

Chapter Two: Introduction

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Chapter Two: Introduction

The Alaska Department of Natural Resources (ADNR) has proposed to offer for lease all available state-owned acreage in Beaufort Sea Areawide oil and gas lease sales from 2009-2018 (see Maps 1.1-1.3). The lease sale area is within the North Slope Borough and consists of state-owned tide and submerged land in the Beaufort Sea between the Canadian Border and Point Barrow. The area is adjacent to both the National Petroleum Reserve-Alaska (NPR-A) and the Arctic National Wildlife Refuge (ANWR). The southern fringe of the lease sale area includes some state-owned uplands lying between the NPR-A and ANWR. The gross area is about 2 million acres and is divided into 573 tracts ranging in size from 640 to 5,760 acres.

A. Authorities

The Alaska Constitution provides that the state’s policy is “to encourage...the development of its resources by making them available for maximum use consistent with the public interest” and that the “legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State...for the maximum benefit of its people” (Alaska Constitution, article VIII, §§1 and 2). To comply with this provision, the legislature enacted Title 38 of the Alaska Statutes and directed ADNR to implement the statutes.

The legislature found that the people of Alaska have an interest in the development of the state’s oil and gas resources to maximize the economic and physical recovery of the resources; maximize competition among parties seeking to explore and develop the resources; and maximize use of Alaska’s human resources in the development of the resources (AS 38.05.180(a)(1)). The legislature also found that it is in the best interests of the state to encourage an assessment of its oil and gas resources and to allow the maximum flexibility in the methods of issuing leases and to offer acreage for oil and gas leases or for gas only leases (AS 38.05.180(a)(2)).

B. Issues Addressed in Best Interest Findings (“g-list”)

Alaska statutes govern the disposal of state-owned mineral interests. AS 38.05.035(e) states that upon a written finding that the interests of the state will be best served, the director may, with the consent of the ADNR commissioner (commissioner) approve contracts for the sale, lease, or disposal of available land, resources, property, or interests in them. The written finding is known as a best interest finding and describes the lease sale area, analyzes the potential effects of the sales, describes measures to mitigate those effects, and constitutes the director’s determination that the interests of the state will be best served by the disposal. ADNR, Division of Oil and Gas (DO&G) makes available both a preliminary and a final written finding and provides opportunity for public comment. The final written finding also discusses material issues that were raised during the public comment period.

AS 38.05.035(e) prescribes what, at minimum, must be in these findings. AS 38.05.035(g) lists the following matters that DO&G must consider and discuss in its written finding:

- i. property descriptions and locations;
- ii. the petroleum potential of the sale area, in general terms;
- iii. fish and wildlife species and their habitats in the area;
- iv. the current and projected uses in the area, including uses and value of fish and wildlife;
- v. the governmental powers to regulate the exploration, development, production, and transportation of oil and gas or of gas only;

- vi. the reasonably foreseeable cumulative effects of exploration, development, production, and transportation for oil and gas or for gas only on the sale area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;
- vii. lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the leases, and a discussion of the protections offered by these measures;
- viii. the method or methods most likely to be used to transport oil or gas from the lease sale area and the advantages, disadvantages, and relative risks of each;
- ix. the reasonably foreseeable fiscal effects of the lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;
- x. the reasonably foreseeable effects of exploration, development, production, and transportation involving oil and gas or gas only on municipalities and communities within or adjacent to the lease sale area; and
- xi. the bidding method or methods adopted by the commissioner under AS 38.05.180.

To aid those interested in reviewing and commenting on the final best interest finding, this document is organized for ease of reading and reviewing, and therefore does not necessarily follow the order of the “g-list”. Location of “g-list” items are listed in Table 2.1.

Table 2.1. Location of topics required by AS 38.05.035(g)(1)(B) – (“g-list”) – in the final best interest finding.

