

Record of Decision
for the Cook Inlet Planning Area, Alaska
Outer Continental Shelf
Oil and Gas Lease Sale 258
(November 2022)

1. INTRODUCTION

The purpose of this Federal action is to offer for lease certain Outer Continental Shelf (OCS) blocks located in the Cook Inlet Planning Area in Alaska that may contain economically recoverable oil and gas resources. Under the 2017-2022 OCS Oil and Gas Leasing Program (National OCS Program), Cook Inlet Lease Sale 258 is the final Alaska lease sale and will provide qualified bidders the opportunity to bid on blocks in order to potentially explore, develop, and produce oil and natural gas. The potential environmental effects of this proposed oil and gas lease sale were evaluated in the “Alaska Outer Continental Shelf, Cook Inlet Planning Area, Oil and Gas Lease Sale 258 in the Cook Inlet, Alaska, Final Environmental Impact Statement” (FEIS) (OCS/EIS EA BOEM 2022-061).

There are currently 14 active OCS oil and gas leases in the Cook Inlet Planning Area. The Lease Sale Area (Area ID) encompasses approximately 442,500 hectares or 1.09 million acres. The unleased OCS blocks within Cook Inlet that BOEM will offer for lease are listed in the document entitled “List of Blocks Available for Leasing,” which is included in the Final Notice of Sale package for Cook Inlet Lease Sale 258. The estimated resource potential of the area to be offered for lease is 192.3 million barrels of oil and 301.9 billion cubic feet of natural gas.

2. DECISION

The Inflation Reduction Act of 2022 (IRA, Pub. L. No. 117-169), signed into law on August 16, 2022, requires the Department of the Interior (DOI) to hold Cook Inlet Lease Sale 258 on or before December 31, 2022. While BOEM has no discretion in whether to hold Lease Sale 258, BOEM issued the FEIS and is issuing this ROD in order to follow its normal leasing process to the fullest extent practicable. Pursuant to this mandate, DOI will hold Lease Sale 258 on December 30, 2022, and selects the Preferred Alternative described and analyzed in the FEIS. The Preferred Alternative combines the following two critical habitat exclusion alternatives and three mitigation alternatives: Alternative 3A (Beluga Whale Critical Habitat Exclusion), Alternative 3C (Beluga Whale Nearshore Feeding Areas Mitigation), Alternative 4A (Northern Sea Otter Critical Habitat Exclusion), Alternative 4B (Northern Sea Otter Critical Habitat Mitigation), and Alternative 5 (Gillnet Fishery Mitigation).

This Preferred Alternative will offer for lease 193 unleased OCS blocks (approximately 387,771 hectares or 958,202 acres). The Preferred Alternative excludes all 17 OCS blocks within the Lease Sale Area that wholly or partially overlap designated critical habitat for the beluga whale and northern sea otter. The Preferred Alternative also applies additional mitigation measures to reduce potential impacts to beluga whales and their critical habitat and feeding areas, sea otters

and their critical habitat, and the gillnet fishery. My selection of the Preferred Alternative includes the following exclusion and mitigation measures described as alternatives in the FEIS:

Beluga Whale Critical Habitat Exclusion (Alternative 3A):

This exclusion applies to the 10 OCS blocks that overlap with the “Area 2” beluga whale critical habitat at the northern tip of the proposed sale area analyzed in the FEIS. These OCS blocks will not be offered for lease and represent approximately 0.85 percent of the total area of beluga whale critical habitat.

Beluga Whale Nearshore Feeding Areas Mitigation (Alternative 3C):

This mitigation measure creates temporal restrictions for on-lease seismic survey activities within the Lease Sale Area. On all 193 OCS blocks being offered for lease, no on-lease marine seismic surveys will be conducted between November 1 and April 1, when beluga whales are most likely to be present and distributed across the Lease Sale Area. The Protection of Beluga Whales Stipulation will be included on all leases issued as a result of Lease Sale 258.

Additionally, for blocks located within 10 miles of major anadromous streams, lessees will not conduct on-lease marine seismic surveys between July 1 and September 30, when beluga whales are migrating to and from their summer feeding areas. The Protection of Beluga Whale Nearshore Feeding Areas Stipulation will be included on any leases issued for blocks located within 10 miles of major anadromous streams.

