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July 8, 2010

Decision of Substantial New Information for
Beaufort Sea Areawide 2010A
North Slope Areawide 2010
North Slope Foothills Areawide 2010
Oil and Gas Lease Sales

Under AS 38.05.035(e)(6)(F), a written finding is not required for an oil and gas lease sale 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. The current Beaufort Sea Areawide final best interest finding was issued on November 9, 2009. The current North Slope Areawide final best interest finding was issued on July 15, 2008. The current North Slope Foothills Areawide final best interest finding was issued on February 7, 2001, with a supplement issued on January 30, 2002.

On April 22, 2010, the Alaska Department of Natural Resources (ADNR), Division of Oil and Gas (DO&G) issued a Call for New Information regarding its proposal to offer all available state acreage in the Beaufort Sea Areawide 2010A, the North Slope Areawide 2010, and the North Slope Foothills Areawide 2010 oil and gas lease sales. The purpose of the call was to provide an opportunity for interested parties to submit to DO&G any substantial new information that has become available since issuance of the best interest findings for these areas.

In response to the call, DO&G received comments from the Alaska Department of Fish and Game (ADF&G), Division of Habitat. ADF&G stated that it had no new information to submit. Comments were also received from the North Slope Borough, the Northern Alaska Environmental Center, and Peter McKay, an individual. These comments are summarized below along with DO&G's responses.

Based on comments and information received in response to the call for new information, the Director of the Division of Oil and Gas finds that there is substantial new information that justifies supplements to the most recent best interest findings for the Beaufort Sea, North Slope, and North Slope Foothills Areawide lease sales. The supplements provide the currently available information about the Deepwater Horizon incident. In addition, the North Slope Foothills supplement eliminates a lessee advisory concerning storage of fuel and hazardous substances and replaces it with a mitigation measure that is consistent with the Beaufort Sea and North Slope mitigation measures.

Deepwater Horizon Incident

The North Slope Borough, the Northern Alaska Environmental Center, and Peter McKay stated that the Deepwater Horizon incident (described below) constitutes new information that justifies a supplement to all three best interest findings. Although comments from the three commenters relative to the Deepwater Horizon incident focused on the Beaufort Sea 2010A sale, all commenters stated that their comments were also applicable to the North Slope and North Slope Foothills 2010 sales.

North Slope Borough Comments

Overall, the North Slope Borough (NSB) stated that the Deepwater Horizon incident shows that the state should reexamine its leasing policies, operational requirements and conditions, and spill prevention and response assumptions and conclusions. In detail, the NSB stated:

1) That the state should not continue to offer leases or to permit drilling operations to go forward until a comprehensive investigation of the incident has been concluded and all appropriate actions taken to ensure that such an incident does not occur again in U.S. waters.

2) That the state should consider and define how a relief well can be quickly and successfully completed in response to a blowout in arctic conditions; and that the drilling season should be shortened to allow adequate time to drill a relief well before freeze-up.

3) That the state should adjust requirements for the amount of personnel, equipment, and supplies that must be immediately available onsite; and that the state should define the maximum time allowable within which operators must be able to get off-site resources to a drilling site in the event of an accident.

4) That the human health impacts of a large spill response effort should be considered.

5) That human health impacts from the use of chemical dispersants in cleanup of a large spill should be analyzed.

6) That the Beaufort Sea 2009 best interest finding was inadequate, and that ADNR should revisit some of its rationales for denying the NSB reconsideration request for the Beaufort Sea 2009 best interest finding.

7) That ADNR should issue a supplemental best interest finding that takes into account the Deepwater Horizon incident, and that provides a more responsible and comprehensive analysis, beyond "consideration and discussion" of the potential risks and benefits to the state and its citizens of continued oil and gas leasing in the Beaufort Sea.

8) That reliance on Minerals Management Service and industry standards regarding spill prevention and response should be reviewed, and that better mitigation measures are needed for addressing exploratory drilling in broken ice.

9) That reports of all recent incidents should be reviewed to determine what new conditions should be required for future construction and operation, and to modify oversight of industrial operations and facilities.

Northern Alaska Environmental Center Comments

Overall, the Northern Alaska Environmental Center (NAEC) stated that the Deepwater Horizon incident indicates major shortcomings in blowout prevention, inspection, and worst-case scenario spill risks, response, and environmental impact review by government and industry. In detail, the NAEC stated:

1) That the state should cancel the 2010A sale so that the state can comprehensively assess lessons from the incident regarding blowout prevention and testing, worst-case scenario assessment, offshore and shoreline spill response, monitoring and oversight deficiencies, compliance factors, environmental impacts, and mitigation measures.