“g-list” Number	“g-list” Description	Location in Final Best Interest Finding
i	Property descriptions and locations	Chapter Three
ii	Petroleum potential	Chapter Six
iii	Fish, wildlife, and habitat	Chapter Four
iv	Current and projected uses; uses and value of fish and wildlife	Chapter Five
v	Governmental powers	Chapter Seven
vi	Reasonably foreseeable effects on subsistence; fish, wildlife, and habitat and their uses; and historic and cultural resources	Chapter Eight
vii	Mitigation measures	Chapter Nine
viii	Oil or gas transport	Chapter Six
ix	Reasonably foreseeable fiscal effects	Chapter Eight
x	Reasonably foreseeable effects on municipalities and communities	Chapter Eight
xi	Bidding method	Chapter Ten

A compilation of other laws and regulations applicable to oil and gas activities in Alaska can be found in Appendix B. If a proposed activity occurs in the coastal zone, AS 46.40 requires that the activity be consistent with the Alaska Coastal Management Program (ACMP) and any approved coastal district plan in effect. An ACMP consistency analysis was released concurrently with the preliminary best

interest finding. It is followed by a proposed consistency determination and a final consistency determination.

C. Areawide Lease Sales

Before 1996, ADNR evaluated noncontiguous patchwork portions of a region and then offered them for lease. For each subsequent lease sale, ADNR repeated this exercise for other patchwork portions of the region, often directly adjacent to those just evaluated. The public faced repeated requests to comment on areas with similar resources and issues or concerns. The state faced repeating costly analyses of resources and issues identical to those just analyzed.

As a result of 1996 amendments to AS 38.05.180(d), areawide oil and gas lease sales no longer require a new written finding under AS 38.05.035(e)(6)(F) provided that a best interest finding has been done for the area within the previous 10 years and, following a call for public comments, the commissioner annually determines whether substantial new information has become available that justifies a supplement to the most recent finding

Areawide leasing allows a thorough, region-wide analysis, eliminates repeated requests to the public, increases government efficiency, and allows ADNR to focus once a year on substantial new information that has become available. It also provides an established time each year that the state will offer for lease all available acreage within five geographical regions: the Alaska Peninsula, Cook Inlet, Beaufort Sea, North Slope, and North Slope Foothills. By conducting lease sales at a set time each year, ADNR provides industry with a stable, predictable leasing program, which allows companies to plan and develop their exploration strategies and budgets years in advance. The result is more efficient exploration and earlier development, which in turn benefits the State of Alaska and its residents. Areawide lease sales are also more efficient for the public and ADNR.

The last best interest finding for the Beaufort Sea was issued July 15, 1999. Supplements to the finding were issued on August 15, 2000, July 29, 2004, and July 15, 2008. The 1999 finding was valid for lease sales held through 2008. This final best interest finding addresses Beaufort Sea Areawide Oil and Gas Lease Sales from 2009-2018.

D. Process

The process of developing a best interest finding includes many opportunities for participation, from the public, government agencies, Native organizations, resource user groups, environmental organizations, and others (Figure 2.1).

1. Request For Agency Information

The process of developing a best interest finding begins with a request for information from agencies, local governments, and Native corporations. DO&G requests information and data about the region's property ownership status, peoples, economy, current uses, subsistence, historic and cultural resources, fish and wildlife, and other natural resource values. Using this information, as well as other relevant information that becomes available, DO&G develops a preliminary best interest finding and releases it for public comment.

