

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### OFFICE OF THE COMMISSIONER

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January 6, 2012

### **Decision of No Substantial New Information 2012 Cook Inlet and Alaska Peninsula Areawide Lease Sales**

Under 38.05.035(e), a written finding that the interests of the state will be best served is required before the director of the Alaska Department of Natural Resources (ADNR), Division of Oil and Gas (DO&G) may hold an oil and gas lease sale. The final finding for the 2009-2018 Cook Inlet Areawide oil and gas lease sales (Cook Inlet Final Finding) was issued on January 20, 2009. The final finding for the 2005-2015 Alaska Peninsula areawide oil and gas lease sales (Alaska Peninsula Final Finding) was issued on July 25, 2005.

Cook Inlet Areawide and Alaska Peninsula Areawide oil and gas lease sales have been annually held under those final findings since 2009 and 2005, respectively. Under AS 38.05.035(e)(6)(F), a written finding is not required for an oil and gas lease sale of acreage subject to a best interest finding issued within the previous 10 years unless the commissioner determines that substantial new information has become available that justifies a supplement to the most recent best interest finding. Calls for new information have been issued each year since the best interest finding was issued. Supplements to the Cook Inlet Final Finding were issued on February 4, 2010, and February 8, 2011. Supplements to the Alaska Peninsula Final Finding were issued on November 21, 2007, February 4, 2010, and February 8, 2011.

On October 12, 2011, DO&G issued a Call for New Information regarding its proposal to offer all available state acreage in the 2012 Cook Inlet and Alaska Peninsula Areawide oil and gas lease sales. The call provided an opportunity for interested parties to submit to DO&G any substantial new information that had become available since issuance of the most recent best interest findings for the area. The public comment period ended on November 14, 2011.

In response to the Call for New Information for the Cook Inlet Areawide lease sale, DO&G received documents from Bruce Webb, Vice President, Escopeta Oil Company, LLC. In response to the Call for New Information for the Alaska Peninsula Areawide lease sale, DO&G received comments from Becky Savo, Naknek, AK, and the Chignik Lagoon Village Council. The comments are summarized below, along with the commissioner's response to each comment.

### **Decision**

Based on information received in response to the Call for New Information, the Commissioner of ADNR finds that there is no substantial new information that justifies a supplement to the most recent final findings of the director for the Cook Inlet (2009) or Alaska Peninsula (2005) areawide lease sales.

## Public Comments Received (Cook Inlet Final Finding)

### 1. Escopeta Oil Company, LLC

*Information Provided:* Escopeta Oil Company, LLC provided the following documents:

- Cook Inlet Beluga Whale Biological Evaluation, Kitchen Lights Unit (Jacobs Engineering, August 2011)
- Acoustic Monitoring of Drill Rig Operations in Cook Inlet, AK (Marine Acoustics, Inc., February 17, 2011)
- Letter from James Balsiger, Ph.D., NOAA, NMFS to Col. Koenig, US Corps of Engineers, August 12, 2011, re: potential effects of drilling on beluga whales or its critical habitat
- Environmental Sampling Effort, Kitchen Lights Unit (Jacobs Engineering, September 2011)
- Escopeta Oil Company, LLC Monthly Beluga Spotting Report (August 2011)
- Draft abstract with edits by Bruce Webb, Vice President, Escopeta Oil Company, LLC, document not dated

*Commissioner's Response:* The commissioner considered each document as follows:

- Cook Inlet Beluga Whale Biological Evaluation, Kitchen Lights Unit (Jacobs Engineering, August 2011)

Escopeta Oil Company, LLC contracted with Jacobs Engineering to perform an environmental evaluation of its proposed offshore exploratory drilling efforts. The evaluation addresses the drilling's potential effects on species protected under the Endangered Species Act. It states that Type 2 critical habitat for the Cook Inlet beluga whale coincides with Escopeta's Kitchen Lights Unit. The evaluation states that Type 2 critical habitat does not include calving, molting, primary feeding, or critical protection areas associated with Type 1 habitat. It considers effects such as harassment, noise, spills, physical habitat alteration, increased pollution and discharge, emissions, and indirect and cumulative effects. The evaluation concludes that proposed drilling activity may affect, but is not likely to adversely affect, the Cook Inlet beluga population or its habitat. This conclusion reflects the finding in the Cook Inlet Final Finding and therefore it does not constitute substantial new information that justifies a supplement to the most recent best interest finding.