2) That the public comment period should be extended until the blowout is halted, state and federal investigations have been completed, and oil spill response efforts have ended; and that then, the implications of the spill to the Beaufort Sea can be incorporated into the best interest finding.

3) That a comprehensive analysis of Alaska Oil and Gas Conservation Commission procedures, requirements, inspection histories, and review of all past Alaskan blowouts should be conducted.

4) That the Deepwater Horizon incident indicates there are flaws in the oversight system of Minerals Management Service that may also be applicable to the State of Alaska.

5) That the size of a worst-case blowout should be addressed and impacts assessed.

Peter McKay Comments

Overall, Mr. McKay stated that there is new information available from the Deepwater Horizon incident. In detail, he stated:

1) That Chapter Six of the Beaufort Sea finding should be substantially reviewed and revised using the new information available from the Deepwater Horizon incident; specifically, the sections concerning oil spills, blowout prevention, and regulatory oversight should be revised.

2) That lease conditions need to be reviewed and changed, and that these changes are needed for undersea, offshore, and onshore activities.

3) That these changes are needed for the Beaufort Sea, North Slope, and North Slope Foothills findings and leases.

4) That the state should consider protections similar to those imposed by the federal government in the Chukchi and Beaufort seas in response to the incident.

Division of Oil and Gas Response

Information Available Concerning the Deepwater Horizon Incident

The Deepwater Horizon was a semi-submersible drilling unit (Transocean 2010a) operating on Mississippi Canyon Block 252 (MC252) (British Petroleum 2010a) in federal Outer Continental Shelf (OCS) waters located in the United States Gulf of Mexico, about 41 miles offshore of Louisiana (Transocean 2010c; Transocean 2010b; Transocean 2010e). British Petroleum Exploration & Production, Inc., was the lease operator (Transocean 2010e).

According to official reports, on April 20, 2010, approximately 10:00 p.m. Central Time, a fire and explosion were reported on the Deepwater Horizon (Transocean 2010b; Transocean 2010e). The rig sank on April 22, 2010 (Transocean 2010e), coming to rest on the sea floor in about 5,000 feet of water, about 1,500 feet from the well center and away from subsea pipelines (Transocean 2010d). At the time of the incident, 126 crew members were onboard; 115 were evacuated and 11 died (Transocean 2010b; Transocean 2010e).

Before the rig sank, the response team was not able to stop the flow of oil and gas (Transocean 2010e), the blowout preventer failed (British Petroleum 2010b), and a large release of hydrocarbons into the water occurred. As of this time, various well control efforts have been attempted, including ongoing drilling of two relief wells begun on May 2, 2010 and May 16, 2010 (British Petroleum 2010b). As of this time, oil continues to escape from the well into the ocean and a large cleanup operation is underway.

The Minerals Management Service (MMS) and the U.S. Coast Guard (USCG) have jurisdiction over the incident, and have a joint, ongoing investigation into the incident (USCG and MMS 2010a). The investigation is tasked with identifying the factors leading to the incident, and developing conclusions and recommendations regarding the incident (USCG and MMS 2010a). As of now, two hearings have been held by the joint USCG and MMS investigation: one on May 11-12, 2010, and a second on May 26-29, 2010. A third hearing is tentatively scheduled for July 19-23, 2010 (USCG and MMS 2010b). Analysis and conclusions are not being presented during the hearings (USCG and MMS 2010b). Evidence, facts, conclusions, and recommendations of the investigation team must be approved by both the USCG and MMS, after which a final investigative report will be made available to the public (USCG and MMS 2010a). A final report is scheduled to be released in January 2011 (USCG and MMS 2010c).

The State of Alaska is closely following the activities in the Gulf of Mexico. When the causes of the incident are established and made available, we will determine any applicability to Alaska, and we will modify or issue new mitigation measures or lessee advisories, as needed.

DO&G Response

The Director has considered a range of options in deciding whether or not the Deepwater Horizon incident constitutes substantial new information that justifies supplements to the Beaufort Sea, North Slope, and North Slope Foothills best interest findings. Some commenters requested that permitting, procedures of the Alaska Oil and Gas Conservation Commission (AOGCC; 20 AAC 25), and other processes beyond DO&G lease sales and leasing be delayed or revised, but those requests are beyond the scope of the call for new information and issuing or not issuing supplements to these best interest findings.

The NSB also requested that previous decisions concerning the Beaufort Sea Areawide Oil and Gas Lease Sale Final Finding of the Director, issued on November 9, 2009, be reconsidered. The process for issuing the 2009 best interest finding has been concluded. Although that process will not be reopened, the current process, in which the NSB is participating, of calling for new information and considering a supplement to the finding is the appropriate route for considering the Deepwater Horizon incident as it relates to the Beaufort Sea, North Slope, and North Slope Foothills lease sales.

