

Chapter Two: Introduction

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Chapter Two: Introduction

The Alaska Department of Natural Resources (ADNR) is offering for lease all available state-owned acreage in Cook Inlet Areawide oil and gas lease sales from 2009-2018 (Figure 2.1). The lease sale area consists of all state-owned uplands located in the Matanuska and Susitna river valleys generally south and west of Houston and Wasilla, the Anchorage Bowl, the western and southern Kenai Peninsula from Point Possession to Anchor Point, and the western shore of Cook Inlet from the Beluga River to Harriet Point. The lease sale area also includes all state owned tide and submerged lands in upper Cook Inlet from Knik Arm and Turnagain Arm south to Anchor Point and Tuxedni Bay. The area is bounded on the east by the Chugach and Kenai mountains and on the west by the Aleutian Range. The gross area is about 4.2 million acres and is divided into 815 tracts ranging from 640 to 5,760 acres.

The Cook Inlet Areawide lease sale contains tracts in which the state owns both the land estate and the mineral estate; and tracts where the state owns just the mineral estate, while the land estate might be either privately owned or owned by a municipality. Only those free and unencumbered state-owned oil and gas mineral estates within the tracts will be included in any lease issued.

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; AS 44.37.020(a)). To comply with this provision, the Alaska State Legislature enacted Title 38 of the Alaska Statutes (AS 38) 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) says 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 it describes the lease sale area, analyzes the potential effects of the lease sale, 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, 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 period allowed for receipt of public comment.

