

requirements in this section under control number 2900-0101.)

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## GENERAL SERVICES ADMINISTRATION

**41 CFR Parts 301-51, 301-52, 301-54, 301-70, 301-71 and 301-76**

[FTR Amendment 90]

RIN 3090-AG92

### Federal Travel Regulation; Mandatory Use of the Travel Charge Card

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Final rule; delay of applicability date.

**SUMMARY:** This document constitutes a deviation to the applicability date of the Federal Travel Regulation (FTR) provisions pertaining to payment by the Government of expenses connected with official Government travel published in the **Federal Register** of January 19, 2000 (65 FR 3054). Due to the difficulties involved in implementing the requirements of Public Law 105-264, October 19, 1998, regarding the required use of the travel charge card, collection of amounts owed, and reimbursement of travel expenses, the Associate Administrator for the Office of Governmentwide Policy hereby grants a class deviation that delays the applicability date until May 1, 2000, for mandatory use of the travel charge card and payment of associated penalties and interest. This delay will allow agencies time to work out the details of implementation of the mandatory use of the travel charge card regulations.

**DATES:** *Effective Date:* The effective date of this final rule remains July 16, 1999.

*Applicability Date:* The applicability date of the final rule published at 65 FR 3054 on January 19, 2000, is delayed from February 29, 2000, until May 1, 2000, or upon the issuance of agency implementing regulations, whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Sandra Batton, Travel and Transportation Management Policy Division, at (202) 501-1538.

Dated: March 24, 2000.

**G. Martin Wagner,**

*Associate Administrator for Governmentwide Policy.*

[FR Doc. 00-7819 Filed 3-29-00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 18

RIN 1018-AF54

### Marine Mammals; Incidental Take During Specified Activities

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** These regulations authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska.

We made a finding that the total expected takings of polar bear and Pacific walrus during oil and gas industry exploration, development, and production activities will have a negligible impact on these species and will have no unmitigable adverse impacts on the availability of these species of subsistence use by Alaska Natives. We base this finding on results from 6 years of monitoring interactions between marine mammals and Industry and using oil trajectory models and polar bear density models to determine the likelihood of impacts to polar bears should an accidental oil release occur.

**DATES:** This rule is effective March 30, 2000, and remains effective through March 31, 2003.

**ADDRESSES:** Comments and materials received in response to this action are available for public and inspection during normal working hours of 8:00 a.m. to 4:30 p.m. Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

**FOR FURTHER INFORMATION CONTACT:** John Bridges, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone 907-786-3810 or 1-800-362-5148, or Internet John\_Bridges@fws.gov.

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (Act) gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service (We) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to

requests by U.S. citizens (You) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region.

Under the provisions of the Act, and based on our finding and the best scientific evidence available that the total of such taking for the 3-year period will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives, we will allow the incidental taking of polar bears and Pacific walrus. These regulations set forth: (1) permissible methods of taking; (2) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

The term "take" as defined by the Act means to harass, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment as defined by the Act, as amended in 1994, " \* \* \* means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

As a result of 1986 amendments to the Act, we amended 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) with a final rule published on September 29, 1989. Section 18.27(c) included, among other things, a revised definition of "negligible impact" and a new definition for "unmitigable adverse impact" as follows. Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. Unmitigable adverse impact means an impact resulting from the specified activity:

(1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:

(i) causing the marine mammals to abandon or avoid hunting areas,

(ii) directly displacing subsistence users, or

(iii) placing physical barriers between the marine mammals and the subsistence hunters, and

(2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Industry conducts activities such as oil and gas exploration, development, and production in marine mammal habitat, and risks violating the prohibitions on the taking of marine mammals. Although Industry is under no legal requirement to obtain incidental take authority, Industry has chosen to seek authorization to avoid the uncertainties associated with conducting activities in marine mammal habitat. Along with their request for incidental take authority, Industry has also developed and implemented polar bear conservation measures.

On December 17, 1991, BP Exploration (Alaska), Inc., for itself and for Amerada Hess Corporation, Amoco Production Company, ARCO Alaska, Inc., CGG American Service, Inc., Conoco Inc., Digicon Geophysical Corp., Exxon Corporation, GECO Geophysical Co., Halliburton Geophysical Services, Inc., Mobil Oil Corporation, Northern Geophysical of America, Texaco Inc. Unocal corporation, and Western Geophysical company requested that we promulgate regulations pursuant to Section 101(a)(5) of the Act.

The geographic region defined in Industry's 1991 application included offshore waters beginning at a north/south line at Barrow, Alaska, east to the Canadian border, including all Alaska state waters and all Outer Continental Shelf (OCS) waters. The onshore region was defined by the same north/south line at Barrow, extending 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge was excluded from Industry's application.

On November 16, 1993 (58 FR 60402), we issued final regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when such taking(s) occurred during Industry activities during year-round operations in the Beaufort Sea Region as described in the preceding paragraph. The regulations were issued for 18 months. At the same time, the Secretary of the Interior directed us to develop, then begin implementation of, a polar bear habitat conservation strategy before extending the regulations beyond the initial 18 months for a total 5-year period as allowed by the Act. On August 14, 1995, we completed development of, and issued, our Habitat Conservation Strategy for Polar Bears in Alaska to ensure that the regulations met with the intent of the 1973

International Agreement on the conservation of Polar Bears. On August 17, 1995, we issued the final rule and notice of availability of a completed final polar bear habitat conservation strategy (60 FR 42805). We then extended the regulations for an additional 42 months to expire on December 15, 1998.

On August 28, 1997, BP Exploration (Alaska), Inc., submitted a petition for itself and for ARCO Alaska, Inc., Exxon Corporation, and Western Geophysical Company for rulemaking pursuant to Section 101(a)(5)(A) of the Act, and Section 553(e) of the Administrative Procedure Act (APA). Their request sought regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when takings occurred during Industry operations in Arctic Alaska. Specifically, they requested an extension of the incidental take regulations beginning at 50 CFR 18.121 for an additional 5-year term from December 16, 1998, through December 15, 2003. The geographic extent of the request was the same as that of previously issued regulations beginning at 50 CFR 18.121 that were in effect through December 15, 1998 (see above).

The petition to extend the incidental take regulations included two new oil fields (Northstar and Liberty). Plans to develop each field identified a need for an offshore gravel island and a buried subsea pipeline to transport crude oil to existing onshore infrastructure (Note: the term of these regulations will expire prior to the operation of Liberty; therefore, we neither analyzed nor authorized incidental take of polar bear and Pacific walrus at the Liberty prospect by this action, in part due to the preliminary and incomplete status of information available). Based on preliminary information related to subsea pipelines published in a Draft Environmental Impact Statement (DEIS) for the Northstar project, we were unable to make a finding of negligible impact and issue regulations for the full 5-year period. The information published in the Northstar DEIS suggested that the probability of an oil spill was 21–23 percent over the life of the project, and that up to 30 polar bears could be killed by a spill.