The NAEC stated that there are problems with the MMS oversight and regulatory processes, both in the Gulf of Mexico where the Deepwater Horizon incident occurred, and in Alaska. Federal OCS processes and programs under the jurisdiction of MMS are beyond the scope of best interest findings supplements and processes, which are State of Alaska, DO&G processes for state oil and gas interests. Information about the causes of the Deepwater Horizon incident is not yet available, and therefore it is not possible at this time to determine if the incident was related to MMS oversight and regulatory processes, and if it was, whether there are implications for State of Alaska oil and gas leases and lease sales.

The Director has considered issuing a supplement that would modify or add mitigation measures, considered extending the period for submitting new information, and considered delaying or canceling the lease sales. However, the causes of the incident are not known at this time, and it is unknown at this time if contributing factors were unique to the Gulf of Mexico, the federal regulatory framework, or the companies or specific operations involved. Therefore, if changes to mitigation measures were made in the absence of this information, the revised measures could miss the actual causes of the incident, coordination of changes with other agencies such as the Alaska Department of Environmental Conservation could be lacking, the revised measures could unnecessarily increase and complicate the regulatory burden, and the new or revised measures could be ineffective or even counterproductive at protecting human life and the environment.

Delaying or canceling the lease sales is likewise problematic. In addition to lacking information necessary to make effective changes to mitigation measures, the timetable for restarting the lease sale process would be unknown. Although the joint MMS-USCG investigative report is scheduled to be released in January 2011, hearings have not yet been completed, and in fact, the incident is still ongoing. Because of the magnitude of the incident, including loss of human life, value of property lost, volume and geographic extent of uncontained oil, potential degree of environmental impacts, and potential for litigation, delays in release of the final report are likely.

It is important to note that leases only give lessees the right to conduct activities such as exploration, development, and production, but leases do not authorize these activities. A plan of operations or a unit plan of operations must be approved before any operations may be undertaken on or in the leased area. In addition, all oil and gas activities are subject to numerous federal, state, and local laws, regulations, policies, and ordinances with which the lessee is obligated to comply.

Finding of Substantial New Information

Therefore, because of the magnitude of the Deepwater Horizon incident, which included loss of human life, high value of lost property, large volume and wide geographic extent of uncontained oil, and potential for

widespread and long-lasting environmental impacts, the Director finds that the Deepwater Horizon incident does constitute substantial new information that justifies supplements to the best interest findings.

However, because the causes of the incident and its applicability to Alaska are unknown at this time, developing effective revisions to mitigation measures is not possible at this time, the timeframe for obtaining information about the causes of the incident is unpredictable, and leases do not actually authorize the lessee to begin any action, revisions or additions to the mitigation measures or lessee advisories stemming from the Deepwater Horizon incident will not be made to the Beaufort Sea, North Slope, and North Slope Foothills best interest findings at this time.

When the causes of the incident are established and made available, and any applicability to Alaska is determined, new or modified mitigation measures or lessee advisories may be issued.

Other Comments

North Slope Borough Comments

Request for Changes to Mitigation Measure Concerning Fuel and Hazardous Substances

Comment Summary: The NSB requested changes to the mitigation measures addressing storage of fuel and hazardous substances to make the mitigation measures consistent with NSB municipal codes.

DO&G Response: AS 38.05.035(e) and the departmental delegation of authority provide the Director of DO&G with the authority to impose conditions or limitations, in addition to those imposed by statute, to ensure that a resource disposal is in the state's best interests. In general, mitigation measures for oil and gas areawide best interest findings are developed for situations that are not covered by the authorities of other state, federal, or local authorities. Situations that are outside the authority of DO&G but that are important considerations for oil and gas development, and that are within the authority of other agencies, may be included as lessee advisories. These other regulatory requirements alert lessees to additional restrictions that may be imposed at the permitting stage of a proposed project or activity where entities other than DO&G have regulatory, permitting, or management authority. However, lessee advisories do not provide a comprehensive list of requirements, and lessees are responsible for knowing and complying with all regulatory requirements.

NSB Municipal Code 19.70.050(I)(L)(11) addresses storage of fuel: "Impermeable lining and diking is required for fuel storage facilities with a capacity greater than 660 gallons."

In the 2009 Beaufort Sea finding, storage of fuel and hazardous substances is addressed in Chapter Nine, Mitigation Measure A(4)(a): "Secondary containment (see definition) shall be provided for the storage of fuel or hazardous substances." The definition of secondary containment is given as, "an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double walled tanks do not qualify as Secondary Containment unless an exception is granted for a particular tank" (Chapter Nine, Section A(8)).

In the 2008 North Slope finding, storage of fuel and hazardous substances is addressed in Chapter Seven, Mitigation Measure A(4)(a): "Secondary containment shall be provided for the storage of fuel or hazardous substances."

