

# Appendix A: Summary of Comments and Responses

AS 38.05.035(e)(7)(B) requires that final best interest findings include a summary of agency and public comments received and the department's responses to those comments. This appendix summarizes public comments received in response to the Preliminary Finding of the Director for the North Slope Foothills Preliminary Best Interest Finding, issued on January 13, 2011.

## **A. Comments Received**

Three comments were received by the end of the public comment period on March 25, 2011. The Alaska Department of Natural Resources (ADNR) Office of History and Archaeology (OHA), the Alaska Department of Fish and Game (ADF&G), Division of Habitat, and the North Slope Borough provided comments.

### **1. ADNR Office of History and Archaeology**

**Anchorage, AK, e-mail agency comment of February 24, 2011, Rachel Joan Dale, Archaeologist**

**Comment Summary:** The OHA recommended an addition to the Office of History and Archaeology text in the Final Finding about the Alaska Heritage Resource Survey (AHRS) and the NSB's Traditional Land Use Inventory (TLUI) data sets. The OHA stated that these are comprised of "restricted access documents" and specific site location data should not appear in final reports or be distributed to others.

**ADNR Response:** This additional information about the state AHRS was incorporated into the Final Finding in Chapter Seven, Governmental Powers, Section 10, and into Chapter Nine, Lessee Advisories, Section B(4)(b).

Reference to the AHRS and the NSB's TLUI was included in Chapter Three, Section D of the Final Finding. Both data sets were described as "restricted access documents".

### **2. ADF&G Division of Habitat**

**Fairbanks, AK, e-mail agency comment of March 7, 2011, Todd "Nik" Nichols, Biologist**

**Comment Summary:** ADF&G Division of Habitat provided technical edits to Chapter Four in Section A, Section B, and Section B(1)(b), and also provided additional references as supporting information.

**ADNR Response:** Many of the technical suggestions, an additional reference, and some of the style suggestions were incorporated into Chapter Four of the Final Finding.

### 3. North Slope Borough (NSB)

**Barrow, Alaska, e-mail with attachment borough comment of March 25, 2011, Mayor Edward S. Itta**

**Scope of Review Comment Summary:** The North Slope Borough (NSB) stated that the scope of review is overly narrow.

**ADNR Response:** AS 38.05.035(g) sets forth the specific scope of review of the written finding. The statute requires ADNR to consider the reasonably foreseeable cumulative effects of oil and gas exploration, development, production, and transportation on the sale area, including effects on subsistence uses, fish and wildlife habitats and populations and their uses, historic and cultural resources, the reasonably foreseeable fiscal and economic effects of the lease sale, and the subsequent activities, on the state and affected municipalities and communities.

The Final Finding does not speculate about possible future effects subject to future permitting that cannot reasonably be determined until the project or proposed use is more specifically defined (AS 38.05.035 (h)), but it does consider and discuss current research and information about foreseeable cumulative impacts due to oil and gas activities in the 45 pages of Chapter Eight, citing to 142 sources. In addition, each year ADNR issues a Call for New Information, to request any substantial new information that has been made publically available, including information about effects on subsistence uses, fish and wildlife habitats and populations and their uses, historic and cultural resources, and the reasonably foreseeable fiscal and economic effects of the lease sale.

Also refer to the ADNR response below about phasing.

**Phasing Comment Summary:** The NSB stated that the use of phasing avoided consideration of potential future environmental, sociological, or economic effects, such as health, climate change, and cumulative impacts. The NSB requested that ADNR consider these concerns to ensure that impacts are adequately considered. The NSB referenced and attached their public comments submitted to ADNR for the Beaufort Sea preliminary best interest finding, as submitted November 30, 2009.

**ADNR Response:** Phasing the review of lease sales does not avoid consideration of potential future effects. In fact, the Final Finding devotes a whole chapter (Chapter Eight), consisting of 45 pages and citing to 142 sources, to the consideration and discussion of foreseeable cumulative impacts due to oil and gas activities, and current research and information about those potential impacts. Mitigation measures found in Chapter Nine, many of which were developed with input from the NSB, ADF&G and other resource agencies, address these impacts to ensure that potential effects from oil and gas lease sales are avoided, minimized or mitigated.