- Acoustic Monitoring of Drill Rig Operations in Cook Inlet, AK (Marine Acoustics, Inc., February 17, 2011)

Marine Acoustics provided a white paper for Escopeta Oil Company, LLC outlining a two-phase approach to developing acoustic monitoring and mitigation procedures to decrease the potential for impacts on beluga whales in the drilling area. The paper states that completion of phase one will produce a report providing the ambient, background, and drill rig activity noise measurement results. It notes that phase two will recommend monitoring and mitigation methodology based on the results from phase one. It outlines how acoustic monitoring may aid in developing mitigation measures for federal incidental take authorization.

The DO&G mitigation measures protect beluga whales and marine mammals. In Chapter 9 of the Cook Inlet final finding (2009), examples of the current mitigation measures include:

Mitigation Measure A.2.p). No permanent or temporary oil and gas exploration or development may occur within High Value/High Sensitivity (Type 1) beluga whale habitat areas, unless it occurs on upland areas (above Mean Higher Water datum). Type 1 habitat areas include the following tracts: 320-334, 391-409, 410, 462, 464-475, 476-481, 483, 484, 485, 486, 493, 494, 497, 498, 522, 524-537, 538, 539, 540, 541, 542, 543, 544, 547-552, 559, 575-577, 579, 581, 582, 585, 586, 590, 593, 594, 598, 616-618, 620-623, 627, 655-658, and 662.

Mitigation Measure A.2.q). The director will assess oil and gas-related activities within all High Value (Type 2) beluga whale habitat areas on a case-by-case basis. No permanent surface entry or structures are allowed, and temporary activities and structures, for example exploration drilling, will only be allowed between November 1 and April 1 of each year, unless it occurs on upland areas, within the following tracts: 021, 022, 126, 127, 129-132, 161, 162, 175, 177, 211, 218, 257, 301, 302, 373, 376, 377, and 384.

Mitigation Measure A.2.r). The director will assess oil and gas-related activities within the remaining tracts (Type 3 habitat areas) on a case-by-case basis.

In addition, beluga whales and marine mammals are protected under federal statutes and regulations, i.e. the Endangered Species Act, and the Marine Mammal Protection Act.

Therefore, the referenced paper does not contain new information that justifies a supplement to the most recent best interest finding.

- Letter from James Balsiger, Ph.D., NOAA, NMFS to Col. Koenig, US Corps of Engineers, August 12, 2011, re: potential effects of drilling on beluga whales or its critical habitat

The letter states that the Corps of Engineers determined that drilling four exploratory oil/natural gas wells within the Kitchen Lights Unit lease tracts is not likely to affect Cook Inlet beluga whales, nor their critical habitat. The National Marine Fisheries Service concurs with the Corps' findings and conclusions. The Cook Inlet Final Finding reports that belugas appear to have become habituated to offshore oil and gas activities in central Cook Inlet, and that they return to estuary areas even after a disturbance (Cook Inlet Final Finding, p. 8-9). Since the information provided corroborates current knowledge, it does not constitute substantial new information that justifies a supplement to the most recent best interest finding.

- Environmental Sampling Effort, Kitchen Lights Unit (Jacobs Engineering, September 2011)

Escopeta Oil Company, LLC hired Jacobs Engineering to collect sediment samples and water column quality readings before, during, and after Escopeta drilled its exploratory well at the Kitchen Lights Unit #1 location. After collecting and analyzing samples, Jacobs Engineering prepared a report that determines it is unlikely that sediment, effluent, or potential discharge from Escopeta's exploration rig will settle in this location. The report notes that water measurements for conductivity, salinity, temperature, and turbidity appear

within the range of results previously recorded. The Cook Inlet Final Finding reports concentrations of metals and organics in sediments have not increased since oil and gas development began in Cook Inlet (Cook Inlet Final Finding, p. 8-11). Since the information provided corroborates current knowledge, it does not constitute substantial new information that justifies a supplement to the most recent best interest finding.