"Secondary containment" means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container plus 12 inches of freeboard. Double walled tanks do not qualify as Secondary Containment unless an exception is granted for a particular tank."

In the 2001 North Slope Foothills, storage of fuel and hazardous substances is addressed in Chapter Seven, Lessee Advisory B(8)(a): "To conform with ADEC requirements, impermeable lining and diking, or equivalent measures such as double-walled tanks, will be required for onshore oil storage facilities (with a total above ground storage capacity greater than 1,320 gallons, provided no single tank capacity exceeds 660 gal) and for sewage ponds. Additional site-specific measures may be required as determined by ADNR, with the concurrence of ADEC and will be addressed in the existing review of project permits or c-Plans."

The mitigation measures in the Beaufort Sea and North Slope findings, which do not specify a minimum threshold of 660 gallons, are more protective than NSB Municipal Code 19.70.050(I)(L)(11). Therefore, the fuel and hazardous substances mitigation measures for those two findings will not be changed.

Given the similarities between the North Slope Foothills, North Slope, and Beaufort Sea areas, the North Slope Foothills finding will be supplemented to make the fuel and hazardous substances measures consistent with the other two findings. This will be accomplished by removing Lessee Advisory B(8)(a) and adding Mitigation Measure 23 under a new Section 11 entitled "Fuel and Hazardous Substances" which will state: "Secondary containment shall be provided for the storage of fuel or hazardous substances. Secondary Containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double walled tanks do not qualify as Secondary Containment unless an exception is granted for a particular tank."

Request for Changes to Mitigation Measure Concerning Tundra Travel

Comment Summary: The NSB requested changes to the mitigation measures addressing tundra travel to make the mitigation measures consistent with NSB municipal codes.

DO&G Response: See previous response concerning purpose of mitigation measures and lessee advisories.

NSB Municipal Code 19.50.030(J) addresses tundra travel:

> Vehicles shall be operated in a manner such that the vegetative mat of the tundra is not disturbed and blading or removal of the tundra vegetative cover is prohibited. Snow ramps, snow/ice bridges or cribbing shall be used to cross-frozen water bodies to preclude cutting, eroding or degrading of their banks. Snow ramps and snow/ice bridges shall be substantially free of soft and debris and of sufficient thickness to support vehicles. Snow/ice bridges must be removed or breached, and cribbing removed after final use or prior to breakup, whichever occurs first. Frozen watercourses shall be crossed at shallow riffle areas, if such areas exist. Where those areas do not exist, an environmentally preferred location will be identified. Vehicles shall not be abandoned. A minimum of six inches of snow or ice on 12 inches of frozen ground is required for tundra travel.

The mitigation measure addressing tundra travel in the Beaufort Sea, North Slope[1], and North Slope Foothills findings states:

> Except for approved off-road travel, exploration activities must be supported only by ice roads, winter trails, existing road systems or air service. Wintertime off-road travel across tundra and wetlands may be approved in areas where snow and frost depths are sufficient to protect the ground surface. Summertime off-road travel across tundra and wetlands may be authorized subject to time periods and vehicle types approved by DMLW. Exceptions may be granted by DMLW, and the director, if an emergency condition exists; or, if it is determined, after consulting with ADF&G that travel can be accomplished without damaging vegetation or the ground surface.

Effects on tundra travel are of concern to DO&G, and this mitigation measure was developed to ensure that tundra habitats are adequately protected. Rather than the approach requested by the NSB in its municipal

[1] The mitigation measure addressing tundra travel in the North Slope finding is slightly different.

code, current ADNR permitting practices make use of more robust methods for opening and closing tundra travel based on recent research (Bader and Guimond 2006). Therefore, the mitigation measures addressing tundra travel in the Beaufort Sea, North Slope, and North Slope Foothills findings will not be changed.

Open Water Expert Review Panel Report

Comment Summary: The NSB stated that there is new information contained in the "Expert Panel Review of Monitoring and Mitigation Protocols in Applications for Incidental Take Authorizations Related to Oil and Gas Exploration, Including Seismic Surveys, in the Chukchi and Beaufort Seas", dated March 22-26, 2010:

NMFS and MMS (National Marine Fisheries Service and Minerals Management Service). Unpublished. Expert panel review of monitoring and mitigation protocols in applications for incidental take authorizations related to oil and gas exploration, including seismic surveys, in the Chukchi and Beaufort seas (draft). Peer review panel report, March 22-26, 2010, Anchorage, Alaska.

