the immediate environment and ecosystem around the Coastal Plain and will therefore affect the Gwich’in’s health and well-being.

The process of oil and gas extraction is both high-risk and carries long-lasting health and environmental impacts. Oil and gas development also produces waste, such as solid waste, wastewater, production fluids, drilling muds, fire-fighting foam and spills of oil, saltwater and hazardous substances. Every phase of development will cause direct emissions of certain pollutants, which are identified as dangerous to human health above certain quantities. Aside from the usual side effects of oil production, there is also the risk of an oil spill; an accident at a production site or a leak in a pipeline could have a truly devastating and permanent effect on the Coastal Plain.

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78 All over the globe Indigenous Peoples are on the frontlines of climate change. They often feel the effects most quickly and acutely because of the ways in which climate change impacts their traditional ways of life. The climate in Alaska is now warming three times as fast as the global average, resulting in serious threats to the safety and lifeways of the Gwich’in People. See John Dos Passos Coggin, *New report highlights Alaska’s last five years of dramatic climate change*, NOAA (Oct. 15, 2019) https://www.climate.gov/news-features/understanding-climate/new-report-highlights-alaska%E2%80%99s-last-five-years-dramatic-climate.
80 Id.
81 *Protect the Arctic National Wildlife Refuge Briefing Booklet, Sierra Club* (Oct. 2020)[See Appendix].
82 FEIS, *supra* note 8, at 3-39-3-41.
83 FEIS, *supra* note 8, at 3-77.
84 FEIS, *supra* note 8, at 3-347.
In addition, air pollution caused by oil and gas development will also put the health of the Gwich’in people at risk. Every phase of the proposed project will pollute the air, including transportation, the use of industrial construction equipment, drilling equipment, power generation and venting/flaring during oil production. Air pollutants can settle on the lands and water bodies after traveling long distances, depositing pollutants in waters and soils on which Indigenous Peoples like the Gwich’in rely. There are currently few sources of air pollutants in the Coastal Plain, making the area particularly vulnerable as the impacts of those pollutants is unknown and prior exposure is low.\textsuperscript{85} Prior oil and gas activities in Arctic Alaska have proven the range that these types of air pollutants can have, and the very serious and urgent threat that development will have to the Gwich’in’s air quality and access to clean environment.\textsuperscript{86}

The exploration and drilling effects are serious and long-lasting and will now and, in the future, violate the rights of the Gwich’in. In the FEIS, the U.S. Government stated, “[e]missions during production would be long term and would include not only production-related stationary emission sources but also intermittent and recurring emissions, such as annual construction of ice roads, and mobile sources, like aircraft. Emissions also would occur at off-lease locations from operating the seawater treatment plant, the barge landing area, and the marine transport route, and from increased flight traffic at the Kaktovik airport.”\textsuperscript{87} Development of the Coastal Plain poses a number of environmental risks to the Coastal Plain, the global climate, and therefore the Gwich’in, whose proximity to this development threatens their right to a clean environment and their right to preserve and protect their environment and traditional lands.\textsuperscript{88}

3. **Serious threats to the Gwich’in People’s right to judicial protections**

The right of access to justice and judicial protection has been deemed fundamental through various OAS instruments, particularly the ADRIP, and by other international bodies.\textsuperscript{89} U.S. courts refuse to offer clear, specific and effective remedies that account for the cultural, social and economic differences amongst its citizens sufficient to protect human rights. This is particularly true for Indigenous Peoples, such as the Gwich’in, whose sacred sites and vital resources are located outside of the boundaries of their property rights as recognized by U.S. law. The domestic remedies available, which are being pursued, are largely based on environmental, administrative and procedural statutes. Domestic law has been shown to be an inadequate remedy to halt development and prevent irreparable harm to Indigenous Peoples. Additionally, it

\textsuperscript{85} FEIS, supra note 8, at 3-14.
\textsuperscript{86} FEIS, supra note 8, at 3-14-3-21.
\textsuperscript{87} FEIS, supra note 8, at 3-16.
\textsuperscript{88} See UNDRIP Arts. 29(1), 32.
\textsuperscript{89} Indigenous People’s collective and individual rights to equal treatment under the law and guarantee of appropriate venue to address grievances are enumerated in the following relevant treaties: ADRDM Art. XVIII; ICERD Art. 5(a); ICCPR Art. 26.
does not address the underlying discriminatory principles that allow for these violations to take place. For these reasons, the domestic judicial regime does not provide adequate remedies or redress for the Gwich’in.

4. **Serious threats to the Gwich’in’s right to free, prior and informed consent**

Finalizing these leases, and every step in the process prior, including opening the Coastal Plain to seismic testing, constitutes a serious violation of the Gwich’in’s right to free, prior and informed consent. The United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) enjoys widespread support, including from the U.S. Government. UNDRIP establishes the duty of States to consult in good faith with Indigenous Peoples and obtain their free, prior and informed consent prior to approving projects that may affect their lands, territories, or other resources.90 Through Executive Order 13175, the U.S. Government sought to strengthen its consultation with Indigenous communities. The order requires “an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”91 On November 9, 2020, during the United Nations Human Rights Council’s Universal Periodic Review92, the U.S. Government stated that “the United States reaffirms its support of the United Nations Declaration on the Rights of Indigenous Peoples… We support the Declaration recognition that Indigenous individuals are entitled without discrimination to all human rights recognized by international law and that Indigenous Peoples recognize additional collective rights.”93

Despite these statements, the U.S. Government continues to violate the human rights of Indigenous Peoples including the Gwich’in. As noted by the Special Rapporteur in her 2017 Report, the U.S. Government “has failed to ensure effective consultations with tribal governments. The breakdown in communication and lack of timely and good faith involvement in the review of federal and non-federal projects has left tribal governments unable to participate in meaningful dialogue on projects affecting their lands, territories and resources.”94 At no point during this process did the United States adequately consult or obtain consent from the Gwich’in regarding plans to develop in the Coastal Plain.

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The Inter-American Court has specified that project assessments should be of a “social and environmental” character and “must go further than the strictly environmental impact studies normally required in order to evaluate and mitigate the possible negative impacts upon the natural environment” and allow the Indigenous Peoples to participate in the realization of prior environmental and social impact assessments. None of this has occurred in this case as to the Gwich’in. All of these violations are a result of the discriminatory legal framework within the U.S. that fails to protect the rights of Indigenous Peoples and constitutes serious violations of the human rights of the Gwich’in.

B. Urgency

The Commission may grant precautionary measures in an “urgent situation,” which “refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action.”

Once the seismic permit is approved or the oil and gas leases are finalized, there is little that can be done to prevent the development in the Coastal Plain. With the approval of a permit to conduct seismic testing in the area, the land will be subjected to permanent - and likely detrimental - alterations to the ecosystem and environment, thus violating the Gwichin’s human rights as articulated above. Once the oil and gas lease sale is finalized, the leaseholder will have access to develop those lands in perpetuity without any requirement to consult with the Gwich’in or other Indigenous Peoples. Once the 30 days have passed, there is nothing that can prevent the next steps of oil and gas exploration in the Coastal Plain.

C. Irreparable Harm

For the purpose of granting precautionary measures, “irreparable harm” refers to “injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.”

The acts of the U.S. Government outlined in this request pose an immediate threat to, and violation of, the Gwich’in’s rights to health and well-being, religion, culture and judicial protection as articulated by the American Declaration of the Rights and Duties of Man and as interpreted through the ADRIP and the jurisprudence of the Commission. These violations are representative of the U.S. Government’s ongoing failure to protect the rights of the Indigenous Peoples within its borders. Oil and gas exploration and development in the Coastal Region would

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95 E.g., UNDRIP Arts. 10, 11(2), 19, 29(2), 32(2).
97 Id., at Art. 25.2c.
permanently alter sacred and ancestral land to the Gwich’in. It would permanently alter the Gwich’in’s ability to sustain their subsistence way of life, which is not only critical to their health but also their culture and religion. Harm to the Porcupine Caribou is harm to the Gwich’in.

Allowing these violations to continue threatens the existence of Indigenous Peoples’ identity, culture and survival. The Gwich’in turn to the Commission and urge it to request that the U.S. Government halt oil and gas activities in the Refuge and Coastal Plain in order to prevent the urgent and irreparable human rights violations that will destroy the Gwich’in and their way of life.

IV. Precautionary Measures Requested

In light of the preceding information, we respectfully request that this Commission call on the U.S. Government to protect the rights of the Gwich’in by taking the following actions immediately:

1. Cancel any lease sale and halt the processing of any bids, permits, or authorizations in the Refuge;

2. Suspend activities and operations on already issued authorizations, including for seismic exploration in the Refuge;

3. Pass legislation to secure permanent protection for the Coastal Plain;

4. Adopt a plan that permanently protects the wildlife in the Coastal Plain including the Porcupine Caribou Herd, consistent with U.S. Government’s obligations under the Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd.

5. Honor the government’s responsibilities to the Indigenous Peoples within the U.S.;

6. Develop a decision-making process which includes meaningful consultation and consent from Indigenous Peoples in accordance with their right to provide or deny their free, prior and informed consent as expressed in the ADRIP and before commencing projects affecting the Gwich’in and other Alaska Natives,

   a. As such, the U.S. Government should: (a) approach Alaskan Native Villages as individual sovereign nations to give them a seat at the table with equal authority
and equal rights; (b) undertake consultations between high-level decision makers in both federal and village governments to ensure the scope necessary to identify social, cultural and environmental impacts; and (c) while honoring the U.S.’s obligations to Alaskan Native Villages and individual Alaskan natives, with respect to their resources and rights, continue to support villages in developing their capacity and resources towards attaining self-determination in all areas.

7. Recommend that the U.S. Government ratify and incorporate the ADRIP into domestic law through statutes and regulations and ensure that human rights pronouncements made at the federal level are implemented at the local level;

8. Recommend that the U.S. Government complies with all existing treaty commitments and fully participates in international human rights processes including responding to the inquiry from CERD dated August 7, 2020; and

9. Prepare a report setting forth all of the facts and applicable law and declaring that the U.S. Government is in violation of its human rights obligations under the OAS Charter in relation to articles III, XI, XIII and XVIII of the ADRDM and instructing the U.S. to comply with the precautionary measures detailed above.

Respectfully,

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APPENDICES


APPENDIX 1
Observations on the State of Indigenous Human Rights in the United States of America

Prepared for:
The Universal Periodic Review Working Group
of the United Nations
Human Rights Council

Submission date: October 2019

The Gwich’in Steering Committee is headquartered in Fairbanks, Alaska and is registered as a 501(c)(3) non-profit organization in the United States. The Gwich’in Steering Committee formed in 1988 in response to proposals to drill for oil in the Coastal Plain of the Arctic National Wildlife Refuge, which the Gwich’in refer to as “Iizhik Gwats’an Gwandaii Goodlit” (the Sacred Place Where Life Begins). The Gwich’in Steering Committee acts as the unified voice of the Gwich’in Nation to protect the birthing and nursing grounds of the Porcupine Caribou Herd against oil and gas development. They have presented testimony before the United States Congress, the United Nations Special Rapporteur on Indigenous Peoples, and at various public hearings.

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* This is a joint report submitted by the Gwich’in Steering Committee, Cultural Survival, Land is Life, First Peoples Worldwide, and the American Indian Law Clinic at the University of Colorado. See Annex A for information on each organization.
I. Executive Summary

1. The Gwich’in Steering Committee, Land is Life, Cultural Survival, First Peoples Worldwide, and the University of Colorado’s American Indian Law Clinic welcome the opportunity to contribute to the Human Rights Council’s Universal Periodic Review (UPR) of the United States of America. The government of the United States has repeatedly failed to protect the human rights of the Gwich’in by aggressively pursuing oil and gas development in the Coastal Plain of the Arctic National Wildlife Refuge without first obtaining the Free, Prior and Informed Consent of the Gwich’in Nation.

II. Background

2. The United States of America is a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) with ratification in 1994; party to the International Covenant on Civil and Political Rights (ICCPR) with ratification in 1992; signatory of the International Covenant on Economic, Social and Cultural Rights (ICESCR); signatory of the Convention on the Elimination of All Forms of Discrimination against Women; signatory of the Convention on the Rights of the Child (CRC); signatory of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); voted in favor of the Universal Declaration of Human Rights (UDHR); has expressed support for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); and is a member of the Organization of American States which adopted the American Declaration on the Rights of Indigenous Peoples (ADRIP) in 2016.

3. The United States Government has a history of violating the rights of Indigenous Peoples, particularly in the context of energy and resource development projects. Of note, the Special Rapporteur on the right of Indigenous Peoples has stated that “tribal communities [in the United States] wrestle with the realities of living in ground zero of energy impact.”

4. The United States is fast-pacing oil and gas development in the Coastal Plain with lease sales taking place as soon as December 2019. These actions are in direct violation of the human rights of the Gwich’in Nation and in violation of the ICERD, ICCPR, and repugnant to the principles expressed in the UDHR, UNDRIP, and other human rights instruments.

5. The Gwich’in are an Athabaskan-speaking Indigenous Peoples. They live in fifteen small villages scattered across a vast area extending from northeast Alaska in the United States to the northern Yukon and Northwest Territories in Canada. The current Gwich’in population is estimated to be between 7,000 to 9,000 people. Gwich’in oral tradition indicates that they have occupied this area since time immemorial, while western anthropological evidence suggests the Gwich’in have occupied their ancestral land for at least 20,000 years.
6. The Gwich’in are caribou people with cultural, historic, and subsistence ties to the Porcupine Caribou Herd (PCH). The PCH consists of an estimated 197,000 caribou.\textsuperscript{v} The PCH migrate hundreds of miles across northern Canada and Alaska and “have the longest land migration of any animal in the world.”\textsuperscript{vi} As demonstrated by the map in Annex B, the traditional homelands of the Gwich’in Nation mirror the migratory pattern of the PCH.

7. The Coastal Plain (often referred to by the U.S. Government as the 1002 Area), is located in the Arctic Refuge, and is the calving ground for the PCH.\textsuperscript{vii} In late May and early June, the PCH come to the Coastal Plain for its unique protective features and sustaining resources.\textsuperscript{viii} The Coastal Plain is the only viable calving ground for the PCH.\textsuperscript{ix} The Gwich’in call this area “Iizhik Gwats’an Gwandaii Goodlit” (\textit{the Sacred Place Where Life Begins}).\textsuperscript{x} The Coastal Plain is so sacred to the Gwich’in that they do not step foot in the area at any time of year or under any circumstance. Even in times of extreme famine, the Gwich’in remain steadfast in their refusal to enter the \textit{Sacred Place Where Life Begins}.

8. In 1960, United States President Dwight D. Eisenhower designated the Arctic National Wildlife Refuge as a protected area in Northern Alaska.\textsuperscript{xi} Of the 19.5 million-acre Refuge, 8.9 million acres are protected as Wilderness.\textsuperscript{xii} However, the 1.5-million-acre Coastal Plain, which is the biological heart of the Refuge and the area that the Gwich’in refer to as \textit{the Sacred Place Where Life Begins}, remains vulnerable to industrial development.\textsuperscript{xiii}

9. In 1988, in response to proposals by the United States Government to drill for oil in the Coastal Plain, Gwich’in elders called upon the chiefs from all fifteen villages to come together for a traditional gathering - the first in over 150 years.\textsuperscript{xiv} At the gathering, they decided unanimously to speak with one voice in protecting the coastal plain.\textsuperscript{ xv} They passed a formal resolution titled \textit{Gwich’in Niintsyaay} (available in Annex C) and established the Gwich’in Steering Committee (GSC) with three goals: (1) to protect the sacred birthplace and nursery grounds of the PCH and to let the world know about the Gwich’in way of life; (2) to not compromise on their position; (3) and to do the work in a good way. The Gwich’in gather every two years to reaffirm the resolution.

10. For the past thirty years, the Gwich’in, through the GSC, have fought to protect \textit{the Sacred Place Where Life Begins}. However, in 2017, the United States Congress passed language in the Tax Cut and Jobs Act (TCJA) that mandated that the Secretary of the Interior and the Bureau of Land Management (BLM) “administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.”\textsuperscript{xvi} This was done without the free, prior and informed consent of the Gwich’in.

11. On September 11, 2019, the United States Senate introduced legislation that would establish permanent protection for the Arctic Refuge and prevent any oil and gas development.\textsuperscript{xvii} The next day, the United States House of Representatives passed H.R. 1146 – the Arctic Cultural and Coastal Plain Protection Act, which would reverse the
language of the TCJA and prevent oil and gas drilling in the Coastal Plain.xviii Despite the congressional efforts to protect the Coastal Plain, on September 12, the BLM issued a Final Environmental Impact Statement (FEIS) announcing that they planned to move forward with the next steps of the oil and gas lease sales and proposing the most aggressive and least protective option for oil and gas development.xix

III. Previous UPR Recommendations

12. During the Second Review, the United States received many recommendations regarding the human rights of Indigenous Peoples. Most relevant to this submission are the following recommendations, which have largely not been implemented:

a) Fully implement the United Nations Declaration on the Rights of Indigenous Peoples, and remove discriminatory legal barriers (176.322, Egypt);

b) Implement the United Nations Declaration on the Rights of Indigenous Peoples (176.323, Plurinational State of Bolivia);

c) Guarantee the enjoyment of human rights of the minorities and vulnerable groups in the country, including the Indigenous Peoples and migrants (176.321, Nicaragua);

d) Respect Indigenous Peoples and ethnic minorities’ rights and interests; fully consult with them on their land, autonomy, environment, language and other issues; correct the historical injustice and offer compensation (176.326, China);

e) Regularly consult with Indigenous Peoples on matters of interest to their communities, to support their rights to traditionally owned lands and resources and to adopt measures to effectively protect sacred areas of Indigenous Peoples against environmental exploitation and degradation (176.324, Republic of Moldova); and

f) Adopt and implement a national plan inspired by the Durban Declaration and Programme of Action, for the benefit especially of disadvantaged minorities, which are Afro-Americans and Indigenous Peoples (176.95, Cabo Verde).

13. Additionally, following a 2017 mission to the United States, the Special Rapporteur on the rights of Indigenous Peoples wrote in her report to the Human Rights Council that “despite the recommendations made by the previous Special Rapporteur following his visit to the United States in 2012, significant work still needs to be done to implement policies and initiatives to further the rights of Indigenous Peoples in that country.”xx The Special Rapporteur provided a number of recommendations in her Report; none of which have been fully-implemented by the United States.
IV. Continuing Rights Violations

The Right to Subsistence

ICCPR art. 1(2); ICESCR art. 1(2); UDHR art. 25; ILO 169 arts. 14, 23; UNDRIP arts. 20; ADRIP XXIX

14. The prospect of drilling in the Coastal Plain threatens the Gwich’in’s right to subsistence by impacting the migratory route and calving grounds of the PCH in direct violation of Article 1 of the ICCPR.

15. Caribou are highly sensitive to environmental changes, particularly during calving season. The U.S. Government’s own calculation, development in the Coastal Plain would cause an 8-10% percent decline in annual calf survival; enough to halt herd growth.

16. This decline is important because the PCH provides subsistence for the Gwich’in. Caribou make up 80% of the Gwich’in diet. The U.S. Government concedes that “[t]he relative lack of cash to support subsistence activities would make [the Gwich’in] more vulnerable to changes in the availability of resources, such as caribou . . . [b]ecause residents have less capacity to travel great distances in search of subsistence resources or to purchase alternative foods that are less desirable.” Additionally, the effects of global climate change on subsistence activities are already being felt by the Indigenous subsistence-based communities of Alaska.

17. The Gwich’in rely on the PCH for other necessities such as medicine and materials for boots, traditional dress, and tools. Therefore, a decline in the population of the PCH will have a direct impact on the Gwich’in’s ability to meet their basic needs of survival, implicating their human right to subsistence and nutrition. The U.S. Government has acknowledged the “particular sensitivity towards impacts on caribou, and the high reliance of Canadian communities [including the Gwich’in] on caribou as opposed to other resources.”

18. The environmental changes exacerbated by fossil fuel development also make it more dangerous for the Gwich’in to engage in their subsistence culture of hunting, fishing, and trapping. Experienced hunters have drowned after falling through increasingly thinning ice, ice cellars that keep meat reserves fresh and safe to eat have been melting, and unseasonal warmth has resulted in erratic behavior of predators. These impacts are already harming the Gwich’in and will only become more extreme with the onset of additional oil and gas development.
19. The Gwich’in’s right to an adequate standard of living includes the right of adequate food and nutrition. The Gwich’in have long been able to maintain their health and nutritional needs by harvesting from the PCH, and development in the Coastal Plain would greatly diminish the Gwich’in’s right to health and adequate food. Threatening the Gwich’in’s means of subsistence also threatens their right to food security and nutrition.

20. Food security can be a source of stress in rural Alaskan Households. Since “[c]aribou is also the most nutritious food available to the Gwich’in,” a shortage of this subsistence food will greatly affect their health. A shortage of caribou will cause the Gwich’in to rely on store-bought food that fails to provide the nutritional value of the Gwich’in Peoples’ traditional foods. Since store-bought food in Alaska is prohibitively expensive, moving away from their subsistence economy will cause undue hardship in violation of their rights to health and nutrition.

21. Higher consumption of non-subsistence food can also be detrimental to the health of the Gwich’in. A reduction of traditional foods and replacement with non-traditional store-bought foods have led to a rise in the rates of diseases in communities elsewhere in Alaska. “Reduced consumption of traditional foods and higher consumption of non-subsistence food have increased the rates of cancer and diabetes, and have disrupted traditional social systems.”

22. Evidence of the potential impacts on the Gwich’in can be seen by looking at the communities in the Prudhoe Bay area of Alaska. Prudhoe Bay underwent intensive oil development starting in the 1970s, which led to a decline in the food species. As a result, the communities saw a large reduction in traditional subsistence foods. In turn, this caused an “increased incidence of cancer and diabetes and disruption of traditional social systems.” Of particular note, caribou is essential to the health and nutrition of children, and a lack of subsistence food is likely to cause malnutrition and other diseases, violating the Gwich’in children’s right to the highest attainable standard of health.

23. The U.S. Government’s authorization of oil and gas development in the Coastal Plain will degrade vital resources and the environment, impacting the health of the Gwich’in People and limiting access to adequate nutritious food and clean, unpolluted drinking water.

24. In addition to the specific violations of the right to nutrition, mental health, and a clean environment, allowing for development in the Coastal Plain will lead to industrialization of the area and put the Indigenous women who live there at risk. The protection of
women and the elimination of discrimination against them is threatened by the potential oil and gas development in the Coastal Plain as multiple studies have shown that oil and gas development is linked to an increase of violence against women, particularly Indigenous women.xxxix

Clean Environment
ICESCR art. 12(1); CRC art. 24(2)(c); ILO 169 art. 7(4); UNDRIP 29; ADRIP art. XIX

25. Opening the Coastal Plain to development will degrade air and water quality for the Gwich’in. The FEIS predicts permanent hydrologic changes to surface water including disruption of stream beds and banks, increased erosion, increased sedimentation, reductions in recharge potential, and increased risk of flooding.xi All of these changes could potentially degrade water quality, reduce access to drinking water, and increase dangerous, extreme weather events for the Gwich’in in direct violation of their right to health.

26. Furthermore, development would consume natural water resources. The FEIS predicts decreases in water levels for lakes and connected streams or wetlands. The impacts of water withdrawal include changes in groundwater levels, drying of vegetation, exposure of lakebeds to erosion, and changes in local drainage patterns.xli In addition to degrading the quality of water used by the Gwich’in, development would also decrease their access to water and impact their ability to travel between communities.