On November 17, 1998, we published proposed regulations (63 FR 63812) to allow the incidental, unintentional take of small numbers of polar bears and Pacific walrus in the Beaufort Sea and northern coast of Alaska. On January 28, 1999, we issued final regulations effective through January 30, 2000. These regulations did not authorize the incidental take of polar bears and

Pacific walrus during construction or operation of subsea pipelines in the Beaufort Sea.

The U.S. Army Corps of Engineers finalized the Northstar Environmental Impact Statement in February 1999. Construction of the Northstar gravel island and subsea pipeline is scheduled for the winter of 1999–2000, with production beginning in the latter half of 2000. The Liberty development is proposed for early 2003. The Department of the Interior's Minerals Management Service (MMS) prepared a Preliminary Draft EIS for the Liberty development that was available as a working copy for participating and cooperating agencies. The MMS plans to issue a Draft EIS for Liberty this year.

### Summary of Current Request

These regulations respond to the August 28, 1997, request by BP Exploration (Alaska), Inc. for the extension of ongoing incidental take regulations. That request was for a period of 5 years, from December 16, 1998, through December 15, 2003. As previously mentioned, we issued regulations for 1 year that expired on January 30, 2000. On February 3, 2000 (65 FR 5275), we reinstated these regulations effective through March 31, 2000, to ensure that we had adequate time to consider public comments on this final rulemaking. This rule is effective March 30, 2000 and remains effective through March 31, 2000.

### Description of Regulations

These regulations are for a 3-year period from March 31, 2000 and include all activities associated with the Northstar project. These regulations do not authorize the actual activities associated with the oil and gas exploration, development, and production, but rather authorized the incidental, unintentional take of small numbers of polar bears and Pacific walrus associated with those activities. The MMS, the U.S. Army Corps of Engineers, and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands. The State of Alaska is responsible for activities on State lands and in State waters. These regulations allow Industry to incidentally take small numbers of polar bear and Pacific walrus within the same area as covered by our previous regulations as defined by a north/south line at Barrow, Alaska, including all Alaska State waters and all OCS waters, and east of that line to the Canadian border, with the onshore region being the same north/south line at Barrow, 25 miles inland and east to

the Canning River. The Arctic National Wildlife Refuge is excluded from these regulations.

This rule requires an applicant to obtain from us a Letter of Authorization (LOA) to conduct exploration, development, and production activities pursuant to the regulations. Each group or individual conducting an oil and gas industry-related activity within the area covered by these regulations may request an LOA.

Applicants for LOAs must submit a plan to monitor the effects on polar bears and walrus that are present during the authorized activities. Applicants for LOAs must also include a Plan of Cooperation. The purpose of the Plan is to ensure that the impact of oil and gas activity on the availability of the species or stock for subsistence uses is negligible. The Plan must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bears and Pacific walrus.

We will evaluate each request for an LOA on the specific activity and the specific location, and we will condition each LOA for that activity and location, if necessary. For example, a request to conduct activities on barrier islands with active bear dens or a history of polar bear denning may be conditioned to avoid the area until after the bears normally exit their dens.

#### Description of Activity

In accordance with 50 CFR 18.27, Industry submitted a request for the promulgation of incidental take regulations pursuant to Section 101(a)(5)(A) of the Act. Activities covered in this regulation include Industry exploration, development, and production of oil and gas, as well as wildlife monitoring associated with these activities.

Exploration activities include, but are not necessarily limited to, geological surveys; geotechnical site investigations; reflective seismic exploration; vibrator seismics data collection; airgun and water gun seismic data collection; explosive seismic data collection; vertical seismic profiles; geological surveys; construction and use of drilling structures such as artificial (gravel) islands, caisson-retained islands, ice islands, bottom-founded structures (concrete island drilling system—CIDS, and single steel drilling caisson—SSDC), ice pads and ice roads; oil spill prevention, response, and cleanup; site restoration and remediation. Exploratory drilling for oil and associated support activities includes, but is not necessarily limited to,

transportation to site, setup to 90–100 person camps, support camps (lights, generators, snow removal, water plants, wastewater plants, dining halls, sleeping quarters, mechanical shops, fuel storage, camp moves, landing strips, aircraft support, health and safety facilities, data recording facility and communication equipment), building gravel pads, building gravel islands with sandbag and concrete block protection, ice islands, ice roads, gravel hauling, gravel mine sites, road building, pipelines, electrical lines, water lines, road maintenance, buildings, and facilities, operating heavy equipment, digging trenches, burying pipelines, and covering pipelines, sea lift, water flood, security operations, dredging, moving CIDS, moving floating drill units, helicopter support, and drill ships such as the CANMAR Explorer III and the Kulluk.

Development activities associated with oil and gas industry operations include, but are not necessarily limited to, road construction; pipeline construction; waterline construction; gravel pad construction; camp construction (personnel, dining, lodging, maintenance shops, water plants, wastewater plants); transportation (automobile, airplane, and helicopter traffic; runway construction; installation of electronic equipment); well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation.

Production activities include, but are not necessarily limited to, personnel transportation (automobile, airplane, helicopter, boats, rollagons, cat trains, and snowmobiles), and unit operations (building operations, oil production, oil spills, cleanup, restoration, and remediation).

A large number of variables influence exploration activities, therefore, predictions as to the exact dates and locations of exploratory operations that will take place over the next 3 years is speculative. However, requests for LOAs must include specific details regarding dates, duration, and geographic locations of proposed activities.

Alaska's North Slope encompasses an area of 88,280 square miles and contains 13 separate oil and gas fields in production: Prudhoe Bay, North Prudhoe Bay State, Kuparuk, Endicott, Point McIntyre, Lisburne, Milne Point, Cascade, West Beach, Niakuk, Schrader Bluff, Badami and Sag Delta North. Additional discoveries have been made at the Northstar and Alpine fields, both of which are now in the development phase.

During the period covered by the regulations, we anticipate a similar level of activity at existing production facilities as during the previous 6 years. The addition of new exploration, development, and production activities will increase human activity and the likelihood of polar bear sightings. We do not believe that the overall activity level will have a measurable impact on polar bears during the 3-year period covered by these regulations. One addition is the new Northstar project, the first offshore production facility on the North Slope which requires a subsea pipeline to transport crude oil to the Trans-Alaska Pipeline System.

#### Biological Information

##### *Pacific Walrus*

Pacific walrus (*Odobenus rosmarus*) typically inhabit the waters of the Chukchi and Bering seas. Most of the population congregates near the ice edge of the Chukchi Sea pack ice west of Point Barrow during the summer. In the winter, walrus inhabit the pack ice of the Bering Sea, with concentrations occurring in the Gulf of Anadyr, south of St. Lawrence Island, and south of Nunivak Island.

Walrus occur infrequently in the Beaufort Sea. Data from our Marking, Tagging, and Reporting Program show that, from 1994 through 1997, 73 walrus were reported killed by Barrow hunters. Tagging certificates show that nearly all of the 73 walrus were taken west of Barrow. In 6 years of monitoring Industry's activities in the Beaufort Sea, on-site monitors have observed only two walrus.

