



# MARINE MAMMAL COMMISSION

13 December 2021

Mr. Tyler Moore, Section Chief  
Leasing and Plans Office  
Bureau of Ocean Energy Management  
Alaska Outer Continental Shelf Region  
3801 Centerpoint Drive, Suite 500  
Anchorage, Alaska 99503-5823

Dear Mr. Moore:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Bureau of Ocean Energy Management's (BOEM) draft environmental impact statement (EIS) for Lease Sale 258 within the Cook Inlet planning area and associated notice of availability (86 Fed. Reg. 47819).

The draft EIS identified five alternatives. Alternative 1 (the proposed action) would offer for sale all 224 Outer Continental Shelf (OCS) lease blocks identified in the proposed lease sale area<sup>1</sup>, covering 1.09 million acres, with no additional mitigation measures. Alternative 2 (the no action alternative) would not allow for a lease sale to occur. The remaining alternatives would provide explicit or ancillary protections for marine mammals and their habitats. They are as follows—

- Alternative 3A would exclude from the lease sale the 10 OCS blocks that overlap with beluga whale critical habitat at the northern end of the proposed lease sale area. This area represents 17,507 acres, or 1.60 percent of the proposed lease area.
- Alternative 3B would offer all available blocks for lease but would prohibit on-lease seismic surveys and exploratory drilling from occurring between 1 November and 1 April, when beluga whales are most likely to be present.
- Alternative 3C would offer all available blocks for lease but would prohibit on-lease seismic surveys from occurring between 1 November and 1 April, and would prohibit on-lease seismic surveys from occurring within the 146 OCS blocks located wholly or partially within 10 miles of major [rivers and] streams used by anadromous fish species between 1 July and 30 September, when beluga whales are migrating to and from their summer feeding areas. Exploratory drilling activities would be allowed to proceed.
- Alternative 4A would exclude from the lease sale the seven OCS blocks that overlap with northern sea otter critical habitat. This area represents 8,154 acres, or 0.75 percent of the proposed lease area.
- Alternative 4B would offer all available blocks for lease but would prohibit lessees from discharging drilling fluids and cuttings and conducting seafloor-disturbing activities

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<sup>1</sup> As identified by BOEM in its [15 January 2021 notice](#) of availability of the area identification for the proposed Cook Inlet Oil and Gas Lease Sale 258, and identified [here](#). It includes the northern portion of the Cook Inlet planning area, from approximately the southern tip of Kalgin Island to the northern tip of Augustine Island.

(including anchoring and placement of bottom-founded structures) within 1,000 m of designated northern sea otter critical habitat.

- Alternative 5 would offer all available blocks for lease but would prohibit lessees from conducting on-lease seismic surveys in 117 whole or partial lease blocks north of Anchor Point during the drift gillnetting season (approximately mid-June to mid-August). This area represents 503,550 acres, or 46 percent of the proposed lease area. This alternative would also require lessees to notify the United Cook Inlet Drift Association of any temporary or permanent structures planned during the drift gillnetting season.

The alternatives that BOEM has proposed in the draft EIS for Lease Sale 258 are nearly identical to the alternatives proposed in BOEM's draft EIS for Lease Sale 244, including the number and letter designations used for each alternative. The Commission provided several comments on that previous lease sale<sup>2</sup>. In those letters, the Commission recommended that BOEM defer the proposed lease sale until such time that it could, with reasonable confidence, confirm that the lease sale was not likely to jeopardize the survival or recovery of the Cook Inlet beluga whale population. The Commission further recommended that if BOEM decided to conduct the lease sale, it exclude not only the 10 blocks at the northernmost portion of the proposed lease sale area that encompassed beluga whale critical habitat, but all areas north of Anchor Point. That recommendation was based on opportunistic sightings referenced in previous letters to BOEM. BOEM selected, as its preferred alternative for that lease sale, a combination of its proposed action to include all lease blocks identified in its proposed lease area (Alternative 1), with additional mitigation measures for beluga whale critical habitat (Alternative 3B), beluga whale nearshore feeding areas (Alternative 3C), northern sea otter critical habitat (Alternative 4B), and the drift gillnet fishery (Alternative 5). The lease sale was conducted on 21 June 2017 and resulted in the sale of 14 tracts, 3 of them north of Anchor Point.

Since that lease sale, the beluga whale population has continued to decline. This is despite efforts by the National Marine Fisheries Service (NMFS) to target its research and recovery actions and resources on this critically endangered population, one of eight marine species or populations it has identified as a "Species in the Spotlight" (NMFS 2016a,b and 2021). The most recent population estimate is 279 animals (CV=0.061) based on an aerial survey conducted in 2018 (Shelden and Wade 2019). That estimate was down from 328 whales in 2016 (Shelden et al. 2017), partly due to a revised estimation method outlined in Shelden and Wade (2019) but consistent with an overall observed decline in the population from 2008 to 2018 of 2.3 percent per year. Reducing the threat of human-caused noise in Cook Inlet, including noise from oil and gas-related activities, and protecting habitat that supports beluga whale foraging and reproduction, have been identified by NMFS as high priorities for the population's conservation and recovery (NMFS 2021).