- Escopeta Oil Company, LLC Informal Monthly Beluga Spotting Report (August 2011)

This informal report describes how many whales were spotted on August 15, 2011, south of the Port of Anchorage. Because it is not a formal report or a data series, it does not rise to the level of substantial new information that justifies a supplement to the most recent best interest finding.

- Draft abstract regarding noise measurements in Cook Inlet with edits by Bruce Webb, Escopeta Oil Company, LLC (not dated)

Mr. Webb provided edits to Marine Acoustics, Inc.'s abstract submission to the 2011 SUBSEA Survey Conference. Because it is not a formal report or a data series, it does not rise to the level of substantial new information that justifies a supplement to the most recent best interest finding.

Although the new information provided by Escopeta Oil Company, LLC does not rise to the level of substantial new information that justifies a supplement to the best interest finding, it will be reviewed and considered again during the process of developing the next new 10-year re-write of the written final finding of the director for the Cook Inlet areawide lease sale.

## **Public Comments Received (Alaska Peninsula Final Finding)**

### **1. Becky Savo, Naknek, AK**

**Comment Summary:** Ms. Savo states that there is new information gathered from the Deep Water Horizon off shore oil well accident that proved that the oil company was ill equipped to stop the leaking oil well and to prevent damage to fish and wildlife. She states that commercial and subsistence uses of fish and wildlife in Louisiana are damaged for the long term.

Ms. Savo states that since the Deep Water Horizon Well blow out could not be quickly stopped in the Gulf waters, considerably calmer than the Bering Sea, Bristol Bay and the Arctic Ocean, it will be difficult to contain such a spill in our region. She states that the infrastructure is not in place in this remote part of the state to prevent environmental damage, or to respond in a timely manner to any emergency situation.

Ms. Savo states that onshore oil and gas development has much less opposition from the local population.

**Commissioner's Response:** Chapter Seven of the Alaska Peninsula Final Finding contains a full description of mitigation measures and lessee advisories. The beginning of the chapter states that, "Lessees must comply with all applicable local, state and federal codes, statutes and regulations, as amended, as well as all current or future ADNIR area plans and recreation rivers plans; and ADF&G game refuge plans, critical habitat area plans, and sanctuary area plans within which a lease area is located." The mitigation measures are intended to protect the marine and freshwater habitats and

their uses in the region, and require offshore tracts will only be accessed onshore through directional drilling. Examples of relevant mitigation measures include:

*Mitigation Measure 3: The siting of facilities, other than docks, roads, utility or pipeline corridors, or terminal facilities will be prohibited within one-half mile of the coast, barrier islands, reefs and lagoons, 500 feet of all fish bearing waterbodies and 1,500 feet from all current surface drinking water sources. Additionally, siting of such facilities will be prohibited within one-half mile of the banks of the Igushik, Naknek, Egegik, King Salmon (tributary to Egegik), David, Milky, Ugashik, King Salmon (tributary to Ugashik), Cinder, Meshik, Ilnik, Muddy, Sandy, Bear, Nelson, Caribou, Sapsuk and Dog Salmon Rivers, Black Hills, Steelhead, Painter and Pumice Creeks, Becharof and Ugashik Lakes and Franks Lagoon. Facilities may be sited within these buffers if the lessee demonstrates to the satisfaction of the Director, in consultation with OHMP and the affected local borough government, that site locations outside these buffers are not feasible and prudent or that a location inside the buffer is environmentally preferred. Road, utility, and pipeline crossings must be consolidated and aligned perpendicular or near perpendicular to watercourses.*

*Mitigation Measure 4: The siting of temporary and permanent facilities will be prohibited within the Bristol Bay Fisheries Reserve.*

*Mitigation Measure 5: Impacts to important wetlands must be minimized to the satisfaction of the Director, in consultation with OHMP and ADEC. The Director will consider whether facilities are sited in the least sensitive areas. Further, all activities within wetlands require permission from the US Army Corps of Engineers.*

*Mitigation Measure 7: Drilling in offshore tracts will only be conducted directionally from onshore locations.*

*Mitigation Measure 8: Pipelines that must cross marine waters will be constructed beneath the marine waters using directional drilling techniques, unless the Director, in consultation with OHMP and the local borough and CRSAs, approves an alternative method based on technical, environmental, and economic justification.*