27. In addition to water quality degradation, oil and gas development can degrade air quality. Every phase of development creates direct emissions of criteria pollutants - identified as dangerous to human health above certain quantities - from transportation, the use of industrial construction equipment, drilling equipment, power generation, and venting/flaring during production. Air pollutants associated with development have been linked to asthma, chronic bronchitis, decreased pulmonary function, and cardiovascular events.xlii

28. Additionally, the increased contribution of oil and gas development to climate change puts the Gwich’in at physical risk and violates their right to health. The Gwich’in have already seen the impacts of climate change including coastal erosion, drying lakes and ponds, increased wildfires, record temperatures, increased insect outbreaks, and changed plant abundance. xiii The loss of land and resources puts pressure on the Gwich’in way of life. Increased insect outbreaks, such as ticks, directly put the Gwich’in at increased risk of disease.

29. The impacts of climate change are making Alaska a more dangerous place and threatening the physical safety and wellbeing of the Gwich’in. The various effects of climate change continue to create additional stressors on both the nutritional and environmental health of the Gwich’in.
Mental Health

ICERD art. 5(e)(iv); ICESCR art. 12(1); UNDRIP arts. 7, 24(2); ADRIP art. XVIII(1)

30. The United States Government’s actions to open up the Coastal Plain for oil and gas development will result in environmental harm, cultural degradation, and community-wide stress. This increased state of fear and anxiety amongst the Gwich’in Nation violates their right to the highest attainable standard of mental health. Furthermore, the potential loss of culture, religion, and subsistence places the Gwich’in at an even higher risk for mental health and substance use issues.

31. Alaskan Native communities are already at higher risk for mental health challenges and substance abuse than the rest of the United States. Recent data shows that 9.7% of American Indian and Alaskan Natives have alcohol use disorders compared with 5.9% for the general U.S. population. Similarly, 4.1% of American Indian and Alaskan Natives have illicit drug use disorder compared with 2.9% of the general U.S. population. The suicide rate for Alaskan Native people is 42.5/100,000 compared to the overall rate of 12.08/100,000 for the general U.S. population. Alaskan Natives between the ages of 15-24 are particularly vulnerable and have an adjusted suicide rate of 58.7/100,000 as compared to the national average of 16.0/100,000 for males and 20.2/100,000 as compared to the national average of 3.5/100,000 for females. The increased suicide rates for Native Alaskan people are associated with “feelings of hopelessness, confusion, and panic in [Alaskan Native] communities that have experienced multiple traumas, as well as the loss of cultural values and traditions that could otherwise provide anchors of strength in crises.”

Religious and Cultural Harms

ICERD arts. 5(d)(vii), 5(3); ICCPR arts. 18, 27; UDHR arts. 18, 27(1); CRC art. 30; ICESCR arts. 3, 15; ILO 169 arts. 2, 5, 8; UNDRIP arts. 5, 8, 11, 12, 31; ADRIP arts. X, XIII, XV, XVI, XXXI(1)

32. The United States’ actions to aggressively move forward with oil and gas development in the Coastal Plain pose an imminent threat to the religious and cultural rights of the Gwich’in.

33. As is the case with many Indigenous communities, the culture and religion of the Gwich’in are intertwined and inseparable such that any violation to their religious rights is also a violation of their cultural rights and vice versa.

34. Gwich’in creation stories teach that the PCH and the Gwich’in have been linked since time immemorial. The stories explain that the Gwich’in will always have a part of the caribou heart in their own heart and the caribou will always have a piece of the Gwich’in People’s heart in theirs. Gwich’in creation stories also teach that thousands of years ago, the Gwich’in made a pact with the PCH that they would always take care of one another.

35. The Gwich’in’s identity is deeply intertwined with the PCH. All of the Gwich’in’s songs, stories, and dances are directed to the herd. Because the spiritual connection is so central
to Gwich’in culture, damage to the herd would endanger the Gwich’in’s identity and threaten their way of life. In particular, the calving and migration period is important to the Gwich’in culture, not only for the food, but also for the passing on of knowledge, dances, and ceremony. In the words of one Gwich’in elder, “This is the time when the life lessons are taught to the younger generation of the Gwich’in people.” The impacts of drilling on the Coastal Plain and on the PCH will deny current and future generations of Gwich’in children the right to learn, practice, and perpetuate their religious and cultural beliefs.

Free, Prior, and Informed Consent
ICCPR art. 1; ILO 169 arts. 6, 7(3), 15; UNDRIP arts. 8(2)(b), 11(2), 18, 19, 29(1), 32(2); ADRIP arts. XXI(2), XXIII

36. When the United States passed language in the Tax Cuts and Jobs Act of 2017 mandating oil and gas leasing, exploration, development, and production in the Coastal Plain, they did so without a single hearing and without any consultation or communication with the Gwich’in Nation. Additionally, the Tax Bill did not benefit from normal legislative procedure because it was rushed through as a rider. As described by Senator Cantwell during the limited hearing, “drilling in the Arctic really has nothing to do with serious budgetary policy, but it has everything to do with evading regular order to pass something that could never pass in the regular order of the legislative process.” Additionally, the Gwich’in were not properly consulted during the analysis, construction, and decision-making process, and there is no future consultation mandated under United States law at any point during the 85+ year life cycle of development.

37. Under Executive Order 13175, the United States seeks to strengthen their government-to-government relationship with Indian and Alaska Native tribes and commits to establishing “regular and meaningful consultation and collaboration” with tribal governments. The order requires “an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”

38. In her 2017 Report on the rights of Indigenous Peoples in the United States of America, the Special Rapporteur on the rights of Indigenous Peoples notes that although the U.S. Government has taken steps to strengthen its tribal consultation regime, the Executive Order has “resulted in a disjointed framework that suffers from loopholes, ambiguity, ad hoc application on an agency-by-agency basis and a general lack of accountability. It has failed to ensure effective consultations with tribal governments. The breakdown in communication and lack of timely and good faith involvement in the review of federal and non-federal projects has left tribal governments unable to participate in meaningful dialogue on projects affecting their lands, territories and resources. The shortcomings of
the current framework still lead to violations of the rights of Indigenous Peoples, most notably the right to free, prior and informed consent.”

39. In the FEIS, the BLM states that development may “erode cultural connections to, and subsistence uses of” the lands of the Coastal Plain for Gwich’in. Nevertheless, they did not engage in meaningful or genuine dialogue with the Gwich’in Steering Committee or the Gwich’in Nation.

40. The BLM states that they participated in government-to-government consultation by sending letters to five tribal governments on March 2, 2018 and eight additional tribal governments on April 23, 2018. They also list fifteen consultation meetings that they conducted with various tribal governments throughout the development of the FEIS. However, these were not true consultations and do not meet the standards established in international human rights norms.

41. For at least one of the meetings, the Gwich’in community did not learn that the “consultation” was taking place until less than a week beforehand. Because the BLM did not work with the tribal leaders to determine a time that would work best for them, the meeting took place at the same time that the community was honoring their traditional chief; limiting the ability for elders and chiefs to attend. At the meeting, the Gwichyaa Zhee Gwich’in Tribal Government Chief Nancy James, the Council of Athabascan Tribal Governments, and the GSC all stood together to let the government of the United States know that they did not want any development on the calving grounds. Nevertheless, at the meeting, the BLM shared their plans for the oil and gas development and asked the Gwich’in leaders where they should drill not IF they could. Additionally, since the meeting was in English, many elders were not able to fully participate as their first language is their native language. These details were not included in the final EIS nor were they meaningfully integrated into the federal government’s final decision to move forward with the most aggressive option for oil and gas leasing in the Coastal Plain.

IV. Questions

42. How is the government of the U.S. working with Indigenous Peoples in Alaska to mitigate climate change?

43. How is the government of the U.S. protecting the human rights of the Gwich’in by aggressively pursuing oil and gas development in the Arctic National Wildlife Refuge without first obtaining the Free, Prior and Informed Consent of the Gwich’in?
V. Recommendations

44. Accordingly, the Gwich’in Steering Committee, Land is Life, Cultural Survival, the University of Colorado’s American Indian Law Clinic, and First Peoples Worldwide, urge the government of the United States to:

   a) Halt the impending oil and gas sales.

   b) Pass legislation to provide permanent protection for the Coastal Plain.

   c) Reaffirm their commitment to and incorporate UNDRIP into domestic law through statutes and regulations and ensure that human rights pronouncements made at the federal level are implemented at the local level.

   d) Sign and ratify ILO Convention No. 169.

   e) Embrace a standard of consent, not consultation, to allow for the government-to-government relationship necessary to fulfill the principles set forth in UNDRIP. As such, the U.S. Government should:

      a. Approach tribes as individual sovereign nations to give them a seat at the table with equal authority and equal rights;
      
      b. Undertake consultations between high-level decision makers in both federal and tribal governments to ensure the scope necessary to identify social, cultural and environmental impacts;
      
      c. While honoring the treaty obligations to tribes and trust obligations to tribes and individual Indians, with respect to resources and rights held in trust for them, continue to support tribes in developing their capacity and resources towards attaining self-determination in all areas, including energy development and law enforcement.

   f) If unwilling to move towards consent, at least initiate consultations at the outset of all projects to include tribes in the planning process, with proper identification and notification of all potentially affected Indigenous Peoples as soon as the federal agency becomes aware of a project requiring federal approval. Federal agencies should take proper steps to discuss, at the concept and earliest planning stage of energy and infrastructure projects, measures to mitigate impacts on tribes and continue to work with Indigenous Peoples to understand their relationship with the land and Indigenous knowledge of their ecosystem.

   g) Similarly, adopt legislation to enforce consultation for all projects that impact the traditional territories of Indigenous communities, particularly energy and infrastructure projects undertaken within Indigenous Peoples’ traditional territories and sacred lands.

   h) Adopt effective policies to acknowledge and encourage adherence to treaty obligations and establish a functional body for oversight of international treaty
obligations with full and effective participation of Indigenous Peoples on issues relevant to them.

i) Support and gather data of Indigenous-led science to assemble information about resource impacts, through which the U.S. Government can take steps to make its domestic law consistent with human rights protecting the lifeways, food, and environment of the Gwich’in.

j) Ensure Indigenous Peoples have full access to redress for violations perpetrated on and against their lands and territories, including access to judicial forums to dispute claims and to concrete and timely assistance to mitigate adverse impacts on environmental and cultural resources. Adopt policies to ensure that mechanisms for future redress and remediation are clearly articulated during the initial consultation period between tribal, state and federal government actors.

k) Lastly, the U.S. Government should adopt legislation to amend existing laws governing the protection of sacred and cultural places beyond present-day reservation boundaries so as to further protect the religious freedoms of Indigenous Peoples. The policies should reflect the vision of Indigenous Peoples’ definition of sacredness as an interconnected landscape with unique relationships to the practice of religions, strengthening of community, livelihoods, subsistence and gathering of traditional medicines and resources.


iii Id.

iv Id.


vi Id.


ix Wilson, supra note ii, at 4.


xiii Id.


xv Id.


xviii The Arctic Cultural and Coastal Plain Protection Act, H.R. 1146 (2019).
Annex A

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples’ rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly, and on its website. Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

Cultural Survival
2067 Massachusetts Avenue
Cambridge, MA 02140
Tel: 1 (617) 441 5400
www.culturalsurvival.org
agnes@cs.org

Land is Life is an international coalition of Indigenous communities and organizations that was founded in May of 1992 at the historic World Conference of Indigenous Peoples on Territories, Environment and Development. Land is Life has had special consultative status with ECOSOC since 2012. Land is Life is headquartered in New York and is registered as a 501(c)(3) non-profit organization in the United States. Land is Life directly supports Indigenous communities, organizations and leaders by strengthening grassroots capacity, building alliances and awareness, and providing Indigenous-led grantmaking.

Land is Life
495A Henry St #1006
Brooklyn, NY 11231
www.landislife.org
info@landislife.org

First Peoples Worldwide works from a foundation of Indigenous values to achieve a sustainable future for all. Founded in 1997 as a program within First Nations Development Institute, First Peoples became an organization in its own right in 2005. In 2017, First Peoples Worldwide transitioned to a program within the University of Colorado.

First Peoples Worldwide
1330 Grandview Ave
Boulder, CO 80302
https://www.colorado.edu/program/fpw/
fpw@colorado.edu

The American Indian Law Clinic (AILC) at the University of Colorado Law School was established in 1992 as one of the first of its kind. The Clinic’s student attorneys provide hundreds of hours of quality pro bono legal support to tribal clients. The AILC is supporting the Gwich’in Steering Committee in their international advocacy strategy.
Annex B

Annex C

Gwich’in Niintsyaa 2012

Resolution to Protect the Birthplace and
Nursery Grounds of the Porcupine Caribou Herd

WHEREAS:
For thousands of years, the Gwich’in People of northeast Alaska and northwest Canada, have relied on caribou for food, clothing, shelter, tools and life itself, and today the Porcupine (River) Caribou Herd remains essential to meet the nutritional, cultural and spiritual needs of our People; and

WHEREAS:
The Gwich’in have the inherent right to continue our own way of life; and that this right is recognized and affirmed by civilized nations in the international covenants on human rights. Article 1 of the International Covenant of Civil and Political Rights, ratified by the U.S. Senate, reads in part:

“…In no case may a People be deprived of their own means of subsistence”; and

WHEREAS:
The health and productivity of the Porcupine Caribou Herd, and their availability to Gwich’in communities, and the very future of our People are endangered by proposed oil and gas exploration and development in their calving and post-calving grounds in the Arctic National Wildlife Refuge; and

WHEREAS:
The entire Gwich’in Nation was called together by our Chiefs in Arctic Village June 5-10, 1988 to carefully address this issue and to seek the advice of our elders; and

WHEREAS:
The Gwich’in People of every community from Arctic Village, Venetie, Fort Yukon, Beaver, Chalkyitsik, Birch Creek, Stevens Village, Circle, and Eagle Village in Alaska; from Old Crow, Fort McPherson, Tsiigehtchic, Aklavik, and Inuvik in Canada have reached consensus in our traditional way, and speak with one voice; and

WHEREAS:
The Gwich’in People and Chiefs of our communities have met every two years since 1988 to re-affirm our position, guided by the wisdom of our elders; and this summer met in Fort McPherson, and now re-affirm our position.

NOW THEREFORE BE IT RESOLVED:
That the United States President and Congress recognize the rights of the Gwich’in People to continue to live our way of life by prohibiting development in the calving and post-calving grounds of the Porcupine Caribou Herd; and

BE IT FURTHER RESOLVED:
That the 1002 area of the Arctic National Wildlife Refuge be made Wilderness to protect the sacred birthplace of the caribou.

Passed unanimously this 27th Day of July, 2012 in Fort McPherson, NWT.
APPENDIX 2
REQUEST FOR EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES

TO

The United Nations Committee on the Elimination of Racial Discrimination

BY

The Gwich’in Steering Committee, Land is Life, Cultural Survival, First Peoples Worldwide, and the University of Colorado’s American Indian Law Clinic

IN RELATION TO

The United States of America

PREPARED FOR

The 100th Session of the Committee on the Elimination of Racial Discrimination

Submitted November 13, 2019

Gwich’in Steering Committee
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* This is a joint report submitted by the Gwich’in Steering Committee, Cultural Survival, Land is Life, First Peoples Worldwide, and the American Indian Law Clinic at the University of Colorado. See Annex A for information on each organization.
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      i. Development in the Coastal Plain harms the Porcupine Caribou Herd and the Gwich’in by extension.

         a. Harms to the Porcupine Caribou Herd violate the Gwich’in’s right to health under ICERD Article 5(e)(iv).

         b. Harms to the Porcupine Caribou Herd violate the Gwich’in’s right to education under ICERD Articles 5(e)(v) & 7.

         c. Harms to the Porcupine Caribou Herd violate the Gwich’in’s right to culture under ICERD Articles 2(2), 5(e)(vi) & 7.

         d. Harms to the Porcupine Caribou Herd violate the Gwich’in’s right to employment under ICERD Article 5(e)(i).

      ii. Development in the Coastal Plain is Destruction of Sacred Lands, violating the right to religion under ICERD Article 5(d)(vii).

      iii. Development will exacerbate climate change and air pollution, directly impacting the Gwich’in’s right to health under ICERD Article 5(e)(iv).

      iv. Development increases the risk of violence against indigenous women, violating the Gwich’in’s right to security under ICERD Article 5(b).

V. UNDRIP informs ICERD violations relating to Indigenous Peoples

VI. The Gwich’in never provided their Free, Prior and Informed Consent.

VII. The United States has the responsibility to protect the Gwich’in from human rights abuses by private businesses under the UN General Principles of Business and Human Rights.

VIII. Conclusions and Requests
I. Executive Summary

The Gwich’in Steering Committee, Land is Life, Cultural Survival, First Peoples Worldwide, and the University of Colorado’s American Indian Law Clinic thank you for the opportunity to submit this request for early warning and urgent action procedures on behalf of the Gwich’in people. The government of the United States is aggressively pursuing oil and gas development in the Coastal Plain of the Arctic National Wildlife Refuge in Alaska without the free, prior and informed consent of the Gwich’in Nation. This is an encroachment on lands held sacred by the Gwich’in people and has further discriminatory impacts on their security and freedoms as enumerated in the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”).

II. Introduction and Background

The submitting organization respectfully requests a decision under the early warning and urgent action procedures of the United Nations Committee on the Elimination of Racial Discrimination (“CERD” or “the Committee”) regarding the U.S. Government’s proposed oil and gas development in the Coastal Plain of Alaska. This land is sacred to the Gwich’in Nation. Development in the area will threaten their way of life, in violation of various rights protected by ICERD including their rights to culture, health, education, and employment. Development will also exacerbate the impacts of global climate change, which have a heightened and disproportionate impacts on Indigenous Peoples, particularly in places like Alaska. The planned extraction of oil and gas in and around their sacred lands threatens serious harm to the Gwich’in Nation, consistent with a continued pattern of the United States showing racial discrimination against indigenous groups. The Gwich’in are therefore asking CERD to address these human rights violations.

The domestic legal framework in the U.S. has proven inadequate in protecting the human rights of Indigenous Peoples, as demonstrated by a long history of discriminatory treatment since its founding. As described by Dr. Martin Luther King, Jr., “Our nation was born in genocide when it embraced the doctrine that the original American, the Indian, was an inferior race. Even before there were large numbers of Negroes on our shore, the scar of racial hatred had already disfigured colonial society. From the sixteenth century forward, blood flowed in battles over racial supremacy. We are perhaps the only nation which tried as a matter of national policy to wipe out its indigenous population.”

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1 All over the globe, Indigenous Peoples are on the frontlines of climate change. They often feel the effects most acutely because of the ways in which climate change impacts their traditional ways of life. The climate in Alaska is already warming twice as fast as the global average, resulting in serious threats to the safety and lifeways of the Gwich’in People.

The Gwich’in Nation spreads across northeastern Alaska and the Northwest Territories of Canada. They are caribou people. For thousands of years, they migrated alongside the Porcupine Caribou Herd (“the Herd”). When they settled, they placed their villages along the Herd’s migration path. The Gwich’in and the Porcupine Caribou are culturally and spiritually linked and dependent on each other for their survival. The Gwich’in rely on the Herd for 80% of their subsistence diet, and their subsistence culture of hunting revolves around the caribou. As one elder shared, “Caribou are not just what we eat; they are who we are. They are in our stories and songs and the whole way we see the world. Caribou are our life. Without caribou, we wouldn’t exist.” Because of the cultural, spiritual, and subsistence relationship with the caribou, harm done to the Herd directly impacts the rights of the Gwich’in.

The Coastal Plain of the Arctic National Wildlife Refuge is the calving and nursery grounds of the Porcupine Caribou Herd. For this reason, the Gwich’in call the Coastal Plain, Izhik Gwats'an Gwandaii Goodlit, which translates to The Sacred Place Where Life Begins. The Coastal Plain is so sacred to the Gwich’in that they do not step foot there, even in times of famine. The United States Government is well aware of this special relationship between the Gwich’in and the Herd and of the importance of the Coastal Plain to the Herd’s survival. Nevertheless, the U.S. is moving forward with aggressive plans to lease the area for oil and gas extraction. The U.S. admits that “caribou are held in the highest regard by the Gwich’in and are the backbone of their cultural identity” and that “broader cultural impacts [from development] on belief systems/religious practices would be common...[p]articularly for the Gwich’in, who hold the program area as sacred ground.” Although the U.S. Government admits that the decision to invade this sacred space will impact the Gwich’in’s subsistence, culture, and health, the Government has moved forward with plans for oil and gas development in the Coastal Plain without the Gwich’in’s free, prior and informed consent, without meaningfully consulting the Gwich’in as required under domestic law, and without incorporating the Gwich'in's traditional knowledge.

In 1960, in response to pressure from conservationists and outdoorsmen, U.S. President Eisenhower designated the Arctic National Wildlife Refuge (“Arctic Refuge” or “Refuge”), as a protected area in northern Alaska. The Coastal Plain is a 1.5 million acre area located within the approximately 19 million acres of the Arctic Refuge. This designation prevented the Coastal

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3 See U.S. Bureau of Land Mgmt., Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement Final 3-226 (2019) [hereinafter “FEIS”].
6 FEIS, at 3-215.
7 FEIS, at 3-216.
8 FEIS, at 3-216.
Plain from development or natural resource extraction. In 1988, in response to potential oil and gas development in the Coastal Plain, the Gwich’in Nation leaders—spanning both the U.S. and Canada—were called together by their elders for the first gathering in over 150 years. They passed a unanimous Resolution, *Gwich’in Niintsyaa*, and created the Gwich’in Steering Committee (“GSC”) to speak as the unified voice of the Gwich’in Nation against oil and gas development in *The Sacred Place Where Life Begins*.

In December 2017, the United States Congress passed the Tax Cuts and Jobs Act of 2017 (“2017 Tax Act”) into law. The Tax Act included language that amended the prohibition of oil and gas development in the Coastal Plain and required that lease sales take place in the area. United States lawmakers passed the law without obtaining the free, prior and informed consent or adequately consulting with the Gwich’in and other similarly affected Indigenous Peoples. On September 11, 2019, in recognition of the harm that oil and gas development would have on some of the last remaining wild landscapes in the world, the U.S. Senate leaders introduced the *Arctic Refuge Protection Bill*, which would provide permanently protect the Coastal Plain from development. On the next day, September 12, the U.S. House of Representatives passed the *Arctic Cultural and Coastal Plain Protection Act* that would reverse the language in the 2017 Tax Act and halt oil and gas development on the Coastal Plain. Three days before the bill was passed, the Trump Administration issued a statement stating that “[i]f these bills were presented to the President, his advisors would recommend he veto them.” A few hours after the House vote, the Bureau of Land Management issued a Final Environmental Impact Statement ("FEIS") as part of the domestic requirements for opening the Coastal Plain to oil and gas development.

The FEIS is a lengthy document listing all of the potential environmental impacts that come with certain proposals for development. As required under domestic law, the FEIS must consider alternatives for development that range in scope. The BLM selected the option with the greatest environmental and social impacts as its “preferred alternative.” This option will open the entirety of the Coastal Plain to oil and gas leasing for development, exceeding what is mandated by the 2017 Tax Act. The U.S. Government analyzed, acknowledged, and accepted

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15 A copy of the FEIS can be found at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=152110> (last visited on Nov. 07, 2019).
16 See FEIS, at ES-3.
that the plan for oil and gas development in the Coastal Plain would have numerous adverse impacts to the physical environment, biological resources, and social systems in the area. Although the U.S. Government claims it consulted with the Gwich’in and other Alaska Native peoples, those efforts were largely an attempt to meet technical requirements for consultation rather than a good faith effort to integrate and consider indigenous perspectives and concerns. This was especially true for the Gwich’in; the analysis of the Final Environmental Impact Statement does not reflect their interests.