Northern Sea Otter Critical Habitat Exclusion (Alternative 4A):

This exclusion applies to the 7 OCS blocks that overlap with the northern sea otter southwest Alaska distinct population segment (SW DPS) critical habitat within the proposed sale area analyzed in the FEIS. These OCS blocks will not be offered for lease.

Northern Sea Otter Critical Habitat Mitigation (Alternative 4B):

This mitigation measure prohibits lessees from discharging drilling fluids and cuttings and conducting seafloor disturbing activities (including anchoring and placement of bottom-founded structures) within 1,000 meters (m) of areas designated as northern sea otter critical habitat. The Protection of Northern Sea Otter SW DPS Critical Habitat Stipulation will be included on any leases issued on the 7 OCS blocks within 1,000 m of northern sea otter critical habitat.

Gillnet Fishery Mitigation (Alternative 5):

This mitigation measure applies to the 97 OCS blocks (whole or partial) located north of Anchor Point within the Lease Sale Area to reduce the potential for conflicts with the drift gillnet fishery. Lessees are prohibited from conducting on-lease seismic surveys during the drift gillnetting season as designated by the Alaska Department of Fish and Game (ADF&G) (approximately mid-June to mid-August). In addition, lessees are advised that the Cook Inlet drift gillnet fishery typically operates on Mondays and Thursdays during the drift gillnetting season as designated by the ADF&G. Lessees are required to notify the United Cook Inlet Drift Association (UCIDA) of any temporary or permanent structures planned during the drift gillnetting season. Lessees are encouraged to coordinate with the UCIDA to avoid conflicts. The Protection of Gillnet Fishery Stipulation will be included on any leases issued for these blocks.

Alternatives 3C, 4B, and 5 will be implemented through lease stipulations, which would apply to all, or some, of the OCS blocks offered for lease. For each of these mitigation measures, lessees may request a variance at the time of filing an ancillary activities notice, an exploration plan (EP), or a development and production plan (DPP) with BOEM's Regional Supervisor for Leasing and Plans. Such requests must identify alternative methods for providing commensurate protection and analyze the effectiveness of those methods.

BOEM's Alaska Regional Office developed the Preferred Alternative after considering public comments on the Lease Sale 258 Draft Environmental Impact Statement (DEIS). BOEM also considered the oil and gas resource potential in the Cook Inlet area and the likelihood of industry to develop those resources in the context of social, economic, and environmental values, impacts, and concerns.

I have concluded that the Preferred Alternative, with the associated exclusions of OCS blocks overlapping designated critical habitat for beluga whales and northern sea otters and the adoption of mitigation measures (i.e., lease stipulations) for protection of beluga whales, northern sea otters, and the drift gillnet fishery, is consistent with the IRA's mandate to hold the lease sale, meets the purpose and need for BOEM's Proposed Action, balances regional and national policy considerations, and includes measures to minimize potential environmental and socioeconomic impacts. After reviewing the effects analyses and the science used to conduct those analyses, I have concluded that the exclusions and mitigation measures implemented through the Preferred Alternative will afford beluga whales and their critical habitat, and sea otters and their critical habitat, adequate environmental safeguards and are consistent with maintenance of industry competition for potential resource development and national needs.

On November 22, 2022, BOEM received a letter from a representative for the Governor of the State of Alaska, in which the State recommended that the 10 blocks overlapping beluga whale designated critical habitat and the 7 blocks overlapping northern sea otter designated critical habitat remain available for leasing and exploration in Cook Inlet Sale 258. BOEM's analysis in the Final EIS, in addition to the comments from the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and other commenters on the Draft EIS, indicate that exclusion of these 17 lease blocks provides additional protections for these two ESA-protected species, balancing the national need for oil and gas resources and the well-being of the state of Alaska, among other factors. Therefore, my decision is to exclude these 17 blocks from the sale. The State also suggested that the inclusion of three stipulations (the Protection of Beluga Whale Nearshore Feeding Areas stipulation, Protection of Beluga Whales stipulation, and the Protection of Gillnet Fishery stipulation), incorporated into Alternatives 3C and Alternative 5 in the FEIS, are effectively a "...limitation on the size of Lease Sale 258 and unnecessarily impairs the ability to explore and develop...". After consideration of the State's comments and reviewing the stipulations, my decision includes Alternative 3C and Alternative 5 in the Preferred Alternative. The measures imposed by these alternatives enhance the important national and local interests in the protection of listed beluga whales under the ESA and the safeguarding of the drift gillnet fishery. Although the temporal restrictions imposed by these mitigation alternatives will reduce the window of opportunity available to the lessee and operator for conducting on-lease seismic surveys, I have concluded that these measures, even when collectively applied, provide sufficient