This report is a summary of a meeting of seven scientists convened by the National Marine Fisheries Service (NMFS) to review monitoring plans required for incidental take authorizations of marine mammals under provisions of the Marine Mammal Protection Act. The panel was tasked with reviewing the monitoring plans of companies that had applied for incidental take authorizations for oil and gas activities in the Chukchi and Beaufort seas in 2010. The panel was to ensure that "the monitoring activities and methods described in the plans will enable the applicant to meet [the] requirements" of the authorization. The panel also made recommendations for changes to applicants' plans.

The panel's report stated that there are many factors determining the acoustic effects from human activities, rather than a single factor (NMFS and MMS Unpublished). The panel stated that there are factors related to the characteristics of sound itself, physical factors of the surrounding environment, and biological factors; these many and varied factors work together to create effects that are difficult to measure and understand. The panel identified many areas of research needs and made recommendations about how research should be carried out. The panel discussed the various methods for monitoring marine mammals, the strengths and weaknesses of those methods, made some recommendations for monitoring, and made some recommendations for future research.

The panel also looked in detail at the monitoring plans of six applications for incidental take authorizations. The panel then made specific recommendations for changes to those plans. A references section included citations to 16 articles, reports, or books.

DO&G Response: This report is specific to federal marine mammal take authorizations administered by NMFS. The North Slope Foothills area does not include marine mammals, and therefore this information would potentially only apply to the Beaufort Sea and North Slope findings. NMFS is responsible for reviewing applications and issuing incidental take authorizations. DO&G does not have any jurisdiction over these authorizations. Therefore, recommendations of NMFS specific to incidental take authorizations and specific take applications does not constitute substantial new information that justifies a supplement to the best interest findings.

Although the report included some generalized recommendations, those focused on methods for monitoring marine mammals and on research needs. Although some of the methods may be new, DO&G does not have jurisdiction for monitoring marine mammals under incidental take authorizations, and does not control decisions on research of marine mammals. Lessee Advisories B(7)(c) in Chapter Nine of the Beaufort Sea best interest finding, and B(6)(c) and B(7)(a) of Chapter Seven of the North Slope finding, alert lessees that they must comply with the Marine Mammal Protection Act. Therefore, the recommendations for monitoring and research do not constitute substantial new information that justifies a supplement to the Beaufort Sea and North Slope best interest findings.

The 16 articles, reports, and books listed in the references section included 13 that were published in or before 2007. These were available at the time the Beaufort Sea and North Slope findings were developed, and therefore do not constitute substantial new information that justifies supplements to the findings. Two articles are listed as "in press" and are not available at this time. A third article is new and available:

Clark, C. W., W. T. Ellison, B. L. Southall, L. Hatch, S. M. V. Parijs, A. Frankel and D. Ponirakis. 2009. Acoustic masking in marine ecosystems: intuitions, analysis, and implication. Marine Ecology Progress Series 395:201-222. http://www.int-res.com/articles/theme/m395p201.pdf

In this article, Clark et al. (2009) present a method for simultaneously accounting for a wide range of sounds in the marine environment that might affect marine animals, especially whales. The purpose of this method is to determine the level of acoustic masking that might be occurring from various sounds originating from human activities. The authors conclude that their method can be used to "evaluate the contributions to masking from individual sound sources and the cumulative effect of multiple sources on one or many individuals." However, they also explain that the actual cost to an individual or a population remains speculative because details about how whale calls, communication, behavior, and ecology are related are lacking.

Therefore, although this information is new, it is not substantial and therefore does not justify a supplement to the Beaufort Sea and North Slope best interest findings. Lessee Advisories B(7)(c) in Chapter Nine of the Beaufort Sea best interest finding, and B(6)(c) and B(7)(a) of Chapter Seven of the North Slope finding, alert lessees that they must comply with the Marine Mammal Protection Act. In addition, Mitigation Measures A(3)(a)-(c) of the Beaufort Sea finding protect subsistence whale hunting activities.

Bowhead Subsistence Report

Comment Summary: The NSB stated that there is a new report about bowhead whale subsistence use around Cross Island that was published in July 2009. The report to which the NSB refers is Galginaitis 2009:

Galginaitis, M. 2009. Annual assessment of subsistence bowhead whaling near Cross Island, 2001-2007: cANIMIDA task 7 final report. OCS Study MMS 2009-038, Minerals Management Service, Alaska Outer Continental Shelf. http://www.mms.gov/alaska/reports/2009rpts/2009_038.pdf

DO&G Response: This report is a compilation of annual reports from a seven-year study funded by the Minerals Management Service. The purpose of the project was to determine if Cross Island subsistence whaling has been affected by oil and gas activities. However, the data collected during the study did not allow for the key hypotheses concerning oil and gas effects to be tested. The Beaufort Sea finding, published in 2009, did use information from this study, although information for the last year of the study (2007) was not available at the time the finding was issued. The report that was available (Galginaitis 2008) included information for all previous years (2001-2006), and a table showing use of Cross Island for subsistence whaling was included in the finding (Table 5.8). In addition, the Beaufort Sea finding discussed subsistence whaling in the area at length, including Nuiqsut and the importance of Cross Island for Nuiqsut subsistence users.