Therefore, the Gwich’in ask CERD to review these concerns under the early warning and urgent action procedures as they are related to “encroachment on the lands of indigenous communities, in particular exploitation of natural resources and infrastructure projects posing threats of irreparable harm to indigenous and tribal peoples.”17 Because the Gwich’in are Indigenous Peoples, the rights enumerated under the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP” or “the Declaration”) help inform this request. Furthermore, since this oil and gas development will be accomplished through government leases to private companies, the Gwich’in invoke the United Nations Guiding Principles of Business and Human Rights (“UNGPs”) under the ICERD obligation that State parties also prevent private actors from engaging in human rights abuses.

III. Previous CERD Recommendations

In its concluding observations from 2014, the Committee acknowledged the following concerns within the United States, all of which are relevant to the proposed development in the Coastal Plain:

a) “That the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with [the ICERD], which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect;”

b) That “the Committee is concerned that...indigenous peoples continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries;”

c) That there are “adverse effects of economic activities related to the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the rights to land, health, environment and the way of life of indigenous peoples and minority groups living in these regions;”

d) That “[t]he Committee is concerned at the obstacles faced by individuals belonging to racial and ethnic minorities and indigenous peoples to effectively exercise their right to vote, due...to restrictive voter identification laws;”

17 Revised Guidelines 2007 CERD, Annual report A/62/18, Annexes, Chapter III.
e) That “the Committee remains concerned at the disproportionate number of women from racial and ethnic minorities, particularly...Alaska Native women, who continue to be subjected to violence, including rape and sexual violence;”

f) That there has been a “[l]ack of concrete progress achieved to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policy-making and decisions that affect them;” and

g) That there have been “[i]nsufficient measures taken to protect the sacred sites of indigenous peoples that are essential for the preservation of their religious, cultural and spiritual practices against polluting and disruptive activities…”

As such, the Committee recommended that the United States:

1) “Prohibit racial discrimination in all its forms in federal and state legislation, including indirect discrimination, covering all fields of law and public life;”
2) “[A]dopt and strengthen the use of special measures...when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms based on race or ethnic origin;”
3) “Ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels;”
4) “Take appropriate measures to prevent the activities of transnational corporations registered in the State party which would have adverse effects on the enjoyment of human rights by local populations in other countries, especially by indigenous peoples and minorities;”
5) “[I]ntensify its efforts to prevent and combat violence against women, particularly against American Indian and Alaska Native women, and ensure that all cases of violence against women are effectively investigated, perpetrators prosecuted and sanctioned, and victims provided with appropriate remedies;”
6) “Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them based on their free, prior and informed consent;” and
7) “Adopt concrete measures to effectively protect the sacred sites of indigenous peoples as a result of the State party’s development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable.”

The United States has provided no response to these concluding observations, and violations continue to persist. As such, the Gwich’in Steering Committee brings the foregoing

18 CERD/C/USA/CO/7-9.
19 CERD/C/USA/CO/7-9.
violations and concerns to the attention of CERD under the early warning and urgent action procedures.

IV. The Gwich’in invoke the early warning and urgent action procedures under CERD to prevent escalation of conflict and serious harm.

The Gwich’in Steering Committee and partner organizations file this request asserting that the United States is engaging in harmful and discriminatory activity warranting the application of early warning and urgent action procedures under ICERD.

The revised guidelines for early warning and urgent action procedures include various situations that may trigger the procedures; relevant here is the “encroachment on the traditional lands of indigenous peoples... in particular for the purpose of exploitation of natural resources” and “polluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups.”20 By opening the Coastal Plain to oil and gas development, without regard for the Gwich’in’s cultural, traditional, and historical relationship to the land and its resources, the U.S. Government is engaging in discriminatory practices that harm the Gwich’in.

A. Domestic remedies do not sufficiently address these human rights violations.

Indigenous rights are not sufficiently considered in the domestic remedies available to prevent drilling on the Coastal Plain, which are instead largely based on environmental, administrative, and procedural statutes. Though remedies under these domestic laws could have beneficial consequences for the protection of the Coastal Plain or minimize the impacts of development, they do not address the underlying discriminatory principles that allow for these violations to take place.

Furthermore, any domestic recourse the Gwich’in have to address their human rights as Indigenous Peoples has historically been futile. This Committee itself has reiterated its concern that “the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with [the ICERD], which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect.”21 Furthermore, in her report to the United States in 2017, the Special Rapporteur on the rights of indigenous peoples noted the Human Rights Committee’s recommendation to the United States to “adopt measures to effectively protect sacred areas of indigenous peoples against desecration, contamination and destruction and ensure that consultations are held with the indigenous communities that might be

21 CERD/C/USA/CO/7-9, ¶ 5 (emphasis added).
adversely affected by the State party’s development projects and exploitation of natural resources with a view to obtaining their free, prior and informed consent for proposed project activities.”

The Special Rapporteur also noted that the United States does not have a framework that ensures full access to redress to Indigenous Peoples for violations perpetrated on their lands and territories.

These legislative and regulatory deficiencies are particularly salient for the Gwich’in who do not have meaningful representation in Congress. Don Young, the U.S. Representative for Alaska, has specifically stated that he does not represent or account for the concerns of the Gwich’in. Alaska’s congressional representatives are putting corporate interests above those of their indigenous constituents. Unsurprisingly, many Alaska Natives face barriers to their ability to participate meaningfully in the elections of these representatives. Proposed voting rules requiring identification cards to include street addresses are one way in which local government is trying to prevent Alaska Natives from being able to vote. This is aligned with a trend that has been occurring in indigenous communities throughout the United States. Furthermore, as the non-Native population in southern Alaska continues to grow, the interest of Alaska Natives are an increasingly marginalized concern for elected officials.

While legal claims brought under U.S. domestic law could result in the delay or even prevention of oil and gas development in the Coastal Plain, those laws do not directly address the human rights of the Gwich’in. The discriminatory effect of the U.S.’s oil and gas leasing plan will harm the Porcupine Caribou Herd, encroach on Gwich’in sacred lands, impact the health of the Gwich’in through climate change and pollution, and increase the risk of violence against Alaska Native women. Therefore, the Gwich’in now turn to CERD for assistance addressing the discriminatory legal framework that is allowing these human rights abuses to be perpetuated against them.

B. Development in the Coastal Plain violates numerous human rights of the Gwich’in People.

The U.S. Government’s plan to open the Coastal Plain for oil and gas development will (1) result in devastating environmental impacts to the Porcupine Caribou Herd and, by extension,
the Gwich’in; (2) physically encroach on land that has been held sacred by the Gwich’in since time immemorial; (3) hasten the effects of climate change in Alaska, which disproportionately impacts Alaska Natives; and (4) increase the risk of violence against Alaska Native women caused by an influx of male-dominated industry camps. Not only is the United States failing to protect the Gwich’in, but it is also actively mandating oil and gas development that directly impacts many of their human rights as defined in ICERD.

i. Development in the Coastal Plain harms the Porcupine Caribou Herd and the Gwich’in by extension.

Because of the cultural, spiritual, and subsistence relationship between the Gwich’in and the Porcupine Caribou Herd, any harm to the Herd will also harm the Gwich’in. A loss of access to the caribou will impact the Gwich’in’s health and nutrition, the education of their youth, the expression of their culture, and their access to the subsistence activities that supplement their employment. The U.S. Government recognizes that development in the Coastal Plain will negatively affect terrestrial mammals, including the Herd, through habitat loss and alteration, behavioral disturbance and displacement, and injury or mortality.\(^{26}\) Because the Herd has had very limited human contact, they will be more adversely affected than other land animals who interact with people more often.\(^{27}\) In addition to physical threats posed by interaction with humans, the Herd are a highly acoustic-sensitive species.\(^{28}\) As such, the introduction of drilling equipment, road building equipment, seismic testing, and other development processes will be highly disruptive to the caribou’s migratory and breeding behaviors. By the Government’s own calculations, development in the Coastal Plain would cause an 8-10% decline in annual calf survival, impacting the overall growth of the Herd.\(^{29}\) Therefore, either through death or displacement, the Gwich’in’s access to the Herd will be impacted by the Government’s activities in the Coastal Plain.

a. Harms to the Porcupine Caribou Herd violate the Gwich’in’s right to health under ICERD Article 5(e)(iv).

The United States is violating Article 5(e)(iv), which protects their right to public health, medical care, social security and social services. In 2014, the Committee demanded the United States “[t]ake appropriate measures to prevent the activities of transnational corporations . . . which could have adverse effects on the enjoyment of human rights by local populations, especially indigenous peoples and minorities in other countries.”\(^{30}\) The United States is blatantly

\(^{26}\) FEIS, at 3-144.
\(^{27}\) For example, lack of familiarity with humans may result in high risk of mortality and injury based on vehicle-related incidents. FEIS, at 3-148-49.
\(^{28}\) Id.
\(^{29}\) FEIS, at 3-150.
\(^{30}\) CERD/C/USA/CO/7-9, ¶ 10(d).
disregarding both the suggestions of the Committee and the impacts on the rights of the Gwich’in by opening the Coastal Plain for oil and gas development.

The Gwich’in rely on the Porcupine Caribou for the majority of their subsistence. Development on the Coastal Plain would greatly diminish this key source of nutrition, threatening the Gwich’in’s food security and forcing them to rely on store-bought food. Studies have shown that consumption of store-bought foods leads to higher rates of cancer and diabetes.31 Furthermore, store-bought food in this region is prohibitively expensive and lacks nutritional value.32 When Gwich’in elders have had to rely on store-bought food in the past, they became sick and needed treatment for vomiting and gestational issues.33

Additionally, the health of other indigenous communities has been impacted when their food sources have come into contact with the Prudhoe Bay oil fields. The Gwich’in are concerned that if the Porcupine Caribou get too close to oil and gas drilling, their meat will no longer be safe for consumption. Therefore, even if the Herd does not alter its migration path and maintains the same number of caribou, oil and gas activity on the Coastal Plain will impact the Gwich’in’s reliance on this food source.

The United States is disregarding the disproportionate impacts these actions will have on the Gwich’in’s health despite their admission that “[t]he relative lack of cash to support subsistence activities would make [them] more vulnerable to changes in the availability of resources, such as caribou.”34 Without access to the safe, nutritional food source that has sustained their people for millennia, these impacts threaten the health of the Gwich’in people, amounting to a violation of ICERD Article 5(e)(iv).

b. Harms to the Porcupine Caribou Herd violate the Gwich’in’s right to education under ICERD Articles 5(e)(v) & 7.

The United States is violating Articles 5(e)(v) and 7 of ICERD, which protects their right to education. When the Herd is decreased or displaced, the Gwich’in will have to rely on less nutritious, more expensive western food. As such, Gwich’in students are more likely to show up to school hungry. The UN Department of Economic and Social Affairs has said that in general “Indigenous children are more likely to arrive at school hungry, ill, and tired.”35 These obstacles

31 Id.
33 FEIS app. C, at C-18.
34 FEIS, at 3-262.
to education lead to higher drop-out rates, which have a direct correlation to family and community poverty.36

According to the American Psychological Association, family poverty leads to “[h]igh mobility and homelessness; hunger and food insecurity; parents who are in jail or absent; domestic violence; drug abuse and other problems . . .”37 Family poverty is linked to “[s]ome of the precursors to dropping out, including low achievement, chronic absenteeism and misbehavior. . .”38 In addition, community poverty is linked to “[c]ommunities of concentrated disadvantage with extremely high levels of joblessness, family instability, poor health, substance abuse, poverty, welfare dependency and crime. . .”39 Moreover, sustained community poverty has an impact on “[c]hild and adolescent development through the lack of resources (playgrounds and parks, after-school programs) or negative peer influences.”40 The U.S. opened the Coastal Plain to development knowing that these issues already plague indigenous communities. This is symbolic of the discriminatory legal and political framework in the U.S., one that ignores and perpetuates harms specific to indigenous communities in violation of Articles 5(e)(v) and 7 of ICERD.

The caribou and their migration pattern are essential for the Gwich’in’s cultural education and the passing of knowledge, dances, and ceremony. In the words of one Gwich’in elder, “This is the time when the life lessons are taught to the younger generation of the Gwich’in people.”41 The impacts of drilling on the Coastal Plain and on the Herd will deny current and future generations of Gwich’in children the right to learn, practice, and perpetuate their religious and cultural beliefs.

c. Harms to the Porcupine Caribou Herd violate the Gwich’in’s right to culture under ICERD Articles 2(2), 5(e)(vi) & 7.

The United States is violating Articles 5(e)(vi) and 7, which protect their right to engage in their subsistence culture. As a key food source for the Gwich’in, the Herd is a crucial part of their subsistence culture and is intrinsically linked to the Gwich’in’s identity. Gwich’in creation stories explain that the Herd and the Gwich’in have been connected since time immemorial; it teaches that the Gwich’in made a pact with the Herd that they will always take care of each other. The Gwich’in have lived up to this promise today by steadfastly protecting the sacred lands in which the Herd migrate and calve.

37 Id.
38 Id.
39 Id.
40 Id.
41 Wilson, supra note 4, at 7.
Climate change has already created unusually warm seasons resulting in melting ice and altered landscapes. Even the most experienced hunters have fallen through thinning ice and drowned. Ice cellars that used to keep caribou meat fresh and safe to eat throughout the year are melting. The Gwich’in are already feeling the impacts from climate change on their subsistence activities, and these will only become more extreme as developers extract and burn fossil fuels in the Coastal Plain.

By the Government’s own admission, the “[o]verall, future development in the program area [the Coastal Plain] could have lasting effects on cultural practices, values, and beliefs through its impacts on subsistence. The potential impacts of development could result in reduced harvests, changes in uses of traditional lands, and decreased community participation in subsistence harvesting, processing, sharing, and associated rituals and feasts. Because of this, communities could experience a loss of cultural and individual identity associated with subsistence, a loss of traditional knowledge about the land, damaged social and kinship ties, and effects on spirituality associated with degradation of the Alaska coastal plain.”42 While the United States recognizes that its proposed oil and gas development will disproportionately affect the cultural practices of groups like the Gwich’in, it nevertheless is moving forward with oil development, in violation of ICERD Articles 5(e)(vi) and 7.

d. Harms to the Porcupine Caribou Herd violate the Gwich’in’s right to Employment under ICERD Article 5(e)(i).

The Gwich’in have a deep relationship with the land they occupy and the resources they use. There is little economic development in remote northern Alaska and few opportunities for local employment. In most cases, seasonal employment rather than full-time or permanent employment directly supports the subsistence activities of individuals. The United States government acknowledges the significant effects a decrease in subsistence wildlife will have on the Gwich’in, specifically that “[t]he comparative lack of economic activity for the Gwich’in . . . could make those communities more vulnerable to social impacts, particularly those associated with disruption of subsistence activities.”43

ICERD Article 5(e)(i) secures the Gwich’in’s right to free choice of employment and to just and favorable conditions of work. The U.S.’s failure to consider the negative impacts that development would have on employment is evidence of its broader discriminatory treatment of Indigenous Peoples. Although development will create an influx of jobs in the region, the Government has stated that the Alaska Natives would not be the anticipated beneficiaries of this job creation.44 Instead, development is likely to displace the Herd, forcing the Gwich’in to travel further distances to hunt and greatly diminishing the ability of hunters to hold part-time

42 FEIS, at 3-241.
43 FEIS, at 3-270.
44 FEIS, at 3-339.
employment that provides for their families. Having to travel a greater distance to hunt will also put the Gwich’in in prolonged danger since climate change is already impacting the predictability of the landscape and of predators in the area. These increased dangers associated with hunting may discourage some members from participating in this activity, even though it is a regular supplement to part-time work and an important facet to their culture. The United States has chosen to ignore these discriminatory impacts on the Gwich’in’s right to employment, in violation of ICERD Article 5(e)(i).

ii. *Development in the Coastal Plain is destruction of sacred lands, violating the right to religion under ICERD Article 5(d)(vii).*

Indigenous culture, religion, and spirituality are integral to the Gwich’in identity. The Gwich’in believe that the Coastal Plain is so sacred that no one should step foot in the area, and that any kind of development on this land would be an act of desecration. Even in times of extreme famine, the Gwich’in remain steadfast in their refusal to enter *Iizhik Gwats'an Gwandaii Goodlit or The Sacred Place Where Life Begins.*

The Gwich’in’s civil right to protect this land is found under ICERD Article 5(d)(vii) as “the right to freedom of thought, conscience, and religion.” This right to religion can be implemented by way of culture through the UNDRIP, which states that “Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.” Despite the fact that the United States have signed on to both the ICERD and the UNDRIP, they have refused to earnestly take into account the importance of the Coastal Plain to the Gwich’in.

Oil and gas infrastructure will affect thousands of acres of the Coastal Plain. Development will require installing nearly two dozen drilling pads and over 200 miles of roads and pipelines that “stretch like a spider across the entire Coastal Plain, end to end, from the coast to the foothills.” The drilling pads are “spaced according to state of the art drilling technology and what people don’t realize when they hear 2,000 acres is that one mile of road only covers

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roughly 7 and a half acres, 100 miles of road only covers 750 acres but it creates a 100 mile long barrier and a 100 mile long scar on the landscape.”\textsuperscript{48} In other words, unequivocally, oil and gas infrastructure and road networks would do irreparable damage to the area.\textsuperscript{49}

Furthermore, seismic testing trails would drastically alter the land of this sacred area as well. The trails would be several hundred feet apart. Depending on timing and local conditions, the testing and camps could create ruts in the terrain or compress vegetation beneath equipment and snow. This could create a network of visible disturbance in the texture of the land and vegetation across the landscape.\textsuperscript{50}

The U.S. Government recognizes the following geological hazards within the Coastal Plain: earthquakes, surface faults, landslides, land subsidence, flooding, sea ice ride-up and override, coastal erosion, and storm surge. Oil and gas development in the Coastal Plain is expected to increase the rate and degree of risk regarding these hazards. Oil and gas development also produces waste, such as solid waste, wastewater, produced fluids, drilling muds, firefighting foam, and spills of oil, saltwater, and hazardous substances.\textsuperscript{51}

The U.S. Government in the FEIS acknowledged that “[w]hile potential impacts on specific cultural resource sites would differ by alternative, broader cultural impacts on belief systems/religious practices would be common across all alternatives. Particularly for the Gwich’in, who hold the program area as sacred ground to their culture . . . the presence of development in the program area would constitute a cultural impact on the Gwich’in. This is because they believe that development in the program area would harm the caribou . . . that migrate to the Coastal Plain to give birth.”\textsuperscript{52}

Therefore, because the Gwich’in consider the Coastal Plain as sacred territory, any sort of physical invasion (drilling, building of roads, pipelines, etc.) within the Coastal Plain would harm the Gwich’in’s ability to protect this area and would infringe upon their religious freedom right under CERD.

\textsuperscript{48} Id.
\textsuperscript{50} FEIS, at 3-88.
\textsuperscript{51} FEIS, at 3-77.
\textsuperscript{52} FEIS, at 3-216.
iii. Development will exacerbate climate change and air pollution, directly impacting the Gwich’in’s right to health under ICERD Article 5(e)(iv).

In addition to the immediate impacts from drilling in the Coastal Plain, burning the extracted oil will accelerate climate change, the effects of which disproportionately impact the health of Alaska Natives, including the Gwich’in, in violation of ICERD Art. 5(e)(iv).

The climate in Alaska is already warming twice as fast as the global average, and Alaska Natives feel those effects more directly because of their connection to the land. As climate change alters weather patterns, natural cycles that the Gwich’in people have understood and relied on for thousands of years have become increasingly unpredictable. For example, an increasing number of experienced Gwich’in hunters are falling through prematurely melting and thin ice during hunts. Arctic lakes are experiencing fish kills, where thousands of fish, such as Arctic char, are going belly-up as warming lakes are no longer suitable for arctic fish species. Melting permafrost is also eliminating previously safe ways for the Gwich’in to store their caribou meat throughout the year. Since the Gwich’in rely on game for most of their meals, any loss to their ability to hunt, fish, and store it will have devastating impacts to Gwich’in health.

The United States’ denial that climate change is a threat further impedes the Gwich’in’s ability to protect themselves from climate change through domestic means. In response to climate change concerns about the development project in the Coastal Plain, the U.S. stated it “does not agree that the proposed development is inconsistent with maintaining a livable planet (i.e., there is not a climate crisis).”53 Further the U.S. seems to claim that Alaska will be better off by drastic warming, stating that “[t]he planet was much warmer within the past 1,000 years ... [t]his warmth did not make the planet unlivable; rather, it was a time when societies prospered.”54

Other types of air pollution from Coastal Plain oil and gas development will put the health of the Gwich’in people at risk. Every phase of the proposed project will pollute the air including transportation, the use of industrial construction and drilling equipment, power generation, and venting/flaring during oil production. Prior oil and gas activities in Arctic Alaska have proven the long range that the air pollutants travel. For example, air pollution from oil and gas activities in Prudhoe Bay has been detected over 200 miles away.55 Air pollutants can also settle on the lands and water bodies after traveling long distances, depositing pollutants in waters and soils on which Alaska Natives rely. There are currently few sources of air pollutants in the

54 Id.
Coastal Plain, making the area particularly vulnerable as the impacts of those pollutants is unknown and prior exposure is low.

ICERD Article 5(e)(iv) protects the right to public health, medical care, social security and social services. By approving a large oil and gas development project, where the burning of those resources will exacerbate climate change and the project will emit air pollutants that will make their way to Gwich’in villages, the U.S. is impeding the Gwich’in health. The project would disproportionately harm the health of Alaska Natives.

iv. Development increases the risk of violence against indigenous women, violating the Gwich’in’s right to security under ICERD Article 5(b).

In addition to the harm that the drilling would cause the Herd and the sacred land, the oil and gas development in the Coastal Plain will lead to industrialization of the area and put the indigenous women who live there at risk. This is a violation of Article 5(b), which protects their “right to security of person and protection by the State from violence inflicted by the State or any individual group or institution.”

The Special Rapporteur, in her 2017 report on the rights of indigenous people in the United States, noted the number of interlocutors who raised the concern that oil and gas leasing approvals do not take into consideration the impact that a short-term influx of well-paid men into isolated indigenous communities has on the rate of sex trafficking, illegal prostitution, and violence against indigenous women. The protection of women and the elimination of discrimination against them is threatened by the potential oil and gas development in the Coastal Plain as multiple studies have shown that oil and gas development is linked to an increase of violence against women, particularly indigenous women.

This type of harm to indigenous women has been seen in other areas of the country that have increased or developed oil production. After the discovery of oil in the Bakken Formation of North Dakota in 2006, the region experienced an increase in people flocking to the area and more importantly the creation of man camps, “and, in recent years, has experienced an exponentially increasing level of violence against Native women.”