time for the lessees, operators, and subcontractors to properly plan and execute on-lease seismic surveys as analyzed in the Final EIS.

In addition to the comment letter submitted by the State of Alaska pursuant to Section 19 of OCSLA, BOEM received two additional comment letters on the Proposed Notice of Sale—one from a group of four environmental organizations (NRDC, Cook Inletkeeper, Earthjustice, and Oceana) on November 9, 2022, and one from the Center for Biological Diversity (CBD) on November 22, 2022. Both letters contained comments and recommendations concerning the lease blocks offered for sale, lease stipulations, and fiscal terms, which BOEM considered in developing its recommendations for the Final Notice of Sale. The letter from CBD also purported to provide new information concerning climate change and beluga whale populations. BOEM extensively evaluated existing scientific information and analyses regarding the impacts of climate change and the possible impacts of oil and gas activities on beluga whale populations during its development of the Final EIS, as reflected in the Final EIS itself and BOEM's responses to comments in Appendix B. Accordingly, after evaluating these comments, BOEM has determined that the letters do not provide significant new circumstances or information relevant to the environmental concerns already considered and bearing on the agency action or its impacts.

Holding Cook Inlet Lease Sale 258 provides an opportunity to address national and regional demand for domestic energy resources and to create economic benefits through oil and gas exploration and development in the Federal waters of Cook Inlet. Holding the lease sale supports domestic energy production, which can reduce oil imports. Production from Cook Inlet OCS leases is expected to be processed and consumed locally, reducing imports from other sources. Additional benefits flowing from OCS leasing include additional employment, labor income, tax revenues, and other economic impacts, both in Alaska and across the United States.

I have selected a royalty rate of $18\frac{3}{4}$ percent for Cook Inlet leases because this rate constitutes the most reasonable balancing of environmental and economic factors for the American public. By selecting a royalty rate of $18\frac{3}{4}$ percent, the maximum allowed under the IRA, I have adopted fiscal terms that may only have a slight impact on the number and price of bids submitted for the lease sale. Long term, this royalty rate may result in less oil and gas development than would be expected with the $16\frac{2}{3}$ percent minimum rate authorized under the IRA or another rate below the maximum authorized rate of $18\frac{3}{4}$ percent, which could result in fewer environmental impacts. However, the impacts resulting from adoption of the Preferred Action with a royalty rate of $18\frac{3}{4}$ percent are not expected to fall outside the range of impacts analyzed in the FEIS.

Since the Deepwater Horizon explosion, oil spill, and response, BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) have raised standards for offshore drilling safety and environmental protection to reduce the risk of oil spills and improved the ability of the Federal Government and industry to respond in the unlikely event of another large oil spill. While offshore exploration and development cannot be made risk free, OCS oil- and gas-related activities can be conducted safely and responsibly with strong regulatory oversight and appropriate measures to protect human safety and the environment.

3. ALTERNATIVES ANALYZED IN DETAIL BUT NOT SELECTED

I did not select the Proposed Action (described as Alternative 1 in the DEIS) because the Preferred Alternative best implements the requirements of the IRA, meets the purposes of the Outer Continental Shelf Lands Act (OCSLA), and supports development of domestic energy resources in an environmentally and economically responsible way through the exclusions and mitigations chosen.

Under Alternative 2 (No Action), Lease Sale 258 would not be held. Alternative 2 cannot be selected because the IRA requires Lease Sale 258 to be held by December 31, 2022. Therefore, I cannot select Alternative 2.