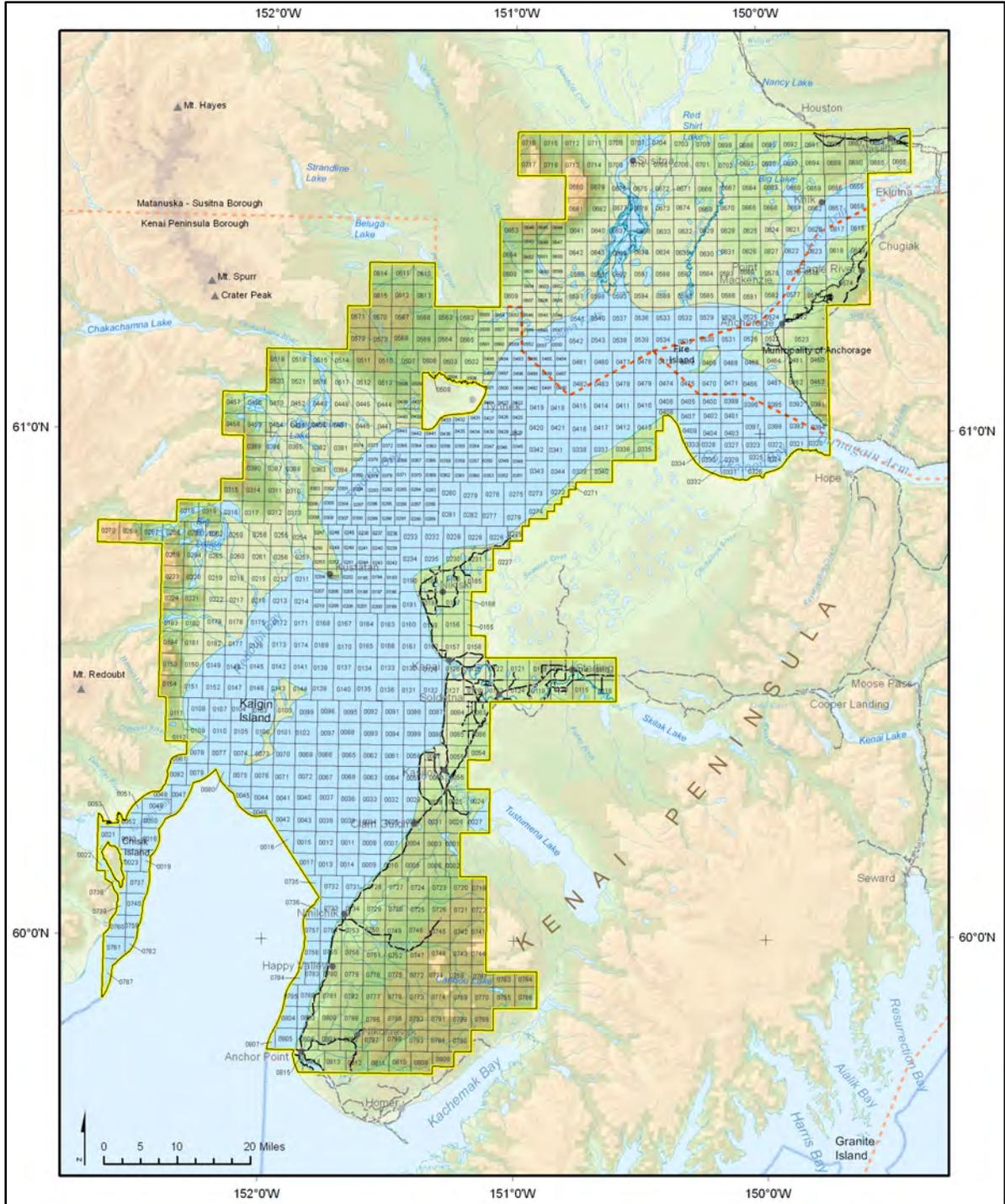


Figure 2.1. Map of the Cook Inlet lease sale area.

AS 38.05.035(e) prescribes what, at minimum, must be in these findings. AS 38.05.035(g)(1)(B) 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 for oil and gas or for 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.

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 best interest finding.

“g-list” Number	“g-list” Description	Location in the Best Interest Finding
i	Property description	Chapter 3
ii	Petroleum potential	Chapter 6B
iii	Habitat, fish, and wildlife	Chapter 4
iv	Current and projected uses in the Cook Inlet area; fish and wildlife uses and value	Chapter 5
v	Governmental powers to regulate oil and gas	Chapter 7
vi	Reasonably foreseeable cumulative effects; habitats; subsistence uses; fish and wildlife populations and their uses; historic and cultural resources	Chapter 8A-F
vii	Mitigation measures	Chapter 9
viii	Likely methods of oil and gas transportation	Chapter 6E
ix	Reasonably foreseeable effects; fiscal effects	Chapter 8G
x	Reasonably foreseeable effects; effects of oil and gas on municipalities and communities	Chapter 8H
xi	Bidding method	Chapter 10

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), which includes approved local district coastal zone management plans. An ACMP consistency analysis was released concurrently with the preliminary best interest finding, and will be 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, AS 38.05.180(d) allows the commissioner to annually offer leases for oil and gas or leases for gas only of the acreage described in AS 38.05.035(e)(6)(F). Further, a written finding under AS 38.05.035(e)(6)(F) that the interests of the state will be best served is not required before the approval of an exempt oil and gas lease sale or gas only lease sale under AS 38.05.180(d) of acreage subject to a best interest finding issued within the previous 10 years or a reoffered oil and gas lease sale or gas only lease sale under AS 38.05.180(w) 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.

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 ADNR will offer for lease all available acreage within five geographical regions: the North Slope, Beaufort Sea, Cook Inlet, North Slope Foothills, and Alaska Peninsula. 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 sales are also more efficient for the public and ADNR.

The last best interest finding for Cook Inlet was issued January 20, 1999. Supplements to the finding were issued on May 20, 2000, February 18, 2004, February 21, 2007, and February 4, 2008. The 1999 finding was valid for lease sales held through 2008.

D. Process

The process of developing a best interest finding includes many opportunities for input from a broad range of participants, including the public, government agencies, Native organizations, resource user groups, environmental organizations, and others (Figure 2.2).

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 to be released for public comment.

On February 16, 2007, DO&G issued a *Request for Agency Information* to begin the process of gathering information on the proposed lease sale area. The ADNR, Office of Habitat Management and