##### *Polar Bear*

Polar bears (*Ursus maritimus*) occur in the Northern Hemisphere, where their distribution is circumpolar and they live in close association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. Two stocks occur in Alaska: the Chukchi/Bering seas stock, whose size is unknown, and the Southern Beaufort Sea stock, which was estimated in 1992 to number about 1,800 bears.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. An average of two cubs are usually born in December, and the family group emerges from the den in late March or early April. Only pregnant females den for an extended period during the winter; however, other polar bears may burrow out depressions to escape harsh winter winds. Reproductive potential (intrinsic

rate of increase) is low. The average reproductive interval for a polar bear is 3–4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these data, a polar bear may produce about 8–10 cubs in her lifetime. The loss of whole litters of cubs would result in additional reproductive effort sooner than if cubs survived. Even though reproduction increases, however, survival decreases.

The fur and blubber of the polar bear protect it from the cold air and frigid water. Newly emerged cubs of the year may not have a sufficient layer of blubber to maintain body heat when immersed in water for long periods of time. Cubs abandoned prior to the normal weaning age of 2.5 years likely will not survive.

Ringed seals (*Phoca hispida*) are the primary prey species of the polar bear; however, occasionally, polar bears hunt bearded seals (*Erignathus barbatus*) and walrus calves. Polar bears also scavenge on marine mammal carcasses washed up on shore and eat non-food items such as styrofoam, plastic, car batteries, antifreeze, and lubricating fluids.

Polar bears have no natural predators, and they do not appear to be prone to death by disease or parasites. The most significant source of mortality is humans. Since 1972, with the passage of the Act, only Alaska Natives are allowed to hunt polar bears in Alaska. Bears are used for subsistence purposes such as the manufacture of handicraft and clothing items. The Native harvest occurs without restrictions on sex, age, number, or season, providing the population is not depleted and takes are non-wasteful. From 1980–1997, the total annual harvest in Alaska averaged 103 bears. The majority of this harvest (70 percent) came from the Chukchi and Bering Seas area.

Polar bears in the near shore Alaskan Beaufort Sea were widely distributed in low numbers across the area with an average density of about one bear per 30 to 50 square miles. However, polar bears have been observed congregating on barrier islands in the fall and winter because of available food and favorable environmental conditions. Polar bears will occasionally feed on bowhead whale carcasses on barrier islands. In November 1996, biologists from the U.S. Geological Survey observed 28 polar bears near a bowhead whale carcass on Cross Island, and approximately 11 polar bears within a 2-mile radius of another bowhead whale carcass near the village of Kaktovik on Barter Island. In October 1997, we observed 47 polar bears on barrier islands and the mainland from Prudhoe Bay to the

Canadian border, a distance of approximately 100 miles.

#### **Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses**

##### *Pacific Walrus*

Oil and gas industry activities that generate noise such as air and vessel traffic, seismic surveys, ice breakers, supply ships, and drilling may frighten or displace Pacific walrus. Nonetheless, the primary range of the Pacific Walrus is west of Point Barrow. Pacific walrus do not normally range into the Beaufort Sea. Occasionally, a single walrus may be sighted east of Point Barrow. From 1994 to 1997, two Pacific walrus were sighted during an open-water seismic program. The program was conducted in the vicinity of Gwydyr Bay approximately 10 miles west of Prudhoe Bay. Marine mammal monitors sighted one sub-adult walrus approximately 5 miles northwest of Howe Island and BP Exploration's Endicott Unit. The second, a single adult walrus, was observed from a survey aircraft approximately 20 miles north of Pingok Island.

In winter, Pacific walrus inhabit the pack ice of the Bering Sea. As the winter range of the Pacific walrus is well beyond the geographic area covered by these regulations (as defined above), we do not expect any impacts to walrus from oil and gas activities during winter.

If walrus are present, their movements may be affected by stationary drilling structures. Walrus are attracted to certain activities and are repelled from others by noise or smell. In 1989 an incident occurred during a drilling operation in the Chukchi Sea where a young walrus surfaced in the center hole (i.e., moonpool) of a drill ship. The crew used a cargo net to remove the walrus from the drilling area, after which the walrus left the scene of the incident and was not seen again. No similar incidents have been reported in the area of these regulations.

Seismic surveys generally take place on solid ice or in open water. Since walrus activity occurs near the ice edge, interactions between walrus and seismic surveys are unlikely.

Due to the small number of walrus in the area covered by the regulations, any take reasonably likely to or reasonably expected to be caused by oil and gas activities will not result in more than a negligible impact on this species.

##### *Subsistence Use of Pacific Walrus*

As the primary range of Pacific walrus is west and south of the Beaufort Sea,

it is not surprising that few walrus are harvested in the Beaufort Sea along the northern coast of Alaska. Walrus constitute a small portion of the total marine mammal harvest for the village of Barrow. In the past 6 years, 73 walrus were reported taken by Barrow hunters. Reports indicate that all but 1 of the 73 walrus were taken west of Point Barrow, beyond the limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik do not normally hunt walrus east of Point Barrow and have taken only one walrus in the last 10 years. Therefore, due to the small number of walrus in the Native subsistence hunting areas covered by the regulations, any take reasonably likely to or reasonably expected to be caused by oil and gas activities will have no unmitigable adverse impacts on the availability of the Pacific walrus for subsistence use by Alaska Natives.

##### *Polar Bear*

In the southern Beaufort Sea, polar bears spend the majority of their lives on the ice, which limits the opportunity for impacts from Industry. For example, although polar bears have been documented in open water, miles from the ice edge or ice floes, it is a relatively rare occurrence. Therefore, any takes resulting from exploration activities in the open-water season will not have more than a negligible impact on the polar bear.

Polar bears also spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times when the ice edge is near shore and then quickly retreats northward, bears may remain along the coast or on barrier islands for several weeks until the ice returns. For those brief periods, the likelihood of interactions between polar bears and Industry activities increases. We have found that polar bear interaction planning and training requirements of the LOA process have increased polar bear awareness and have helped minimize these encounters. For example, in 1999 Exxon terminated work on Flaxman Island due to the presence of several polar bears in the vicinity of the work area.

Disturbances to denning females, either on land or on ice, are of particular concern. As part of the LOA application for seismic surveys during denning season, Industry provides us with the proposed seismic survey routes. To minimize the likelihood of disturbance to denning females, we evaluate these routes along with information about known polar bear dens, historic denning sites, and probable denning habitat. A standard condition of LOAs requires Industry to maintain a 1-mile buffer

between survey activities and known denning sites. In addition, we may require Industry to avoid denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we are conducting research in cooperation with Industry to evaluate the use of remote sensing techniques, such as Forward Looking Infrared (FLIR) imagery, to detect active dens.