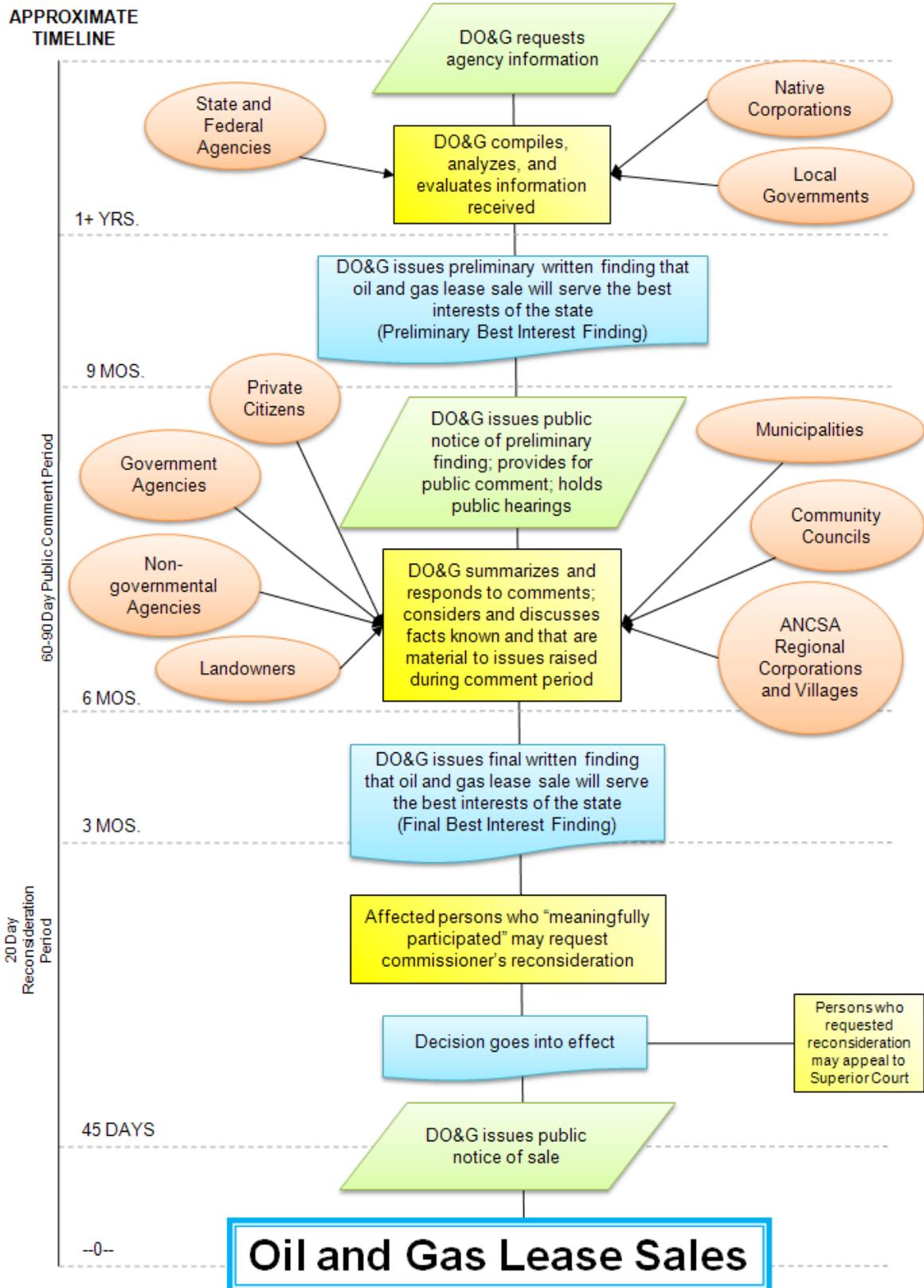


Figure 2.1. Public process for developing best interest findings for areawide oil and gas lease sales. Note that timeline is not to scale.

On April 23, 2008, DO&G issued a *Request for Agency Information* to initiate the process of gathering information on the proposed lease sales. The division received responses from the Alaska Department of Environmental Conservation (ADEC); ADNR, Office of Habitat Management and Permitting (OHMP)¹; ADNR, Division of Park and Outdoor Recreation (DPOR); ConocoPhillips Alaska, Inc. (CPAI); the Alaska Fisheries Science Center; and the North Slope Borough (NSB). ADEC, Air Quality Permits Program suggested requiring lessees to document the baseline air quality, prohibiting lessees from using simple cycle turbines, and requiring lessees to provide a plan for the prevention/minimization of field souring. OHMP submitted additional information regarding subsistence fishery harvest information for Arctic cisco in the Colville River Delta. DPOR, Office of History and Archaeology reported several submerged shipwreck sites within the project area and requested that stipulations on submerged cultural resources be included in the finding. CPAI expressed concerns about operational restrictions, encouraged ADNR to resist delays in scheduled sales, and recommended that ADNR not decrease the current aerial surface extent of the sales. The Alaska Fisheries Science Center provided links to documents on the status of marine mammal and fish stocks. Information provided by these agencies, as well as other relevant information, was incorporated into the preliminary and final best interest finding.

The North Slope Borough (NSB) asked that ADNR consult closely with the borough and other stakeholders as the finding was being prepared, provided 18 sources of new information and events that it believed must be considered, said that areas deferred from past sales should be permanently removed from consideration, believed that potential impacts to human health must be analyzed as rigorously and comprehensively as the potential impact to wildlife resources, and believed that the goal of the cumulative effects analysis should be to capture all potential influences, whether from industrial sources or not.

