



State of Alaska
Division of Oil and Gas
Department of Natural Resources



August 15, 2000

**Decision to Supplement Beaufort Sea Areawide Oil and Gas Lease Sale
Best Interest Finding with Information on Polar Bears
and Discussion of Comments Received**

[Supplement to the Final Best Interest Finding](#)

On December 29, 1999, the Division of Oil and Gas (DO&G) issued a Call for New Information regarding DO&G's proposal to re-offer, in Cook Inlet Areawide Oil and Gas Lease Sale 2000, tracts that were not leased in Cook Inlet Areawide Oil and Gas Lease Sale 1999 held on April 21, 1999. The purpose of this call was to provide an opportunity for interested parties to submit to the division substantial new information that has become available since the issuance of the final best interest finding on January 20, 1999.

On July 15, 1999 the Alaska Department of Natural Resources (ADNR) Division of Oil and Gas (DO&G) issued a final best interest finding under AS 38.05.035 (e) and (g) regarding Beaufort Sea Areawide 1999 Oil and Gas Lease Sale. On September 21, 1999, ADNR issued an announcement postponing the sale pending the BP/ARCO merger. ADNR rescheduled the sale for November 15, 2000. Although a decision that the sale was in the best interests of the state was made when the final finding was issued and no further action was required, DO&G issued a Call for New Information on March 8, 2000, because of the amount of time between July 1999 and November 2000. This decision discusses the comments received and includes ADNR's response to those comments. ADNR has also prepared a supplemental to the cumulative effects section of the finding discussing this new information on the effects of a major oil spill on polar bears.

DO&G received comments from the Alaska Department of Fish and Game (ADF&G), the U.S. Fish and Wildlife Service (USF&S), the National Marine Fisheries Service (NMFS), Anadarko Petroleum Corporation, and Trustees for Alaska.

ADF&G stated that they had no substantial new information to contribute, but commented on the subsistence mitigation measures and the NPR-A subsistence workshop in the 1998 Northstar EIS. ADNR reviewed ADF&G's comments and determined that it has previously considered both of the subjects to the extent information is presently available.

The USF&S provided information on the recently published regulations pertaining to critical habitat designations for the threatened Steller's eider and spectacled eider. They also recently published regulations for the incidental take of polar bear and pacific walrus during oil and gas exploration activities on the North Slope. The regulations for the incidental take of polar bear and pacific walrus, are an extension of existing regulations, and do not present substantial new information.

DNR has reviewed USF&S proposals to name critical habitat under the Endangered Species Act for spectacled and Steller's eiders. These proposals, published in the Federal Register February 8, 2000 and March 13, 2000, were the result of a March 10, 1999 settlement of litigation. The lawsuit was originally filed in U.S. District Court against the Secretary of the Interior by several groups alleging failure to designate critical habitat for five listed species in California and two eider species in Alaska. In this settlement, the federal government agreed to reconsider its original

finding of non-prudency regarding the designation of critical habitat for the seven listed species.

After discussion with ADF&G, it is ADNR's belief that no critical habitat for either spectacled or Steller's eiders on the North Slope and that there is no scientific information that demonstrates critical importance of the North Slope for the recovery of either of these species. In addition, there is no evidence to date of a decline of these species in that area.¹ Based on the above discussion, I find the proposal to designate critical habitat is not new information that justifies a supplement to the finding.

Anadarko petroleum supports the sale and requested a minimum lease term of 10 years and a royalty rate not to exceed 1/8th. This request does not constitute substantial new information. For Beaufort Sea 2000, the Commissioner chose a royalty rate of 1/8th or 1/16th for different portions of the sale areas, and a lease term of ten and seven years respectively. In selecting the bidding method for Beaufort Sea Areawide, the ADNR considered and balanced the following state interests: protecting the state's ownership interest in hydrocarbon resources, promoting competition among individuals seeking to explore and develop the area, encouraging orderly and efficient exploration and development; and the need to generate revenues for the state.