58 HONOR THE EARTH., Man Camps Fact Sheet: Chasing out the Specter of Man Camps... Retrieved from: <http://www.honorearth.org/man_camps_fact_sheet> (last visited Nov. 07, 2019) (explaining, that “North Dakota’s Uniform Crime Report shows that violent crime has increased 7.2 percent, while 243 reported rapes occurred in 2012 – an increase from 207 in 2011. According to the Bismarck Tribune, Attorney General Wayne Stenehjem stated that 12 of the state’s top oil-producing counties accounted for much of that crime. The cause for this is the camps of thousands of male workers who have come to their territory to profit from the Bakken oil boom – settling
Even though the Gwich’in do not occupy the area directly parallel to the potential drilling sites, there will still be an influx of people and creation of man camps that will impact their communities, particularly those located closest to the Coastal Plain. In 2014, the Committee noted that they remained concerned “[a]t the disproportionate number of women from racial and ethnic minorities, particularly . . . American Indian and Alaskan Native women, who continue to be subjected to violence, including rape and sexual violence.” The Committee went on to recommend that the United States “intensify its efforts to prevent and combat violence against women, particularly American Indian and Alaska Native women, and ensure that all cases of violence against women are effectively investigated, perpetrators are prosecuted and sanctioned, and victims are provided with appropriate remedies.”

The Committee made its remarks in 2014, the Special Rapporteur made her comments in 2017, and in 2019 the issue of unrectified violence against Indigenous women still remains to be addressed. In the face of this shocking reality, the United States has mandated that more of these man camps come into existence in frightening proximity to vulnerable indigenous communities. The effects of oil and gas leasing on the rates of violence experienced in indigenous communities are beyond dispute, so it is not unfounded speculation to conclude that leasing in the Coastal Plain will be placing an untold number of indigenous women and girls in danger of sexual exploitation, drug addiction, and violence.

V. UNDRIP informs ICERD violations relating to Indigenous Peoples.

The CERD’s 2008 Concluding Observations regarding the United States included a recommendation that the U.S. adopt UNDRIP as a guide for fulfilling its obligations as a State party to ICERD. When the U.S. adopted UNDRIP in 2010, it did so with reservations, including that its domestic frameworks were sufficient to protect these rights. Since then, the U.S. has done little to nothing through its legislative and regulatory mechanisms to implement UNDRIP and has specifically failed to follow these recommendations regarding development on the Coastal Plain. While UNDRIP is not a binding treaty, CERD has recommended that the “declaration be used as a guide to interpret the State party’s obligations under [ICERD] relating to indigenous peoples.” Further, UNDRIP does not have its own treaty body to enforce its
guidelines. Therefore, it is appropriate for the Committee to address violations of these principles as they relate to issues covered by ICERD.63

The proposed development on the Coastal Plain would violate UNDRIP Articles including the Right to Free, Prior and Informed Consent: Arts. 3, 5, 8(2)(b), 11(2), 18, 19, 27, 28(1), 29(1), the Right to Subsistence: Arts. 20, 24, 26, 29, 30, the Right to Health, Nutrition, and Mental Health: Arts. 21(1), 23, 24(2), the Right to Culture and Religion: UNDRIP Arts. 5, 8(1), (2)(a), & (2)(b), 12, and the Right to Self-Determination in Resource and Land Development: Arts. 1, 3, 8(2)(b), 20, 23, 25, 26, 28, 29. All of these violations are a furtherance of the discriminatory framework within the U.S. that fails to protect the rights of Indigenous Peoples.

VI. The Gwich’in never provided their Free, Prior and Informed Consent.

UNDRIP establishes the duty of States to consult in good faith with Indigenous Peoples to obtain their free, prior and informed consent prior to approving projects that may affect their lands, territories, or other resources.64 It also reaffirms that Indigenous Peoples have the right to participate in decision-making processes through representatives chosen in accordance with their own procedures.65 As early as 1997, this Committee recognized Indigenous Peoples’ right to be consulted and the key role that consent plays in the elimination of discrimination.66

Through Executive Order 13175, the United States sought to strengthen its consultation with indigenous communities. The order requires “an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”67 However, as noted by the Special Rapporteur in her 2017 Report, the Executive Order has “has failed to ensure effective consultations with tribal governments. The breakdown in communication and lack of timely and good faith involvement in the review of federal and non-federal projects has left tribal governments unable to participate in meaningful dialogue on projects affecting their lands, territories and resources. . .”68

The United States did not meaningfully consult or obtain consent from the Gwich’in before passing language in the 2017 Tax Act that mandates oil and gas leasing, nor during the administrative process for environmental review of the proposed development.

64 UNDRIP Art. 27 and 32.
65 Id. Art. 18.
On December 22, 2017, the United States hastily pushed the 2017 Tax Act through Congress, mandating oil and gas leasing, exploration, and development in the Coastal Plain. The United States passed this language in the Act without conducting a single hearing or communicating or consulting with the Gwich’in Nation. On December 28, 2018, the Government issued a draft Environmental Impact Statement and opened up a 45-day public comment period to allow the public to comment on the proposed development plan. This process proved deficient. The Government shut down for 35 of the 45 days of the comment period and cancelled public meetings. Although the Government subsequently extended the comment period by 30 days and rescheduled meetings, it nevertheless failed to meaningfully consult with the Gwich’in during that extended period.

During the drafting of the FEIS, the Government claimed it engaged in consultation by sending letters to five tribal governments on March 2, 2018, and eight additional letters on April 23, 2018. Additionally, it lists fifteen consultation meetings conducted with various tribal governments throughout the drafting of the FEIS. In organizing these meetings, the Government failed to coordinate with the Gwich’in to determine a time that would work best for them. For example, the Government scheduled one meeting during the same time the Gwich’in were honoring their traditional chief, making it impracticable for the most important tribal decision-makers to attend.

These consultations efforts can hardly be described as genuine consultations as established by international human rights norms. As noted by the Expert Mechanism on the Rights of Indigenous Peoples, UNDRIP does not envision consultation as a “single moment or action but a process of dialogue and negotiation over the course of a project, from planning to implementation and follow-up.” The United States, however, treated consultation as a single moment by holding public hearings across Alaska and considering those to be sufficient rather than engaging the Gwich’in leadership in a meaningful and extensive dialogue.

The Government also failed to recognize that “consultation” denotes the right of Indigenous Peoples to genuinely influence the decision-making process. As Former Special Rapporteur on the rights of indigenous peoples, James Anaya, explained, “the somewhat different language of the Declaration suggests a heightened emphasis on the need for consultations that are in the nature of negotiations towards mutually acceptable arrangements, prior to the decisions on proposed measures, rather than consultations that are more…for

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70 Id.
71 FEIS, at ES-7.
72 Id.
providing indigenous peoples with information about decisions already made or in the making, without allowing them genuinely to influence the decision-making process.”

The United States Government shared its plans for oil and gas development to the Gwich’in and other affected indigenous groups without giving the Gwich’in the opportunity to make a different proposal or suggest an alternative. At one consultation meeting, Gwichyaa Zhee Gwich’in Tribal Government Chief Nancy James, the Council of Athabascan Tribal Governments, and the GSC stood together to let the Government know they opposed development in the calving ground. The U.S. Government nevertheless reiterated its plan for development, asking only where to drill and not if it should drill.

The United States has failed to live up to its commitments under UNDRIP and the Convention by disregarding its obligation to secure the free, prior and informed consent of the Gwich’in.

VII. The United States has the responsibility to protect the Gwich’in from human rights abuses by private businesses under the UN Guiding Principles of Business and Human Rights.

The UN Guiding Principles on Business and Human Rights (“UNGPs”) apply to States and corporations alike. States must protect against human rights abuses by third parties. States have a duty to prevent, investigate, punish, and redress human rights abuses through State legal systems. Further, a State has an additional duty to protect against abuses by businesses when they receive substantial support and services from State agencies. By granting companies oil and gas leases on public land, the U.S. is providing them substantial support, therefore heightening the U.S.’s responsibility to ensure those companies are not violating human rights.

Where such connection to the State exists, acts of human rights abuses by businesses might “entail a violation of the State’s own international obligations.” In that case, the UNGPs encourage States to require agencies and businesses to practice due diligence to ensure human rights are not violated. States also have a duty to ensure that remedies to abuses occurring in their territories exist and are available when those abuses occur. The U.S.’s leasing scheme does not

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76 Id. at 6.
77 Id. at 7.
provide opportunities to address abuses resulting from oil and gas development in the Coastal Plain, either during the decision-making process or in the future as those abuses occur.

The same industries that have already contributed heavily to global climate change are now positioned to exacerbate the accelerated climate problems in Alaska. Instead of holding these industries accountable, the United States is engaged in business dealings that will increase the impacts felt by the Gwich’in and other similarly situated Indigenous Peoples. Although Alaska Natives are already experiencing a disproportionate number of harms from climate change, they are expected to bear the burden of additional environmental and climate consequences ushered in by the oil and gas development in the Coastal Plain.

**VIII. Conclusions and Requests**

In light of the ongoing discrimination against the Gwich’in and the threat of imminent destruction of the Coastal Plain, the submitting organizations humbly request that the Committee considers the situation in the Coastal Plain under its early warning and urgent action procedures in order to avoid further irreparable harm to the Gwich’in. In particular, the submitting organization requests that the Committee adopt a decision:

1. Stating concern regarding the discriminatory treatment of the Gwich’in and requesting that the United States submit information to the Committee under the urgent action and early warning procedures relating to the situation in *Izhik Gwats’an Gwandaii Goodlit* (*The Sacred Place Where Life Begins*).
2. Recommending that the United States, consistent with the commitments that it has made under ICERD and UNDRIP, recognize the denial of rights to the Gwich’in as a human rights issue and begin to take action to rectify the above described human rights abuses.
3. Recommending the United States Government work to bring to a halt any future activities that infringe on the rights of the Gwich’in as Indigenous Peoples in Alaska, through:
   a. Halting the impending oil and gas sales;
   b. Adopting Option A in the Final Environmental Impact Statement, so that no part of the Coastal Plain will be offered for future oil and gas lease sales;
   c. Passing legislation to provide permanent protection for the Coastal Plain;
   d. Adopting a plan that permanently protects the wildlife in the Coastal Plain including the polar bears and the Porcupine Caribou Herd including honoring their commitments under the *Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd*;
   e. Honoring the government’s trust responsibility to Indigenous Peoples within the United States; and
f. Engaging in meaningful consultation and obtaining the free, prior and informed consent of the Gwich’in under the principles enshrined in UNDRIP and related international norms before commencing projects on or near the ancestral lands of the Gwich’in.

4. Requesting that other States and international organizations, including financial institutions, withdraw their support and informing all Member States of their obligations under ICERD and the UNGPs that the support of oil and gas development on the part of governments or private businesses will be a violation of these instruments.

5. Recommending that CERD communicate with the United States Government regarding this situation and consider sending a committee member to visit Alaska to create a report on the situation based on his or her findings.

6. Recommending the U.S. reaffirm their commitment to and incorporate UNDRIP into domestic law through statutes and regulations and ensure that human rights pronouncements made at the federal level are implemented at the local level.

7. Stating that the Committee will continue to track this issue and report on it in the next Universal Periodic Review of the United States of America on May 11, 2020 in Geneva.

8. Addressing these ICERD violations facing the Gwich’in at the 100th CERD Session beginning November 25, 2019.
APPENDIX 3
7 August 2020

Excellency,

I write to inform you that in the course of its 101st session, the Committee on the Elimination of Racial Discrimination received information concerning the situation of Gwich’in indigenous peoples in Alaska, in the United States of America. The Committee has since considered this information under its early warning and urgent action procedure.

The information received by the Committee alleges that the planned oil and gas development in the Coastal Plain of the Artic National Wildlife Refuge in Alaska is conducted without the free, prior and informed consent of and adequate consultation with Gwich’in indigenous peoples, despite the serious harm such extractive activities could allegedly cause.

The information received also alleges that the oil and gas development in the Coastal Plain would infringe the enjoyment of human rights by Gwich’in indigenous peoples, in particular by significantly reducing their traditional source of food, the caribou, encroaching on the sacred site of the Coastal plain, increasing health risks due to environmental degradation, including air pollution, and by increasing the risk of violence against indigenous women due to the arrival of extractive industry workers.

The information further alleges that the oil and gas development in the Coastal Plain would exacerbate the already disproportionate impact of climate change on indigenous peoples, in particular in Alaska. Moreover, the information alleges that the domestic remedies available to indigenous peoples do not provide a legal basis for addressing the underlying cause of structural discrimination.

His Excellency Mr. Andrew Bremberg
Ambassador
Permanent Representative of United States of America
to the United Nations Office
Geneva
Email: GenevaUSmission@state.gov
The Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples and its previous concluding observations (CERD/C/USA/CO/7-9).

Accordingly and on the basis of the information received, the Committee would like to request the State party to provide information on the status of the proposal to develop oil and gas in the Coastal Plain as well as on the measures taken to:

(a) Guarantee the respect of the right to consultation and to free, prior and informed consent of the Gwich’in indigenous peoples regarding the project of oil and gas development in the Coastal Plain;
(b) Effectively protect the sacred sites of indigenous peoples, in particular in the Coastal Plain;
(c) Prevent and combat violence against indigenous women, in particular in Alaska, and in specially within the context of the extractive industry;
(d) Assess and mitigate the impact on climate change of the proposal for oil and gas development in the Coastal Plain, in particular on indigenous peoples in Alaska;
(e) Ensure effective remedies against instances of racial discrimination, including in the context of extractive industries.

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive a response to the above allegations and concrete measures taken in this regard before 30 October 2020. The Committee notes that the State party’s periodic report is overdue since 20 November 2017, and encourages the State party to submit its periodic report without further delay.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of the United States of America, with a view to assisting it to implement the Convention effectively.

Yours sincerely,

Yanduan Li
Chair
Committee on the Elimination of Racial Discrimination
APPENDIX 4
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THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA
GWICH’IN STEERING COMMITTEE, ALASKA WILDERNESS LEAGUE, ALASKA WILDLIFE ALLIANCE, CANADIAN PARKS & WILDERNESS SOCIETY-YUKON, DEFENDERS OF WILDLIFE, ENVIRONMENT AMERICA, INC., FRIENDS OF ALASKA NATIONAL WILDLIFE REFUGES, NATIONAL WILDLIFE FEDERATION, NATIONAL WILDLIFE REFUGE ASSOCIATION, NORTHERN ALASKA ENVIRONMENTAL CENTER, SIERRA CLUB, THE WILDERNESS SOCIETY, and WILDERNESS WATCH,

Plaintiffs,

v.

DAVID BERNHARDT, in his official capacity as Secretary of the Interior, UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, and U.S. FISH & WILDLIFE SERVICE,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. NATURE OF THE CASE

1. The Coastal Plain of the Arctic National Wildlife Refuge (Arctic Refuge) is iconic and sacred. It provides habitat for numerous fish and wildlife species, including caribou, polar bears, birds, and wolves. It offers exceptional recreational experiences, in large part because of its incredible wilderness and wildlife values. Most critically, it is sacred land to the Gwich’in Nation, Indigenous people of Alaska and Canada, because of the importance of the Coastal Plain to the Porcupine Caribou Herd and the deep cultural and spiritual connection between the Gwich’in and the caribou.

2. Because of its exceptional subsistence, wildlife, habitat, and cultural values, the Coastal Plain has been protected under federal law for decades. Those protections prohibited oil and gas leasing and development in the area.

3. This protected status changed in 2017. A rider to tax reform legislation allowed for an oil and gas leasing program on the Coastal Plain. The U.S. Department of
the Interior (DOI) and the Bureau of Land Management (BLM) have since rushed to complete their environmental review and adopt an extensive and harmful leasing program.

4. In issuing the final environmental impact statement (EIS) and signing the record of decision (ROD), BLM failed to comply with numerous federal statutes and regulations that impose important protections for the lands and resources on the Coastal Plain. These laws require thorough, transparent, and careful analysis of the impacts of BLM’s decision. The agency’s failure threatens the exceptional resources of the Coastal Plain and the subsistence, cultural, and spiritual connection between the Gwich’in People and the Coastal Plain.

5. The U.S. Fish and Wildlife Service (FWS) issued a Biological Opinion (BiOp) in support of the final EIS and ROD. FWS determined the leasing program would not jeopardize polar bears on the Coastal Plain nor adversely modify their critical habitat. In making this determination, FWS relied on mitigation measures that are not reasonably certain to occur, and failed to consider the best available science, the impacts of the entire leasing program on designated critical habitat, and the contribution of the leasing program to climate change. FWS violated the Endangered Species Act (ESA) and the Administrative Procedure Act (APA) because its consultation with BLM was deficient and its determinations in the BiOp are arbitrary and capricious.

7. Plaintiffs bring this action to invalidate BLM’s unlawful final EIS, ROD, and ANILCA Section 810 Final Evaluation, and FWS’s deficient BiOp, and any related or subsequent decisions based on those documents.

8. Plaintiffs seek vacatur and declaratory and injunctive relief against the Secretary of the Interior, DOI, BLM, and FWS. The agencies’ actions and decisions fail to comply with applicable law, are arbitrary, capricious, an abuse of discretion, and not in accordance with the law, in excess of statutory authority, and without observance of the procedure required by law. 5 U.S.C. § 706(2).

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over the parties and subject matter of this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (action to compel
mandatory duty), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202 (injunctive relief).¹

10. The BLM’s final EIS, ROD, and ANILCA Section 810 Final Evaluation, and FWS’s BiOp are final agency actions for which Plaintiffs have a right to judicial review under the APA. 5 U.S.C. §§ 701–706.

11. Defendants’ sovereign immunity is waived pursuant to the APA. 5 U.S.C. § 702.

12. Venue is proper in the District of Alaska under 28 U.S.C. § 1391(a)–(c) and (e) because a substantial part of the events giving rise to the claims occurred within the BLM Alaska State and Arctic District Offices, and the FWS Alaska Regional Office, because many groups are primarily located in or maintain offices in Alaska, and because the lands at issue in the case — the Coastal Plain of the Arctic National Wildlife Refuge — are located in Alaska.

III. PARTIES

Plaintiffs

¹ Pursuant to 16 U.S.C. § 1540(g)(2)(A), on August 24, 2020, Plaintiffs provided 60 days’ notice of intent to sue to DOI, BLM, and FWS regarding BLM’s unreasonable and unlawful reliance on the BiOp, in violation of its substantive duty under section 7(a)(2) of the ESA to ensure against jeopardy and destruction or adverse modification of critical habitat for the polar bear.
13. Plaintiff Gwich’in Steering Committee is a 501(c)(3) nonprofit organization based in Fairbanks, Alaska. The Gwich’in Steering Committee is a voice for the 8,000 members of the Gwich’in Nation speaking out to protect the sacred calving and nursery grounds of the Porcupine Caribou Herd — the Coastal Plain. The Gwich’in Steering Committee was formed in 1988 in response to proposals to drill for oil in the Coastal Plain. The Gwich’in Steering Committee represents the communities of Arctic Village, Venetie, Fort Yukon, Beaver, Chalkyitsik, Birch Creek, Canyon Village, Circle, and Eagle Village in Alaska, and Old Crow, Fort McPherson, Tsiigehtchic, Aklavik, and Inuvik in Canada. The mission of the Gwich’in Steering Committee is to ensure the long-term health and viability of the Porcupine Caribou Herd, which sustains the Gwich’in way of life. Protecting the Coastal Plain and the Porcupine Caribou Herd is a human rights issue for the Gwich’in People. The Gwich’in Steering Committee is dedicated to protecting the entire ecosystem that the caribou rely on so that the Gwich’in People will have a future in their homeland. As depicted in the map below, the traditional homelands of the Gwich’in generally follow the migratory path of the Porcupine Caribou Herd, but because of how sacred the Coastal Plain is to the Gwich’in, the area is not visited:
The Gwich’in Steering Committee’s goal is to permanently protect the Coastal Plain of the Arctic Refuge. Gwich’in leaders have advocated for permanent protection of the Coastal Plain of the Refuge for decades, since before the passage of the Alaska National Interest Lands Conservation Act. The Gwich’in Steering Committee engages in numerous activities to advocate for permanent protection of the Refuge, including public outreach and education, media work, public speaking, and attending conferences and events. The Gwich’in Steering Committee has submitted comments on numerous Refuge...
decisions and has presented testimony to Congress, the United Nations Special Rapporteur on Indigenous Peoples, and at public hearings on the EIS. The Gwich’in Steering Committee submitted extensive comments on the draft EIS, including raising issues under ANILCA section 810 and subsistence use of the Coastal Plain’s resources.

14. Plaintiff Alaska Wilderness League (AWL) is a nonprofit organization founded in 1993 with approximately 100,000 members and supporters, including many members in Alaska. AWL’s mission is to galvanize support to secure vital policies that protect and defend America’s last great wild public lands and waters. AWL advocates for the protection of Alaska’s wild lands and waters and works to prevent environmental degradation on Alaska’s public lands and waters, including the Arctic Refuge. AWL actively works on issues related to oil and gas development and the protection of the Arctic Refuge. AWL is committed to honoring the human rights and traditional values of the people of the Arctic.

15. Plaintiff Alaska Wildlife Alliance (AWA) was founded by Alaskans in 1982 to protect intact ecosystems so that our state’s wildlife can be managed for biodiversity and the benefit of present and future generations. AWA as over 300 members and supporters. AWA and its members speak out against energy development that unduly threatens vulnerable Alaskan ecosystems and species, including BLM’s leasing program for the Coastal Plain. AWA is particularly concerned about impacts on Coastal Plain ecosystems and wildlife, including but not limited to the endangered
Steller’s eider and Beaufort Sea Polar bears, as well as millions of migrating and nesting shorebirds, the Porcupine and Central Arctic caribou herds, and muskoxen. In addition to threatening wildlife, the leasing program violates the rights of Alaska Natives to subsist on this vibrant landscape. AWA views the Coastal Plain as one of the last unspoiled wild areas in the world, and seeks to ensure that protections guaranteed in its designation are honored for future generations of Alaskans and wildlife.

16. Plaintiff Canadian Parks and Wilderness Society – Yukon Chapter (CPAWS Yukon) is one of thirteen chapters of the Canadian Parks and Wilderness Society, which has over 40,000 supporters across Canada. CPAWS Yukon has approximately 220 members and over 2,000 supporters. It was founded in 1992 by Yukoners who wanted to bring attention to conservation issues in the Yukon Territory. CPAWS Yukon aims to preserve vast tracts of the Yukon’s most beautiful and ecologically important lands and waters. CPAWS Yukon supports fair and democratic land-use planning that respects the rights of Yukon First Nations, engages all Yukoners, and recognizes the importance of protected areas as a means to promote ecological integrity and a sustainable future for the Yukon. CPAWS Yukon works on issues related to oil and gas activities on the Coastal Plain of the Arctic Refuge, which have the potential to harm the Porcupine Caribou Herd, which is critical to the culture and subsistence ways of life for Indigenous peoples across northern Yukon and into the Northwest Territories.
17. Plaintiff Defenders of Wildlife (Defenders) is a nonprofit conservation organization and one of the nation’s leading advocates for endangered species and wildlife. Founded in 1947, Defenders is headquartered in Washington, D.C. and maintains six regional offices throughout the country, including in Anchorage, Alaska. Defenders represents approximately 1.8 million members and supporters nationwide and around the world, including more than 6,000 in Alaska. Defenders uses education, public outreach, science, policy, and litigation, along with legislative and administrative advocacy, to defend the species, ecosystems, and habitats that are central to the organization's mission, including on the Arctic National Wildlife Refuge. Defenders has worked for decades to safeguard the Arctic Refuge from destructive oil and gas development. Protecting this vital unit of the National Wildlife Refuge System is key to implementing Defenders’ vision to ensure that diverse wildlife populations are secure and thriving, sustained by a healthy and intact network of lands and waters. Defenders also works to support implementation of the FWS’s Polar Bear Conservation and Recovery Plan, and to reduce any conflicts or impacts to polar bears and other wildlife that may arise from current or proposed development activities in the Arctic Refuge and elsewhere in the Arctic.