Phased review is statutorily authorized by AS 38.05.035(e)(1)(C). As discussed in detail in Chapter Two, Section D, the statutory criteria for phasing have been met for the North Slope Foothills oil and gas lease sales. In addition, ADNR will comply with the decision of the court in REDOIL v. Sullivan.

Applications for permits and plans of operation generally require public notice and opportunity for public input. Chapter Seven describes many of the other permits and approvals required by local, state, and federal agencies for oil and gas exploration, development, and production.

**Use of the Gulf of Mexico Deepwater Horizon Incident Current Information Comment Summary:** NSB requested that ADNR consider the report from the national Oil Spill Commission about the BP Deepwater Horizon oil spill and offshore drilling, released January 11, 2011.

**ADNR Response:** Information about the BP Deepwater Horizon oil spill in the Gulf of Mexico has been added to the Final Finding in Chapter Six, Section F.

**Use of Current ADEC Information Comment Summary:** The NSB requested that ADNR consider the Alaska Department of Environmental Conservation's (ADEC) recent study, the Alaska North Slope Spills Analysis, Final Report on North Slope Spills Analysis and Expert Panel Recommendations on Mitigation Measures.

**ADNR Response:** Information about the ADEC spills analysis and reports have been added to the Final Finding in Chapter Six, Section F.

To reflect the new, current information, a Lessee Advisory B(5) has been added to Chapter Nine in the Final Finding.

**Recent Oil Releases Comment Summary:** The NSB requested that ADNR consider the May 2010 pipeline valve failure and the January 2011 leak at a North Slope pipeline pumping station, both of which forced shut down of the Trans-Alaska pipeline due to these failures.

**ADNR Response:** Information about the ADEC spills specified in the comments has been added to the Final Finding in Chapter Six, Section F.

**Climate Comment Summary:** The NSB stated that there are no mitigation measures that address climate change and geological hazards, and that information from the Governor's Climate Change Sub-Cabinet and the Alaska Climate Impact Assessment Commission (ACIAC) should be considered. The NSB stated that the overly narrow scope of review avoids consideration of potential future effects from climate, and they requested consideration of mitigation measures to address these effects.

**ADNR Response:** Climate of the lease sale area, the Sub-Cabinet, and Commission were discussed in Chapter Three, Section F. The NSB provided additional references to additional information, which are discussed below.

In 2009 the ACIAC released a report that addressed mitigation, presented a range of potential mitigation measures, and stated that more analysis is needed for effective mitigation. The report's Chapter Six specifically discusses the impacts of the oil and gas sector. Some potential issues discussed were carbon dioxide emissions, the estimated proportion attributed to oil and gas activities, and the percentage that is generated in Alaska (0.7%) (ACIAC 2009). The Commission's Mitigation Advisory Group clarified that the recommendations in the report require further study before implementation as mitigation measures. As information becomes available, it will be considered to

be incorporated into the state's management strategy (ACIAC 2011). In the Final Report to the Legislature, the Commission wrote that no near term changes to statutes or regulations are needed, but that efforts to identify the needs for adaptive actions and new mitigation measures should continue (ACIAC 2008).

Information about the 2009 ACIAC report has been added to the Final Finding in Chapter Three, Section F.

**Geologic Hazards Comment Summary:** The NSB also referred to information available about geological hazards in the lease sale area, and requested that mitigation measures address these hazards.

**ADNR Response:** The geological hazards of the area are discussed in Chapter Three. In this discussion, ADNR refers to potential natural hazards such as faults, earthquakes, permafrost, frozen-ground phenomena, mass movements, river erosion, flooding and slope movements. A reference to geological hazard projects information was added to Chapter Three, Section G in the Final Finding.

**Health Comment Summary:** The NSB stated that the Final Finding should clarify the state's Health Impact Assessment (HIA) policy, that HIA(s) should be conducted prior to any lease sales, that potential health impacts of the proposed oil and gas leasing and operations should be identified, and that mitigation measures should be provided.