Industry activities that occur on or near the ice have greater possibility for encountering polar bears. Depending upon the circumstances, bears can be either repelled from or attracted to sounds, smells, or sights associated with these activities. As mentioned above, the LOA process requires the applicant to develop a polar bear interaction plan for each operation. These plans outline the steps the applicant will take to minimize impacts, such as garbage disposal procedures to reduce the attraction of polar bears. Interaction plans also outline the chain of command for responding to a polar bear sighting. In addition to interaction plans, Industry personnel participate in polar bear interaction training while on site. The result of these polar bear interaction plans and training is that when a bear encounters Industry activities, it is detected quickly, and responded to appropriately. Most often, this response involves deterring the bear from the site, with minimal effect. Without such plans and training, an undesirable outcome could be lethal take in defense of human life.

Over the span of our incidental take regulations, Industry reported 103 polar bear sightings. Of these, only 29 were instances where a bear was attracted to and/or deterred from the site. We have no indication that encounters that merely alter the behavior and movement of individual bears have any long-term effects on those bears. It is therefore unlikely that the small number of benign encounters between polar bears and Industry will have a significant overall effect on the populations.

No lethal takes have occurred during the period covered by incidental take regulations. Even before regulations were issued, lethal takes by Industry were a rare occurrence. Since 1968, there have been two documented cases of lethal take of polar bears associated with oil and gas activities. In both instances, the lethal take was in defense of human life.

Based on the above discussion, any take reasonably likely to or reasonably expected to be caused by oil and gas activities will not result in more than a negligible impact on this species.

### *Oil Spills*

In addition to routine operations, the potential exists for polar bears to be impacted by oil spills. Spills of crude oil and petroleum products associated with onshore production facilities are usually minor spills that are contained and removed upon discovery. As polar bears spend the majority of their time offshore, they are unlikely to encounter oil from an onshore spill.

Oil spills are of concern in the marine environment, where spilled oil will accumulate at the ice edge, in leads, and similar areas of importance to polar bears. Oil spilled from offshore production activities was not considered in our previous regulations. The Northstar Project will transport crude oil from a reconstructed gravel island in the Beaufort Sea to shore via a 5.96-mile buried subsea pipeline. The pipeline will be buried in a trench in the sea floor deep enough to reduce the risk of damage from ice gouging and strudel scour. Construction of the Northstar project began in the winter of 1999–2000.

Polar bears are at risk from an oil spill in the Beaufort Sea. Limited data from a Canadian study suggest that polar bears experimentally oiled with crude oil may die. This finding is consistent with what is known of other marine mammals that rely on their fur for insulation. The Northstar FEIS concluded that mortality of up to 30 polar bears could occur as the result of an oil spill greater than 1,000 barrels. This estimate was based on observations of aggregations of polar bears on barrier islands in the Beaufort Sea.

Two independent lines of evidence support our determination that only a negligible impact to the Beaufort Sea polar bear stock will occur from Northstar, one largely anecdotal, and the other quantitative. The largely anecdotal information is based on observations of polar bear aggregations on barrier islands and coastal areas in the Beaufort Sea. This information suggests that polar bear aggregations may occur for brief periods in the fall. The presence and duration of these aggregations are influenced by the presence of sea ice near shore and the availability of marine mammal carcasses, notably bowhead whales. In order for significant impacts to polar bears to occur, an oil spill would have to occur, an aggregation of bears would have to be present, the spill would have to contact the aggregation, and many of the bears would have to be killed. We believe the probability of all these events occurring simultaneously is low.

The quantitative rationale for negligible impact is based on a risk assessment that considered oil spill probability estimates for the Northstar Project, an oil spill trajectory model, and a polar bear distribution model. The Northstar FEIS provides estimates of the probability that one or more spills greater than 1,000 barrels of oil will occur over the project's life of 15 years. We consider here only spill probabilities for the drilling platform and subsea pipeline as these are the spill locations that will affect polar bears. Using exposure variables and production estimates from the Northstar EIS, we estimate the likelihood of one or more spills greater than 1,000 barrels in size occurring in the marine environment is 3–10 percent during the 3-year period covered by the regulations.

Applied Sciences Associates, Inc., was contracted by BP Exploration Inc. to run the OILMAP oil spill trajectory model. The size of the modeled spill was set at 3,600 barrels, simulating rupture and drainage of the entire subsea pipeline. Each spill was modeled by tracking the location of 100 “spilletts,” each representing 36 barrels. Spilletts were driven by wind, and their movements were stopped by the presence of sea ice. Open water and broken ice scenarios were each modeled with 250 simulations. A solid ice scenario was also modeled, in which oil was trapped beneath the ice and did not spread. In this event, we found it unlikely that polar bears will contact oil, and removed this scenario from further analysis. Each simulation was run for 96 hours with no cleanup or containment efforts simulated. At the end of each simulation, the size and location of each spill was represented in a geographic information system (GIS).

Telemetry data suggest that polar bears are widely distributed in low numbers across the Beaufort Sea with a density of about one bear per 30–50 square miles. Movement and distribution information was derived from radio and satellite relocations of collared adult females. The U.S. Geological Survey, Biological Resources Division, developed a polar bear distribution model based on an extensive telemetry data set of over 10,000 relocations. Using a technique called “kernel smoothing,” they created a grid system centered over the Northstar production island and estimated the number of bears expected to occur within each 0.25km<sup>2</sup> grid cell. Each of the simulated oil spills was overlaid with the polar bear distribution grid. If a spillet passed through a grid cell, the bears in that cell were

considered killed by the spill. In the open water scenario, the estimated number of bears killed ranged from less than 1 to 78, with a median of 8. In the broken ice scenario, results ranged from less than 1 to 108, with a median of 21. These results are based on an "average" distribution of polar bears and do not include potential aggregation of bears.

We estimated the likelihood of occurrence of mortality for various numbers of bears by multiplying the probability of mortality by the spill probability for each period of the year, and summing those probabilities over the entire year. We calculated that the probability of a spill that will cause mortality of one or more bears is 0.9–3.1 percent. As the threshold number of bears is increased, the likelihood of that event decreases; the likelihood of taking more bears becomes less and less. Thus the probability of a spill that will cause a mortality of 5 or more bears is 0.7–2.5 percent; for 10 or more bears is 0.6–2.0 percent; and for 20 or more bears is 0.3–1.1 percent.

The greatest source of uncertainty in our calculations is the probability of an oil spill occurring. The oil spill probability estimates for the Northstar Project were calculated using data for subsea pipelines outside of Alaska and outside of the Arctic. These spill probability estimates, therefore, do not reflect conditions that are routinely encountered in the Arctic, such as permafrost, ice gouging, and strudel scour. They may include other conditions unlikely to be encountered in the Arctic, such as damage from anchors and trawl nets. Consequently, there is some uncertainty about oil spill probabilities as presented in the Northstar FEIS. If the probability of a spill were actually twice the estimated value, however, the probability of a spill that will cause a mortality of one or more bears is still low (about 6 percent).

This analysis is dependent on numerous assumptions, some of which underestimate, while others overestimate, the potential risk to polar bears. These include variation in spill probabilities during the year, the length of time the oil spill trajectory model was run, whether or not containment occurred during the trajectory model, lack of efforts to deter wildlife during the model runs, contact with a spill that constitutes mortality, and that aggregations of bears were not included. We determined that the assumptions that will overestimate and underestimate mortalities were generally in balance.