18. Plaintiff Environment America, Inc. (Environment America) is an advocacy group comprised of twenty-nine affiliate organizations and members and supporters in every state, including Alaska. Environment America works to protect air, water, and open
spaces. Environment America engages in independent environmental research and advocates for policies by lobbying and mobilizing the public. Environment America has worked to raise awareness about the harmful impacts of oil and gas on public lands, including the Arctic Refuge, and the need to protect our natural heritage over fossil fuel extraction.

19. Plaintiff Friends of Alaska National Wildlife Refuges (Friends) is a nonprofit organization founded in 2005 and based in Homer, Alaska. It is a volunteer group that works to assist FWS to accomplish its congressionally-mandated mission for the sixteen national wildlife refuges in Alaska. Friends promotes the conservation of all Alaska National Wildlife Refuges by helping to protect and enhance their habitats and wildlife, including the Arctic Refuge, and by assisting the FWS through outreach to decision-makers and testimony before Congress.

20. Plaintiff National Wildlife Federation (NWF), one of America’s largest conservation organizations, has worked across the country to unite Americans from all walks of life in giving wildlife a voice for over eighty years. NWF has 51 state and territorial affiliates, including an Alaska affiliate, and more than 6 million members and supporters, including hunters, anglers, gardeners, birders, hikers, campers, paddlers, and other outdoor enthusiasts. NWF programs work to protect the 600 million acres of public lands owned by all Americans and has a longstanding interest in ensuring these lands are managed properly for fish, wildlife, and communities.
21. Plaintiff National Wildlife Refuge Association is a non-profit organization focused exclusively on protecting and promoting the 850 million-acre National Wildlife Refuge System, the world’s largest network of lands and waters set aside for wildlife conservation. Founded in 1975, its mission is to conserve America’s wildlife heritage for future generations through strategic programs that enhance the National Wildlife Refuge System and the landscapes beyond its boundaries. With approximately 80% of the land mass of the National Wildlife Refuge System in Alaska, the National Wildlife Refuge Association has throughout its history focused significant resources on protecting and enhancing Refuge System resources in Alaska, including the Arctic Refuge.

22. Plaintiff Northern Alaska Environmental Center (Northern Center) is an Alaska nonprofit environmental organization founded in 1971 with over 900 members, sixty percent of whom are located throughout Alaska. The Northern Center’s mission is to promote the conservation of the environment and sustainable resource stewardship in Interior and Arctic Alaska through education and advocacy. One of the Northern Center’s major focus areas is its Arctic program. The Northern Center actively works to protect the Arctic, its communities, and vital wildlife habitats and wildlands, including the Arctic Refuge, from the harms associated with oil and gas development. The Northern Center also works to amplify the voices of local populations impacted by development. The Northern Center participates in agency decision-making processes related to oil and gas development in the Arctic, including the challenged action. The Northern Center provides
its members and the public with information about the impacts of oil and gas on the Arctic, enabling members to participate as well.

23. Plaintiff Sierra Club is the nation’s oldest and largest grassroots environmental organization. The Sierra Club is a national nonprofit organization of approximately 800,000 members dedicated to exploring, enjoying, and protecting the wild places of Earth; to practicing and promoting the responsible use of the Earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment, and to using all lawful means to carry out these objectives. The Alaska Chapter of the Sierra Club has approximately 1,800 members. The Sierra Club’s concerns encompass a variety of environmental issues in Alaska, and the organization has long been active on issues related to the protection of the Coastal Plain of the Arctic Refuge.

24. Plaintiff The Wilderness Society is a nonprofit organization headquartered in Washington, D.C., with offices throughout the country, including a six-person staff in Alaska. Its overall mission is to protect wilderness and inspire Americans to care for wild places. The Wilderness Society has close to a million members and supporters, many of whom are in Alaska. The goal of its Alaska program is to permanently protect special places in America’s Arctic and sub-Arctic, including in the Arctic Refuge. The Wilderness Society has been engaged in Arctic Refuge conservation efforts for decades, and has consistently participated in public processes associated with Arctic Refuge
decisions. Among other areas of focus, staff from The Wilderness Society work to advance scientific understanding and conservation policy for highly migratory caribou and fish resources that utilize much of the landscape to complete their life cycles.

25. Plaintiff Wilderness Watch is a nonprofit organization founded in 1989. Its mission is to defend the nation’s 111-million-acre National Wilderness Preservation System. Wilderness Watch advocates for appropriate stewardship according to the requirements of the Wilderness Act of 1964. Wilderness Watch monitors agency stewardship of designated Wilderness in Alaska and organizes its members to participate in public processes in Alaska, including the Arctic Refuge, that impact designated Wilderness.

26. Plaintiffs participated actively in the administrative process related to the oil and gas leasing program by submitting public comments, engaging with experts to review the analysis, giving oral testimony, and engaging their millions of members and supporters to participate in support of Coastal Plain protection to achieve organizational missions and goals. Plaintiffs also have an interest in ensuring that DOI, BLM, and FWS comply with applicable laws.

27. Plaintiffs’ members and supporters work, visit, and recreate in and around the Arctic Refuge and on the Coastal Plain, including those lands and waters on the Coastal Plain that are open to oil and gas leasing and activities under BLM’s decision, and plan to return to the Coastal Plain. Plaintiffs’ members and supporters also live in and
around the Arctic Refuge. Plaintiffs’ members and supporters use the Coastal Plain and depend on the health of the subsistence resources in the Coastal Plain and its vicinity to support their subsistence way of life, including to maintain cultural and spiritual practices and their identity. Plaintiffs’ members and supporters have health, subsistence, cultural, economic, recreational, scientific, environmental, aesthetic, educational, conservation, and other interests in the Coastal Plain of the Arctic Refuge. Plaintiffs’ members and supporters enjoy or use wildlife that inhabit these areas, in particular caribou, polar bears, and birds. Plaintiffs’ members and supporters recreate on the Coastal Plain in multiple seasons because of its exceptional wilderness values and the exceptional visitor experience.

28. These interests, their members’ and supporters’ use and enjoyment of the Coastal Plain and adjacent areas, and the resources present in the area and that rely on the area, have been, are being, and will continue to be adversely affected by oil and gas program and activities in the Coastal Plain, including leasing the Coastal Plain. The leasing program, leasing, and oil and gas activities allowed by the lease program — including seismic exploration — will degrade and harm the natural environment and wildlife and habitat used and enjoyed by the Plaintiffs’ members and supporters, thereby harming the interests of Plaintiffs’ members and supporters. The oil and gas lease program, and activities enabled by the lease program and lease sale, will also impede Plaintiffs’ members’ ability to access subsistence resources in the region or to use
subsistence resources that rely on the Coastal Plain, and impact cultural and spiritual connections and traditions.

29. BLM’s adoption of a leasing program in violation of NEPA, ANILCA, the Refuge Act, the Tax Act, and the Wilderness Act threatens imminent irreparable harm to the interests of the Plaintiffs and their members. The agency’s failure to adhere to mandated procedures and its reliance on a flawed analysis also harms Plaintiffs’ and their members’ and supporters’ ability to engage in the public process and ensure informed decision making and compliance with statutory protections otherwise mandated for the Coastal Plain.

30. These actual, concrete injuries suffered by Plaintiffs and their members and supporters are fairly traceable to BLM’s adoption of the leasing program in violation of the substantive and procedural protections of these laws, and would be redressed by the relief sought in this case.

31. FWS’s deficient BiOp in violation of the ESA and APA threatens imminent, irreparable harm to the interests of Plaintiffs and their members and supporters to the Southern Beaufort Sea (SBS) population of polar bears. These actual, concrete injuries suffered by Plaintiffs and their members and supporters are fairly traceable to the deficient BiOp for the leasing program and would be redressed by the relief sought in this case.
Defendants

32. Defendant David Bernhardt is the Secretary of the Interior and is being sued in his official capacity. Secretary Bernhardt is the official ultimately responsible under federal law for ensuring that the actions and decisions of BLM and FWS comply with all applicable laws and regulations. Secretary Bernhardt is the official who signed the ROD.

33. Defendant DOI is an agency of the United States responsible for oversight of BLM and FWS.

34. Defendant BLM is an agency within DOI. Under the Tax Act, it is responsible for management of a competitive oil and gas program including the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.

35. Defendant FWS is an agency within DOI and is charged with administering units of the national wildlife refuge system, including the Arctic Refuge, and with administering the ESA for polar bears (in addition to other terrestrial species).

IV. STATEMENT OF FACTS

The Exceptional Values of the Coastal Plain of the Arctic Refuge

36. The Arctic Refuge is iconic among America’s wildlife refuges. Many consider it to be the crown jewel of the National Wildlife Refuge System, the largest system of public lands and waters managed for wildlife conservation in the world. At over 19 million acres, the Arctic Refuge is America’s largest and wildest national wildlife
refuge. It encompasses boreal forests in the south, glaciers in the Brooks Range, the highest peak in Arctic Alaska, numerous braided rivers and natural springs, and the Coastal Plain that borders the Beaufort Sea to the north.

37. Its over 1.5-million-acre Coastal Plain is a vibrant and ecologically rich area that has been referred to as the “Serengeti of the Arctic” and is recognized as the biological heart of the Arctic Refuge. It is rare and important habitat for many animals, including caribou, polar and grizzly bears, birds, ice seals, musk oxen, and wolves.

38. The Porcupine Caribou Herd migrates annually through Alaska and Canada, traveling upwards of 2,700 miles per year — the longest overland migration of any terrestrial mammal. The Porcupine Caribou Herd relies on the Coastal Plain for calving, post-calving, and insect relief habitat, and as a source of high-protein nutrition away from predators.

39. The herd’s migratory path brings it to the Coastal Plain in the early summer, as early as May, where, in a frenzy of activity, the tens of thousands of calves are born within a few days of each other. The caribou cows find plentiful and high-protein food on the Coastal Plain to nourish and replenish them after their long journey and the stress of birth. The insect relief attributes of the Coastal Plain are also critical to the herd. The relentless insects of the Arctic are a major problem for the caribou and can even lead to death. The winds, coastline, and aufeis (areas of ice buildup along rivers) provide critical and potentially life-saving insect relief.
40. The Arctic Refuge lies at the heart of the traditional homelands of the Gwich’in people. As they have since time immemorial, the Gwich’in Nation of Alaska and Canada relies heavily on the Porcupine Caribou Herd for subsistence and as the foundation of their culture. Indeed, Porcupine caribou are so central to the lives of the Gwich’in that they call themselves the “caribou people,” and the Gwich’in name for the Coastal Plain is “Iizhik Gwats’an Gwandaii Goodlit” — which translates to “the Sacred Place Where Life Begins.”

41. The relationship between the caribou and the Gwich’in is guided by the belief that the caribou have a piece of the Gwich’in in their heart and the Gwich’in have a piece of the caribou in their heart. As a result, the Gwich’in made a pact with the caribou to protect them so the caribou can continue to provide for the Gwich’in. The Gwich’in have maintained their cultural identity and connection to the Arctic Refuge and the Coastal Plain for millennia.

42. Gwich’in traditional knowledge instructs that the caribou will be harmed by the development of the Coastal Plain, the sacred calving and nursery grounds of the Porcupine Caribou Herd.

43. The Coastal Plain also provides denning habitat for polar bears, which are protected as a threatened species under the ESA. Polar bear populations have been reduced to a precarious state due to impacts from climate change, which will only worsen as warming in the Arctic region continues.
44. The Coastal Plain has the highest density of onshore polar bear denning habitat in America’s Arctic. This is because the topography of the Coastal Plain, where the rivers and hills of the Coastal Plain create areas of deep snow drifts, is uniquely different from the rest of Alaska’s Arctic. These areas where snow accumulates are ideal denning sites for pregnant polar bears. Maternal denning habitat includes corridors between the dens and the coast, as polar bears move along riverine corridors, traveling between their dens and food sources.

45. The abundant plants and insects available in the summer also allow many bird species to nest and forage on the Coastal Plain, which they do as part of their annual migrations through all of North America’s flyways and, remarkably, to six continents. Birds begin returning to the Coastal Plain in the spring and remain through late summer and into early fall.

46. The Arctic Refuge is our nation’s premiere wilderness Refuge and the wilderness values of the Coastal Plain are incomparable. The untrammeled nature provides unique opportunities to study and understand ecosystems and functions on a landscape scale. The integrity of the ecosystems provides unique habitat to numerous wildlife species. The undeveloped and undisturbed character of the area offers world-class wilderness recreation opportunities. The Coastal Plain also boarders the 8-million acre Mollie Beattie Wilderness area within the Arctic Refuge.
47. In short, the ecological, cultural, and wilderness values of the Coastal Plain are exceptional.

   **The Imperiled Southern Beaufort Sea Population of Polar Bears**


49. The Coastal Plain has the highest density of onshore polar bear denning habitat for polar bears in America’s Arctic. FWS designated critical habitat for polar bears in Alaska in 2011, including barrier island, sea ice, and terrestrial denning habitat. Designation of Critical Habitat for the Polar Bear (Ursus maritimus) in the United States, 75 Fed. Reg. 76,086, 76,088–91 (Dec. 7, 2010). The vast majority of BLM’s oil and gas leasing program area is land designated as terrestrial denning critical habitat.

50. The proportion of females denning on land has increased significantly as sea ice diminishes due to climate change. Polar bears are particularly vulnerable to sea ice melt given their life history and specialized habitat needs.

51. The Southern Beaufort Sea (SBS) population is among the most imperiled polar bear populations in the world, having declined dramatically since the 1990s.
addition to climate change, polar bears in the SBS population face threats from a wide range of industrial activities, including onshore and offshore oil and gas development and increased shipping. They are also subject to subsistence hunting and mortality due to interactions with humans where there is a perceived threat to life and property.

52. The data and information on the population dynamics for the SBS polar bears are outdated and incomplete.

53. Noise and visual disturbance from human activity and operation of equipment, especially aircraft and vehicle traffic, have the potential to disturb polar bears nearby. Disturbance of maternal females during the winter denning period can result in premature den abandonment, or earlier den emergences and departures, adversely affecting polar bear cub survival.

BLM’s Coastal Plain Leasing Program Process


55. Numerous groups, including Plaintiffs, and hundreds of thousands of individuals submitted comments to the agency. Plaintiffs’ comments outlined myriad
legal, technical, and resource issues that the agency needed to thoroughly explain and review before adopting a leasing program.

56. In spring 2018, working in conjunction with the Arctic Slope Regional Corporation and Kaktovik Inupiat Corporation, SAExploration, Inc. (SAE) applied to BLM for an authorization to conduct three-dimensional (3D) seismic exploration on the Coastal Plain.

57. According to SAE’s Plan of Operations, the goal of its proposal was to identify potential targets for future lease sales on the Coastal Plain. SAE proposed to conduct seismic activities across the entire Coastal Plain, including its lagoons, over the course of two winter seasons.

58. Several groups, including Plaintiffs and scientific experts on Coastal Plain resources, submitted comments to BLM on the proposed seismic application. These comments explained that the agency should evaluate seismic exploration as part of the Leasing Program EIS, in addition to other issues.

59. BLM has yet to approve or reject SAE’s proposal to conduct seismic exploration on the Coastal Plain. According to BLM statements in a Petroleum News article, as of August 13, 2020, BLM paused its processing of the application, pending BLM’s receipt of an updated plan from SAE. To date, BLM has not released a NEPA document analyzing the impacts of SAE’s seismic exploration project and application, nor has the agency addressed these comments.
In December 2018, BLM released the draft environmental impact statement (EIS) for the Coastal Plain leasing program and the ANILCA Section 810 Preliminary Evaluation.

Plaintiffs and over one million individuals submitted comments on BLM’s draft EIS. The majority of these comments opposed the oil and gas program.

BLM’s draft EIS considered a no-action alternative (Alternative A) and three action alternatives — Alternatives B, C, and D, with Alternative D having two subalternatives, Alternatives D1 and D2.

In comments on the draft EIS, Plaintiffs criticized BLM’s consideration of alternatives, noting that the agency failed to consider a reasonable range of alternatives and failed to consider numerous viable alternatives. Letter from Alaska Wilderness League et al. to Nicole Hayes, Project Manager, BLM (Mar. 13, 2019).

Plaintiffs proposed multiple alternatives or components of alternatives that provided more protections for the Coastal Plain’s resources. Plaintiffs explained how each proposed alternative or component would be consistent with applicable statutory mandates, including the Tax Act. Id.

In their comments, Plaintiffs also explained how BLM’s proposed program was inconsistent with ANILCA’s and the Refuge Act’s conservation purposes for the Coastal Plain and otherwise failed to comply with the Refuge Act and ANILCA. Id.
66. Plaintiffs also submitted comments criticizing BLM’s interpretation and application of the 2,000-acre limitation on surface development. *Id.*

67. Plaintiffs submitted extensive comments on the faults and errors with BLM’s analysis of direct, indirect, and cumulative impacts of the proposed oil and gas leasing program for numerous resources. Plaintiffs commented on BLMs failure to consider any site-specific impacts, transboundary impacts, and impacts from climate change, in addition to other fundamental failings. *Id.*

68. These comments also included criticisms of the lease stipulations and required operating procedures, as well as the analysis of the affected environment and environmental consequences for greenhouse gas emissions and climate change, air quality, water, polar bears, caribou, wilderness and recreation, soils, permafrost, vegetation, and wetlands, and subsistence uses and resources, in addition to many others. *Id.*

69. Plaintiffs also commented extensively on BLM’s failures to analyze the impacts to or propose measures for the protection of the wilderness characteristics of the Mollie Beattie Wilderness. *Id.*

70. Plaintiffs, and in particular the Gwich’in Steering Committee, submitted extensive comments criticizing BLM’s ANILCA Section 810 Preliminary Evaluation and the related draft EIS analysis, including raising BLM’s failure to consider all affected Gwich’in communities in the analysis, its incomplete and faulty conclusions about the
impacts of an oil and gas program on the subsistence resources relied on by the Gwich’in, including caribou and birds, and its incorrect conclusion that the oil and gas leasing program would not significantly restrict subsistence uses for the Gwich’in. \textit{Id.}; Letter from Gwich’in Steering Committee to Nicole Hayes, Project Manager, BLM (Mar. 13, 2019).

71. BLM did not analyze either the proposed SAE seismic program or the potentially significant impacts of seismic exploration in general on polar bears, tundra, vegetation, permafrost, and other resources in the draft EIS — issues that Plaintiffs raised in their comments. Letter from Alaska Wilderness League et al. to Nicole Hayes, Project Manager, BLM.

72. Plaintiffs also pointed out that the draft EIS failed to examine impacts to the SBS polar bear population or explain how such impacts could be avoided or mitigated. \textit{Id.} at 273–95.

73. The draft EIS did not adequately consider how current levels of lethal take will adversely affect individual SBS polar bears or the population as a whole, including the cumulative effects to the population when combined with the additional impacts of oil and gas activities on the Coastal Plain. \textit{Id.}

74. BLM did not consider a range of alternatives or enforceable mitigation measures sufficient to offer a meaningful difference in impacts to polar bears and their critical habitat.
75. The draft EIS relied primarily on the use of forward looking infrared (FLIR) camera surveys to detect denning bears in advance of activities as a means to mitigate impacts. Plaintiffs submitted comments, including technical analysis from polar bear expert Dr. Steven Amstrup, explaining why such surveys are not effective given recent research demonstrating their shortcomings. See id.; Letter from Sierra Club to Nicole Hayes, Project Manager, BLM (Mar. 13, 2019) (attaching Letter from Dr. Steven Amstrup to Nicole Hayes, Project Manager, BLM (Mar. 8, 2019)). In fact, research suggests that a 50% detection rate is probably close to the highest that could reasonably be expected from FLIR surveys. Letter from Sierra Club to Nicole Hayes, Project Manager, BLM, (Sept. 18, 2019) (attaching Letter from Dr. Steven Amstrup to Nicole Hayes, Project Manager, BLM (Sept. 17, 2019)); see also Tom Smith et al., Efficacy of aerial forward-looking infrared surveys for detecting polar bear maternal dens, 15 PLOS ONE 2 (2020) (finding FLIR detection success rate of only 45% based on empirical data from a set of industry surveys of northern Alaska). Detection success rates for the Coastal Plain are likely be even lower than the 45% observed in other areas of northern Alaska because of the deeper snow drifts and higher wind speeds prevailing on the Coastal Plain.

76. In September, BLM issued the final EIS and ANILCA Section 810 Final Evaluation for the leasing program, and identified Alternative B as the preferred alternative. EPA, Environmental Impact Statements, Notice of Availability, 84 Fed. Reg. 49,521 (Sept. 20, 2019).
77. In the final EIS, BLM modified the acreage available for lease under Alternative D2 to 800,000 acres. 1 U.S. Dep’t of the Interior, Bureau of Land Mgmt., Coastal Plain Oil and Gas Leasing Program Final Environmental Impact Statement at 2-3 (2019) [hereinafter FEIS]. Otherwise, BLM did not analyze any new alternatives, including the other alternatives proposed by Plaintiffs.

78. BLM did not explain its failure to consider an alternative that would not allow seismic exploration on areas not offered for lease in the final EIS. See 1 id. at 2-44.

79. BLM did not explain its failure to consider a phased-leasing alternative in the final EIS. See id.

80. BLM did not adequately consider the purposes of the Coastal Plain or ensure that the oil and gas program would protect these purposes, and failed to consider the three purposes of the public land order setting the Refuge aside in 1960. Id. at 3-296 to -297; 2 id. at app. D at D-3. BLM stated, summarily, that the action alternatives “account for all purposes of the Arctic Refuge.” 1 id. at 1-2. However, the final EIS does not indicate how the purposes will be met and BLM failed to analyze the impacts to all purposes from the proposed program. Id. at 3-296 to -297.

81. Despite the concerns identified by Plaintiffs and numerous other commenters, BLM’s final EIS still failed to adequately analyze the affected environment, the environmental consequences, or ways to mitigate the impacts to numerous resources, including but not limited to greenhouse gas emissions and climate change, air quality,
water, polar bears, caribou, wilderness and recreation, soils, permafrost, vegetation and wetlands, and subsistence uses and resources.

82. In the final EIS, BLM only considered one mitigation measure to protect the wilderness characteristics of the 8-million acre Mollie Beattie Wilderness: a 3-mile buffer around the area that would prohibit surface occupancy and/or not offer those areas for lease, and would also require aircraft to avoid flights below 2,000 feet within the buffer. This measure, however, only applied to Alternative D. Id. at 2-18. BLM did not propose, analyze, or adopt other mitigation measures to protect wilderness characteristics of the Mollie Beattie Wilderness and the Coastal Plain. BLM otherwise failed to properly evaluate the impacts of an oil and gas program on the wilderness characteristics of the Mollie Beattie Wilderness and the Coastal Plain. Id. at 3-304 to -306.

83. BLM set out its interpretation of the 2,000-acre limit on surface development of production and support facilities. Id. at 1-6 to -7; 2 id. at app. S at S-3 to -9. BLM stated that it cannot authorize anything less than 2,000 acres of development for surface facilities under the terms of the Tax Act. 1 id. at 2-44. This interpretation set out what components of oil and gas activities would be included in the limitation. Id. It also informed BLM’s development scenario and impacts analysis for each alternative. Id. at 1-7, 2 id. at app. S at S-4; id. app. B at B-10, B-22 to -26.

84. Additionally, BLM explained that it would allow acreage to be reclaimed and then new acreage to be developed, potentially in excess of 2,000 acres over time (but
not more than 2,000 acres could be authorized at any given time). Id. at app. S at S-5 to -6. In other words, BLM treated the 2,000-acre limitation as a rolling limitation, not a cumulative cap and applied this interpretation to each action alternative. Id.