ADNR carefully considered the borough's comments and incorporated much of the relevant new information into the preliminary and final best interest finding. The borough had opportunity to review the preliminary finding and suggest further changes during the public comment period. ADNR continued to defer from the proposed lease sale all tracts from Pt. Barrow to Tangent Point (Tracts 555, 557-573) and from Barter Island to Pokok Bay (Tracts 27-39). Deferral means that these tracts will not be offered for lease in the 2009 Beaufort Sea Areawide sale, but may be included in future lease sales. Impacts to public health and cumulative effects are discussed in Chapter Eight. The goal of Chapter Eight is to satisfy the requirements of AS 38.05.035(g), that the director consider and discuss facts that are material to the reasonably foreseeable cumulative effects of exploration, development, production, and transportation for oil and gas on the sale area, not to capture all potential influences.

2. Preliminary Best Interest Finding and Request for Public Comments

Public comment assists in providing a body of information for the best interest finding review and analysis that is as complete as possible. Information provided by agencies and the public assists the director in reviewing all of the facts and issues; determining which facts and issues are material to the decision of whether the proposed lease sale is in the best interests of the state; and determining the reasonably foreseeable, significant effects of the proposed lease sale.

A preliminary best interest finding for Beaufort Sea oil and gas lease sales was issued on April 2, 2009 and was public noticed through various media outlets and mailings. The public comment period was April 2, 2009 through June 1, 2009, and was then extended to August 31, 2009. During the comment period, public hearings were held in Barrow on May 11, 2009; in Nuiqsut on May 12, 2009; and in

¹ The Office of Habitat Management and Permitting (OHMP) of the Alaska Department of Natural Resources became the Division of Habitat, a part of the Alaska Department of Fish and Game (ADF&G), effective July 1, 2008, as a result of Executive Order 114.

Kaktovik on May 19, 2009. A teleconference was held for Wainwright on May 21, 2009; and an informational meeting was held in Anchorage on May 21, 2009. Meetings were announced through a combination of statewide media releases, newspaper ads, public service announcements on local radio stations, flyers, and announcements over local VHF radio.

The public hearings were formatted with an hour of informal question-answer with poster displays of information and issues from the preliminary best interest finding. DO&G staff with expertise in geology and geophysics, oil spill risk and prevention, oil and gas leasing and administration, and fish and wildlife were available to answer questions and discuss issues with the public. Following the informal time, a formal public hearing was commenced in which formal oral testimony was received. Oral testimony was recorded. Forms were provided so that people could submit written comments during the hearings as well. Attendance at the meetings was five in Barrow, 14 in Nuiqsut, nine in Kaktovik, and four in Anchorage; no one attended the teleconference held for Wainwright.

During the public comment period, comments were received from the North Slope Borough; Trustees for Alaska, representing Alaska Wilderness League, Rosemary Ahtuanguaruk, Center for Biological Diversity, Defenders of Wildlife, Gwich'in Steering Committee, Native Village of Point Hope, Natural Resources Defense Council, Northern Alaska Environmental Center, Pacific Environment, Resisting Environmental Destruction on Indigenous Lands (REDOIL), Sierra Club, and The Wilderness Society; Crag Law Firm of Portland, OR representing the Inupiat Community of the Arctic Slope and the Alaska Eskimo Whaling Commission; USFWS; and the Alaska Oil and Gas Association. Comments were also received from ADF&G and individuals. A total of 35 comments was received, including 20 through oral testimony and 15 written. These are summarized in Appendix A, along with the ADNR's responses.

3. Final Best Interest Finding

After receiving public comments on the preliminary best interest finding, DO&G reviews all comments, revises the best interest finding as needed, and incorporates additional relevant information and issues brought up during the public comment period. The director strikes a balance of interests, determines if the proposed oil and gas lease sale is in the best interest of the state, and makes a final finding.

After the Beaufort Sea public comment period ended on August 31, 2009, DO&G reviewed all written comments and oral testimony received. A response to comments is provided in Appendix A. Common issues and concerns raised among commenters included oil spills; greenhouse gases, climate change, and global warming; phasing; information, data, and studies used in the finding; cumulative effects; subsistence; effectiveness of mitigation measures; input from local communities and Native organizations; directional drilling; tract deferrals and deletions; State of Alaska best interest finding process and federal environmental impact statement process; and need for additional studies.