Alternative 3B (Beluga Whale Critical Habitat Mitigation) would mitigate impacts on the 10 OCS blocks overlapping beluga whale critical habitat. Because the Preferred Alternative includes Alternative 3A, which would exclude these 10 blocks from leasing altogether and avoid most impacts, Alternative 3B would not offer any additional protections to beluga whale critical habitat. Therefore, I have decided not to select Alternative 3B.

Following the close of the public comment period for the DEIS, BOEM received additional comments and input from the National Marine Fisheries Service (NMFS) indicating that beluga whales may remain in the “Area 2” beluga whale critical habitat at the northern tip of the Lease Sale Area into the month of April, a few weeks later than had previously been observed. BOEM analyzed this information in the FEIS and expects little, if any, change to the analyzed impacts of the sale as a result. Accordingly, BOEM has concluded that the additional input from NMFS does not constitute significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts requiring preparation of a supplemental EIS (40 CFR 1502.9(d)(1)(ii)). Nevertheless, as a result of this additional information, Alternative 3B was revised in the FEIS to extend the prohibition on certain activities within these 10 blocks beginning on November 1, from April 1 to April 30. By selecting Alternative 3A, which defers leasing on these 10 blocks altogether, BOEM is taking an even more proactive step to ensure that impacts to beluga whale critical habitat will be avoided or minimized. Because Alternative 3A was analyzed in both the DEIS and FEIS, the Preferred Alternative does not represent a substantial change to the proposed action that is relevant to environmental concerns (40 CFR 1502.9(d)(1)(i)).

4. ENVIRONMENTALLY PREFERABLE ALTERNATIVE

I have identified Alternative 2, referred to as the No Action Alternative in the Cook Inlet Lease Sale 258 FEIS, as the environmentally preferable alternative. The environmentally preferable alternative is the alternative required by 40 CFR 1505.2(a)(2) that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources (43 CFR 46.30). The No Action Alternative is considered environmentally preferable because not holding an individual lease sale could delay the timing of, and likely reduce, certain OCS oil- and gas-related activities and resulting environmental effects in Cook Inlet. However, oil- and gas-related activity would be expected to continue under existing State of Alaska leases, and the decision not to hold a single lease sale would result in

only slightly less cumulative OCS oil- and gas-related activity. As stated previously, Alternative 2 could not be selected because the IRA requires Cook Inlet Lease Sale 258 to be held by December 31, 2022.

5. CONSULTATIONS AND OTHER ENVIRONMENTAL REQUIREMENTS

BOEM engaged in a number of consultation and coordination processes with Alaska Native Tribes, Alaska Native Claims Settlement Act (ANCSA) corporations, and Federal regulatory agencies regarding Lease Sale 258.

Tribal: Consistent with Executive Order 13175 and implementing DOI directives, BOEM actively reached out to Cook Inlet Tribes and the eight federally recognized tribes living on Kodiak Island. Government-to-Government meetings were held with the Kenaitze Tribe. BOEM initiated the Government-to-ANCSA corporation consultations through letters, emails, and telephone calls to ANCSA corporations potentially affected by activities related to Lease Sale 258, including: English Bay Corporation; Port Graham Corporation; Seldovia Native Association, Incorporated; Ninilchik Native Association, Incorporated; Kenai Natives Association, Incorporated; Salamatof Native Association, Incorporated; Tyonek Native Corporation; Chickaloon Moose Creek Native Association, Incorporated; and, Eklutna, Incorporated.

Essential Fish Habitat (EFH): The Magnuson-Stevens Fishery Conservation and Management Act (as amended) requires Federal agencies to consult with NMFS regarding actions that may adversely affect designated EFH. EFH designations were updated for five species of Pacific salmon (Chinook, coho, pink, sockeye, and chum salmon) in the 2021 NMFS Pacific Salmon Fisheries Management Plan (FMP). In the 2014 NMFS Pacific Salmon FMP, EFH was described for weathervane scallops. NMFS EFH designations for groundfish in the Gulf of Alaska were revised in 2020. That revised FMP includes EFH for Pacific cod, walleye pollock, arrowtooth flounder, rock sole, sculpins, and skates. BOEM prepared an EFH assessment that identified adverse effects to designated EFH from potential oil and gas exploration activities in the Lease Sale Area. This assessment was provided to and accepted by NMFS prior to releasing the FEIS.