*Mitigation Measure 12: Compaction or removal of snow cover overlying fish bearing waterbodies is prohibited except for approved crossings. If ice thickness is not sufficient to facilitate a crossing, ice or snow bridges may be required.*

*Mitigation Measure 15: To minimize impacts to important waterfowl habitats in Kvichak Bay, Egegik Bay, Ugashik Bay, Cinder River Estuary, Port Heiden, Seal Islands Lagoon, Port Moller, Herendeen Bay, and Nelson Lagoon exploration, development, and major maintenance within these areas will only be allowed between November 16 and April 6, unless an exception is approved by the Director, in consultation with OHMP. Routine maintenance and emergency repairs will be permitted on a year-round basis during the production phase. A detailed plan describing routine maintenance activities to be conducted between April 7 and November 15 in these areas must be included in the plan of operations.*

*Mitigation Measure 17: Lease-related use will be restricted when the Director determines it is necessary to prevent conflicts with local subsistence, commercial and sport harvest activities. In enforcing this term DO&G, during review of plans of operation, will consult*



*with other agencies, the affected local borough(s) and the public to identify and avoid potential conflicts. In order to avoid conflicts with subsistence, commercial and sport harvest activities, restrictions may include alternative site selection, requiring directional drilling, seasonal drilling restrictions, and other technologies deemed appropriate by the Director.*

*Mitigation Measure 18: Traditional and customary access to subsistence areas shall be maintained unless reasonable alternative access is provided to subsistence users. "Reasonable access" is access using means generally available to subsistence users.*

Ms. Savo refers to the Deepwater Horizon incident to highlight her concern about the ability to contain oil spills in the Bering Sea, Bristol Bay, and the Arctic Ocean. In his Decision of Substantial New Information for the 2011 Alaska Peninsula areawide lease sale, dated February 8, 2011, the commissioner states:

*The State of Alaska is in the process of reviewing and evaluating information from the Deepwater Horizon investigations and the Alaska Risk Assessment reports, and is determining which of the information and recommendations are applicable to Alaska, which recommendations to implement, and the next steps for implementing them. As this process develops, new or modified mitigation measures, lessee advisories, or other statutory or regulatory requirements addressing issues such as safety, environmental safeguards, risk management, and reporting standards may be forthcoming.*

The federal agencies that had Congressionally-delegated joint jurisdiction over the Deepwater Horizon incident, the United States Coast Guard and the Bureau of Energy Management, Regulations and Enforcement (BOEMRE), released their final report and recommendations on April 22, 2011. As a result of the report's findings, BOEMRE launched comprehensive reforms to offshore oil and gas regulation and oversight. The reforms strengthen requirements for everything from well design and workplace safety to corporate accountability and incorporate additional safety requirements.<sup>1</sup>

Further, the State of Alaska conducted an inquiry concerning information that is becoming available from the Deepwater Horizon incident. The AOGCC accepted comments and held a public hearing on September 15, 2011, addressing whether changes or additions are needed to AOGCC regulations governing drilling, rig workover, and well control in offshore and ultra-extended reach wells in areas of Alaska under AOGCC jurisdiction.<sup>2</sup> Results of AOGCC's findings may result in new or modified mitigation measures, lessee advisories, or other statutory or regulatory requirements as described in the commissioner's Decision of Substantial New Information for the 2011 Alaska Peninsula areawide lease sale, dated February 8, 2011.

The substance of Ms. Savo's comments is addressed in Chapter Seven of the Alaska Peninsula Final Finding and in the commissioner's Decision of Substantial New Information for the 2011 Alaska Peninsula areawide lease sale, dated February 8, 2011. Her comments did not provide any substantial new information. Therefore, a supplement to the most recent best interest finding is not justified.

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<sup>1</sup> Bureau of Energy Management, Regulations and Enforcement, Regulatory Reform. <http://www.boemre.gov/reforms.htm>. Retrieved November 29, 2011.

<sup>2</sup> Alaska Oil and Gas Commission, Offshore and Extended Reach Inquiry (OTH-10-16). [http://doa.alaska.gov/ogc/OTH-10-16\\_AOGCCOffshoreInquiry/OTH-10-16index.html](http://doa.alaska.gov/ogc/OTH-10-16_AOGCCOffshoreInquiry/OTH-10-16index.html). Retrieved November 29, 2011.