After weighing the facts and issues known to him at this time, comments received during the public comment period, applicable laws and regulations, and balancing the potential positive and negative effects given the mitigation measures and other regulatory protections, the director has concluded that the potential benefits of the lease sale outweigh the possible negative effects, and that Beaufort Sea Areawide oil and gas lease sales will best serve the interests of the state of Alaska.

4. Request for Reconsideration and Appeal to Superior Court

A person who is eligible to file a request for reconsideration and who is or maybe adversely affected by the final written finding may, within 20 days after issuance of the final written finding, file a request for reconsideration of the decision by the commissioner. A person is eligible to file a request for reconsideration if the person "meaningfully participated" in the process set out for receipt of public comment and is affected by the final written finding. "Meaningfully participated" means submitting

written comment during the period for receipt of public comment or presenting oral testimony at a public hearing, if a public hearing was held (AS 38.05.035(i)).

A person may appeal a final written finding to the superior court, but only if the person was eligible to request, and did request, reconsideration of that finding. The points on appeal are limited to those presented to the commissioner in the person's request for reconsideration (AS 38.05.035(l)). By requiring a party to exhaust the administrative review and reconsideration process before appealing to the superior court, the agency is given full opportunity to review, analyze, and respond to concerns before litigation. For purposes of appeal, the burden is on the party seeking review to establish the invalidity of the finding (AS 38.05.035(m)).

E. Annual Lease Sales

After a final best interest finding has been issued and any challenges to it resolved, DO&G may proceed with conducting oil and gas lease sales in the area. However, annually the commissioner must determine if substantial new information has become available that justifies a supplement to the finding.

Approximately nine months before a lease sale, DO&G issues a call for comments requesting substantial new information that has become available since the most recent finding for that lease sale area was issued (Figure 2.2). This request is sent to agencies and individuals on the division's mailing list and posted on the DO&G website. The call for public comments provides opportunity for public comment for a period of not less than 30 days. Based on information received, the commissioner determines whether it is necessary to supplement the finding. Based on that determination, the commissioner either issues a supplement to the finding or a "Decision of No New Substantial Information" 90 days before the lease sale. The supplement has the status of a final written best interest finding for purposes of filing an administrative appeal or a request for reconsideration.

Any person who "meaningfully participated" by submitting written comments during the period for receipt of public comments and is affected by the final written finding of substantial new information is eligible to file a request for reconsideration (AS 38.05.035).

F. Scope of Review

The director, in the written finding, shall establish the scope of the administrative review on which the director's determination that the disposal will best serve the interest of the state is based and the scope of the written finding supporting that determination. The scope of the administrative review and finding may address only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal (AS 38.05.035(e)(1)(A)). For an effect to be "reasonably foreseeable": (1) there must be some cause/result connection between the proposed disposal and the effect to be evaluated; (2) there is a reasonable probability that the effect will occur as a result of the disposal; and (3) the effect will occur within a predictable time after the disposal. Therefore, the finding does not speculate about potential but improbable future effects, but instead reviews reasonably foreseeable effects of the proposed disposal.

A reasonably foreseeable effect must also be "significant." Significant means a known and noticeable impact on or within a reasonable proximity to the area involved in the disposal.