Endangered Species Act (ESA): BOEM is also consulting with the U.S. Fish and Wildlife Service (USFWS) and NMFS concerning potential impacts to listed species and their designated critical habitat. For ESA consultation on proposed lease sales in Alaska, BOEM and BSEE specifically request incremental Section 7 consultations. Regulations at 50 CFR 402.14(k) allow consultation on part of the entire action as long as: that step does not violate section 7(a)(2); there is a reasonable likelihood that the entire action will not violate section 7(a)(2); and the action agency continues consultation with respect to the entire action, obtaining a Biological Opinion for each step. Accordingly, at the lease sale stage, BOEM evaluates the early lease activities (seismic surveying, ancillary activities, and exploration drilling) to ensure that activities (through exploration) under any leases issued will not result in jeopardy to a listed species or cause destruction or adverse modification of designated critical habitat. BOEM and BSEE would then reinitiate consultation for any proposed development and production activities. Biological assessments have been provided to USFWS and NMFS.

BOEM has not yet received the Biological Opinions from USFWS or NMFS. They are expected in April 2023. In their absence, BOEM has determined pursuant to section 7(d) of the ESA that there are no irreversible or irretrievable commitments of resources from post-lease activities that may result from holding Lease Sale 258 that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures needed to avoid jeopardy or destruction or adverse modification of designated critical habitat. BOEM retains authority under OCSLA to apply additional mitigation measures on post-lease OCS activities as necessary to ensure protection of threatened and endangered species and their critical habitat, including measures consistent with the Biological Opinions. Throughout consultation, BOEM will ensure the best available information related to listed species and designated critical habitat is fully considered. BOEM is consulting on Alaska-breeding Steller's eider, northern sea otter, northern sea otter critical habitat, beluga whale, fin whale, humpback whale, Steller sea lion, beluga whale critical habitat, and Steller sea lion critical habitat. Moreover, no activity under a plan will be allowed to proceed under the leases without the completion of appropriate ESA consultation.

National Historic Preservation Act (NHPA): BOEM recognizes that a lease sale constitutes an undertaking under section 106 of the NHPA but has determined that it is not the type of activity that has the potential to cause effects on historic properties, and thus would not require formal State Historic Preservation Office consultation. Subsequent project- and site-specific consultations will occur if they are a type of activity that has the potential to cause effects on historic properties for any proposed exploration, development, and production activities.

Coastal Zone Management Act (CZMA): As of July 1, 2011, the federal consistency provision no longer applies in Alaska. Consequently, federal agencies are not required to provide the State of Alaska with CZMA Consistency Determinations or Negative Determinations pursuant to 16 U.S.C. § 1456(c)(1) and (2), and 15 CFR part 930, subpart C. Similarly, persons or agencies seeking federal authorizations or funding are not required to provide the State of Alaska with CZMA Consistency Certifications pursuant to 16 U.S.C. § 1456(c)(3)(A), (B) and (d), and 15 CFR part 930, subparts D, E and F (76 FR 39857, July 7, 2011).

6. MITIGATION MEASURES

As part of the decision to hold Lease Sale 258, BOEM is adopting all practicable means of mitigation to avoid or minimize environmental harm from the chosen Preferred Alternative. In addition, BOEM will conduct additional environmental analyses on any post-lease activities (for example, exploration plans and development and production plans) that may be proposed by a lessee. BOEM retains discretion to impose additional project-specific mitigation measures as conditions of individual plan approvals. The various mitigation measures adopted for the Preferred Alternative, and those that may be applied during post-lease reviews, are summarized below.