85. BLM identified the areas of high, medium, and low hydrocarbon potential, including for each action alternative. 1 id. 3-46 to -47, 2 id. at app. A at Map 3-6, 3-7, 3-8 & 3-9, app. B at B-3 to -5 & Map B-1

86. BLM’s ANILCA Section 810 Final Evaluation relied primarily on the information and analysis in the final EIS. 2 id. at app. E at E-2. In the ANILCA Section 810 Final Evaluation, BLM evaluated the impact of the oil and gas leasing program on only four communities: Kaktovik, Nuiqsut, Arctic Village, and Venetie — and failed to evaluate the impacts of an oil and gas leasing program on other communities, despite recognizing many additional communities have subsistence-use connections to Coastal Plain resources. Id. at E-3 to -4.

87. In evaluating the impacts of each alternative on these four communities, BLM incorrectly determined that the alternatives would not significantly restrict subsistence uses for Arctic Village and Venetie. Id. at E-4 to -20.

88. The subsistence resources that BLM evaluated included only fish, marine mammals, and caribou; BLM failed to consider other important food sources that make up the wild foods consumed by the Gwich’in. Id. at E-3.
89. BLM also failed to incorporate the extensive traditional knowledge shared by the Gwich’in about the impacts of oil and gas on their subsistence uses and traditional practices of Coastal Plain resources in the ANILCA Section 810 Final Evaluation.

90. BLM did not hold a formal ANILCA section 810 hearing or make formal findings under ANILCA section 810(a)(3) for any Gwich’in village.

91. BLM included Lease Notice 2, which provides that BLM will not approve any exploration or development activity with the potential to “take” marine mammals unless the applicant/operator applies for and provides documentation of compliance with relevant take authorization(s) under the MMPA prior to commencement of oil and gas activities. 1 id. at 2-43. Lease Stipulation 5 provides the following requirement/standard: “[c]omply with ESA and [MMPA] requirements.” Id. at 2-11.

92. In the final EIS, BLM repeatedly stated that it lacks authority to preclude activities on leases that are “necessary” for “access” to carry out the oil and gas program. See, e.g., 2 id. at app. S at S-223.

93. FWS released a modeling study in December 2019 that quantitatively evaluated the impacts to denning bears and cubs on the Coastal Plain from an area-wide seismic survey, taking into account the impact of mitigation measures. Ryan Wilson & George Durner, Seismic Survey Design and Effects on Maternal Polar Bear Dens, 84 Jour. Wild. Mgmt. 201 (2019). The study found that extensive timing and geographic
restrictions on seismic activities would be needed to protect denning bears and ensure compliance with the Marine Mammal Protection Act (MMPA).

94. On March 13, 2020, FWS issued the programmatic BiOp for the leasing program analyzing impacts to polar bears and other protected species under FWS’s jurisdiction. FWS, Biological Opinion for Coastal Plain Oil and Gas Leasing Program Arctic National Wildlife Refuge (Mar. 13, 2020) [hereinafter BiOp].

95. The BiOp concluded that BLM’s decision to open the entire Coastal Plain to leasing as described under Alternative B, and subsequent lease sales, will not jeopardize the survival and recovery of polar bears or result in the destruction or adverse modification of the species’ designated critical habitat. Id. at 128.

96. The BiOp acknowledges that there could be harm to polar bears, but did not attempt to quantify those harms or incidental take, stating that the locations of specific exploration and development activities are unknown at the leasing stage and that quantifying take is not be possible at this stage. Id. at 113. The BiOp did not include an incidental take statement.

97. The BiOp did not acknowledge or discuss the recent FWS study quantitatively estimating the extent of take from area-wide seismic surveys, despite assuming such a survey would occur within two years of the first lease sale. Id. at 15.

98. FWS identified four project design criteria (PDC) that it stated would ensure compliance with Section 7(a)(2) of the ESA. Id. at 107–08. Most relevant here are
PDCs 1 and 2. PDC 1 provides that, through a “lease notice,” BLM will require documentation of compliance with the MMPA before BLM will authorize any on-the-ground oil and gas activities. Id at 107. PDC 2 provides that BLM will conduct future “step-down” ESA consultation on a project-by-project basis. Id. at 107.

99. Throughout the BiOp, FWS relies on future MMPA compliance as the primary mechanism to ensure against jeopardy to the polar bear under the ESA. Id. at 114–16. In relying on future mitigation measures put in place via future MMPA authorizations, FWS failed to discuss recent studies finding that traditional den detection methods failed to detect the majority of known polar bear maternal dens. The BiOp also failed to address whether a “lease notice” would provide adequate authority to preclude activities on leases in light of DOI and BLM’s interpretations of the Tax Act, the MMPA, and the legal effect of “lease notices.”

100. Regarding critical habitat, the BiOp does not attempt to quantify the total extent of impacts from the program. The BiOp assumes that MMPA compliance and future ESA consultations will ensure against any destruction or adverse modification. Id. at 123. The BiOp does not explain this assumption in light of the fact that the MMPA does not include an express standard addressing protection or consideration of designated critical habitat; nor does it address FWS’s comments stating that MMPA compliance would not prevent habitat loss due to behavioral avoidance of structures after the construction period. Nor does it address that future consultations will not address the
totality of the program’s impacts. The BiOp also relies on an interpretation of the 2,000-acre limit under the Tax Act that would restrict the total surface footprint of the oil and gas facilities to no more than 2,000 acres at any point in time. *Id.*

101. The BiOp does not consider the impacts of the direct or indirect greenhouse gas emissions from the Coastal Plain oil and gas development or production on exacerbating climate change related impacts on polar bears. It relies on a May 14, 2008 FWS policy memo to say that such analysis of indirect emissions is not required due to the unavailability of scientific information. The BiOp fails to address existing scientific and technical information that has become available in the last decade that demonstrates such an analysis can indeed be conducted for polar bears.

102. On August 17, 2020, Secretary Bernhardt signed the ROD for the leasing program. U.S. Dep’t of the Interior & BLM, Coastal Plain Oil and Gas Leasing Program Record of Decision (2020) [hereinafter ROD].

103. The ROD adopted Alternative B as the Coastal Plain Leasing Program, the most extensive alternative considered in the final EIS, opening “the entire program area” to oil and gas leasing, “and consequently for future potential exploration, development, and transportation.” *Id.* at 2–3.

104. The ROD adopted the lease stipulations and required operating procedures (ROPs) considered in the final EIS under that alternative (with only minor changes to two ROPs and one lease notice). *Id.* at 3, 5; *id.* at app. A.
105. The ROD stated that the leasing program protects the ANILCA purposes of the Coastal Plain, but acknowledged that there will be “some potential impact on the other four purposes.” *Id.* at 7–8. The ROD did not discuss the original purposes of the Arctic National Wildlife Range.

106. The ROD did not adopt the interpretation of the 2,000-acre limitation set forth and applied in the final EIS. *Id.* at 2, 4, 5. The ROD indicated that BLM would not apply the “rolling cap” approach from the final EIS that would have allowed additional infrastructure beyond the initial 2,000 acres once the previously impacted areas had been “reclaimed.” *Id.* at 12–13. However, the ROD also contained a new interpretation of the 2,000-acre limit that identified and defined what facilities could be included within that limitation. *Id.* at 11–13. The ROD explained that many facilities that were assumed to be within the 2,000-acre limitation in the final EIS may not actually be counted toward that limitation, including airstrips, barge landings, roads, and gravel mines. *Id.* at 13. BLM based this new interpretation on its conclusion that the facilities counting toward the 2,000-acre limitation needed to be both “production and support facilities.” *Id.* at 12. The ROD explained that “support” facilities that could be attributed to any other phase of oil and gas activities, such as transportation, exploration, or development, would not be limited by the 2,000-acre cap. In other words, the agency indicated that under this new interpretation that it could authorize far more than 2,000 acres of infrastructure to be present on the Coastal Plain at any given point in time. However, the ROD also stated
that the agency would not make specific determinations about which facilities would count toward the 2,000 acres until later in time. *Id.* at 12–13.

107. BLM stated that making the entire Coastal Plain available for leasing will ensure that it is offering the highest hydrocarbon potential areas for lease, and that the agency cannot know which areas have the highest potential until exploration drilling occurs. *Id.* at 17.

108. BLM stated its position in the ROD that it cannot refuse to issue a right-of-way grant or other authorizations necessary for access and that its discretion is superseded by the Tax Act. *Id.* at 9–10.

109. The ROD summarized the ESA consultation and recommendations from FWS’s BiOp. *Id.* at 23–24.

110. The ROD summarized the ANILCA Section 810 Final Evaluation from the final EIS. *Id.* at 24–27.

V. LEGAL BACKGROUND

111. Because of its abundant wildlife and ecological importance, efforts to protect the Arctic National Wildlife Refuge began in the mid-1950s. The area was first formally set aside and granted federal protections in 1960 when it was designated as the Arctic National Wildlife Range (Range). Public Land Order 2214, Establishing the Arctic National Wildlife Range at 1 (Dec. 6, 1960). The Range was designated “for the purpose of preserving unique wildlife, wilderness and recreational values.” *Id.*
Alaska National Interest Lands Conservation Act

112. Following statehood and various attempts to address Indigenous land claims and federal conservation land designations, the Alaska National Interest Lands Conservation Act (ANILCA) was passed in 1980. 94 Stat. 2371 (Dec. 2, 1980).

113. Congress passed ANILCA “[i]n order to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values.” ANILCA § 101(a), 16 U.S.C. § 3101(a).

114. ANILCA has a broad purpose focused on conservation and subsistence:

It is the intent of Congress in this Act to preserve unrivaled scenic and geological values associated with natural landscapes; to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable values to the citizens of Alaska and the Nation, including those species dependent on vast relatively undeveloped areas; to preserve in their natural state extensive unaltered arctic tundra, boreal forest, and coastal rainforest ecosystems; to protect the resources related to subsistence needs; to protect and preserve historic and archeological sites, rivers, and lands, and to preserve wilderness resource values and related recreational opportunities, including but not limited to hiking, canoeing, fishing, and sport hunting, within large arctic and subarctic wild lands and on free-flowing rivers; and to maintain opportunities for scientific research and undisturbed ecosystems.

ANILCA § 101(b), 16 U.S.C. § 3101(b).
115. Congress also specifically stated that a purpose of ANILCA was to “provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.” ANILCA § 101(c), 16 U.S.C. § 3101(c).

116. In ANILCA, Congress re-designated the Range as the Arctic National Wildlife Refuge. ANILCA § 303(2)(A). Congress added additional acreage to the south and west of the Range to expand the re-designated Arctic Refuge. Id.

117. Congress recognized four specific purposes for the Arctic Refuge, in addition to those recognized in the 1960 Public Land Order and ANILCA more generally. The ANILCA purposes for the Arctic Refuge are:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

Id. § 303(2)(B).

118. ANILCA section 305 also recognized that existing protective mandates not in conflict with ANILCA would remain in place:
[a]ll proclamations, Executive orders, public land orders and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act, and in such case, the provisions of such Acts shall prevail.

119. The original three purposes of the Range and the four additional ANILCA purposes are all statutory purposes that apply to the Coastal Plain. ANILCA § 305; FWS, Arctic Nat’l Wildlife Refuge Revised Comprehensive Conservation Plan and Envtl. Impact Statement at 1-21 (Jan. 2015).

120. ANILCA section 304(c) also withdrew all National Wildlife Refuges “from all forms of appropriation or disposal under the public land laws, including location, entry and patent under the mining laws.”

121. Additionally, Congress designated the majority of the Range (approximately 8 million acres, excluding the Coastal Plain) as Wilderness. ANILCA § 702(3). This Wilderness area was subsequently named the Mollie Beattie Wilderness after the first female director of the U.S. Fish and Wildlife Service.

122. The potential development of the Coastal Plain for oil and gas was also addressed in ANILCA. Other than authorizing a one-time surface exploration program that has now expired, ANILCA § 1002(a)–(h), 16 U.S.C. § 3142(a)–(h), ANILCA section 1003 imposed a prohibition on oil and gas development in the Arctic Refuge, including the Coastal Plain. 16 U.S.C. § 3143. The Coastal Plain was also specifically “withdrawn
from all forms of entry or appropriation under the mining laws, and from operation of the
mineral lease laws, of the United States.” ANILCA § 1002(i), 16 U.S.C. § 3142(i).

123. Title VIII of ANILCA recognizes that subsistence uses are a public interest
and provides a framework to consider and protect subsistence uses in agency decision-
making processes. 16 U.S.C. §§ 3111–3126. In enacting Title VIII, Congress found that
“the continuation of the opportunity for subsistence uses . . . is essential to Native
physical, economic, traditional, and cultural existence.” ANILCA § 810(1), 16 U.S.C
3111(1).

124. ANILCA broadly defines “subsistence use” as “the customary and
traditional uses by rural Alaska residents of wild, renewable resources for direct personal
or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the
making and selling of handicraft articles out of nonedible byproducts of fish and wildlife
resources taken for personal or family consumption; for barter, or sharing for personal or
family consumption; and for customary trade.” ANILCA § 803, 16 U.S.C. § 3113.

125. Under ANILCA section 810, if an agency is going to withdraw, reserve,
lease, or otherwise allow the use, occupancy, or disposition of land, the agency conducts
what is often referred to as a “tier-1 analysis” to determine the proposed action’s impact
on subsistence uses. ANILCA § 810(a), 16 U.S.C. § 3120(a). The agency “shall evaluate
the effect of such use, occupancy, or disposition on subsistence uses and needs, the
availability of other lands for the purposes sought to be achieved, and other alternatives
which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” *Id.* In doing so, the agency must also consider cumulative impacts.

126. If the agency conducts the tier-1 analysis and determines that the activities will not “significantly restrict subsistence uses,” then the agency issues a Finding of No Significant Restriction and section 810’s requirements are met. *Id.*

127. ANILCA also mandates that the agency provide public notice and hold hearings in potentially affected communities if it makes a finding that the action may significantly restrict subsistence uses under section 810. ANILCA § 810(a)(2), 16 U.S.C. § 3120(a)(2).

128. If the agency finds that the proposed action would “significantly restrict subsistence uses,” the agency then conducts a “tier-2” analysis. In that analysis, the agency can only move forward if it finds that the restriction on subsistence is necessary and consistent with sound public land management principals; involves the minimum amount of public lands necessary to accomplish the purpose of the proposed action; and the agency takes reasonable steps to minimize the adverse impacts to subsistence uses and resources. ANILCA § 810(a)(1)–(3), 16 U.S.C. § 3120(a)(1)–(3).

129. When an agency prepares an EIS under NEPA, the ANILCA section 810 evaluation is included as part of that process. ANILCA § 810(b), 16 U.S.C. § 3120(b).
130. To guide administration of refuges in Alaska, ANILCA states that “[e]ach refuge shall be administered by the Secretary . . . in accordance with the laws governing the administration of units of the National Wildlife Refuge System, and this Act.” ANILCA § 304(a).

131. ANILCA also mandates that for Wilderness, “[e]xcept as otherwise expressly provided for in this Act wilderness designated by this Act shall be administered in accordance with applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness.” Id. § 707.

National Wildlife Refuge System Administration Act

132. The National Wildlife Refuge System Administration Act (Refuge Act) governs the administration of the entire National Wildlife Refuge System. 16 U.S.C. § 668dd. It mandates that the Secretary, acting solely through FWS, administer and manage the National Wildlife Refuge System, which includes the Arctic Refuge. Id. § 668dd(a)(1).

133. The mission of the National Wildlife Refuge System “is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” Id. § 668dd(a)(2); see also 50 C.F.R. § 25.11(b).
134. Under the Refuge Act, each refuge “shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established.” 16 U.S.C. § 668dd(a)(3)(A); see also 16 U.S.C. § 668ee(10) (defining “purposes of the refuge” to include those “purposes specified in or derived from the law, . . . [or] public land order . . . establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit”).

135. The Refuge Act also identifies multiple purposes for administration of the National Wildlife Refuge System, including “conservation of fish, wildlife, and plants, and their habitats,” “ensur[ing] that the biological integrity, diversity, and environmental health of the System are maintained,” and “to contribute to the conservation of the ecosystems of the United States.” Id. § 668dd(a)(4)(A–C); see also 50 C.F.R. § 25.11(b).

The Wilderness Act


137. To achieve this goal, it established the National Wilderness Preservation System and mandated that areas designated as Wilderness “be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and
dissemination of information regarding their use and enjoyment as wilderness.” 16


138. Wilderness is defined in relation to what it is not: is it not areas where man and his own works dominate the landscape. Id. § 1131(c). Instead, Wilderness is “an area where the earth and its community of life are untrammled by man, where man himself is a visitor who does not remain.” Id.

139. Wilderness is defined as an undeveloped area protected and managed to preserve it:

An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Id.

140. The Wilderness Act recognizes the following public purposes for Wilderness: “recreational, scenic, scientific, educational, conservation, and historical use.” Id. § 1133(b).

141. The Wilderness Act mandates that “each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of
the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” 16 U.S.C. § 1133(b); see also id. § 1133(a) (noting that the purposes of the Wilderness Act supplement the purposes that national wildlife refuges “are established and administered”).

Tax Cuts and Jobs Act of 2017

142. In late 2017, Congress passed An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. 115-97, H.R. 1, title II (Tax Act), which repealed section 1003 of ANILCA as it applied to the Coastal Plain. Id. § 20001(b)(1).

143. That legislation directs the Secretary to “establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.” Id. § 20001(b)(2)(A).

144. The Tax Act also amended ANILCA section 303(2)(B) (the Arctic Refuge purposes section) to include an additional purpose for the Coastal Plain: “to provide for an oil and gas program on the Coastal Plain.” Id. § 20001(b)(2)(B)(iii). The Tax Act did not otherwise modify the purposes of the Arctic Refuge or waive or alter any other applicable laws.

145. The Tax Act requires the Secretary to hold two lease sales — the first within four years, the second within seven — from the enactment of that legislation. Each
lease sale must offer at least 400,000 acres and include “those areas that have the highest potential for the discovery of hydrocarbons.” Id. § 20001(c).

The Tax Act also limited surface development to a maximum of 2,000 acres for production and support facilities by stating that BLM: “shall authorize up to 2,000 surface acres of Federal land on the Coastal Plain to be covered by production and support facilities (including airstrips and any areas covered by gravel berms or piers for support of pipelines) during the term of the leases under the oil and gas program under this section.” Id. § 20001(c)(3).

National Environmental Policy Act

146. The National Environmental Policy Act (NEPA) is “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a).\(^2\) NEPA’s twin aims are to ensure that federal agencies take a hard look at the environmental impacts of their proposed actions before taking an action and to ensure that agencies provide relevant information to the public so the public can play a role in both the decision-making process and the implementation of the decision. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.1, 1502.16. By focusing the agency’s attention on the environmental consequences

\(^2\) The Council on Environmental Quality (CEQ) recently issued new regulations implementing NEPA, which take effect September 14, 2020. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (“Final Rule”), 85 Fed. Reg. 43,304 (July 16, 2020). CEQ’s prior regulations govern the EIS and ROD and all references are to those prior regulations.
of its proposed action, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after an agency has committed resources. 42 U.S.C. § 4332(2)(C).

147. NEPA requires federal agencies to prepare a detailed environmental impact statement (EIS) for every major federal action that will have a significant impact on the quality of the human environment. 42 U.S.C. § 4332. An EIS is required to “provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

148. An EIS must consider (1) “the environmental impact of the proposed action,” (2) “any adverse environmental impacts that cannot be avoided,” (3) “alternatives to the proposed action,” (4) “the relationship between local short-term uses . . . and the maintenance and enhancement of long-term productivity,” and (5) “any irreversible and irretrievable commitments of resources.” 42 U.S.C. § 4332(2)(C); see also 40 C.F.R. § 1502.16.

149. The alternatives analysis is the heart of a NEPA document, and NEPA’s implementing regulations direct agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a). The alternatives considered should include those “that will avoid or minimize adverse effects of the actions upon the quality of the human environment.” Id. § 1500.2(e).
150. In its alternatives’ analysis, the agency must “present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” Id. § 1502.14; see also id. § 1505.1(e). This requires the agency to “[d]evote substantial treatment to each alternative considered in detail . . . so that reviewers may evaluate their comparative merits.” Id. § 1502.14(b).

151. An EIS must “state how alternatives considered in it and decisions based on it will or will not achieve the requirements of [NEPA] and other environmental laws and policies.” Id. § 1502.2(d). For alternatives that are excluded from agency analysis, the agency must explain that decision. Id.

152. NEPA requires agencies to analyze the direct, indirect, and cumulative environmental effects of the alternatives, including the proposed action, as well as the means to mitigate against those adverse environmental consequences. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.14, 1502.16, 1508.7.

153. An “effect” as used in NEPA and its implementing regulations “includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8(b); see also id. § 1508.14 (defining “[h]uman environment . . . to include the natural and physical environment and the relationship of people with that environment”).
154. Direct effects “are caused by the action and occur at the same time and place.” *Id.* § 1508.8(a).

155. Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b). Indirect effects include “induced changes in the pattern of land use” and “related effects on air and water and other natural systems, including ecosystems.” *Id.*

156. Cumulative impact is defined as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

*Id.* § 1508.7.

157. Mitigation includes consideration of how to avoid impacts completely by not taking a certain action or parts of an action; minimize impacts by limiting the degree or magnitude of the action and its implementation; address the impact by repairing, rehabilitating, or restoring the affected environment; reduce the impact over time through preservation and maintenance; and compensate for the impact. *Id.* § 1508.20.

**Endangered Species Act**

158. Congress enacted the ESA to protect and conserve threatened and endangered species and the ecosystems upon which they depend. 16 U.S.C. § 1531(b), (c)(1).
159. The goal of the ESA is not only to temporarily save endangered and threatened species from extinction, but also to recover these species to the point where they are no longer in danger of extinction, and thus no longer in need of ESA protection. *Id.* §§ 1531(b) (purposes), 1532(3) (definitions).

160. The National Marine Fisheries Service and FWS jointly administer the ESA. As relevant here, FWS has responsibility for administering the ESA and performing consultations for the polar bear. 50 C.F.R. § 402.01(b). The BLM is the action agency for purposes of the Coastal Plain oil and gas leasing program.

161. Section 7(a)(2) of the ESA obligates federal agencies to ensure “that any action authorized, funded or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.” 16 U.S.C. § 1536(a)(2).

162. To fulfill this substantive duty, Section 7(a)(2) imposed procedural obligations on federal agencies to consult with FWS. *Id.*

163. The ESA prescribes a multi-step process to ensure compliance with its substantive provisions by federal agencies. A federal agency proposing to take an action must inquire of the Secretary of Interior whether any threatened or endangered species “may be present” in the area of the proposed action. 16 U.S.C. § 1536(c)(1). If the answer is affirmative, the agency shall conduct a biological assessment to determine whether such species “is likely to be affected” by the action. *Id.*
164. If the action agency determines that the action is “likely to adversely affect” the listed species, formal consultation with the Secretary is required. 50 C.F.R. § 402.14(b); id. at § 402.02, 402.14(a); 16 U.S.C. § 1536(a)(3). Formal consultation concludes with the FWS’s issuance of a biological opinion under Section 7(b)(3) of the ESA. 50 C.F.R. § 402.02. The FWS and the action agency must each utilize the “best scientific and commercial data available” during the consultation process. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d).

165. In a biological opinion, the FWS must determine whether the federal action subject to the consultation is likely to jeopardize the listed species or destroy or adversely modify critical habitat. 16 U.S.C. § 1536(b)(4). The biological opinion must include a summary of the information upon which the opinion is based, an evaluation of the current status of the listed species, the effects of the action, and the cumulative effects. 50 C.F.R. § 402.14(g)(2), (g)(3).