**ADNR Response:** HIA(s) were discussed in Chapter Eight, Section I(3) of the Preliminary Finding, where it was explained that a HIA is a tool that seeks to identify potential lasting or significant changes, both positive and negative, of different actions on the health and social well-being of a defined population as a result of a program, project, or policy.

As discussed in the Preliminary Finding, the Alaska Inter-Tribal Council received a grant from the Robert Wood Johnson Foundation to integrate an HIA into the federal environmental impact study process. In 2007, the NSB was awarded a \$1.67 million NPR-A impact grant to perform a HIA. The goal is to aid the NSB in analyzing and understanding potential impacts of proposed development on the health of communities and to design appropriate mitigation measures. The State is evaluating appropriate policies and procedures for conducting HIAs. The Final Finding may be supplemented as necessary as information becomes available about HIAs.

**Mitigation Measures Comment Summary:** The NSB stated that the value of many mitigation measures is significantly diminished by the qualification that compliance is required only when "practicable." The NSB suggested that ADNR adopt a policy that no exception to the requirement of implementing a mitigation measure should be granted unless the applicant demonstrates that the objective of the measure can be met through a means other than implementation of the specified mitigation measure. The NSB stated that is particularly important regarding subsistence activities.

**ADNR Response:** The request to evaluate and change the use of the term practicable resulted in changes to mitigation measures, where the mitigation measures now state that the Director must approve any proposed alternative. The changes made in the Final Finding are in mitigation measures, Chapter Nine, Sections A(1)(c), A(1)(e), A(1)(f), A(1)(h), A(1)(i), A(2)(f), and A(4)(h).

**Local Permits Comment Summary:** The NSB stated that lessees should be informed that there are requirements to obtain a NSB permit in connection with these activities: construction of facilities, placement of gravel pads, use of explosive devices, and tundra travel.

**ADNR Response:** Lessee advisories are discussed to alert lessees to additional statutory and regulatory requirements imposed under other administrative jurisdictions in the lease sale area. ADNR included lessee advisories to address the concerns that NSB stated relating to requirements to obtain permits from NSB prior to implementation for construction of facilities, placement of gravel pad, use of explosive devices, and tundra travel into Chapter Nine B(10)(g) in the Final Finding.

**NSB TLUI Certificate Comment Summary:** The NSB stated that applicants must obtain a Certificate of Inupiat History, Language and Culture/Traditional Land Use Inventory (IHLC/TLUI) Clearance from the NSB Planning Department for an earth-moving activity, ice road, or seismic survey. The NSB also requested that this be connected to the mitigation measures in Chapter Nine.

**ADNR Response:** Lessee advisories are provided to alert lessees to additional statutory and regulatory requirements imposed under other administrative jurisdictions in the lease sale area. ADNR included a lessee advisory for the concerns that NSB stated relating to requirements to obtain a certificate from NSB prior to earth-moving activity, ice road, or seismic surveys. These may require obtaining a Certificate of Inupiat History, Language and Culture/Traditional Land Use Inventory (IHLC/TLUI) Clearance from the NSB Planning Department prior to the activity.

Information about the TLUI was included in Chapter Three, Section D of the Final Finding. In addition, a lessee advisory was included into Chapter Nine, Section B(10)(h) of the Final Finding.

**Pipeline Height Comment Summary:** The NSB recommended that the mitigation measures provide for the pipeline height to be measured from the top of the average snow depth to the bottom of cables and vibration dampeners or bottom of the vertical support member (VSM).

**ADNR Response:** Mitigation measure A(1)(g), specifying the requirement for pipeline height, is representative and more protective than the recommendation of the Final Report of the Alaska Caribou Steering Committee, which suggested a pipeline elevation height of 5 feet above ground level (Cronin et al. 1994). The higher, more conservative height of 7 feet above ground level is more protective than the Steering Committee's recommendation. ADNR will retain the mitigation measure as stated in the Preliminary Finding.

**Caribou Migration Comment Summary:** The NSB suggested that exploratory drilling operations should be restricted to the same dates as restrictions for exploration activities, from August 1 through October 31 each year.