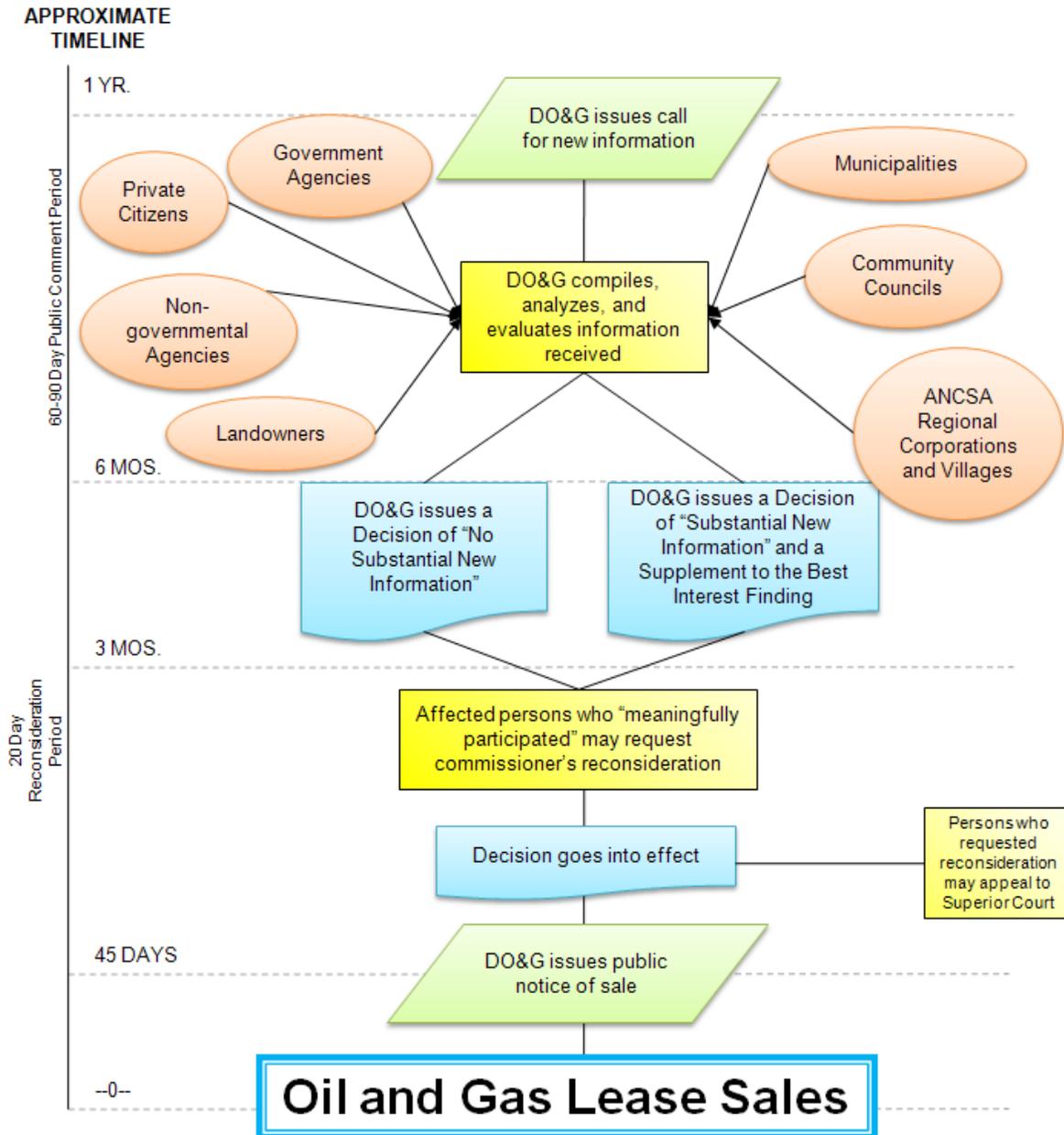


Figure 2.2. Annual public process for determining if a supplement to a best interest finding is necessary. Note that timeline is not to scale.

Further, the director may limit the scope of an administrative review and finding for a proposed disposal to:

- (i) applicable statutes and regulations;
- (ii) the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and
- (iii) issues that, based on the statutes and regulations, on the facts as described, and on the nature of the uses sought to be authorized by the disposal, the director finds are material to the determination of whether the proposed disposal will best serve the interests of the state. (AS 38.05.035(e)(1)(B).)

Therefore, the scope of review in this final finding addresses the reasonably foreseeable, significant effects of the uses to be authorized by the lease sale and is limited to the applicable statutes and regulations, the material facts and issues known to the director that pertain to the lease sale phase, and issues that the director finds are material to the determination of whether the lease sale will best serve the interests of the state. This includes consideration and discussion of facts that are material to issues raised during the period allowed for public comments, facts that are material to the matters listed in AS 38.05.035(g)(B)(i)-(xi), and the basis for the director's final finding, that, on balance, holding oil and gas lease sales in the area would be in the state's best interest.