166. The “effects of the action” include “all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action.” 50 C.F.R. § 402.02. Cumulative effects are “effects of future State or private activities . . . that are reasonably certain to occur within the action area of the Federal action[.]” Id.

167. Programmatic consultation is:

a consultation addressing an agency's multiple actions on a program, region, or other basis . . . such as: (1) Multiple similar, frequently
occurring, or routine actions expected to be implemented in particular geographic areas; and (2) A proposed program, plan, policy, or regulation providing a framework for future proposed actions.

50 C.F.R. § 402.02.

168. Where an action is authorized by a statute that allows the agency to take incremental steps toward completing the action, the action agency may only proceed with or authorize the incremental steps if:

(1) [t]he biological opinion does not conclude that the incremental step would violate section 7(a)(2); (2) [t]he Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step; (3) [t]he Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action; (4) [t]he incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and (5) [t]here is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

50 C.F.R. § 402.14(k).

169. A biological opinion cannot limit its review of an agency action in a manner that segments the analysis and thereby allows for a piecemeal approach to the brink of jeopardy or destruction or adverse modification of critical habitat. See Wild Fish Conservancy v. Salazar, 628 F.3d 513, 522–23 (9th Cir. 2010).

170. A biological opinion must analyze the entire action before making a decision that may affect listed species or their habitat, including a programmatic decision. See Conner v. Burford, 848 F.2d 1441, 1454 (9th Cir. 1988).
171. After FWS adds the direct and indirect effects of the action to the environmental baseline and cumulative effects, it must make its determination of “whether the action is likely to jeopardize the continued existence of a listed species.” 16 U.S.C. § 1536(b)(3), (b)(4); 50 C.F.R. § 402.14(h). In evaluating whether an action will jeopardize the continued existence of a listed species, the biological opinion must evaluate whether the action “reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of” the recovery of a listed species in the wild, even if the Service concludes the action would not reduce the likelihood of survival. Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv., 524 F.3d 917, 931–32 (9th Cir. 2008) (interpreting 50 C.F.R § 402.02).

172. Where an agency relies upon mitigation measures to ensure against jeopardy, such mitigation measures must be reasonably certain to occur. Id., 524 F.3d at 936 n.17.

173. If the biological opinion concludes that an action is likely to result in jeopardy to a listed species, the biological opinion must set forth the reasonable and prudent alternatives that would avoid this ESA violation. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. §§ 402.02, 402.14(h)(3).

174. The ESA prohibits any “person” from “taking” individual members of an endangered species, as well as threatened species protected from such take by species-specific regulations or a “special rule.” 16 U.S.C. § 1538(a)(1)(B), (G). For polar bears,
the species-specific “special rule” prohibits incidental take from an activity “within the current range of the polar” bear unless the taking has been authorized or exempted under the Marine Mammal Protection Act. 50 C.F.R. § 17.40(q); see also 16 U.S.C. § 1361 et seq. (regulating killing and disturbance of marine mammals.).

175. Under the ESA, “take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” or any attempt to do the above actions. 16 U.S.C. § 1532(19). “Harm” means an “act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” 50 C.F.R. § 17.3. “Harass” means “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” Id.

176. Incidental take means “takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.” 50 C.F.R. § 402.02.

177. If a biological opinion concludes that the agency action is not likely to jeopardize the continued existence of a listed species, but results in incidental take, the Service provides an Incidental Take Statement (ITS) that must include the amount or extent of anticipated take due to the federal action, reasonable and prudent measures to
minimize the take, and terms and conditions that must be observed when implementing those measures. 16 U.S.C. § 1536(b)(4).

178. Framework programmatic action means a Federal action that approves a framework for the development of future action(s) that are authorized, funded, or carried out at a later time, and any take of a listed species would not occur unless and until those future action(s) are authorized, funded, or carried out and subject to further section 7 consultation. 50 C.F.R. § 402.02. An incidental take statement is not required for framework programmatic actions. Id. § 402.14(i)(6). Mixed programmatic action means a Federal action that approves an action that will not be subject to further section 7 consultation, and also approves a framework for the development of future actions. Id. § 402.02. For a mixed programmatic action, an incidental take statement is required at the programmatic level only for those program actions that are reasonably certain to cause take and are not subject to further section 7 consultation. Id. § 402.14(i)(6).

Administrative Procedure Act


180. Under the APA, Courts “hold unlawful and set aside agency actions, findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in excess of statutory authority, or made “without observance of procedure required by law.” Id. § 706(2)(A)–(D).
CLAIMS FOR RELIEF

COUNT I

(Violation of ANILCA and Refuge Act; Failure to Adopt a Leasing Program Consistent with Purposes of the Coastal Plain)

181. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

182. Public Land Order 2214 established three purposes of the Range:

“preserving unique wildlife, wilderness and recreational values.”

183. ANILCA recognized four additional purposes for the Arctic Refuge:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and quantity within the refuge.

ANILCA § 303(2)(B).

184. The original three purposes of the Range and the four additional ANILCA purposes all apply to the Coastal Plain and must be given effect. ANILCA § 305; 16 U.S.C § 668ee(10).
185. The Tax Act added an additional purpose for the Coastal Plain: “to provide for an oil and gas program on the Coastal Plain.” Pub. L. 115-97, tit. 2, § 20001(b)(2)(B).

186. ANILCA governs the administration of the Arctic Refuge. It mandates that the Arctic Refuge “shall be administered by the Secretary, subject to valid existing rights, in accordance with the laws governing the administration of units of the National Wildlife Refuge system, and this act.” ANILCA § 304(a).

187. The Refuge Act also governs the administration of all refuges and the National Wildlife Refuge System. 16 U.S.C. § 668dd. It mandates that each refuge “shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established.” Id. § 668dd(a)(3)(A).

188. The Secretary failed to adopt an oil and gas program consistent with and protective of the Coastal Plain’s conservation purposes because he: (a) disregarded the original Range purposes; (b) failed to consider and adopt an alternative that was consistent with and protective of the seven conservation purposes, (c) failed to consider and adopt lease stipulations and required operating procedures that were consistent with and protective of the conservation purposes, and (d) failed to accurately or adequately analyze and limit the impacts of an oil and gas leasing program on the conservation purposes, in addition to other reasons.
189. The Secretary also failed to provide an adequate explanation of how the program he adopted complies with and fulfills the seven conservation purposes of the Coastal Plain.

190. The Secretary’s failure to consider and adopt an oil and gas program consistent with and protective of all seven of the conservation purposes of the Coastal Plain of the Arctic Refuge or to adequately explain how the program was consistent with protection of the conservation purposes of the Refuge violates ANILCA and the Refuge Act, and was arbitrary, capricious, and not in accordance with the law and was without observance of the procedure required by ANILCA, the Refuge Act, and the APA. 5 U.S.C. § 706(2).

COUNT II
(Violation of NEPA; Failure to Consider a Reasonable Range of Alternatives)

191. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

192. NEPA requires agencies to consider a reasonable range of alternatives. 43 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500.2, 1502.2, 1502.14, 1505.1. Agencies must, to the fullest extent possible, include “reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” 40 C.F.R. § 1500.2(e). The EIS must also state how the alternatives considered will meet both NEPA and other environmental laws and policies, including
the Refuge Act and ANILCA, and must discuss the reasons for eliminating any alternatives from detailed study. See id. §§ 1502.2(d), 1502.14(a).

193. BLM failed to consider a reasonable range of alternatives in the EIS that would protect the Coastal Plain’s exceptional resources and limit oil and gas development consistent with law.

194. BLM failed to consider a reasonable range of alternatives in the Coastal Plain Leasing Program EIS because BLM failed to consider an alternative or alternatives that had the potential to reduce the adverse effects on the Coastal Plain and better protect the purposes of the Arctic Refuge. Viable, unconsidered alternatives or components of alternatives include, but are not limited to: (a) phased-leasing of only 400,000 acres of the highest hydrocarbon areas; (b) allowing less than 2,000 acres of surface development; (c) prohibiting seismic exploration on areas of the Coastal Plain not offered for lease; and (d) more protective lease stipulations and required operating procedures to protect Coastal Plain resources, uses, and users.

195. Consideration of a more protective alternative or alternative components would be consistent with BLM’s and Department of the Interior’s statutory mandates, the purpose and need of the Coastal Plain leasing program, and the nature and scope of the proposed program.

196. BLM failed to adequately explain its failure to consider viable alternatives that would reduce the impacts to the Coastal Plain and provide more protections for
Coastal Plain resources. To the extent BLM provided any explanation for failing to consider viable alternatives, that explanation was arbitrary and capricious.

197. For each of the above reasons, BLM failed to consider a reasonable range of alternatives, including viable alternatives proposed by the Plaintiffs, rendering the final EIS and ROD arbitrary, capricious, and not in accordance with the law, and its adoption of the final EIS and ROD was done without observance of the procedures required by NEPA, its implementing regulations, and the APA. 5 U.S.C. § 706(2).

COUNT III
(Violation of NEPA; Failure to Assess the Direct, Indirect, and Cumulative Impacts and to Adequately Consider Mitigation Measures)

198. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

199. Pursuant to NEPA, agencies must take a “hard look” at the consequences, environmental impacts, and adverse effects of their proposed actions, consider alternatives to the proposed action, and evaluate mitigation measures. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.1, 1502.14, 1502.16. NEPA requires that an EIS include an assessment of the cumulative impacts of the proposed action together with the impacts of past, present, and reasonably foreseeable activities. Id. § 1508.7.

200. NEPA’s implementing regulations require that an EIS discuss the means to mitigate adverse environmental consequences. Id. §§ 1502.14(f), 1502.16(h). Mitigation
includes, but is not limited to, avoiding, minimizing, rectifying, or compensating for adverse project impacts to the environment. *Id.* § 1508.20.

201. BLM violated NEPA and its implementing regulations in its evaluation and adoption of an oil and gas leasing program because BLM failed to take a hard look at the potential direct, indirect, and cumulative impacts of the Coastal Plain leasing program. These violations include, but are not limited to, BLM’s evaluation of the impacts on greenhouse gas emissions and climate change, air quality, water, polar bears, caribou, wilderness and recreation, soils, permafrost, vegetation and wetlands, and subsistence uses and resources. BLM also failed to adequately analyze the impacts from reasonably foreseeable activities related to the oil and gas program, including but not limited to seismic exploration. BLM also failed to take a hard look at the potential impacts associated with and resulting from a scenario where infrastructure with a footprint exceeding 2,000 acres would be authorized at any given time.

202. The EIS also fails to provide a reasonably thorough discussion of the effectiveness of mitigation measures to reduce direct, indirect, or cumulative effects from the oil and gas program on Coastal Plain resources. These violations include, but are not limited to, BLM’s failure to analyze or prescribe mitigation measures in the form of lease stipulations and/or required operating procedures that will limit the direct, indirect, and cumulative impacts to resources. These resources include, among others: greenhouse gas emissions and climate change, air quality, water, polar bears, caribou, wilderness and
recreation, soils, permafrost, vegetation and wetlands, and subsistence uses and resources.

203. BLM’s cursory analysis of the implementation and anticipated effectiveness of the proposed mitigation measures is insufficient to show that the agency has properly evaluated the environmental consequences of its action or ways to address those consequences.

204. For each of the above reasons, BLM failed to take a hard look at the direct, indirect, and cumulative impacts of the Coastal Plain leasing program, including failing to analyze the effectiveness of the proposed mitigation measures, rendering the final EIS and ROD arbitrary, capricious, and not in accordance with the law and its adoption of the final EIS and ROD was done without observance of the procedure required by NEPA, its implementing regulations, and the APA. 5 U.S.C. § 706(2).

COUNT IV
(Violation of ANILCA; Failure to Comply with Section 810)

205. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1-180.

206. Pursuant to ANILCA section 810, agencies must consider effects and restrictions upon subsistence resources and uses, and actions which would significantly restrict subsistence uses may only be undertaken if BLM finds that such actions are necessary, involve the minimal amount of public lands necessary, and if the adverse effects to subsistence are minimized. 16 U.S.C. § 3120(a).
207. BLM’s ANILCA Section 810 Final Evaluation fails to comply with the law for multiple reasons, including, but not limited to: (a) BLM improperly excluded many Gwich’in communities that use the subsistence resources of the Coastal Plain and that would be affected by the proposed action; (b) BLM failed to consider important subsistence resources that would be affected by its proposed action, including but not limited to migratory waterfowl; (c) BLM failed to consider all subsistence uses that would be affected by its proposed action, including but not limited to traditional sharing and bartering practices; (d) BLM’s finding that there would not be significant restrictions to subsistence uses for Arctic Village and Venetie from its proposed action is based on flawed analysis and findings and fails to consider traditional knowledge; (e) BLM relied on the flawed analysis in the final EIS as the basis for its ANILCA Section 810 Final Evaluation; and (f) BLM did not adequately analyze alternatives in the final EIS that would be more protective of lands and resources that are important for key subsistence resources and uses.

208. For the above reasons, BLM’s ANILCA Section 810 Final Evaluation was arbitrary, capricious, and not in accordance with the law and was without observance of the procedure required by ANILCA and the APA. 5 U.S.C. § 706(2).

COUNT V
(Violation of the Wilderness Act; Failure to Protect Wilderness)

209. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.
210. The Wilderness Act mandates that “each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” 16 U.S.C. § 1133(b).

211. An agency has a duty to preserve Wilderness from activities outside the Wilderness area that degrade the area’s wilderness characteristics. *Id.*

212. In adopting the oil and gas program for the Coastal Plain, the Secretary failed to protect the wilderness character of the Mollie Beattie Wilderness.

213. These violations include, but are not limited to: (a) failing to analyze the impacts of an oil and gas program on the Mollie Beattie Wilderness, including mitigation measures to protect the wilderness characteristics of the area, and (b) adopting an oil and gas program that degrades the wilderness characteristics of the Mollie Beattie Wilderness.

214. The Secretary’s decision to adopt a leasing program that does not evaluate the impacts to and that degrades the wilderness character of the Mollie Beattie Wilderness was arbitrary, capricious, and not in accordance with the law, and was without observance of the procedure required by law, in violation of the Wilderness Act, and the APA. 5 U.S.C. § 706(2).

**COUNT VI**

*(Violation of the Tax Act; Failure to Properly Interpret and Implement the 2,000-Acre Provision)*

COMPL. FOR DECLARATORY AND INJUNCTIVE RELIEF

*Gwich'in Steering Committee v. Bernhardt*, Case No. 3:20-cv-00204-JWS
215. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

216. The Tax Act mandates that the Secretary “shall authorize up to 2,000 surface acres of Federal land on the Coastal Plain to be covered by production and support facilities (including airstrips and any areas covered by gravel berms or piers for support of pipelines) during the term of the leases under the oil and gas program under this section.” Pub. L. 115-97, tit. 2, § 20001(c)(3).

217. The Secretary and BLM interpret the “up to 2,000 surface acres” provision to mean that BLM could not authorize any amount of surface development less than 2,000 acres for purposes of its alternatives analysis.

218. BLM applied this unlawful interpretation to reject proposed alternatives.

219. The Secretary and BLM also interpret the 2,000-acre provision to only apply to facilities that qualify as both “production and support facilities.” Based on this interpretation, the Secretary and BLM indicate they will exclude a range of facilities and infrastructure from the 2,000 acre limit, thereby allowing infrastructure to cover more than 2,000 acres at any given time.

220. The Secretary and BLM also indicated that the right-of-way provision is not subject to the 2,000-acre provision.

221. The Secretary’s and BLM’s adoption of an oil and gas leasing program based on these incorrect interpretations is inconsistent with the Tax Act.
222. For each of the above reasons, the Secretary’s and BLM’s interpretation of the Tax Act’s 2,000-acre provision for the Coastal Plain and adoption of an oil and gas program based on that interpretation was arbitrary, capricious, and not in accordance with the law and in excess of statutory authority, in violation of the Tax Act, and the APA. 5 U.S.C. § 706(2).

**COUNT VII**
*(Violation of ESA Section 7 and the APA)*

223. Plaintiffs re-allege, as if fully set forth here, every allegation contained in paragraphs 1–180.

224. The ESA requires FWS to prepare a BiOp that uses the best scientific and commercial data available to evaluate whether BLM’s leasing program is likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify designated critical habitat. 16 U.S.C. § 1536(a)(2). FWS must draw a rational connection between the facts found and the conclusions it draws.

225. FWS failed to consider relevant and available studies in the BiOP, including, but not limited to, its model for estimating quantitative take of polar bears from seismic activities, and recent science on the limitations of den detection technology (i.e., FLIR).

226. In issuing the BiOp for polar bears, FWS relies on a “lease notice” indicating that BLM will require documentation of compliance with the MMPA prior to authorizing any on-the-ground oil and gas activities, but FWS failed to consider whether
the lease notice would be enforceable in light of BLM’s authority under the Tax Act with regard to “necessary access,” DOI’s interpretation of the MMPA, and DOI and BLM’s interpretation of the legal effect of lease notices. As a result, it is not reasonably certain that BLM could refuse to authorize oil and gas activities that fail to comply with the MMPA.

227. FWS also failed to consider the impact of the whole oil and gas program on critical habitat, including, but not limited to: (1) FWS’s unlawful and unreasonable conclusion that MMPA compliance will prevent loss or degradation of critical habitat; (2) FWS’s unlawful conclusion that “step-down” consultations and consultations on MMPA authorizations will prevent such loss because those consultations will each reflect only a piecemeal analysis; and (3) FWS’s deficient analysis of polar bear critical habitat impacts from the entire program.

228. Finally, FWS failed to address impacts to polar bears as a result of greenhouse gas emissions produced from oil and gas activities on the Coastal Plain and those emissions’ contribution to exacerbating or hastening climate change effects.

229. FWS’s failure to consider the best available science, its reliance on uncertain mitigation measures to avoid jeopardy, and its failure to analyze the impacts of the whole oil and gas program on critical habitat and consider impacts from increased greenhouse gas emissions each render the BiOp arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and without observance of the

**REQUEST FOR RELIEF**

Plaintiffs respectfully request that this Court grant the following relief:

1. Declare that in issuing the final EIS, ROD, and ANILCA Section 810 Final Evaluation, the Secretary, DOI, and BLM violated ANILCA, the Refuge Act, NEPA, the Wilderness Act, the Tax Act, and the APA; declare that in issuing the BiOp the Secretary, DOI, and FWS violated the ESA and the APA; declare that the invalid final EIS, ROD, ANILCA Section 810 Final Evaluation, and BiOp cannot serve as the basis for any future actions, including decisions to conduct a lease sale or issue leases; and declare that the actions as set forth above are arbitrary, capricious, an abuse of discretion or not in accordance with law and without observance of procedure required by law;

2. Vacate and set aside as unlawful any and all agency approvals and underlying analysis documents, including the final EIS, ROD, ANILCA Section 810 Final Evaluation, and BiOp, as well as any decisions and documents based on the unlawful actions, including decisions to lease and leases;

3. Enter appropriate injunctive relief, including prohibiting BLM from authorizing any activities under the Coastal Plain leasing program in reliance on the unlawful final EIS, ROD, ANILCA Section 810 Final Evaluation, or BiOp;

4. Award Plaintiffs all reasonable costs and fees as authorized by law; and
5. Grant such other relief as this Court deems just and proper.

Respectfully submitted this 24th day of August, 2020,

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APPENDIX 5
Update to 13 November 2019 Early Warning and Urgent Action Procedure Request
Submitted by the Gwich’in Steering Committee et al.

Respectfully Submitted to the Committee on the Elimination of Racial Discrimination
on the 4th of September, 2020

I. Background.

On 13 November 2019, the Gwich’in Steering Committee, Land is Life, Cultural Survival, First Peoples Worldwide, and the University of Colorado’s American Indian Law Clinic submitted a request to the Committee on the Elimination of Racial Discrimination ("Committee") under its early warning and urgent action procedures. The submitting organizations commend this Committee for considering the provided information during its 101st session and issuing a letter to the United States requesting that the State party provide information on the status of the proposal and a number of measures related to the situation faced by the Gwich’in. The submitting organizations now write to provide an update on recent actions taken by the United States that have further escalated the urgency and seriousness of the situation and to request additional measures be taken by this Committee under its early warning and urgent action procedures.

II. Recent actions by the United States indicate the lease sale is imminent, escalating the situation and providing evidence of ongoing discrimination against the Gwich’in.

On 17 August 2020, the United States government released the Coastal Plain Oil and Gas Leasing Program Record of Decision ("Record of Decision" or "ROD"). This document, prepared by the United States Bureau of Land Management, is the final administrative step required for the United States to move forward with a lease sale of the Coastal Plain to oil and gas companies. In addition, a letter dated 15 July 2020 from the United States Department of the Interior ("DOI") included the oil and gas development in the Coastal Plain as a project that could be granted a waiver under Executive Order 13927 "On Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other

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If granted a waiver under EO 13927, the lease sale would be further fast tracked and could be announced as soon as today, the 4th of September 2020. Once finalized, the purchaser of a lease is often granted the right to develop the oil and gas in perpetuity. As a result, once the lease sale is initiated, it becomes nearly impossible to cancel the sale and prevent oil and gas development of the area.

The ROD released in August also confirms that the United States is seeking the most expansive drilling option that will have the greatest and most destructive impact on the Coastal Plain, the Herd, and the Gwich’in. The option selected was one of four presented in the Final Environmental Impact Statement, which included a range of possibilities including no development, limited development, and extensive development. Under the selected option, the United States can open the entire 1.56 million acres of the Coastal Plain to oil and gas leasing. Furthermore, the mitigation protocols stipulated by the United States, such as limiting development in certain parts of the Coastal Plain during certain times of the year, do not adequately protect the Coastal Plain or the Herd. The Herd uses the entirety of the Coastal Plain during calving and would be disturbed by construction and extraction activities. It is also well documented that oil and gas development has had negative effects on other caribou herds. Though the United States attempts to downplay the severity and extent of development, it also acknowledges that habitat destruction and the destruction of natural resources is necessary for development to occur. Similar to the Final Environmental Impact Statement, the ROD is an attempt to paper over the potentially disastrous impacts of development in order to speed up sale of the area to oil and gas interests.

In response to the ROD, on 24 August 2020, the Gwich’in Steering Committee and allied partners filed a lawsuit in U.S. federal courts. While the litigation could delay or even temporarily prevent development of the Coastal Plain, the domestic legal framework only allows for relatively narrow procedural and environmental review and does not provide an adequate forum to address the ongoing human rights violations and the racial discrimination that the Gwich’in continue to experience. As stated in the complaint filed with the U.S. courts, “Protecting the Coastal Plain and the Porcupine Caribou Herd is a human rights issue for the Gwich’in People.” Yet, the Gwich’in do not have a clear legal basis to fully assert those rights under the United States legal system. In addition, regardless of the merits of the case, the elongated timeline of litigation relative to the accelerated timeline for development will likely result in the project moving forward, creating irreparable harm.

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7 Id. at 7.
litigation failing to provide an adequate remedy for Indigenous Peoples is exhibited by the events surrounding the Standing Rock Sioux Tribe’s opposition to the Dakota Access Pipeline.

The United States’ recent actions are evidence of a very real and substantial threat of harm to the Gwich’in and align with a pattern of ongoing discrimination against Indigenous Peoples in the context of infrastructure and energy development projects. The submitting organizations continue to emphasize the urgency of this moment, which requires the immediate attention and intervention of this Committee to prevent serious violations of the International Convention on the Elimination of all Racial Discrimination by the United States government.