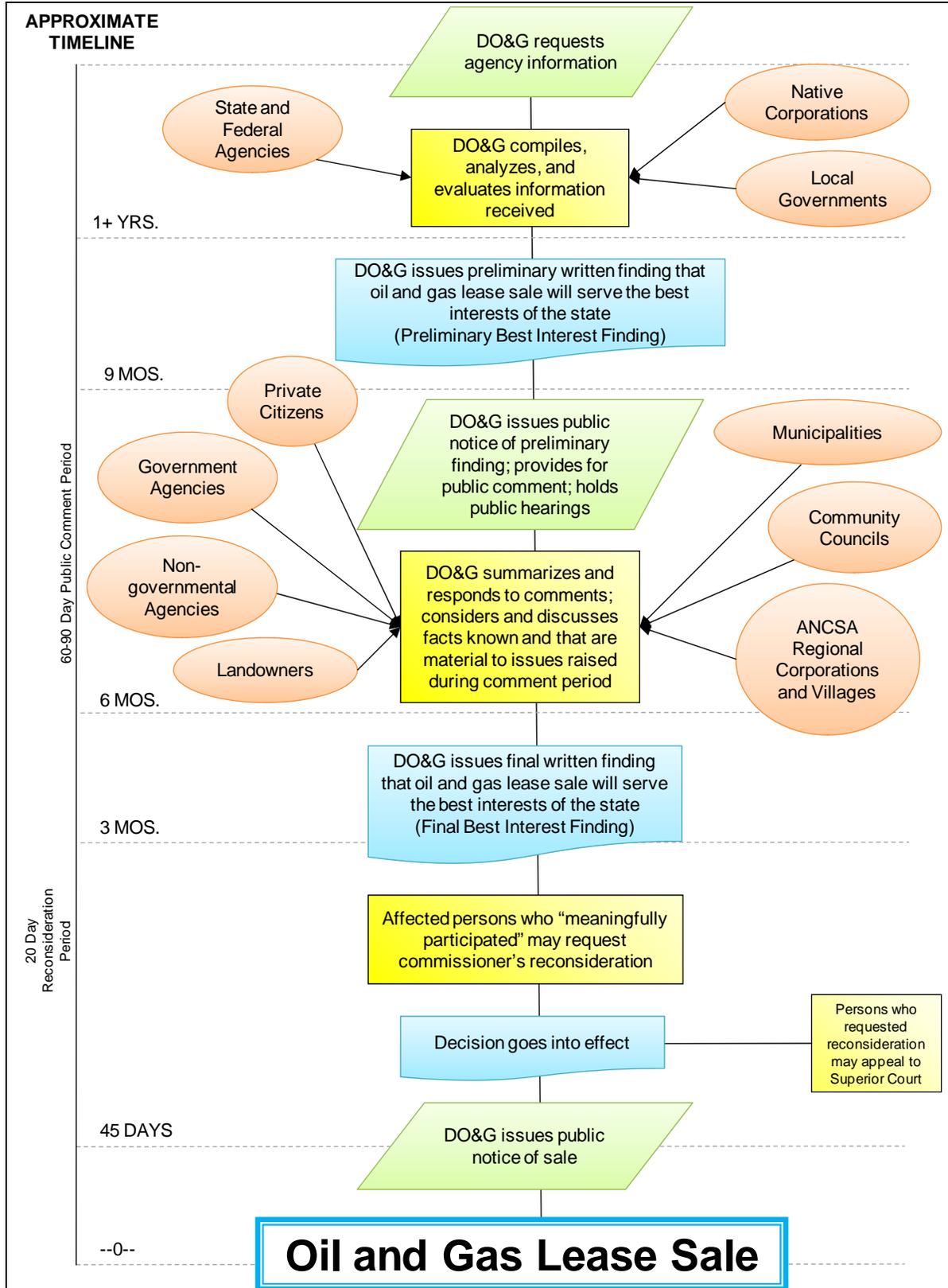


Figure 2.2. Public process for developing best interest findings for areawide oil and gas lease sales. Note that timeline is not to scale.

Permitting (OHMP)¹ provided some updated harvest estimates for commercial, sport, and subsistence fisheries, noted that the Kenai Peninsula Brown Bear Conservation Strategy had been completed, and recommended including lessee advisories from the U.S. Coast Guard and Federal Aviation Administration concerning boat and aircraft traffic in the vicinity of species protected under the Migratory Bird Treaty Act, the Marine Mammal Protection Act, and the Endangered Species Act. The Alaska Department of Fish and Game (ADF&G) subsequently provided additional updated information on several species of birds, fish, marine mammals, and terrestrial mammals. ADNR, Office of History and Archaeology stated that the study area is extensive and requested that the final lease sale boundary area be forwarded for review under the Alaska Historic Preservation Act. The Bureau of Land Management provided a copy of its 2006 Ring of Fire Proposed Resource Management Plan and Final Environmental Impact Statement.

Information provided by these agencies, as well as other relevant information, was incorporated into this best interest finding.

2. Preliminary Best Interest Finding and Request for Public Comments

To obtain public comments on a preliminary best interest finding, DO&G follows the public notice statute, AS 38.05.945. This statute includes specific requirements for notice given by ADNR for a written finding under AS 38.05.035(e). These include: publication of both a legal notice and a notice in display advertising in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action; public service announcements on the electronic media serving the area to be affected by the proposed action; and one or more of the following methods: posting in a conspicuous location in the vicinity of the proposed action; notification of parties known or likely to be affected by the action; or another method calculated to reach affected parties. Notice must also be given to a municipality if the land is within the boundaries of the municipality; to a coordinating body or a community council if requested in writing; to a regional corporation if the boundaries of the corporation established by the Alaska Native Claims Settlement Act (ANCSA) encompass the land and the land is outside a municipality; to a village corporation organized under ANCSA if the land is within 25 miles of the village for which the corporation was established and the land is located outside of a municipality; to the postmaster of a permanent settlement of more than 25 persons located within 25 miles of the land if the land is located outside a municipality, with a request that the notice be posted in a conspicuous location; and to a nonprofit community organization or a governing body that has requested notification in writing and provided a map of its boundaries, if the land is within the boundaries.