G. Phased Review

Phased review recognizes that some disposals of oil and gas, or of gas only, may result in future development that cannot be predicted or planned with any certainty or specificity at the initial lease sale phase, and that any future development will be subject to detailed review before it takes place. In the case of oil and gas, DO&G cannot determine with any specificity or definition at the lease sale phase if, when, where, how, or what kind of exploration, development or production might ultimately occur as the result of a lease sale. Although advances in technology, unpredictable market changes, and specific infrastructure requirements for possible production cannot be foreseen, new developments or improvements in any or all of these areas may yield answers to some of these questions in the future.

Phasing allows the analysis of leasing to focus only on the issues pertaining to the lease sale phase and reasonably foreseeable, significant effects a lease sale. Additional authorizations are required for exploration, development, and production phases. When a project is multi-phased, review of issues that would require speculation about future factors may be deferred until permit authorization is sought at the exploration, development, and production phases. A discussion of governmental and public involvement at these later phases can be found in Chapter Seven.

Under AS 38.05.035(e)(1)(C), the director may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified above that pertain solely to the disposal phase of the project when:

- (i) the only uses to be authorized by the disposal are part of that phase;
- (ii) the disposal is a disposal of oil and gas, or of gas only, and, before the next phase of the project may proceed, public notice and the opportunity to comment are provided unless the project is subject to a consistency review under AS 46.40 and public notice and the opportunity to comment are provided under AS 46.40.096(c);
- (iii) the department's approval is required before the next phase may proceed; and,
- (iv) the department describes its reasons for a decision to phase.

The conditions under which phasing may occur have been met for Beaufort Sea Areawide oil and gas lease sales addressed in this best interest finding. Accordingly, the review of activities in the lease sale area is of a multi-phased development. The director, in making this final finding, has limited the scope of the finding to the applicable statutes and regulations, facts, and issues that pertain solely to the lease sale phase of oil and gas activities and the reasonably foreseeable significant effects of a lease sale.

Condition (i) is met because the only uses authorized by the lease sale are part of the lease sale phase. The lease gives the lessee, subject to the provisions of the lease, the right to conduct geological and geophysical exploration for oil, gas, and associated substances within the leased area and the right to drill for, extract, remove, clean, process, and dispose of any oil, gas, or associated substances that may underlie the lands described by the lease. While the lease gives the lessee the right to conduct these activities, the lease sale itself does not authorize any exploration or development activities by the lessee on leased tracts.

Condition (ii) is met because the lease sale is of oil and gas or gas only, and before the next phase of the project may proceed, ADNR will provide public notice and the opportunity to comment for any proposed plan of operations in the lease sale area. Additionally, any plan of operations in the lease sale area that is within the coastal zone is subject to consistency with the ACMP standards, including public notice and opportunity to comment under AS 46.40.

Condition (iii) is met because ADNR's approval is required before the next phase (in this case exploration) may proceed. See Chapter Six for a discussion of post-leasing phases. Before exploration activities can occur on leased lands, the lessee must secure all applicable authorizations. Additional authorizations must also be secured for any subsequent development or production on the lease.

The plans of operation must identify the specific measures, design criteria, construction methods, and standards that will be employed to meet the provisions of the lease. A plan of operations is subject to extensive technical review by a number of local, state, and federal agencies. Oil and gas exploration, development, or production-related activities will be permitted only if proposed operations comply with all local, state, and federal laws and the provisions of the lease.

Condition (iv) is met because ADNR describes above the reasons for its decision to phase.

The effects of future exploration, development, and production will be considered at each subsequent phase, when various government agencies and the public review applications for specific proposed activities at specific locations. However, this finding does discuss, in general terms, the potential effects that may occur with oil and gas exploration, development, production, and transportation within the lease area as well as the measures to be imposed as terms of the lease, subsequent permits, and plan of operations to mitigate possible adverse effects.

H. Post-sale Title Search

The Beaufort Sea lease sale area has been divided into tracts that will remain fixed for future lease sales. The extent of the state's ownership interest in these lands will not be determined before the lease sales. Instead, following each lease sale, ADNR will verify title only for tracts receiving bids. Therefore, should a potential bidder require title or land status information for a particular tract before a lease sale, it will be the bidder's responsibility to obtain that information from ADNR's public records. It is possible that a tract included in a lease sale may contain land that the state cannot legally lease because it is subject to an existing oil and gas lease or because the mineral estate is not state owned. Depending on the number of tracts leased and the complexity of the ownership, it could take weeks to months following a lease sale to complete the title work and issue all of the leases.