Lease Stipulations – The Final Notice of Sale (FNOS) package contains ten lease stipulations which I have adopted for Cook Inlet Lease Sale 258. The full text of these stipulations is available on BOEM's website at: <http://www.boem.gov/ak258/>. The ten stipulations are as follows: the Protection of Fisheries Stipulation (No. 1); the Protection of Biological Resources Stipulation (No. 2); the Orientation Program Stipulation (No. 3); the Transportation of

Hydrocarbons Stipulation (No. 4); the Protection of Beluga Whale Nearshore Feeding Areas Stipulation (No. 5); the Protection of Beluga Whales Stipulation (No. 6); the Protection of Northern Sea Otter Critical Habitat Stipulation (No. 7); the Protection of Gillnet Fishery Stipulation (No. 8); the Alaska Conflict Mitigation Plan Stipulation (No. 9); and the Royalties on All Produced Gas Stipulation (No. 10). These stipulations will be added as lease terms as applicable to all, or some subset (as described in Section 2 above and the FNOS package), of OCS blocks, and will therefore be enforceable as part of the lease terms.

Post-Lease Mitigation Measures – In addition to the mitigation measures implemented via the aforementioned lease stipulations, the FEIS acknowledges that other mitigation measures may be applied to post-lease activities. Under the OCSLA staged decision process, BOEM and BSEE retain authority to review and approve post-lease activities (e.g., EPs, DPPs, permits to drill, pipeline permits, decommissioning permits). Before approving such activities, BOEM and BSEE may condition approval of the permit or plan on implementation of site- or activity-specific mitigation. These requirements are incorporated into the approval of submitted plans and permit applications. Similarly, mitigation measures required by NMFS and the USFWS as a result of ESA consultation may be added as conditions of approval on individual plans or permits. Typically, these mitigation measures include, but are not limited to, having protected species observers on board industry vessels to detect and avoid marine mammals, shutdown and ramp up procedures for seismic and other equipment use, protocols for vessels and aircraft to avoid marine mammals, monitoring, and operational modifications intended to reduce or eliminate disturbance to marine mammals. Additional mitigation measures may include the use of fully shielded light fixtures, the avoidance of unnecessary lighting, and the use of motion sensors wherever human safety allows on platforms and vessels.

Mitigation Monitoring and Adaptation – BOEM and BSEE continually assess compliance with and effectiveness of mitigation measures to allow the Alaska Regional Office to adjust mitigation if needed. A primary focus of this effort is requiring submission of information within a specified timeframe or after a triggering event that is tracked by BOEM and/or BSEE. This information helps inform BOEM and BSEE regarding potential impacts, effectiveness of mitigation, and potential modifications to operations or mitigations in the future through post-lease conditions of approval.

Enforcement – BSEE has the authority to inspect operations and enforce the conditions of any lease terms, including stipulations and conditions of any plan approval (30 CFR part 250, subpart N). BOEM may also refer potential violations to BSEE for investigation and potential enforcement. BSEE may impose penalties or other remedies on any lessee or any operator that fails to comply with the terms of a lease, including stipulations and other mitigation measures, and conditions of any post-lease plan or permit approvals.

7. CONCLUSION

Pursuant to the IRA, BOEM is required to hold Cook Inlet Lease Sale 258 in accordance with the Record of Decision approved by the Secretary of the Interior on January 17, 2017, described in the notice of availability entitled “Record of Decision for the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Program, Final Programmatic Environmental Impact Statement;

MMAA104000.” In carrying out this mandate, I considered many factors in selecting the Preferred Alternative including public input, comments from the Governor of the State of Alaska, the effects analysis in the FEIS, and the purpose and policies of OCSLA. Pursuant to 40 CFR 1505.2(b), I certify that DOI has considered all of the alternatives, information, analyses, and objections submitted by State, Tribal, and local governments, and public commenters for consideration by the lead and cooperating agencies in developing the FEIS. Notwithstanding the IRA’s mandate to hold the lease sale, BOEM fully considered the potential effects of this action, developed mitigation of potential impacts through exclusion of sensitive OCS acreage and other measures, and rationally articulated the relevant factors in recommending the Preferred Alternative. Therefore, I have decided that, on December 30, 2022, Cook Inlet Lease Sale 258 will be held and will offer for lease 193 unleased OCS blocks in the Lease Sale Area, subject to the exclusions and lease stipulations described herein.¹

Laura Daniel-Davis
Principal Deputy Assistant Secretary
Land and Minerals Management

¹ This Record of Decision rescinds and replaces the Record of Decision for this sale of November 21, 2022, which did not consider timely comments on the proposed sale received after that date.