We conclude that if an oil spill were to occur during the fall or spring broken-ice periods, a significant impact

to polar bears could occur. However, in balancing the level of impact with the probability of occurrence, we conclude that the probability of serious impacts (large-volume spills that cause high polar bear mortalities) is low. Therefore, the total expected taking of polar bear during oil and gas industry exploration, development, and production activities will have no more than a negligible impact on this species.

#### *Subsistence Use of Polar Bear*

Within the area covered by the regulations, polar bears are taken in Barrow, Nuiqsut, and Kaktovik; however, it is not considered a primary subsistence species in these villages. Data from our Marking, Tagging, and Reporting Program indicate that from July 1, 1993, to June 30, 1998, a total of 94 polar bears was reported harvested by residents of Barrow; 7 by residents of the village of Nuiqsut; and 10 by residents of the village of Kaktovik. Hunting success varies considerably from year to year because of variable ice and weather conditions. Native subsistence polar bear hunting could be affected by an oil spill. Hunting areas where polar bears are historically taken may be viewed as tainted by an oil spill.

Industry works with local Native groups to achieve a cooperative relationship between oil and gas activities and subsistence activities. The Industry works with the local Native groups to develop a Plan of Cooperation to address subsistence mitigation measures to be incorporated into the Industry's plan of operation. Any taking of polar bears likely to result from oil and gas activities will not have an unmitigable adverse impact on the availability of polar bears for taking for subsistence uses.

#### *Cumulative Effects*

Based on past LOA monitoring reports, we believe that any take resulting from the interactions between Industry and marine mammals (Pacific walrus and polar bears) has had a negligible impact on these species. Additional information, such as subsistence harvest levels and incidental observations of polar bears near shore, provides evidence that these populations have not been adversely affected. The projected level of activities during the period covered by the regulations (existing onshore development and proposed exploratory activities) are similar in scale to previous levels. Therefore, we conclude that any take reasonably likely to or reasonably expected to occur as a result of projected onshore activities will have

a negligible impact on polar bears and Pacific walrus.

While the actual construction and operation of the Northstar development is not expected to significantly increase the impacts to Pacific walrus and polar bears, concern about potential oil spills in the marine environment was raised in the Northstar FEIS. We have analyzed the likelihood of an oil spill in the marine environment that will kill a significant number of polar bears and found it to be negligible. Thus, after considering the cumulative effects of existing onshore development, exploratory activities, and the new Northstar subsea pipeline, we find that the total expected takings of polar bears during oil and gas industry exploration, development, and production activities will have a negligible impact on polar bears and Pacific walrus and will have no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives.

#### **Conclusions**

Based on the previous discussion, we make the following findings regarding this action:

#### *Impact on Species*

We find, based on the best scientific information available, the results of monitoring data from our previous regulations and the results of our modeling assessments, that any take reasonably likely to result from the effects of oil and gas related exploration, development, and production activities from March 30, 2000 through March 31, 2003, in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat. In making this finding, we are following Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information. 53 FR at 8474; accord, 132 Cong. Rec. S 16305 (Oct. 15, 1986)

Even though the probability of an oil spill that will cause mortality to polar bears is extremely low, in the event of a catastrophic spill, we will reassess the impacts to the polar bear and walrus populations and reconsider the appropriateness of authorizations for incidental taking through Section 101(a)(5)(A) of the Act.

Our finding of "negligible impact" applies to oil and gas exploration, development, and production activities. The following are generic conditions intended to minimize interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. We may expand the conditions in the LOAs based upon site-specific and species-specific reasons.

(1) These regulations do not authorize intentional taking of polar bear or Pacific walrus.

(2) For the protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known and confirmed denning areas, Industry activities may be restricted in specific locations during certain specified times of the year. These restrictions will be applied on a case-by-case basis in response to each LOA request. In potential denning areas, we may require pre-activity surveys (e.g., aerial surveys) to determine the presence or absence of denning activity.

(3) Each activity authorized by an LOA requires a site-specific plan of operation and a site-specific polar bear interaction plan. The purpose of the required plans is to ensure that the level of activity and possible takes will be consistent with our finding that the cumulative total of incidental takes will have a negligible impact on polar bear and Pacific walrus and their habitat and, where relevant, will not have an unmitigable adverse impact on the availability of these species for subsistence uses.

#### *Impact on Subsistence Take*

We find, based on the best scientific information available and the results of monitoring data, that the effects of oil and gas exploration, development, and production activities for the next 3 years in the Beaufort Sea and adjacent northern coast of Alaska will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for taking for subsistence uses.

Polar bear and Pacific walrus represent a small portion, in terms of the number of animals, of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. The low numbers do not mean, however, that the harvest of these species is not important

to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that a Plan of Cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission, the Alaska Nanuq Commission, and the North Slope Borough. The plan will ensure that oil and gas activities will continue not to have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This Plan of Cooperation must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus.

If there is evidence that oil and gas activities will affect, or in the future may affect, the availability of polar bear or walrus for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

#### *Monitoring and Reporting*

Monitoring plans are required to determine short-term and direct effects of authorized oil and gas activities on polar bear and walrus in the Beaufort Sea and the adjacent northern coast of Alaska. Monitoring plans must identify the methods used to assess changes in the movements, behavior, and habitat use of polar bear and walrus in response to Industry's activities. Monitoring activities are summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed exploratory activity, and the applicant must submit a final monitoring report to us no later than 90 days after the completion of the activity. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of an LOA. Since development and production activities are continuous and long-term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we will require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the

monitoring results for continued operation under the LOA.

#### **Discussion of Comments on the Proposed Rule**

The proposed rule and request for comments was published in the **Federal Register** on December 9, 1999 (64 FR 68973). The closing date for comments was January 10, 2000. During this period we received 265 comments. These comments can be broadly categorized as relating to Legislation, National Environmental Policy Act (NAPA), Geography, Potential Impacts, Risk Assessment, Oil Spill Response, and Monitoring. A summary of these comments, and their responses, follows.

#### **Legislative Issues**

*Comment:* Allowing incidental take is contrary to the Act.

*Response:* Incidental take is authorized under Section 101(a)(5)(A) of the Act. While the Act placed a moratorium on the taking of any maritime mammal, Section 101(a) of the Act identifies exceptions to the moratorium. Section 101(a)(5)(A) of the Act provides for the incidental, but not intentional, take of small numbers of marine mammals, provided that the total take will have a negligible impact on the population and will not affect the availability of the species for subsistence users.

*Comment:* Allowing incidental take is a violation of the 1973 International Agreement on the Conservation of Polar Bears.

*Response:* The Agreement on the Conservation of Polar Bears calls for the prohibition on taking of polar bears with certain limited exceptions. However, the definition of "taking" in the Agreement differs substantially from that set out in the Act, in that the treaty definition includes only hunting, killing, and capturing. The only "takings" that are reasonably expected to occur during the period covered by this regulation would consist of the harassment of polar bears, which requires an authorization under the Act but does not constitute a "take" for purposes of the treaty. Further, the risk of any lethal taking of a polar bear incidental to the authorized activities is negligible and, therefore, would not be inconsistent with the provision for taking prohibitions in Article I of the Agreement.