In addition, AS 38.05.946 provides that a municipality, an ANCSA corporation, or nonprofit community organization may hold a hearing within 30 days after receipt of the notice. The commissioner has discretion to hold a public hearing.

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 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 Cook Inlet oil and gas lease sales was issued on September 29, 2009. DO&G gave notice by publication in *The Frontiersman*, *The Anchorage Daily News*, *The Peninsula Clarion*, and *The Homer Tribune*; posting on the division's web

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.

page: <http://www.dog.dnr.state.ak.us/oil/>; posting on the State of Alaska Online Public Notice page: <http://notes5.state.ak.us/pn>; and through a media release that went to all media outlets listed in the Alaska Media Directory. Notice that the preliminary finding had been issued was mailed directly to approximately 700 individuals, businesses, and governmental and non-governmental agencies; and to postmasters at 42 post offices in the Cook Inlet area with a request that the notice be posted in the post office. Copies of the preliminary finding were also distributed to libraries in the Cook Inlet area.

The public comment period was September 30, 2008 through December 1, 2008. During the comment period, public hearings were held in Anchorage on October 27, 2008; in Wasilla on October 29, 2008; in Kenai on November 3, 2008; and in Homer on November 6, 2008. Notice of the public hearings included display ads in *The Anchorage Daily News*, *The Frontiersman*, *The Peninsula Clarion*, and *The Homer Tribune*; posting on the division's web page: <http://www.dog.dnr.state.ak.us/oil/>; posting on the State of Alaska Online Public Notice page: <http://notes5.state.ak.us/pn>; and through a media release that included a public service announcement that went to all media outlets listed in the Alaska Media Directory. Notice of the public hearings was also mailed directly to approximately 700 individuals, businesses, and governmental and non-governmental agencies.

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. A court reporter recorded all oral testimony. Forms were provided so that people could submit written comments during the hearings as well. Attendance at the Anchorage hearing was five people, with one written comment submitted and no oral testimony; at the Wasilla hearing six people attended, with no written or oral testimony; at the Kenai hearing three people attended, with no written or oral testimony; and at the Homer hearing, five people attended with no written testimony submitted and four people giving oral testimony.

A total of 19 written and oral comments were received during the public comment period. These are summarized in Appendix A.

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 Cook Inlet public comment period ended on December 1, 2008, DO&G reviewed all written comments and oral testimony received. A response to each comment is provided in Appendix A. Common issues and concerns raised among commenters included oil spills; information, data, and studies used in the finding; need for additional studies; use of federal environmental impact statements; effects are insufficiently proven or disproven; effectiveness of mitigation measures is not proven; beluga whales; economic data; renewable energy; greenhouse gases, climate change, and global warming; and costs to the state and other regulatory agencies.

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 Cook Inlet 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 aggrieved 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 calls for comments from the public requesting new information that has become available since the most recent best interest finding for that lease sale area was issued (Figure 2.3). This request is sent to agencies and individuals on the division's mailing list and posted on the DO&G web page. 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 comment and is affected by the final written finding of substantial new information is eligible to file a request for reconsideration.

On September 13, 2007, DO&G issued a Call for New Information regarding its proposal to offer all available state acreage in the Cook Inlet Areawide 2008 Oil and Gas Lease Sale. In response to the call, DO&G received five comments. DO&G reviewed the information submitted and the commissioner determined that substantial new information had become available that justified a supplement to the most recent best interest finding for Cook Inlet. As a result, a supplement was issued that added six new lessee advisories, modified two existing mitigation measures, and added one new mitigation measure to the finding. The Cook Inlet Areawide 2008 Oil and Gas Lease Sale was held on May 21, 2008. Eighteen tracts totaling 47,933.06 acres were sold.

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 this finding does not speculate about potential but improbable future effects, but instead reviews only reasonably foreseeable effects of the proposed disposal.