The NSB specifically requested an explanation of why deferrals around Cross Island have not been instituted. As explained in the Beaufort Sea finding in Appendix A, Section A(10) and B(3)(a), subsistence hunting and harvests of bowhead whales have remained stable for many years, and mitigation measures detailed in Chapter Nine, Section A(3), along with other regulatory requirements, provide a myriad of protections for subsistence whaling. Therefore, deferrals around Cross Island are not necessary at this time.

Therefore, the Galginaitis (2009) report does not constitute substantial new information that justifies a supplement to the Beaufort Sea 2009 best interest finding.

ESA Listing of Polar Bears

Comment Summary: The NSB stated that polar bears have been listed as threatened under the federal Endangered Species Act and critical habitat has been proposed.

DO&G Response: The listing of polar bears under the ESA was discussed in the final 2009 Beaufort Sea finding in Chapter Four, Section B(4)(a), and in the final 2008 North Slope finding in Chapter Three, Section B(4)(a). Polar bears are not found in the North Slope Foothills area. Designation of critical habitat has been proposed by the U.S. Fish and Wildlife Service for polar bears, but a second public comment period has been opened, and it is unknown at this time what the final critical habitat designation will be and when a final rule will be published.

Therefore, because the listing of polar bears as threatened under the Endangered Species Act was discussed in the Beaufort Sea and North Slope findings, and because designation of critical habitat has not been finalized at this time, the listing and critical habitat proposal for polar bear does not constitute substantial new information that justifies a supplement to the best interest findings.

If a critical habitat designation is finalized by the U.S. Fish and Wildlife Service, it can be considered in the next annual call for new information for the Beaufort Sea and North Slope best interest findings. In the meantime, Lessee Advisories B(7)(a) in the Beaufort Sea finding and B(6)(a) in the North Slope finding alert lessees that polar bears are protected under the Endangered Species Act, and that lessees must comply with requirements of the Act.

Loss of Tundra

Comment Summary: The NSB stated that there were tundra fires during the summer of 2007, and that accelerating loss of tundra should be considered for the North Slope Foothills Areawide.

DO&G Response: The NSB did not provide any reports or studies providing substantial new information about changes to tundra in the area. Therefore, this is not substantial new information that justifies a supplement to the North Slope Foothills 2001 finding. However, DO&G is currently in the process of developing a new best interest finding for the North Slope Foothills Areawide, scheduled to be issued in 2011. Information about the climate of the area and tundra habitats will be considered and discussed in that finding.

Other Development Plans for the Beaufort Sea, North Slope, and North Slope Foothills Areas

Comment Summary: The NSB stated that there are several proposed projects that should be considered and discussed. These include: planning for development at Point Thomson, Alaska Department of Transportation funding for the Bullen Point Road, a proposed road to Umiat, and a proposed coal prospecting exploration license for the Nanushuk area.

DO&G Response: Point Thomson is located in the Beaufort Sea area. Although tracts within the Point Thomson area have been deferred from past lease sales, the Point Thomson area and tracts were included in the 2009 finding for the Beaufort Sea Areawide (see page 3-1 of the Beaufort Sea final finding). Therefore, planning or development of Point Thomson does not constitute new information that justifies a supplement to the Beaufort Sea best interest finding.

The Bullen Point Road would connect the Dalton Highway east to oil and gas developments in the North Slope and Beaufort Sea areas. This project has been under consideration since at least 2003, and potential effects of roads were considered and discussed in the 2008 best interest finding for the North Slope Areawide and the 2009 best interest finding for the Beaufort Sea Areawide. Currently, there are no plans to move forward with this project (ADOT 2010d). Therefore, this information does not constitute substantial new information that justifies supplements to the North Slope and Beaufort Sea best interest findings.

Concerning the road to Umiat, the NSB is likely referring to the Foothills West Transportation Access Project managed by the Alaska Department of Transportation and Public Facilities (ADOT 2010b; ADOT 2010a). This project, located in the North Slope Foothills area, would build a road from the Dalton Highway west to Umiat to provide opportunities for exploration and development. This road has been under consideration since at least 2003 (ADOT 2010c), and potential effects of roads were considered and discussed in Chapter Five of the 2001 best interest finding for the North Slope Foothills. This project will be discussed and considered in the 2011 North Slope Foothills best interest finding. Therefore, this information does not constitute substantial new information that justifies a supplement to the North Slope Foothills best interest finding.

