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*of* **ALASKA**  
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Department of Natural Resources

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**January 15, 2016**

**Decision of No Substantial New Information  
2016 Cook Inlet and Alaska Peninsula Areawide Lease Sales**

**Introduction**

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 (DNR), Division of Oil and Gas (DO&G) may hold an oil and gas lease sale. The final written 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 written finding for the 2015-2024 Alaska Peninsula areawide oil and gas lease sales (Alaska Peninsula Final Finding) was issued on November 26, 2014 and corrected on December 1, 2014.

Cook Inlet and Alaska Peninsula areawide oil and gas lease sales have been held annually under these final findings since 2009 and 2014, respectively. Under AS 38.05.035(e)(6)(F), the most recent written final finding would be supplemented if the director determined that substantial new information had become available to justify a supplement. To gather this information, public Calls for New Information have been issued each year since the final findings were issued. Supplements to the Cook Inlet Final Best Interest Finding were issued on February 4, 2010, February 8, 2011. No supplements to the Alaska Peninsula Final Best Interest Finding were issued in 2015.

On September 30, 2015, DO&G issued a Call for New Information (CFNI) regarding the 2016 Cook Inlet and Alaska Peninsula areawide oil and gas lease sales. The CFNI requested interested parties to submit to DO&G substantial new information that has become available over the past year to supplement the most recent final findings for the area. The submission period ended on November 6, 2015.

As stated in the CFNI, DO&G generally considers substantial new information to include published research, studies, or data directly relevant to the matters listed in AS 38.05.035(g) and to the lands covered in the final findings that have become publicly available over the past year. Matters listed in AS 38.05.035(g) include:

- property descriptions and locations;
- petroleum potential of the sale area, in general terms;
- fish and wildlife species and their habitats in the area;
- current and projected uses in the area, including uses and value of fish and wildlife;
- governmental powers to regulate the exploration, development, production, and transportation of oil and gas or of gas only;
- 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;
- 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 the protections offered by these measures;

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- 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;
- 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;
- 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;
- the bidding method or methods adopted by the commissioner under AS 38.05.180.

In response to the CFNI, DO&G received three timely comments and requests, including a request to extend the comment period. Additionally, DO&G received one untimely comment that was submitted after the November 6, 2015 deadline. Out of all comments received, one timely comment and one untimely comment referenced and included documents. The director has reviewed and considered all timely public comments and documents referenced or included with those comments.

## **Decision**

The director finds that no substantial new information was received in response to the CFNI to justify a supplement to the Cook Inlet Areawide Final Best Interest Finding or the Alaska Peninsula Areawide Final Best Interest Finding. The director considered the extension request and determined that the statutory public comment period provided adequate opportunity for the public to provide substantial new information. The request to extend the public comment deadline is denied.

## **Responses to Timely Public Comments**

Each timely comment, including the director's response, is summarized below.

### **Daniel K. Donkel**

#### **Comment 1: Lease Terms and Conditions**

***Comment Summary:*** Mr. Donkel provided two comments stating that oil and gas lease sale terms and conditions adopted under a previous administration are unreasonable and pricing bidders out of the lease sales. Mr. Donkel requested that DO&G offer all tracts that did not sell under those terms in a separate sale with lower terms, such as \$1.00 per acre minimum bid, \$1.00 per acre annual rent, 10 year term, and 12.5% royalty.

***Director's Response:*** Mr. Donkel's comments relate to the state's processes for lease sales after disposal. Mr. Donkel's suggestions have been forwarded to the DNR commissioner and DO&G director for consideration when setting terms and conditions for lease sales in accordance with AS 38.05.180(f).

#### **Comment 2: Public Comment Period**

***Comment Summary:*** Mr. Donkel requested that DO&G delay the public comment period through November 16, 2015 to give the public an opportunity to comment on the bids submitted for the North Slope Areawide 2015W Oil and Gas Lease Sale.

***Director's Response:*** In accordance with AS 38.05.945 and AS 38.05.035(e)(6)(F), DO&G issues a CFNI prior to each lease sale that notifies stakeholders (state and federal agencies, media,

Native corporations and villages, boroughs, municipalities, industry, special interest groups, and individuals who have requested to be notified of DO&G events) of the opportunity to submit comments. The notice is also published in local newspapers, posted in post offices, libraries, schools, and in multiple locations on the state website. Additionally, statute requires the public comment period last at least 30 days. This comment period was open for 38 days. For these reasons, Mr. Donkel did not provide substantial information that would justify extending the public comment period.

## **Alaska Department of Fish and Game (ADF&G)**

### Comment 1: Cook Inlet – Habitat, Fish, and Wildlife

**Comment Summary:** ADF&G stated that it no longer maintains a Species of Special Concern list, and footnote<sup>a</sup> should be deleted from Table 4.2 (page 4-13).