*Comment:* Polar bears should not be harassed.

*Response:* While the Act placed a moratorium on the taking of any marine mammal, Section 101(a) identifies exceptions to the moratorium. Section 101(a)(5)(A) of the Act provides for the incidental, but not intentional take by



U.S. citizens of small numbers of marine mammals, provided that the total take will have a negligible impact on the population, and will not affect the availability of the species for subsistence users.

The term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. The term "harass" means any action that has the potential to injure or disturb a marine mammal. Incidental, but not intentional, taking means takings that are infrequent, unavoidable, or accidental. It does not mean that the taking must be unexpected.

This final regulation allows Industry (the U.S. citizen) to take polar bears and Pacific walrus incidental, but not intentional, to exploration, development, and production activities (specified activity) on the North Slope of Alaska (specified geographical area). We made a finding that the total taking of polar bear and Pacific walrus during the 3-years life of the regulation will have a negligible impact on polar bears and Pacific walrus and will not have an unmitigable impact on the availability of such species for taking for subsistence uses.

#### NEPA Comments

*Comment:* Significant new scientific information has shown that the impacts to polar bears would be greater than was expressed in the Northstar FEIS. Therefore, an EIS for the regulations is warranted.

*Response:* In developing our environmental analysis we utilized the best scientific information available. We evaluated information in the Northstar EIS as well as refining or supplementing this information. As a result of this effort we developed a better understanding of potential effects and the likelihood of these effects occurring. However, we are not aware of new scientific information that has shown that the impacts to polar bears would be greater than was expressed in the Northstar FEIS. Through the preparation of an Environmental Assessment (EA), we found that the proposed activity (issuance of implementing regulations) will not significantly affect the quality of the human environment, thereby resulting in a "Finding Of No Significant Impact (FONSI)." Therefore, in accordance with NEPA, an EIS is not required. Our analysis in the Final EA found that the total expected takings of polar bears during oil and gas industry exploration, development, and production activities will have a negligible impact on polar bears and will have no unmitigable adverse impacts on the availability of polar

bears for subsistence use by Alaska Natives.

There appeared to be confusion between the potential impacts of these regulations and the potential impacts of the activities themselves. These incidental take regulations do not authorize the actual oil and gas activities. Those activities are authorized by other State and Federal agencies, and would likely occur even without incidental take authority. These regulations allow for the incidental take of marine mammals in accordance with the Act and provide us with a means of interacting with Industry to insure that the impacts to polar bears are as minimal as possible.

Our Final EA evaluated the impacts of the proposed incidental take regulations. The EA was not written to correct any perceived shortcoming of the Northstar EIS. We believe our EA adequately addresses the relevant issues with respect to the final regulations. As our NEPA document, the EA analyzes the affected environment and the environmental consequences of our action (i.e., the issuance of Federal implementing regulations).

*Comment:* Our NEPA analysis addressed an improper and insufficient array of alternatives.

*Response:* In order to issue regulations, we first had to assess if the sum total of all takings by all specified activities within the specified geographic region during the 3-year period covered by the proposed regulations would have a negligible impact on the species and would not have an unmitigable adverse impact on the availability of the species for taking for subsistence purposes. Since the regulations must consider the sum total of all takings, the only two relevant alternatives in the EA were to issue or not issue incidental take regulations.

*Comment:* Recommendations to conduct necessary studies of offshore oil development impacts on polar bears prior to and during the time of Northstar EIS preparation were ignored.

*Response:* The development of Federal regulations for the incidental take of marine mammals is a separate process from the Northstar EIS. For these regulations, we were required to make a determination of negligible or greater than negligible impact. With the cooperation of the U.S. Geological Survey's (USGS) Biological Resources Division, we facilitated the completion of a thorough analysis of the potential impacts of an Arctic oil spill on polar bears, which was included in our finding of negligible impact. That this analysis was not completed earlier and incorporated in the Northstar EIS does

not change our finding of negligible impact, nor our ability to issue incidental take regulations.

#### Geographic Issues

*Comment:* The geographic scope of the regulations is overly broad and should be modified.

*Response:* Section 101(a)(5) of the Act states that incidental take regulations may be issued for "specified activities" and "specified geographical areas." Industry's original petition (of December 1991) requested regulations for: (1) open-water exploration operations—Beaufort Sea, (2) oil and gas development and production in Arctic Alaska, and (3) exploration operations during the ice-covered period—coastal Arctic Alaska and Beaufort Sea. Due to the similarity of the activities and the geographical areas, we made the decision to issue one set of regulations instead of three sets of regulations.

*Comment:* The Beaufort Sea area covered by these regulations far exceeds that requested by the petitioner, and therefore it should be modified.

*Response:* On December 17, 1991, Industry requested that we promulgate incidental take regulations for the following specific geographical area: (1) A north/south line at Barrow including all Alaska State waters and the OCS east of that line to the Canadian border; (2) an area extending approximately from Barrow on the west to the Canning River on the east and from 25 miles inland from the coast on the south to approximately 5 miles offshore; and (3) a north/south line at Barrow including all Alaska coastal areas, State waters, and OCS waters east of that line to the Canadian border. Instead of responding to three different petitions in the same general area, requesting the same general activities, we chose to combine the three petitions into one action. The "specified geographical area" is defined as a north/south line at Barrow, Alaska, including all Alaska State waters and all OCS waters, and east of that line to the Canadian border, with the onshore region being the same north/south line at Barrow, 25 miles inland and east to the Canning River. The scope of the petitions was limited to pre-lease and post-lease oil and gas activities on private, State, or Federal lands in coastal Arctic Alaska with the exception of lands within the Arctic National Wildlife Refuge. Therefore, the Arctic National Wildlife Refuge is excluded from the regulations.

*Comment:* The National Petroleum Reserve—Alaska (NPR) should be excluded from these regulations.

*Response:* We considered the total takings in the total geographical area as



defined in the regulations when we developed our finding of negligible impact. The oil and gas industry activities as defined to include exploration, production, and development that will occur in NPRA will be similar to activities that have occurred in areas that have previously been developed and the NPRA area has been made available for leasing through Federal actions. Our finding made the determination that the sum total of all takings for all activities for the 3-year term of these regulations will have a negligible impact on polar bears and Pacific walrus. This determination is supported by our past monitoring results, which have indicated no adverse impacts to polar bears or Pacific walrus. "Important Habitat Areas" identified in our Habitat Conservation Strategy for Polar Bears in Alaska (Strategy) will be adequately protected by LOA special conditions. Our Alaska National Interest Lands Conservation Act (i.e., ANILCA) section 810 responsibilities were fulfilled as a result of our finding that the total takings during our 3-year regulations will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for taking for subsistence uses. Section 18.124 of these regulations requires a Plan of Cooperation between Industry and the affected subsistence communities to mitigate potential conflicts between Industry's activities and subsistence hunting.