A proposed coal prospecting permit for the Nanushak project has been applied for within the North Slope Foothills lease sale area, and is being considered by ADNR, Division of Mining, Land and Water (ADNR 2010). An evaluation by ADNR, Division of Geological and Geophysical Surveys found that there is low potential for commercial development of coal in the area. The proposed permitting area lies along the northern foothills of the Brooks Range, extending from approximately five miles west of Toolik Lake to Banded Mountain, just west of the Anaktuvuk River. The prospecting permit referred to by the NSB is still in the review phase. Therefore, this is not substantial new information that justifies a supplement to the North Slope Foothills best interest finding. However, DO&G is currently in the process of developing a new best interest finding for the North Slope Foothills Areawide, scheduled to be issued in 2011. Updated information about the Nanushuk coal project will be considered and discussed in that finding.

Northern Alaska Environmental Center Comments

Pending Appeal to Superior Court

Comment Summary: The NAEC stated that the Beaufort Sea lease sale should be postponed until a pending appeal to Superior Court is decided, and reiterated its statements made in its appeal to Superior Court that the 2009 final finding for the Beaufort Sea Areawide was inadequate. The NAEC also resubmitted comments of Trustees for Alaska on the Beaufort Sea 2009 best interest finding and Trustees' request for reconsideration.

DO&G Response: The process for issuing the 2009 best interest finding for the Beaufort Sea Areawide has been concluded and that process will not be reopened. Points from the 2009 finding on which the NAEC has appealed to Superior Court will be decided through the appeal process.

Integrity of Existing Pipelines

Comment Summary: The NAEC stated that new information is available about the integrity of pipeline infrastructure in Alaska; the NAEC also referred to the Alaska Risk Assessment of Oil and Gas Infrastructure project. The NAEC also provided citations for an ADEC incident report for a 2006 oil spill, and an Anchorage Daily News article concerning the same spill.

DO&G Response: The purpose of the Alaska Risk Assessment of Oil and Gas Infrastructure project is to "reduce the number and severity of future spills and provide recommendations on mitigation measures to reduce future spills" (ADEC 2010a). The scope of the project has been narrowed to include only an analysis of North Slope pipeline spills that resulted in a loss of integrity (ADEC 2010b). This project is still underway, and no reports have yet been issued. Therefore, the Alaska Risk Assessment of Oil and Gas Infrastructure project does not constitute substantial new information that justifies supplements to the best interest findings. The 2006 oil spill to which the NAEC referred happened four years ago and therefore does not constitute substantial new information that justifies supplements to the Beaufort Sea, North Slope, and North Slope Foothills findings.

Bowhead Subsistence Report

Comment Summary: The NAEC stated that there is a new report about bowhead subsistence use around Cross Island that was published in July 2009.

DO&G Response: See response above to the NSB concerning this report.

ESA Listing of Polar Bears

Comment Summary: The NAEC stated that polar bears have been listed as endangered under the federal Endangered Species Act and that critical habitat has been proposed. The NAEC also stated that the information about polar bears that was used by USFWS to propose critical habitat is new information.

DO&G Response: See the response to the NSB comment on the ESA listing of polar bears above. In addition, almost all the articles and reports listed in the References Cited for the proposed critical habitat designation were available at the time the Beaufort Sea 2009 and North Slope 2008 best interest findings were issued.

Therefore, because the information listed in the References Cited section for the proposed critical habitat designation was available at the time the Beaufort Sea 2009 and North Slope 2008 best interest findings were issued, this information does not constitute substantial new information that justifies a supplement to the Beaufort Sea and North Slope findings.

Migratory Patterns of Bowhead Whales

Comment Summary: The NAEC stated that there is a new study about migratory patterns of bowhead whales:

Huntington, H. H. and L. T. Quakenbush. 2009. Traditional knowledge of bowhead whale migratory patterns near Kaktovik and Barrow, Alaska. Report to: Barrow and Kaktovik Whaling Captains Associations and Alaska Eskimo Whaling Commission. http://www.wildlife.alaska.gov/management/mm/pdfs/tk_barrow_kaktovik.pdf

DO&G Response: This report provides traditional knowledge of bowhead whale movements and behavior near the communities of Kaktovik and Barrow. Six whalers or whaling captains were interviewed from Kaktovik; from Barrow, five were interviewed along with a local scientist. The interviewees had from 18 to 64 years of whaling experience. The 2009 Beaufort Sea finding considered and discussed the timing and movement of bowhead whales and subsistence use in the Beaufort Sea (page 5-11 through 5-14), and information in the Huntington and Quakenbush (2009) report does not contradict or substantially alter the understanding of the temporal and spatial characteristics of the migration and hunting patterns. Therefore, although this report provides new information, it is not substantial new information that justifies a supplement to the Beaufort Sea best interest finding.