**Director's Response:** DO&G recognizes that ADF&G no longer maintains a Species of Special Concern list, and has not done so since 2011. However, this information alone does not justify a supplement to the current best interest finding. This information will be reviewed and updated when DO&G begins drafting a new best interest finding for Cook Inlet.

### Comment 2: Cook Inlet – Habitat, Fish, and Wildlife

**Comment Summary:** ADF&G stated that the Northern sea otter (southwest Alaska Distinct Population Segment) was listed in 2005 as threatened by the USFWS and this population could be present in the southwestern lease sales area. ADF&G requested that sea otter status in Table 4.2 be changed from ASSC to threatened.

**Director's Response:** This change was made in the February 4, 2010 Supplement to the Cook Inlet Areawide 2009 Oil and Gas Lease Sale Final Finding of the Director.

### Comment 3: Cook Inlet – Habitat, Fish, and Wildlife

**Comment Summary:** ADF&G stated that the taxonomic name for the Tule white-fronted goose should be corrected to *Anser albifrons elgasi*.

**Director's Response:** DO&G recognizes that the taxonomic name for the Tule white-fronted goose needs to be corrected. However, this is not new, substantial information that justifies a supplement to the current best interest finding. This information will be corrected when DO&G begins drafting a new best interest finding for Cook Inlet.

### Comment 4: Cook Inlet – Marine Mammals, beluga whales

**Comment Summary:** ADF&G provided references to a survey conducted in 2012 that showed there were 312 beluga whales in Cook Inlet, and that abundance estimate data from 1999-2012 indicate a decreasing trend of 1.6% in the annual growth rate.

Another study provided by ADF&G offered an analysis of the contents of 53 beluga stomachs collected from 2002-2012. The analysis revealed at least 12 species of fish and 8 species of invertebrates, with salmon, cod, smelt, and flounder the most dominant fish, and shrimp, polychaetes, and amphipods the most dominant invertebrates.

**Director's Response:** Although the information provided by ADF&G is new, it is substantially similar to that considered and discussed in Chapter 4, Section B(3)(b) of the 2009 Cook Inlet Areawide Final Best Interest Finding, and does not justify a supplement. However, this information will be retained and reviewed when DO&G begins drafting a new best interest finding for Cook Inlet. In future CFNI, the director will consider reports and studies if they are submitted for consideration and were published within one year prior to the CFNI.

Comment 5: Cook Inlet – 3. Mammals, b. Marine Mammals, beluga whales

**Comment Summary:** ADF&G stated that in 2011, NMFS designated critical habitat under the Endangered Species Act for the Cook Inlet beluga whale distinct population segment, and that two separate areas were designated, comprising 7,800 square kilometers. Additionally, ADF&G provided a link to a map depicting the critical habitat area.

**Director's Response:** DO&G recognizes the existence of the critical habitat area designated by NMFS for the Cook Inlet beluga whale distinct population segment. The information offered by ADF&G is not new as it has been publically available since 2011, and does not rise to the level of substantial information that would justify supplementing the Final Finding at this time. However, DO&G recognizes the importance of this information, and will review and update information regarding NMFS marine mammal and ESA requirements in the next Cook Inlet Best Interest Finding.

Comment 6: Cook Inlet – Chapter 7- Governmental Powers

**Comment Summary:** ADF&G stated that the references to ACMP should be deleted.

**Director's Response:** The ACMP expired on June 30, 2011, and information regarding the end of that program has been publically available since at least early 2011. The information offered by ADF&G is not new and does not rise to the level of substantial information that would justify supplementing the Final Finding at this time. The next Cook Inlet Areawide Best Interest Finding will not include a discussion of the ACMP.

Comment 7: Cook Inlet – Chapter 8 – Foreseeable Effects

**Comment Summary:** ADF&G provided a reference to an unpublished study where acoustic noise recordings were collected by the Cook Inlet Beluga Acoustics research program from July 2008 to May 2013. ADF&G stated that the study found beluga whale communications and hearing can be masked by anthropogenic noises, notably commercial ship traffic, unknown up or down sweeps, unidentified clanking and banging noises, and unidentified unclassed machinery. ADF&G also stated that the latter was detected in Trading Bay and could be related to oil and gas operations in that area, and that other sources of anthropogenic noise that could affect beluga hearing and communication include pile driving, dredging, outboard engine noise, and aircraft.

**Director's Response:** Although the information provided in the report submitted by ADF&G is new, the potential effects that noise from seismic surveys, construction activities, and ongoing boat, drilling, and aircraft activities could have on marine mammals, specifically Cook Inlet beluga whales, was considered and discussed in the 2009 Cook Inlet Areawide Final Best Interest Finding, and this new report would not substantially change that consideration and discussion. Therefore, the report does not provide substantial information that justifies a supplement to the most recent best interest finding. This information will be retained and reviewed when DO&G begins drafting a new best interest finding. In future CFNI, the director will consider reports and

studies if they are submitted for consideration and were published within one year prior to the CFNI.