III. The concerns raised in the 13 November 2019 request remain unaddressed by the Government of the United States.

Over the past ten months, the United States has taken no actions to address the concerns of the Gwich’in and instead, barreled ahead with the lease sale. Since November, the Gwich’in Steering Committee has continued to express their concerns in various forums including at the United Nations and with private entities.


The Gwich’in Steering Committee has also engaged with a number of financial institutions. In light of human rights concerns, twenty-five financial institutions have taken steps to fully or partially exclude financing for oil and gas development in the Arctic, including five major U.S. banks: Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, and Wells Fargo. However, the United States continues to minimize or completely ignore the concerns raised by the Gwich’in.

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The submitting organizations reiterate that the statements in the previous filing to this Committee are accurate and true, and that if the United States is permitted to lease the area for oil and gas development, the Gwich’in will be harmed in the following ways:

- Development of the Coastal Plain harms the Porcupine Caribou Herd, and therefore the Gwich’in. Because the Herd provides the majority of the Gwich’in’s subsistence, the health of the Gwich’in is directly tied to the health of the Herd. Destruction of the caribou population violates the Gwich’in’s right to health under ICERD Article 5(e)(iv). It also limits employment opportunities for the Gwich’in, in violation of ICERD Article 5(e)(i). Furthermore, food scarcity inhibits the ability of children to learn, and the loss of the Herd limits the Gwich’in’s cultural education, in violation of ICERD Articles 5(e)(v) & 7. Finally, the destruction of the Gwich’in subsistence culture is a violation of ICERD Articles 2(2), 5(e)(vi), & 7.

- Development in the Coastal Plain would destroy land sacred to the Gwich’in. The ROD allows the installation of, at minimum, 2,000 acres of drilling pads, hundreds of miles of roads and pipelines, and other support structures. This massive development is offensive to the Gwich’in, who consider the area to be so sacred that they refuse to step foot onto the Coastal Plain, even in times of extreme famine. The development would therefore infringe on the religious freedom rights of the Gwich’in under ICERD Article 5(d)(vii).

- Development will also impact the health of the Gwich’in by exacerbating the rate of climate change and air pollution. Alaska is being affected by climate change at twice the rate of the rest of the United States, causing major changes to the weather patterns and plant and animal life cycles. By worsening the local effects of climate change, development and habitat destruction violates the rights of the Gwich’in by injuring their right to health under ICERD Article 5(e)(iv).

- Development will create security risks for the Gwich’in by increasing the risk of violence against Indigenous women. Sudden influxes of oil and gas workers, who are generally well-paid men from outside the community, typically leads to violence, trafficking, and sexual violence against Indigenous women in the area. The development of the Coastal Plain, and the work camps that will accompany them, therefore violate the Gwich’in’s right to security under ICERD Article 5(b).

- The United States has violated the rights of the Gwich’in by continually failing to consult with the Gwich’in or seek their free, prior and informed consent. Under UNDRIP, nations have the duty to consult with Indigenous Peoples prior to approving projects that may affect their ancestral lands, territories, or resources. To date, the United States has only provided cursory meetings with select members of the Gwich’in, focusing primarily on how best to drill, not whether development should even occur in the first place.

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10 ROD, at 10.
IV. Recent actions of the United States are reflective of the nation’s historic and ongoing discrimination towards Indigenous Peoples.

The pandemic, and the response of the United States, further exposes the entrenched discrimination and structural inequalities that the Gwich’in face. As this Committee has recently noted, the pandemic disproportionately affects already marginalized and vulnerable minority groups. Gwich’in and other Alaskan Natives, particularly those that are far from population centers, are in the midst of a public health crisis. Gwich’in leaders are focused on protecting the health and wellness of their communities and limiting the spread of the disease into their villages, some of which are only accessible by plane, and even then, only under favorable weather conditions. Under these circumstances, the leaders are understandably limited in their ability to comment and participate in any leasing or development process. However, rather than address the effects of the pandemic on these marginalized communities, the United States government issued EO 13927 and is using this moment to remove existing regulations and forge ahead with development of the Coastal Plain and other energy projects that directly and disproportionately impact Indigenous Peoples. The decision to move ahead with this controversial and nonessential project during a global health crisis illustrates the disregard that the United States has for Indigenous Peoples and their way of life.

V. Updated Conclusion & Renewed Request for Early Warning Measures and Urgent Action Procedures.

In light of the ongoing discrimination against the Gwich’in and the threat of imminent and irreversible destruction of the Coastal Plain, the submitting organizations humbly request that this Committee again consider the situation in Alaska under its early warning and urgent action procedures in order to avoid additional violations of the Convention. In particular, the submitting groups urge this Committee to adopt a decision:

1. Urging the Government of the United States of America to fully respect its international obligations, in particular those arising from the International Convention on the Elimination of All Forms of Racial Discrimination to which it is a party;
2. Stating concern regarding the discriminatory treatment of the Gwich’in and again requesting that the United States submit information to the Committee under the early warning and urgent action procedures related to the situation in Izhik Gwats’an Gwandaii Goodlit (The Sacred Place Where Life Begins) and that they do so prior to holding a lease sale.

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3. Recommending that the United States, consistent with the commitments that it has made under ICERD and UNDRIP, recognize the denial of rights to the Gwich’in as a human rights issue and begin to take action to rectify the human rights violations.

4. Recommending the United States revoke the ROD and not proceed with the lease sale.

5. Recommending the United States halt any future activities that infringe on the rights of the Gwich’in as Indigenous Peoples through:
   a. Adopting Option A in the Final Environmental Impact Statement, so that no part of the Coastal Plain will be offered for future oil and gas lease sales;
   b. Passing legislation to provide permanent protection for the Coastal Plain;
   c. Adopting a plan that permanently protects the wildlife in the Coastal Plain including the polar bears and the Porcupine Caribou Herd;
   d. Honoring its commitments under the Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd;\(^{13}\)
   e. Honoring the government’s trust responsibility to Indigenous Peoples within the United States; and
   f. Engaging in meaningful consultation and obtaining the free, prior and informed consent of the Gwich’in under the principles enshrined in UNDRIP and related international norms before commencing any projects on or near the sacred lands of the Gwich’in.

4. Requesting that other States and international entities, including financial institutions, withdraw their support for development of the Coastal Plain, and informing all Member States that the support of oil and gas development is a violation of ICERD and the United Nations Guiding Principles on Business and Human Rights.

5. Recommending that a Committee member seek permission from the United States to visit Alaska and create a report on the situation based on their findings.

6. Recommending the United States reaffirm its commitment to incorporating UNDRIP into domestic law.

7. Recommending the United States, in the face of COVID-19 and the global health crisis, aid Indigenous Peoples through:
   a. Ensuring equal access to healthcare services for all people;
   b. Seeking ways to meaningfully partner and assist Indigenous Peoples in fighting COVID-19;
   c. Avoiding unnecessary development projects that tax the physical and emotional resources of Indigenous Peoples during the health crisis;
   d. Ensuring isolated Indigenous communities are protected from the effects of COVID-19; and

e. Partnering with Indigenous Peoples to create individualized approaches to COVID-19 economic recovery.

8. Stating that the Committee will continue to monitor this issue and will address these alleged violations at the next CERD meeting session.
PROTECT THE
Arctic National Wildlife Refuge
INTRODUCTION

The Arctic National Wildlife Refuge is one of America’s last wild places, and the coastal plain is its biological heart. The coastal plain is home to more than 200 wildlife species, including the Porcupine caribou herd that gathers here in one of the world’s most spectacular wildlife migrations. The coastal plain has also sustained Indigenous peoples for millennia. To this day, the survival of the Gwich’in Nation is inextricably linked to the caribou of the Arctic Refuge. Although there has been a long-term political effort to open the coastal plain for oil and gas drilling, a majority of Americans oppose drilling in the Arctic Refuge.

However, after 50 years of protection, the 1.6 million acre coastal plain was opened to oil and gas leasing, exploration, development, and production by an unrelated provision tacked onto the Tax Reform and Jobs Act of 2017. This rider passed without a single hearing on the actual legislation. Lease sales could occur as soon as winter of 2020-2021, with large-scale industrialization of the coastal plain following soon after.

In an Arctic that is already warming twice as fast as the rest of the country, and in a world in which truly wild and intact places are increasingly rare, we must defend the coastal plain of the Arctic National Wildlife Refuge from this reckless harm.
INDIGENOUS RIGHTS
The Gwich’in people have thrived in villages along the migration path of the Porcupine Caribou Herd since time immemorial, and consider the coastal plain where calves are born sacred. In fact, the Gwich’in call the coastal plain “lizhak Gwats’an Gwandaii Goodlit,” meaning “the Sacred Place Where Life Begins.” The protection of the coastal plain is a matter of survival and food security for the Gwich’in people. The Gwich’in depend on the caribou for subsistence, and their way of life is tied inextricably to the health of the caribou. The few western foods that are shipped into the villages are prohibitively expensive and cannot be substituted for the abundance of caribou, which is the source of 80% of the Gwich’in diet.

ECOLOGICAL VALUES OF THE ARCTIC REFUGE
The Arctic Refuge contains the greatest diversity of animal life of any conservation area in the circumpolar region. Here the Brooks Range swings close to the Arctic Ocean creating a compressed diversity of habitats unique on Alaska’s North Slope. The coastal plain wedged between mountains and sea—the very area where oil and gas drilling and 3-D seismic exploration is proposed—supports the largest concentrations of wildlife. Over 200 species of fish and wildlife have been found on the coastal plain and 250 across the Refuge.

The community of life in the Arctic Refuge spans boreal forests in the Yukon River watershed to the arch of the Continental Divide at the highest peaks and glaciers of the Brooks Range, thence braided rivers flow north through rolling foothills and tundra to deltas, bays and spits, and a chain of barrier islands and lagoon along Beaufort Sea shores. This is the only conservation area in North America that protects a complete spectrum of arctic and sub-arctic landscapes and ecosystems.

Along with adjacent Ivavik and Vuntut National Parks in the Yukon Territory of Canada, this constitutes one of the largest transboundary wildlife and intact wilderness areas in North America which continues to provide culturally significant lands for the sustenance of Gwich’in, Inupiat, and Inuvialuit peoples. The coastal plain bursts with life in the summer as migratory wildlife converges on this biological heart of the refuge—the Porcupine caribou herd along with golden eagles, wolves, and brown bears.

Each year the Porcupine (River) caribou herd, North America’s largest international herd, migrates from winter ranges about 400 miles across Alaska and Canada to the Arctic Refuge coastal plain. In late May, the herd arrives on the coastal plain where the pregnant cows typically give birth to 40–50,000 calves within two to three weeks. All of the calving and post-calving habitat of the coastal plain is essential to the Porcupine herd to provide long-term resiliency. If oil and gas exploration or development in the Refuge proceeds, there is no alternative habitat for this herd to move to from the coastal plain in the face of direct habitat loss, fragmentation by roads or pipelines, or noisy aircraft or vehicle activity.

Some caribou from the Central Arctic as well as Porcupine herds may be found here in winter. Among year-round residents are the Ice Age muskox as well as wolves, wolverines, and weasel and other small mammals from Arctic ground squirrels to voles and shrews. All three species of North American bears are found in the Refuge, and a total of 36 terrestrial mammals and 8 marine mammal species including bowhead whales.

Millions of migratory birds representing more than 200 species from six continents and all 50 states nest, feed, molt, or stage in the Refuge; 70 species nest in the coastal plain, which is an important bird nursery. In fall, more than 300,000 snow geese fly from Canadian nesting grounds to stage on the coastal plain.

Anadromous fish in the Arctic have lived over 200,000 years since Pleistocene glaciation to adapt to the extreme winter environment in the Arctic. Dolly Varden (formerly known as Arctic char) have strong ties to overwintering and spawning areas streams and river channels—primarily where springs flow year round such as the entire Canning, Hulahula and others—then migrate in summer to feed in rich nearshore coastal waters. Arctic Grayling uses many of the rivers for overwintering and migrating to tundra streams where they spawn. Arctic cisco have a transboundary migration in the nearshore waters, wintering in Canada and travelling past the Arctic Refuge coastline. These could be affected by construction of docks, ports, or solid-fill causeways.
In late fall, pregnant polar bears move onshore from the icepack to dig maternity dens in drifted snow along river banks and the coast. The mothers give birth to one or two cubs in December or January and raise them in the den until emerging in April. The Arctic Refuge coastal plain has the highest density of land-denning polar bears in the U.S. and this area is increasing in importance as arctic sea ice vanishes.

**THE IMPACTS OF OIL AND GAS DEVELOPMENT IN PRUDHOE BAY AND THE NORTH SLOPE**

The stark reality of oil and gas operations and infrastructure across the North Slope portends that drilling the Arctic Refuge would forever change its incredible landscape, wildlife, and people.

Over the last 50 years, the Prudhoe Bay oil fields on Alaska’s North Slope have expanded from the 1968 discovery well into an industrial zone which can be seen from space. From the start, multinational corporations—BP, Exxon, and ConocoPhillips—have downplayed the environmental damage and claim a commitment to environmental regulation, touting “new technology” like directional drilling, ice roads, 3-D seismic, and a “small footprint” will make future development environmentally benign. Cumulative impacts to land, air, water, and wildlife keep adding up as the industrial complex continues to sprawl across Arctic tundra, rivers, and coasts.

In 2017, the Tax Act included a provision on surface development, “the Secretary shall authorize up to 2,000 surface acres of Federal land on the coastal plain to be covered by production and support facilities (including airstrips and any area covered by gravel berms or piers for support of pipelines)....” Yet the law also required at least 400,000 acres be offered in at least two lease sales, and a previously proposed 3-D seismic program would cover the entire 1.6 million-acre coastal plain with operations expected to result in permanent damage to tundra vegetation and permafrost thaw.

Far from constituting a “small footprint,” the Prudhoe Bay oil field complex spreads across tundra wetlands, rivers, and coasts. Infrastructure sprawls out over a vast area and has a direct impact of 18,357 acres, but indirect impacts affect a far greater area. The 40 producing oil fields require over 1,600 miles of pipelines and 700
miles of roads linking 170 gravel pads for processing and operations such as 25 oil production plants, gas processing turbines, water treatment plants, power generators, refineries; 13 airports; and 38 gravel mines excavated from rivers and tundra. Over 7,000 wells have been drilled at over 250 permanent gravel drill sites. Each year, 400 spills of crude oil and other toxics occur on average; from 1996 to 2016, a total of 8700 spills spilled 3.1 million gallons of more than 50 toxic substances, according to Alaska Department of Environmental Conservation. In 2007, EPA fined BP $20 million for violations of the Clean Water Act for the largest crude oil spill at Prudhoe Bay caused by corrosion and negligence; BP was under probation for this case for three years.

Prudhoe Bay air pollution has been detected over 200 miles away at Barrow. In 2003, the National Research Council reported that, “in addition to stress contributing to adverse health effects, oil development has increased the smog and haze near some villages, which residents believe in causing an increased in asthma.”

Environmental impacts take place at every stage of oil and gas development. Construction of gravel roads, airstrips, drilling or production pads, and digging of gravel mines or construction of water reservoirs cause direct loss of habitats. Indirect effects far exceed the direct impacts. These include road dust and road side flooding which has resulted in more extensive thermokarsting (melting and slumping of ice rich soil) next to roads and gravel pads, along with thawing of permafrost and erosion. Noisy vehicles and aircraft disturb wildlife, and wildlife habitats are fragmented by roads, pipelines, buildings, powerlines, and other structures disturbing to wildlife that may alter migratory movements.

Caribou at calving time are sensitive and easily displaced from preferred areas by development activity and facilities. Extensive research by Alaska Department of Fish & Game and others show negative impacts from the Trans-Alaska Pipeline and North Slope oil fields and that the extent of caribou avoidance and reduction in feeding habitats greatly exceeds the physical “footprint” of the oil field complex. At the Prudhoe Bay oil fields, concentrated caribou calving areas have shifted completely away from oil developments to areas with lower forage value. Oil development activities and facilities have altered the caribou distribution and interfered with movements between inland feeding areas and coastal insect-relief areas. Disruption of caribou use of critical habitats by oil development has reduced calf births and summer weight gain of adults leading to population decline during years of adverse weather.

The severity of oil impacts on the Porcupine Caribou Herd are very likely to be much greater that seen with the Central Arctic herd due to the high density of caribou and the narrow, constricted coastal plain in the Arctic Refuge. Oil development in the Arctic Refuge will likely displace calving Porcupine Caribou to areas of low in forage and high in predators, resulting in reduced calf survival. The National Research Council concluded there have been major cumulative impacts to caribou, and that even with new technology harm to caribou is expected to increase.

LONG-LASTING IMPACTS OF SEISMIC EXPLORATION IN THE ARCTIC REFUGE COASTAL PLAIN

At the same time the Interior Department’s rushed oil and gas leasing program moves forward, the agency zoomed ahead of that process to consider a green light to convoys of industrial vehicles for executing the first ever 3-D seismic exploration in the Arctic Refuge. In June 2018, the Washington Post revealed that the Trump administration had received an application from SAExploration, Inc. to conduct dangerous 3-D seismic exploration across the entire million-acre coastal plain.

Seismic exploration would rely on a fleet of more than 150 tracked vehicles for seismic surveys carried out by two 150- to 160-person crews along with mobile support camps and other equipment, such as tractors, fuel haulers and incinerators. Convoys of tractors and D-7 bulldozers would drive across the tundra dragging a total of 100 trailers on heavy sleds to 40-50 different campsites, building temporary airstrips, running diesel generators 24/7, and creating extensive noise, vibration, and disturbance.

The proposal asserted its operations would have “reduced vehicle size” and “reduce the number of equipment on the tundra, through new technology, thereby has reduced the total environmental impact of the crew.” Yet the 3-D seismic application listed double the number of vehicles
numbers, crew and mobile camp numbers, and intensity of seismic lines compared to the 1985–85 2-D seismic program in the coastal plain.

Major impacts would result from the planned 3-D surveys due to more closely spaced trails for the survey grid, the larger camps, and many more vehicles. The increased numbers of vehicles, camp sizes, and intensity of trails risks greater impacts from surface disturbance to vegetation, permafrost, and hydrology. It would also result in more conflicts with denning polar bears as well as other wildlife such as muskox, some caribou present during winter and overwintering fish habitats.

The prior 2-D seismic surveys in the Arctic Refuge resulted in long-term changes to natural habitat diversity, including changes in plant species composition and permafrost stability. Previous studies predicted short-term and mostly aesthetic impacts, but the scars of the one-time 2-D seismic testing completed on the coastal plain in 1984 and 1985 are still visible 30 years later, and long-term research documented severe impacts to tundra vegetation persisting for decades. Those trails are unlikely to recover to pre-disturbance conditions.

Polar bear expert Dr. Steven C. Amstrup of Polar Bears International analyzed the proposed 3-D seismic plan and concluded that this proposed oil exploration plan would put the Southern Beaufort Sea polar bear population at unacceptable risk.

Dr. Amstrup notes, “43% of Alaska’s land denning bears were on or immediately adjacent to the Arctic Refuge coastal plain.” He calculated the 3-D seismic program would have “>31,000 miles of transect line over the top of and adjacent to polar bear denning habitat.” The 3-D program across the entire coastal plain “could disturb over 96 percent of denning habitat on the coastal plain. In addition, there is a 25 percent probability that heavy vehicles could drive right over one or more dens – with fatal consequences for mother polar bears and cubs. Even if a mother bear escaped before being crushed, young cubs are unlikely to do so.”

Even oil's earliest stages such as 3-D seismic exploration in the biological heart of the Arctic Refuge are profoundly incompatible with its purposes to conserve the natural diversity of fish and wildlife populations and their habitats. Furthermore, seismic surveys will be done repeatedly and overlap with all stages exploratory drilling, development of permanent facilities for processing and transportation of oil to distant markets proceed for decades contributing to cumulative impacts.

**CLIMATE IMPACTS IN THE ARCTIC REFUGE**

The Arctic Refuge's wildlife, wilderness, and diverse ecosystems are vulnerable to accelerating climate change with changes already evident from coastal erosion, drying lakes and ponds, increased insect outbreaks and wildfire, altered plant distributions, and cumulative effects on Alaska Native communities and the ecosystems they depend upon for hunting, fishing, and cultural ways of life. Permanently protecting the coastal plain instead of pursuing oil and gas exploration and development in this remarkable place would provide resiliency for wildlife and intact habitats already extremely vulnerable from climate change.

The Arctic is warming faster than any place on earth, and Alaska has warmed twice as quickly as the rest of the U.S. in the past 60 years, with average annual air temperatures rising by 3°F and in winter by 6°F. In the Arctic Refuge, climate models predict average annual increases reaching 6°F warmer than historical by 2040, and to 10°F warmer by 2080.

Permafrost temperatures warmed 3° to 5°F warmer in the Arctic Refuge coastal plain in 2004 compared with 1985. At this rate permafrost could even disappear in some places in the next century. Permafrost melt affects wildlife habitats and releases heat-trapping gases that increase climate warming. Arctic summer sea ice is declining faster than forecasted and is expected to virtually disappear before 2050; record summer minimum sea ice occurred in 2012. Studies show that the decline in Arctic sea ice is largely due to rising amounts of manmade greenhouse gases in the atmosphere.

All glaciers in the Arctic Refuge are shrinking. In the next 50 years, most of its 400 glaciers will likely vanish. McCall Glacier, the longest studied of U.S. Arctic glaciers, has retreated 2,600ft up the flanks of the Brooks Range in the last century. Glacial loss will affect river flows, estuaries, birds and fish.

Animals in the Arctic Refuge—from the planet’s largest carnivore to the continent’s smallest mammal—are already experiencing the impacts from climate change. According to Arctic Refuge scientists, “we can expect climate change to cause profound habitat changes in Arctic Refuge, which will result in species shifting their distributions northward and to higher elevations.

As the Arctic Ocean pack ice shrinks, polar bears are denning on land more often, especially in the Arctic Refuge where snow drifts along rivers, shores, and barrier islands of the coastal plain provide the most important land denning habitat for bears in the U.S. Bears are smaller
due to more difficult hunting for seals, which are also ice-dependent and projected to decline with less ice and snow cover. The southern Beaufort Sea polar bear population is declining due to nutritional stress, poorer condition, and lower survival rates especially of young bears. It declined 40% from 2001 to 2010 (NOAA 2014).

The Porcupine caribou herd is highly vulnerable from climate change. Deep snow in the boreal forest or winter rain storms icing over tundra vegetation impact grazing and spring migratory movements. Warmer, longer summers may also increase numbers of parasites and biting insects that attack caribou.

What happens in the Arctic affects the rest of the world. Rapid Arctic warming linked to loss of sea ice is changing atmospheric circulation such as the jet stream and polar vortex, ocean currents, and patterns of precipitation in the Arctic and across the U.S.

The oil and gas industry is the largest source of greenhouse gas emissions in Alaska and produces 22 million metric tons of CO2 equivalents (MMT CO2e) which is more than half (54%) % of all anthropogenic GHG emissions statewide. Fugitive methane contributed 19% of the oil and gas sector emissions. BP contributed more than half the emissions from stationary sources statewide. This does not account for emissions during shipping oil to markets on the West coast of the US or exported to Asia, nor from being burned in cars, trucks, and industry.

The oil industry’s claim to a “small footprint” is at odds with reality on the ground in the Arctic and because GHG pollution from the world’s largest fossil fuel corporations are changing the earth’s climate that sustains us. We are all connected to the Arctic. We can’t afford to burn new oil from the Arctic National Wildlife Refuge.

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