Section A(3) of Chapter Nine of the Beaufort Sea best interest finding provides a broad array of mitigation measures that protect subsistence hunting of bowhead whales.

Deferrals

Comment Summary: The NAEC stated that tracts in the Beaufort Sea and Kaktovik areas were previously deferred and that changes to the deferrals would constitute significant new information. The NAEC also asked whether or not tracts from the Point Thomson unit would be offered in the lease sale, and stated that if they were, this would be a significant change that would warrant a supplement to the finding.

DO&G Response: As explained in the Beaufort Sea best interest finding on page 3-1, deferral means that even though they were not offered for lease in the 2009 areawide lease sale, deferred tracts may be included in future lease sales. The decision of whether or not deferred tracts will be offered in a lease sale is made prior to the lease sale announcement and is provided to the public as part of the public notice for the lease

sale itself. The Point Thomson area, and areas containing deferred tracts near Barrow and Kaktovik, were included in the area considered and discussed in the Beaufort Sea 2009 best interest finding, and therefore, whether or not deferred tracts are offered in subsequent lease sales does not constitute substantial new information that justifies a supplement to the Beaufort Sea best interest finding.

Open Water Expert Review Panel Report

Comment Summary: The NAEC stated that there is new information contained in the "Expert Panel Review of Monitoring and Mitigation Protocols in Applications for Incidental Take Authorizations Related to Oil and Gas Exploration, Including Seismic Surveys, in the Chukchi and Beaufort Seas", dated March 22-26, 2010.

DO&G Response: See response to the NSB, above.

Other Development Plans for the Beaufort Sea, North Slope, and North Slope Foothills Areas

Comment Summary: The NAEC stated that there are several proposed projects that could have cumulative environmental impacts, and that they should be considered and discussed. These include: planning for development at Point Thomson, the Bullen Point road proposal, a proposed road to Umiat, a proposed coal prospecting exploration license for the Nanushuk area, a proposed road to Nome, and new information on the proposed natural gas pipeline projects.

DO&G Response: See response above to the NSB concerning Point Thomson, the Bullen Point Road, the road to Umiat, and the Nanushuk coal project proposal.

The road to Nome referred to has been under consideration for some time. In January 2010, the Western Alaska Access Planning Study was completed that analyzed the possibility of constructing a highway that would link the continuous road system of Interior Alaska with the isolated road system of western Alaska, including Nome (ADOT 2010e). The Yukon River corridor was identified as the best route. This route lies south of the Beaufort Sea, North Slope, and North Slope Foothills areas, and thus does not constitute substantial new information that justifies a supplement to the best interest findings.

The Alaska Gasline Project is an ongoing effort to build a major Alaska gas pipeline that would transport natural gas from Alaska's North Slope to market (SOA 2010). There are currently two projects addressing a pipeline: the "Alaska Pipeline Project" of TransCanada/Exxon Mobil, and the "Denali – The Alaska Gas Pipeline" project of ConocoPhillips and British Petroleum. The "Alaska Pipeline Project" has an open season currently underway from April 30, 2010 through July 2010 (APP 2010); the "Denali" project has an open season scheduled for July 6 – October 4, 2010 (Denali 2010). At this time, neither project has been selected or finalized. Therefore, recent information about the projects, although new, does not constitute substantial information that justifies a supplement to the Beaufort Sea, North Slope, and North Slope Foothills findings.

Summary

DO&G has carefully reviewed the comments submitted by the Alaska Department of Fish and Game, the North Slope Borough, the Northern Alaska Environmental Center, and Peter McKay, and has determined that substantial new information has become available that justifies supplements to the most recent best interest findings for Beaufort Sea Areawide 2010A, North Slope Areawide 2010, and North Slope Foothills Areawide 2010 oil and gas lease sales. Supplements for the Beaufort Sea and North Slope will add information about the Deepwater Horizon incident. A supplement for the North Slope Foothills will add information about the Deepwater Horizon incident, and will replace a lessee advisory about fuel and hazardous substances and with a mitigation measure. See attachments.

A person affected by this decision who provided timely written comment may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request must be received by July 28, 2010 and may be mailed or delivered to:

Thomas E. Irwin, Commissioner
Alaska Department of Natural Resources
550 W. 7th Avenue, Suite 1400
Anchorage, Alaska 99501

faxed to 1-907-269-8918

or emailed to dnr.appeals@alaska.gov

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on August 9, 2010. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

Thomas E. Irwin

Commissioner

ATTACHMENTS: Supplements to the Beaufort Sea Areawide 2009, North Slope Areawide 2008, and North Slope Foothills Areawide 2001 Oil and Gas Lease Sale Best Interest Findings

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