Comment 8: Alaska Peninsula – Chapter 4- Habitats, Fish, and Wildlife

**Comment Summary:** ADF&G provided studies that indicate Pacific walrus tend to use terrestrial haulouts repeatedly and with some fidelity. ADF&G stated that a 2012 haulout abundance study observed 3,888 walruses at Cape Seniavin, which is located within the sale area, and that in 2011, USFWS added Pacific walrus to the candidate species list for the Endangered Species Act.

**Director's Response:** Although the studies provided by ADF&G are more current, the information provided in the reports is substantially similar to that considered and discussed in Chapter Four, Section B(3)(b)(ii) of the 2014 Alaska Peninsula Areawide Final Best Interest Finding. ADF&G provided a study by Garlich-Miller et al. from 2011 to support the generalization that Pacific walrus tend to use terrestrial haulouts repeatedly with some fidelity. However, that same study also states that the degree of inter-annual fidelity to Bristol Bay haulouts is unknown, and large year to year fluctuations in haulout numbers suggest that animals do not necessarily return to the same haulout each year. The studies referenced by ADF&G do not provide substantial new information that justifies a supplement to the most recent best interest finding. However, this information will be retained and reviewed when DO&G begins drafting a new best interest finding. In future CFNI, the director will consider reports and studies if they are submitted for consideration and were published within one year prior to the CFNI.

Comment 9: Alaska Peninsula – Chapter 8- Reasonably Foreseeable Effects

**Comment Summary:** ADF&G provided a study from 2012 that demonstrated that walruses hauled out at Cape Seniavin may be vulnerable to disturbance.

**Director's Response:** Although the information provided in the study is new, it is substantially similar to that considered and discussed in Chapter 8, Section D(b)(ii) of the 2014 Alaska Peninsula Areawide Final Best Interest Finding, and does not justify a supplement. However, this information will be retained and reviewed when DO&G begins drafting a new best interest finding. In future CFNI, the director will consider reports and studies if they are submitted for consideration and were published within one year prior to the CFNI.

Comment 10: Alaska Peninsula – Chapter 9- Mitigation Measures

**Comment Summary:** ADF&G requested that a new mitigation measure be added for Alaska Peninsula lease sales. The measure would state that from May through December, marine vessels 50 feet in length or less should remain at least a 0.5 nautical mile away from hauled out walrus; marine vessels 50-100 feet in length should remain at least 1 nautical mile away from hauled out walrus; and marine vessels greater than 100 feet in length should remain at least 3 nautical miles away from hauled out walrus. Pilots should maintain a buffer from walruses hauled out on land to avoid causing a disturbance. Small single engine aircraft should maintain a 2000 feet minimum altitude within ½ mile of walruses hauled out on land. Helicopters and multi-engine aircraft should maintain a 3000 feet elevation within 1 mile of a haulout site.

**Director's Response:**

Pacific walrus in the U.S. are managed under the Marine Mammal Protection Act (MMPA) of 1972, and are protected from unauthorized take or harassment. NMFS has enforcement authority

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under the MMPA and is authorized to partner with other federal and state agencies, such as USFWS, to enforce the provisions of the Act. The mitigation measure proposed by ADF&G closely mirrors the existing guidelines and policies issued by USFWS for operating marine vessels or aircraft in the vicinity of Pacific walrus haulouts<sup>1</sup>, and adding the proposed mitigation measure may not result in enhanced protection against disturbance. Therefore, the mitigation measure as proposed by ADF&G does not justify a supplement to the Alaska Peninsula Areawide Final Best Interest Finding at this time. In future CFNI, the director will consider reports and studies if they are submitted for consideration and were published within one year prior to the CFNI.

## **Conclusion**

The director has considered the comments submitted in response to the CFNI for the 2016 Cook Inlet and Alaska Peninsula areawide lease sales, and finds that the comments do not provide substantial new information that justifies a supplement to the Cook Inlet Areawide Final Best Interest Finding or the Alaska Peninsula Areawide Final Best Interest Finding. However, information received will be reviewed and updated when DO&G begins drafting new best interest findings for the Cook Inlet and Alaska Peninsula Areawide lease sale areas.

An eligible person affected by this decision may request reconsideration in accordance with 11 AAC 02. Any request for reconsideration must be received within 20 calendar days after the date of issuance of this decision, as defined in 11 AAC 02.040(c) and (d), and may be mailed or delivered to Commissioner Mark Myers, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov).

An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. If the commissioner does not act on a request for reconsideration within 30 days after issuance of this decision, the request for reconsideration is considered denied and this decision becomes a final administrative order and decision on the 31st day after issuance for the purposes of an appeal to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.



Corri A. Feige  
Director, Division of Oil and Gas

January 15, 2016

Date

cc: Daniel K. Donkel  
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<sup>1</sup> U.S. Fish and Wildlife Service. 2012. Guidelines for Marine Vessel Operations Near Pacific Walrus Haulouts in Bristol Bay.

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