## 2. Chignik Lagoon Village Council

- a. **Comment Summary:** Chignik Lagoon Village Council (commenter) states that since having been identified by the Alaska Outer Continental Shelf Office as a potential oil and gas terminal site, Kuiu Bay has been re-charted by the National Oceanic and Atmospheric Administration. The commenter states that the chart shows the bay area is the best location for developing a terminal site to facilitate development of the oil and gas fields within the North Aleutian Basin and on and along the Alaska Peninsula. Additionally, the commenter provided links to digital elevation models for Kuiu Bay and surrounding areas, including Left Hand Bay and Balboa Bay, to analyze and forecast tsunami inundation of the sites identified as potential port sites to facilitate the development of the oil and gas fields of the North Aleutian Basin and the Alaska Peninsula.

**Commissioner's Response:** The commenter did not provide any published reports or studies supporting its comment that the Alaska Outer Continental Shelf Office identified Kuiu Bay as a potential oil and gas terminal site. The commenter provides links to maps and models prepared by NOAA of the bay area, but did not provide references to a published determination that the bay area is the best location for developing a terminal site. Therefore, this is not substantial new information that justifies a supplement to the Cook Inlet Final Finding or the Alaska Peninsula Final Finding. The commissioner will consider published reports and studies if they are submitted for consideration during future calls for new information. However, ADNR does not have jurisdiction for siting, construction, and maintaining public access ports and terminals. That responsibility belongs to the Alaska Department of Transportation and Public Facilities (ADOT&PF). ADOT&PF evaluates and prioritizes statewide public harbor needs and seeks legislative appropriations to address the needs<sup>3</sup>.

- b. **Comment Summary:** The commenter states the Council will propose the state's department of transportation analyze a road corridor between Kuiu Bay and Port Moller to facilitate the development of oil and gas resources on and along the Alaska Peninsula between Meshik River and Port Moller. It states that roads are planned within the Metrolina Valley and Kuiu Bay area, and will connect the potential port sites of Windy Bay and Kuiu Bay with a sub-regional airport. The commenter provides web links to Google Earth files showing the planned roads.

**Commissioner's Response:** The commenter did not provide any published reports or studies documenting substantial new information about road corridors. Therefore, this is not substantial new information that justifies a supplement to the Alaska Peninsula Final Finding. The commissioner will consider published reports and studies if they are submitted for consideration during future calls for new information. However, ADNR does not have jurisdiction for siting, construction, and maintaining public access and roads. That responsibility belongs to the Alaska Department of Transportation and Public Facilities (ADOT&PF). ADOT&PF manages transportation connecting communities. It is currently updating the Southwest Alaska Transportation Plan for this region.<sup>4</sup>

Although the new comments provided by Chignik Lagoon Village Council do not rise to the level of substantial information that justifies a supplement to the best interest finding, they will be reviewed and considered again during the process of developing the next new 10-year re-write of the written final finding of the director for the Alaska Peninsula areawide lease sale.

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<sup>3</sup> <http://www.dot.state.ak.us/stwddes/desports/>

<sup>4</sup> <http://www.dot.state.ak.us/stwdplng/areaplans/swplan.shtml>

## Summary

The commissioner has considered the information provided by Escopeta Oil Company, LLC; Becky Savo, Naknek, AK; and the Chignik Lagoon Village Council in response to the Call for New Information for the 2012 Cook Inlet and Alaska Peninsula areawide lease sales, and finds that the information provided does not justify a supplement to the most recent best interest findings for the lease sales.

A person affected by this decision who provided timely written comment may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request must be received by the 20<sup>th</sup> day after issuance, and may be mailed or delivered to:


Daniel S. Sullivan, Commissioner  
Alaska Department of Natural Resources  
550 W. 7th Avenue, Suite 1400  
Anchorage, Alaska 99501

By fax to: 1-907-269-8918

or

By email to: [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov)

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on the 31<sup>st</sup> day after the date of issuance. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any Department of Natural Resources regional information office.

  
Daniel S. Sullivan, Commissioner

12/22/2011  
Date

cc: Escopeta Oil Company, LLC  
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