**ADNR Response:** The mitigation measure addressing exploration drilling activities found in mitigation measure A(3)(c), was changed to align the dates with the related mitigation measure A(3)(d) for exploration activities in the Chandler, Nanushuk, Itkillik, Kugaruk, and Anaktuvuk River valleys to allow for subsistence hunting. In the Final Finding these two mitigation measures have the same date restrictions for activities, August 1 through October 31 of each year.

**Oil Spill Comment Summary:** The NSB stated that spill response equipment sufficient to respond to a spill up to 5,000 gal should be updated and should replace the stated volume of 5 gal, as found in mitigation measure A(4)(d).

**ADNR Response:** Spill prevention of oil is under the jurisdiction of the ADEC. One of the goals of the Division of Spill Prevention and Response (SPAR) is oil spill prevention for exploration and production facilities. SPAR ensures that operators use proper spill prevention as approved in each operator's oil discharge and prevention contingency plan (C-plan) (ADEC 2011). Spill prevention is regulated under the statutes and regulations of ADEC. Therefore, no changes were made to the mitigation measures in the Final Finding.

**Access Comment Summary:** The NSB stated that access to ice roads and the lease areas should be prohibited for motorized vehicles originating from the James Dalton Highway.

**ADNR Response:** The State has established generally allowable uses on state owned land (DMLW 2009). These include using a highway vehicle with a curb weight of up to 10,000 pounds, including a four-wheel drive vehicle and a pick-up truck, or using a recreational-type vehicle off-road or all-terrain vehicle with a curb weight of up to 1,500 pounds, including a snowmobile and four-wheeler, on or off an established road easement, if use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion. An authorization is required from the ADF&G Division of Habitat for any motorized travel in fish bearing streams.

The limitation imposed by mitigation measure A(5)(b) addresses prevention of problems associated with potential hazards within the immediate vicinity of drill sites, buildings, and other related facilities. It also prevents blockage of access to or along navigable or public waters. State statute and regulations are not structured to restrict generally allowed uses on state owned land. Access restrictions as requested by NSB would only be applicable on lands not owned by the State of Alaska, and would be conditioned by the statutes, regulations or policies of the land owner. Therefore, no changes were made to the mitigation measures in the Final Finding.

**Comment Summary regarding the Alaska Coastal Management Program (ACMP):** The NSB commented about the Alaska Coastal Management Program (ACMP) evaluation.

**ADNR Response:** These comments are addressed in the ACMP proposed consistency determination, a companion document to the Final Finding for the North Slope Foothills.

**References:**

ACIAC (Alaska Climate Impact Assessment Commission). 2008. Final report to the legislature. Representative Ralph Samuels, Chairman, and Representative Reggie Joule, Vice-Chairman. March 17, 2008. [http://www.housemajority.org/coms/cli/cli\\_finalreport\\_20080301.pdf](http://www.housemajority.org/coms/cli/cli_finalreport_20080301.pdf)

ACIAC (Alaska Climate Impact Assessment Commission). 2009. Mitigation Advisory Group Final Report. Alaska State Legislature's Joint Alaska Climate Impact Assessment Commission. <http://www.climatechange.alaska.gov/advgrp.htm>

ACIAC (Alaska Climate Impact Assessment Commission). 2011. Climate change in Alaska. Alaska State Legislature's Joint Alaska Climate Impact Assessment Commission. <http://www.climatechange.alaska.gov/>

ADEC (Alaska Department of Environmental Conservation). 2011. Division of Spill Prevention and Response: About us; Safe handling of oil and chemicals pamphlet. ADEC SPAR. <http://www.dec.state.ak.us/spar/about.htm> Accessed May 11, 2011.

Cronin, M. A., W. B. Ballard, J. Truett and R. Pollard. 1994. Mitigation of the effects of oil field development and transportation corridors on caribou. Final Report to the Alaska Caribou Steering Committee, Prepared by LGL, Alaska Research Associates, Inc., Anchorage. July.

DMLW (Division of Mining , Land and Water). 2009. Generally allowed uses on state land fact sheet. [http://dnr.alaska.gov/mlw/factsht/gen\\_allow\\_use.pdf](http://dnr.alaska.gov/mlw/factsht/gen_allow_use.pdf)