Beluga presence in the proposed lease area is limited but not discountable, and could be negatively affected by increased oil and gas exploration and production activities. Belugas have been detected acoustically in the proposed lease area during the winter months off Tuxedni Bay and nearby, in the Kenai River area (Castellote et al. 2016). BOEM is currently partnering with NMFS to conduct aerial surveys during winter months to understand more about year-round distribution of

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<sup>2</sup> See the Commissions' [6 September 2016](#), [8 December 2014](#), and [7 May 2012](#) letters.

beluga whales<sup>3</sup>. The results of those surveys have yet to be published, but observers have reported detecting beluga whales off Tuxedni Bay on the western side of the inlet, in the Kenai River, and south of Ninilchik on the eastern side of the inlet<sup>4</sup>. Stranding records and a report from recent seismic survey operations also indicate presence of stranded animals in and near the proposed lease area, on Kalgin Island, in the Kenai and Kasilof Rivers, off Anchor Point, and in Kachemak Bay (McGuire et al. 2021, Fairweather Science 2020). For these and other reasons outlined in previous Commission letters regarding lease sales in Cook Inlet, the Commission reiterates its recommendation that BOEM defer the proposed lease sale (Alternative 2) as the only way to ensure that oil and gas exploration and production activities do not jeopardize the survival or recovery of the Cook Inlet beluga whale population.

If BOEM decides to go forward with a lease sale in Cook Inlet, despite the potential risks to beluga whales and the continuing decline of the population, the Commission again expresses its belief that measures should be taken to provide the greatest safeguards for the beluga whale population. Those safeguards should include an exclusion of all beluga whale critical habitat areas from the lease sale and seasonal restrictions (from 1 November to 1 April) on all seismic surveys and exploratory drilling operations north of Anchor Point. Those areas warrant protective measures to ensure that any beluga whales that are present are not disturbed by oil and gas exploration or longer-term development activities. Of the alternatives identified in the draft EIS, the most precautionary approach would be to combine the lease sale exclusions identified in Alternative 3A with the additional mitigation measures for all remaining areas identified in Alternative 3C. The exclusion of beluga whale critical habitat from the lease sale would ensure that no exploration or development activities occur in these areas in the immediate future. The prohibition on seismic surveys and exploratory drilling in areas and at times when beluga whales are most likely to be present would also prevent disturbance. Therefore, should BOEM choose not to adopt Alternative 2 but rather proceed with the proposed lease sale, the Commission again recommends that BOEM include in the final EIS and lease sale a combination of the beluga whale critical habitat exclusions of Alternative 3A with the mitigation measures for the remaining areas identified in Alternative 3C.

As noted in the draft EIS, northern sea otters are sensitive to disturbance from vessel activity and protective measures for northern sea otters also have been identified under Alternatives 4A and 4B. Sea otters are also sensitive to actions that affect the primary constituent elements of critical habitat and the prey resources within such areas, such as the kelp forests used for resting and foraging. BOEM has initiated aerial surveys in partnership with the U.S. Geological Survey to assess sea otter distribution patterns in Cook Inlet and differences between offshore and nearshore foraging habitats<sup>5</sup>. Those studies should provide more information regarding sea otter use of habitats within and adjacent to the proposed lease areas. Until that information is available, excluding sea otter critical habitat areas from the proposed lease sale (Alternative 4A) and adopting mitigation measures for the remaining areas (Alternative 4B) represent a more precautionary approach. Therefore, the Commission recommends that BOEM combine the lease sale exclusions of Alternative 4A with the mitigation measures for the remaining areas identified in Alternative 4B in the final EIS and lease sale.

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<sup>3</sup> <https://www.boem.gov/mmak-ofc-01pdf>

<sup>4</sup> <https://www.facebook.com/BelugasCount/>

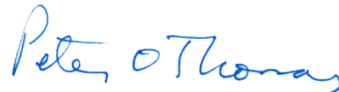
<sup>5</sup> <https://www.boem.gov/mmak-20-04pdf>

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The Commission further recommends the inclusion of Alternative 5 in the final EIS and lease sale. Prohibiting lessees from conducting on-lease seismic surveys in areas north of Anchor Point during the drift gillnetting season (approximately mid-June to mid-August) would further reduce risks to beluga whales, sea otters, and other marine mammals in that portion of Cook Inlet.

I trust these comments will be helpful. Please let me know if you have any questions.

Sincerely,



Peter O. Thomas, Ph.D.,  
Executive Director

cc: Jon Kurland, NMFS Alaska Regional Office  
Kimberly Damon-Randall, NMFS Office of Protected Resources  
Patrick Lemons, FWS Alaska Region

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