NMFS called for a monitoring effort on living marine resources. They also may make recommendations to state agencies concerning essential fish habitat (EFH) for subsequent exploration or development activities. This, however, does not constitute substantial new information. If NMFS generates new information as a result of monitoring studies or makes EFH recommendations in the future, ADNR will consider them at that time.

Trustees for Alaska raised eight issues they believe warrant a supplement to the best interest finding:

1. *Recent proposed designation of critical habitat for spectacled and Steller's eiders and the effect of offshore leasing must be considered in a supplement. DO&G should wait for the outcome of the proposed eider designation to assess whether leasing in a critical habitat area is in the state's best interest.*

See response to USF&WS regarding critical habitat designations for the threatened Steller's eider and spectacled eider. The effects of onshore and offshore leasing on birds was discussed in Chapter Five "Reasonably Foreseeable Cumulative Effects" of the Beaufort Sea Areawide Final Best Interest Finding dated July 15, 1999. Potential impacts that were discussed include 1) drilling and production discharges; 2) habitat loss; 3) barriers to movement; and 4) disturbance.

2. *The Minerals Management Service (MMS) removed the federal waters offshore of ANWR from OCS Sale 170. It is highly likely that they will also delete these areas from OCS Sale 176. For the public to have an accurate picture of the extent of potential leasing the state should hold off on decisions regarding Beaufort Sea Areawide 2000 until the final decisions have been made on OCS Sale 176.*

Speculation on which areas MMS may delete from OCS Sale 176 is not substantial new information. ADNR has previously reviewed MMS actions in federal waters offshore of ANWAR, and will continue to do so as federal actions develop. It is not in the state's best interest, however, to delay decisions regarding the Beaufort Sea Areawide 2000 sale on the basis of speculation about what a federal agency may decide in the future with regard to the federal sale. Federal and state oil and gas leases are two separate and distinct processes under different laws and schedules.

3. *MMS and the Alaska Department of Environmental Conservation (ADEC) have concluded that North Slope operators are not prepared to effectively respond to an offshore spill. ADNR should reconsider the effects that offshore leasing and oil drilling can have on the environment. The Beaufort Sea Areawide should be put on hold until the operators come into full compliance with oil spill contingency plans.*

ADNR has considered ADEC and MMS's decision that, based on the results of the fall 1999 exercise of the barge-based response system, the industry was not able to comply with the 72-hour standard for mechanical cleanup of oil released from a blowout into broken ice. The agencies and operators have agreed to drilling schedules which reduce risk during periods of broken ice. Operators will not perform exploratory drilling or drill a first production well into previously untested formations during periods of broken ice.

The effects of offshore leasing on the environment were thoroughly discussed in Chapter Five of the Final Finding. The current mechanical methods of oil recovery and their limitations were discussed in Chapter Six and Appendix A.²

Each operator must have an approved spill discharge and contingency plan prior to commencing exploration or development operations. North Slope operators have developed a slope-wide technical response manual that contains the best estimate of what responders will be able to do under varying conditions. The manual supports the individual c-plans that each operator must prepare prior to commencing activities on specific prospects and discoveries. ADEC and MMS found the manual sufficient for all instances except the blowout in broken ice scenario. The industry and its response organization, Alaska Clean Seas, recently completed a series of evaluations of barge-based response operations in spring broken ice. The results are expected to be available in early fall, and the organization anticipates conducting more evaluations in fall broken ice this year.

ADNR has determined that it is not necessary to delay the lease sale or supplement the current Finding. There is sufficient information in the July 1999 Final Finding to proceed, and the broken ice operator schedules related to the period which was implemented after the Finding was published do not substantially change the determination in the Finding. Schedules for drilling operations in solid ice or open water conditions are not affected. The contingency plan is a permit that, by its detailed nature, can only be prepared after site-specific information has been gathered and analyzed following a lease sale and after the lessee has decided to drill. The contingency plan approval process is separate and distinct from the lease sale process.

State agencies are in the process of evaluating the information from the Spring 2000 Broken Ice Exercises. Because exercises like these occur on a periodic basis, if ADNR were to delay lease sales pending the results of the latest exercise, lease sales would never occur. Rather, a discussion of the latest exercise will be incorporated in the next sale document to the extent that it provides new and relevant information.