*Comment:* Specific areas should be protected, including the Arctic National Wildlife Refuge, offshore of the refuge, and other Important Habitat Areas identified in the Habitat Conservation Strategy for Polar Bears in Alaska.

*Response:* The Arctic National Wildlife Refuge is excluded from this rulemaking. Also, Lease Sale 170 does not allow further oil and gas leasing in the OCS area offshore of the Arctic National Wildlife Refuge. However, some oil and gas industry activity may occur in this area at existing leases. The area from the coast to 3 miles out is under the jurisdiction of the State of Alaska. A State of Alaska lease sale is planned for this area in the future. With incidental take regulations in place, we will have a greater degree of involvement with oil and gas operations off the coast of the refuge to monitor and mitigate potential impacts through the LOA process.

Important habitat areas identified in our Strategy are presently considered when LOAs are issued. Habitat values are protected through area and timing conditions incorporated into LOAs.

*Comment:* East Barrow, South Barrow, and Walakpa gas fields were not

referenced because they are operated by the North Slope Borough and not the oil industry.

*Response:* This assumption is correct. Section 101(a)(5)(A) of the Act states that "Upon request \* \* \* by citizens \* \* \* who engage in a specified activity \* \* \* within a specified geographical region, the Secretary shall allow \* \* \* the incidental, but not intentional taking \* \* \* by citizens while engaging in that activity \* \* \*" Only the oil and gas industry on the North Slope has asked that implementing regulations be developed for the incidental take of polar bears and Pacific walrus. East Barrow, South Barrow, and Walakpa gas fields were not identified in Industry's request for regulations. However, when regulations are in place, anyone who engages in a specified oil and gas industry activity within a specified (as defined in the regulations) geographical region may be authorized to take small numbers of polar bears and Pacific walrus.

*Comment:* The proposed regulations do not describe how far north the area goes, only that it includes the OCS.

*Response:* The specific area defined in our regulations includes all OCS waters. Therefore, the regulations to authorize the incidental take of polar bears and Pacific walrus extend 200 miles offshore. This area has been clarified in the final regulations.

#### *Potential Impacts*

*Comment:* Industry should not be allowed to disturb denning females.

*Response:* We agree that denning female polar bears should not be disturbed. Applications for LOAs must include information regarding the area of Industry activities. We evaluate these work areas and compare them with known den locations, known denning habitat, and probable denning habitat. When we identify a conflict, we include conditions in the LOA to protect denning polar bears. For example, in 1999 we worked with Exxon Corporation to schedule the timing and location of their work activities to avoid known dens and areas of historical dens. In the past 6 years while incidental take regulations have been in place, no cases of disturbance to a denning polar bear have been documented. While it is true that we do not know the location of every polar bear den, we use all available information (i.e., local knowledge, satellite transmitters, historic data) and we continue to work with Industry to explore the use of new technology to locate dens.

*Comment:* Subsea pipelines are an intrusion into polar bear habitats.

*Response:* We agree that Industry activities occur within polar bear habitat. Our findings of negligible impact included a review of the effects of oil and gas industry intrusion into polar bear habitats. Since regulations were first issued for the incidental take of polar bears on the North Slope, we have not seen declines in the polar bear population or rates of recruitment and survival. We are concerned about future cumulative effects of development activities on polar bears and their habitat, and, therefore, we will continue to monitor ongoing activities, interactions with polar bears, and loss of polar bear habitat.

*Comment:* Industry should not be able to kill polar bears as a result of a spill.

*Response:* As authorized by section 101(a)(5)(A) of the Act, these regulations allow for the incidental, but not intentional, take (including lethal take) of small numbers of polar bears and Pacific walrus so long as the total of such taking during the specified time period will have a negligible impact on the species and will not have an unmitigable adverse impact on the availability of the species for subsistence purposes. Section 101(a)(5)(B) of the Act states that we shall withdraw, or suspend the permission to take polar bears if the taking allowed is having, or may have more than a negligible impact on polar bears. In addition, incidental take authorization does not override requirements or penalties of other environmental legislation, such as the Clean Water Act and the Oil Pollution Act. In the event of a catastrophic spill that results in the lethal take of polar bears or Pacific walrus, we will reassess the impacts to polar bear and Pacific walrus populations and reconsider the appropriateness of authorization for incidental taking through specific LOAs or this regulation. Damages are collected under the Natural Resource Damage Assessment provision within the Comprehensive Environmental Response, Compensation, and Liability Act. Our incidental take regulations do not override this responsibility.

*Comment:* Routine operations pose great risks to polar bears.

*Response:* Over the past 6 years while incidental take regulations have been in effect, no instances of lethal take have occurred. We feel the level of non-lethal incidental take in the form of harassment that has occurred, and is likely to occur in the future, does not constitute "great risk." With this regulation in place, we have established communication with Industry that fosters interactions that minimize potential impacts to polar bears.

Harassment that has been permitted defused incidents that otherwise may have resulted in lethal take in defense of human life.

*Comment:* Effects of chronic spills, transportation, and other spills and contaminants on polar bears were not considered.

*Response:* We did consider these indirect and direct effects and have clarified the types of activities analyzed and the scope of effects. The results of our monitoring program for the past 6 years shows that oil spills from any source have had no discernable impact on polar bears. In addition to our monitoring, onsite visits reveal that the oil and gas industry takes extensive precautions to avoid and reduce the release of petroleum products to the environment. Likewise, should a release of petroleum products occur, Industry is required to respond quickly and take corrective action. To date, we have no indication that the polar bears have been affected by spilled oil from any source.

Records from the Alaska Oil and Gas Conservation Commission (AOGCC) indicate that the release of hydrocarbons from a blowout has not occurred in the oil fields, onshore or offshore. During the 50-plus years of drilling on the North slope, AOGCC records show 6 gas blowouts and no oil blowouts. In the winter of 1991/92, an exploratory well (Cirque #1) in the Kuparuk Field west of the Colville River did experience a blowout. However, only gas and sands were released to the environment. When tested, no hydrocarbons were detected in the sands. Through December 1999, AOGCC records show 3,865 wells were permitted, and, through November 1999, 12,561,250,991 barrels of oil have been produced. Although the release of hydrocarbons from a blowout is unlikely, it could pose a risk to polar bears should it occur at an offshore site.

*Comment:* Polar bears are already stressed by climate change.

*Response:* We evaluated the size and trends of the Beaufort Sea polar bear population and did not detect changes caused by industrial effects. Recent re-analysis of long-term polar bear capture information indicates that the population grew during the 1970s and 1980s, and that the population is currently stable. Anecdotal information tends to support the position that the polar bear population is increasing. Our finding of negligible impact is made for 3 years, the life of the regulations. Climate change over time is a concern to us also. However, we have no evidence that the polar bear population is stressed by climate change. In the future, if climate change is shown to

affect the polar bear population, this issue could affect future evaluations and findings.

*Comment:* The long-term cumulative impacts of harassment, disturbance, and oil spills on polar bear populations or habitat use, including selection of denning sites and success of reproduction were not considered.