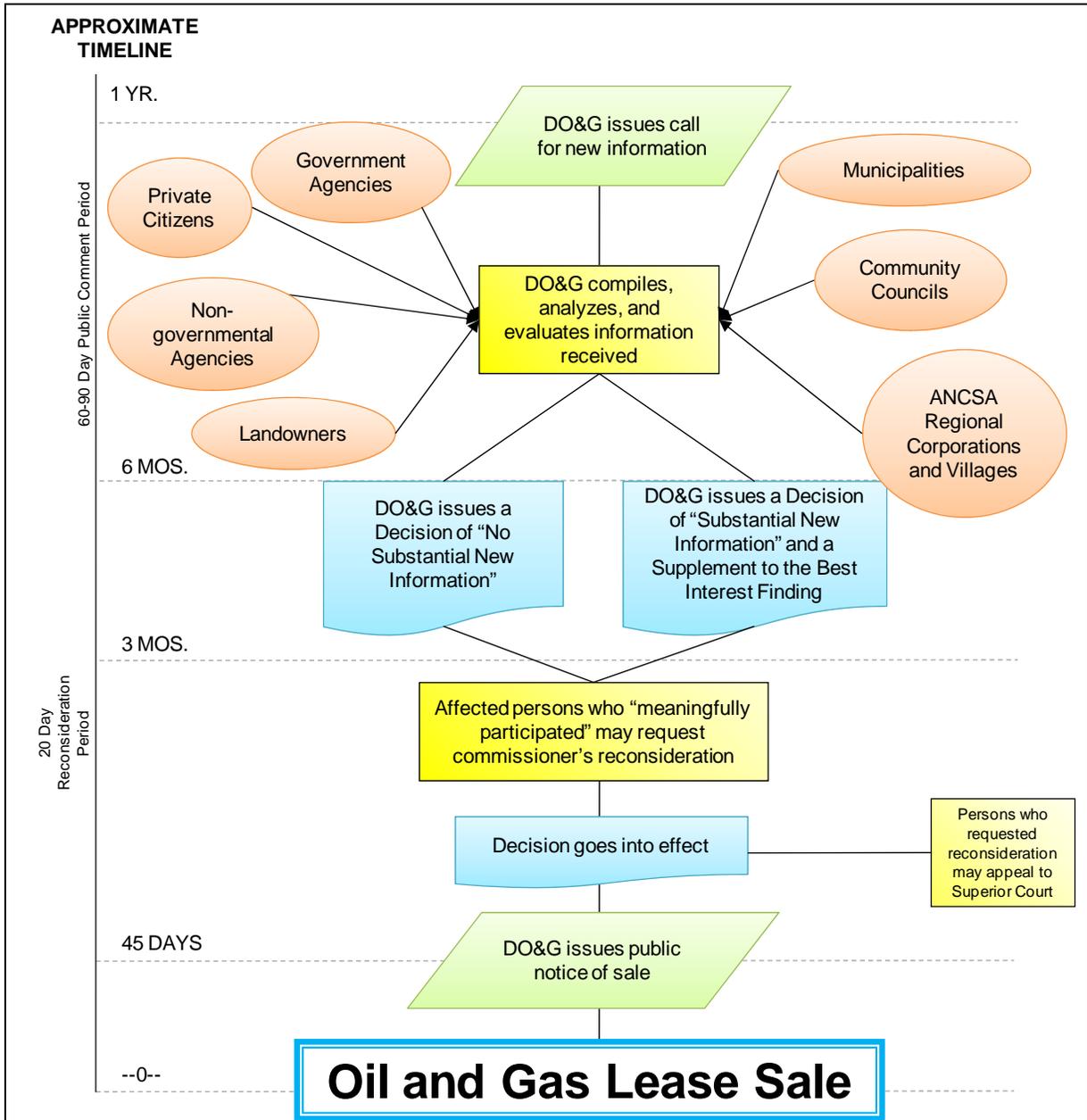


Figure 2.3. Annual public process for determining if a supplement to a best interest finding is necessary. Note that timeline is not to scale.

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.

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

- applicable statutes and regulations;
- 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
- 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 a disposal 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 markets 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 of a lease sale. Additional authorizations are required for exploration, development, and production phases. When a project is multiphased, 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 7.

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 that pertain solely to the disposal phase of the project when:

- (i) the only uses to be authorized by the proposed 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 Cook Inlet 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 multiphased development. The director, in making this 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 6 on 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 plan of operations 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 the reasons for its decision to phase above.

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 proposed lease sale area as well as measures to be imposed as terms of the lease, subsequent permit, and plan of operations to mitigate possible adverse effects.

H. Post-Sale Title Search

The Cook Inlet 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 tracts will not be determined before the lease sale. Instead, following the 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 the 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 the 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 or months following the lease sale to complete the title work and issue all of the leases.