The results of these exercises so far show that the permitting process works as intended. Spill cleanup exercises, such as the Spring 2000 exercise, are expensive undertakings. These exercises are necessary to ensure that the approval terms and conditions of industry oil spill prevention and contingency plans are met. The current extensive investment in North Slope offshore oil spill prevention and oil spill response technology would not have occurred without a leasehold interest in oil and gas tracts.

Notwithstanding this significant investment by industry, the exercises and c-plan approval process demonstrate that the state will permit activities only to the extent that they can meet oil spill prevention and response standards set by Alaska State Law.

For example, the state is generally satisfied that the oil industry has developed c-plan for solid ice conditions. Solid ice is thick enough to put heavy clean-up equipment on. When there is solid ice cover, a subsea pipeline oil leak can be contained and effectively cleaned up. In solid ice conditions, due to low temperatures, oil tends to gel in the sand around the pipe and can be scooped up in a trenching operation similar to that used to construct the Northstar subsea pipeline. Moreover, pipeline leaks can be detected with a high degree of sensitivity, and, at any rate, are absolutely limited in size to the capacity of the pipeline between valves.

A blowout occurring during the drilling of an exploration or production well is more problematic. In the very worst scenario, which assumes that the blowout does not bridge naturally, an operator might have to drill an offset well to relieve pressure on an out-of-control well. Transporting the second drill rig to the site of the blowout could be difficult during broken ice periods. Therefore, the state has temporarily prohibited the drilling during these times. So, for example, BP is prohibited, by compliance agreement, from drilling wells in the Northstar, Endicott, Pt. McIntyre, and Niakuk fields during periods of broken ice and open water, until they demonstrate that they can meet the requirements set forth in the compliance agreement. Industry continues to work on response techniques and technology in order to extend their drilling season.

Because spill exercises would never be undertaken without an economic incentive, to argue that industry, or the

state, must demonstrate that oil can be cleaned up in all circumstances before there is even leasing, puts the cart before the horse. As the Broken Ice Exercises perfectly demonstrate, industry takes a risk when it leases a tract that it will be able to develop that tract in accordance with state environmental and resource development laws and regulations. To the extent that it cannot, it will not be allowed to conduct activities. Because of the enormous expense associated with experimenting with various oil spill clean up techniques, this is the only practical way that leasing and development can occur on the North Slope and Beaufort Sea. Industry is required to meet contingency plan standards or face restrictions under separate permit required at the exploration or development stages. Therefore it is not necessary to put the sale on hold until operators come into full compliance with contingency plans and the sale, as scheduled, is in the best interest of the state.

4. *The recent Report by the Alaska Community Action on Toxics entitled 11 million and Counting details the threat to the arctic environment caused by oil activities on the North Slope. The every-day risk of oil and hazardous material spills on the North Slope should be incorporated into your consideration of the Beaufort Sea Lease Sale.*

The research methodology in this report consisted of simply querying an ADEC spill database for the years 1989 to 1999 and then selectively interpreting the results. ADNDR is apprised of this information and it does not present substantial new information that justifies a supplement to the best interest finding. ADNDR considered the reasonably foreseeable cumulative effects of oil and gas exploration development and production as directed by the statute. See Chapter Five of the final best interest finding.

5. *There have been environmental impacts from the construction of the Northstar and Liberty projects and these should be discussed. The interagency planning team is considering a number of new technologies for the Liberty project. The state should allow time for the public to learn the results of these studies and the results should be incorporated into the state's decision regarding the Beaufort Sea Areawide.*

The broad and unsubstantiated statement that there are environmental impacts from the construction of the Northstar and Liberty projects is non-specific and not substantial new information. The Liberty project is still in the planning phase and would not be in the state's best interest to delay the sale until the planning process is completed. If substantial new information results from this process, it can be considered and included in a future supplement, as ADNDR will issue a request for new information each year for the life of the finding.

6. *A great deal of new information regarding the impacts of global climate change on the arctic environment since the time of the original comment period. The two most critical pieces of information (from the Christian Science Monitor and Science Magazine) concern the disappearance of arctic ice pack and the undeniable role of human activities in this. These reports must be taken into consideration.*

ADNDR considered these reports. Although global warming is a concern, there is widespread disagreement within the scientific community regarding the causes of sea ice loss. The article from the *Christian Science Monitor* (Cowen) states "[t]here's nothing to tie the ice loss to any man made or natural global warming." The article from *Science Magazine*, (Vinnikov et al., incorrectly cited as von Radowitz) suggests that sea ice extent is related to anthropogenic (human influenced) global warming, but another *Science Magazine* article by Moritz and Bitz disputes Vinnikov citing a "spurious feature" of their simulation model. The von Radowitz article is from a newspaper in Australia called *The Age*. None of these reports confirm "the undeniable role of human activities" in the disappearance of the ice pack or constitute substantial new information that would require a supplement to the best interest finding.³

7. *The corporate structure on the North Slope has changed. The state must demonstrate that the bidding process will be a competitive one and should mention any and all side agreements between BP and Philips Petroleum.*

This is not substantial new information. It is merely speculation that the bidding process will not be competitive and that "side agreements" exist.

8. *New information is available on the potential consequences of a major oil spill on polar bears (Amstrup, 1999). The state should further discuss the cumulative impacts on polar bears.*

ADNR has prepared a supplemental to the cumulative effects section of the finding discussing this new information on the effects of a major oil spill on polar bears.

A person who is aggrieved by this decision may request the commissioner to reconsider the decision under AS 35.05.035(i) and (j). To be eligible an appellant must have meaningfully participated in the process by submitting written comments during the prescribed comment period. A request for reconsideration must be received by John T. Shively, Commissioner, Department of Natural Resources, 550 W 7th Ave, Suite 1400, Anchorage, Alaska 99501, or received by fax at 1-907-269-8918 by 5:00 p.m. (local time), September 5, 2000. If the commissioner fails to act on the request for reconsideration by September 14, 2000, the request is considered denied.

A denial of a request for reconsideration is the final administrative decision for purposes of appeal to Superior Court. A person may appeal to Superior Court only if the person was eligible to request, and did request, an administrative reconsideration of this decision by the commissioner. An appellant must initiate an appeal to the Superior Court within 30 days from the date of denial of that reconsideration or from the date of distribution of the denial decision, in accordance with the rules of court and to the extent permitted by applicable law.

John T. Shively
Commissioner

Appeal Code Number: OG81500.035

Footnotes:

1. The decline in populations is in the Yukon-Kuskokwim Delta.
2. The Beaufort Sea Final Finding addressed oil spill risk for particular transportation methods, such as pipelines and tankers, using a methodology developed by the MMS. This methodology, which is based on U. S. Gulf of Mexico and Pacific coast OCS oil development, reviews spill rates from pipelines, platforms and tankers in the same study. Therefore, ADNR can consider the "relative risks of each" method, as required by AS 38,05.035(g)(1)(B)(viii). Using another methodology that does not consider, for example, tankers in the same study as pipelines is illogical and inconsistent.

The Northstar BIF considered CONCWE (Conservation of Clean Air and Water in Europe) a European method based on a database of pipelines that run cross-country in western Europe and include estuary crossings, but not sub-sea sections. DNR chose not to use this method in the Beaufort Sea BIF for the reason stated above. But DNR is not required to consider every methodology assessing oil spill risks, as long as it considers the "relative risks of each" method of transport and lease stipulations designed to prevent and mitigate releases of oil. This is especially true in light of the fact that both the MMS methodology and the European methodology depend upon completely unknown factors at the lease sale phase. While factors such as pipeline length and annual flow rates are clearly predictable at a project phase, such as Northstar, they are completely unknown at the lease sale phase.

3. The current warming trend is taking place on a global scale. It is impossible to separate out the effects of this lease sale from all the other events taking place around the world or to assess what this sale's contribution to global warming might be.

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