*Response:* Long-term cumulative impacts were considered, and we remain cognizant and concerned regarding the potential effect of multiple offshore production facilities on the Beaufort Sea polar bear population in the future. Our efforts for this regulatory action apply through early 2003, and have focused on the location, level, frequency, and duration of Industry activities expected during this period as well as those activities having occurred in the past. Biological information we used in our assessment includes research publications and data, results from previous monitoring, information contained in our 1995 Strategy, traditional knowledge of polar bear habitat use, anecdotal observations, and professional judgment. We evaluated the sum total of impacts, both direct and indirect, subtle and acute, likely to occur from industrial activity. After considering all available sources of information, we have no indication, based on the best scientific information available, that cumulative effects of industrial activities had, or would have, population level effects on rates of recruitment or survival.

Existing data do not lend themselves to a quantitative assessment of cumulative effects of the indirect and subtle impacts of industrial activity. We have evaluated direct impacts, such as oiling, which have a quantifiable likelihood of occurrence. The more subtle impacts, such as habitat selection, harassment, disturbance, and stress and confounded by difficulties in detecting changes in life history parameters caused by human interaction and issues such as natural variation or harvest. In order to evaluate these types of impacts, either individual animals would need to be followed over time and a comparison of those exposed to human influence (e.g., hazing, presence of activities in denning habitat) versus those not exposed to human influence would have to be conducted, or a comparison of life history parameters prior to the presence of Industry activities with life history parameters in the presence of industrial activities would have to be done. We hope to obtain a better understanding through a concerted effort of various agency and public interests in the future.

*Comment:* the cumulative impact of the Liberty Development project should be considered.

*Response:* These regulations will authorize the incidental take of polar bears and Pacific walrus for a 3-year period ending in early 2003. The Liberty Project has been delayed and is proposed for startup in 2003. Under these regulations, no activities associated with the Liberty Project will be authorized for the incidental take of polar bears or Pacific walrus since information is incomplete or preliminary at this time. We are obligated to assess cumulative impacts for the duration of the proposed regulations and cannot include information that is speculative, incomplete, or beyond the term of these regulations.

*Comment:* Regulations are a "License to Kill" polar bears.

*Response:* During the past 6 years of incidental take regulations, no known instances have occurred where a polar bear was killed by Industry activities. Intentional take is not authorized by these regulations. When polar bears do encounter Industry activities, appropriate measures are taken to safeguard the lives of both humans and bears.

*Comment:* Polar bear and Pacific walrus populations are in decline.

*Response:* Our September 1998 Stock Assessment developed according to the provisions of Section 117 of the Act indicate that the Beaufort Sea polar bear populations has experienced growth since the 1970s and that the population is at a relatively high level. Recent reanalysis of long term polar bear capture information indicates that the population grew during the 1970s and 1980s and that the population is currently stable. Pacific walrus occur in extremely limited numbers in the area of the regulations. While some studies show evidence of low productivity in the walrus populations, we have no evidence of a population decline.

*Comment:* Higher rates of incidental take at production facilities, offshore operations, and past records of polar bear sightings during Northstar activities support a finding of significant impacts.

*Response:* We disagree that increases in the number of polar bear sightings constitute significant impacts. However, increases in the numbers of polar bear sightings to some degree may equate to increased levels of take. However, sightings do not necessarily equate to takes as defined in the regulations. Similarly, the scale of production and development activities is greater than exploration; therefore, it comes as no

surprise that the majority of polar bear sightings occur at those facilities; since the chance of detecting polar bears may be proportional to the number of observers. Also it is important to note that the increase in sighting may be related to multiple observations of the same bear as it transits the oil field and operations are year-round. However, it is inappropriate to conclude that development and production at Northstar constitutes a major expansion that will have significant population level effects.

We agree that increased incidental take associated with the construction of the Northstar production facility and sub-sea pipeline is likely, as well as with production activities. However, offshore developments occur in only a small portion of the overall range of the southern Beaufort Sea stock of polar bears. We do not consider all sightings to be takes and these levels of possible incidental take do not have population-level effects.

*Comment:* Despite a trend of increased level of oil and gas activities in polar bear habitats and greater incidental take, the level of take is assumed to be the same this year as last.

*Response:* We agree that the increase in numbers of LOAs issued indicates an increase in oil and gas industry activities. An increase in number of bears sighted, which is not necessarily a take, is therefore to be expected because we have more active monitoring plans in place. We do not agree, however, that the risk of death to polar bears and people is heightened. Note that, since our regulations have been in place (1993–1999), we have no record of an encounter resulting in injury to polar bears or humans. We credit this success to enhanced employee training and awareness about polar bear encounters.

In the proposed regulations, we stated that the types of activities would be similar to previous years, not that the level of activities and/or incidental take or types of take would be similar. The addition of new development, such as Northstar, will increase human activity and the likelihood of polar bear sightings. We do not believe that the overall activity level will have a measurable impact on polar bears during the 3-year period covered by these regulations.

*Comment:* Existing scientific information on long-term impacts of oil spill mortality to the population was not considered.

*Response:* All existing scientific information on long-term impacts of oil spill mortality to the populations was considered. We are unaware of additional information which should

have been considered in our analysis. The commentor provides no indication of potential sources of additional information. A preliminary polar bear population model that estimates the response of the Beaufort sea polar bear stock to a one-time removal of polar bears, as could occur in the event of an oil spill, is under development and was tested using an oil spill scenario. While the underlying concepts of this model are sound, we consider it a work in progress that is very sensitive to the input parameters used. We continue to work on the model to refine those parameters.

*Comment:* Spills from the Endicott Production Facility were not considered in previous regulations.

*Response:* In developing implementing regulations and making the required finding of negligible impact to polar bears and Pacific walrus, and on the availability of polar bears and Pacific walrus for taking for subsistence uses, we considered all possible and probable impacts. Research conducted to date reveals that six documented cases of loss of secondary well control (blowouts) occurred during the period 1974–1997; no oil spills, fire, or loss of life occurred in any of the six events. To date, we have no record of a blowout directly or indirectly causing the take of a polar bear or Pacific walrus. Endicott has an above-surface pipeline similar in size and function as the other operating facilities on the North Slope. Pipelines located above ground increase the probability of rapid or timely leak detection, containment, and cleanup. We did consider the probability and effects of past activities, including Endicott, in making our negligible effect finding for polar bears and no unmitigable adverse effect for Native subsistence users. Therefore, Endicott was considered in the same detail as the Prudhoe Bay, Kuparuk, and other operating facilities.

*Comment:* Construction and operation of the Northstar facility may affect polar bear distribution, both directly and indirectly, by affecting ringed seal distribution.

*Response:* We considered information contained in the Corps of Engineers' FEIS for the Northstar project. As required by NEPA, this document presents information on the overall environmental effect of the project in deciding if a Section 404 discharge permit should be issued. Our incidental take regulations provide for unintentional take of polar bear and Pacific walrus encountered during lawfully permitted activities provided that we find that the activity will have a negligible impact on the species' rates

of recruitment or survival. Oil and gas activities in the Beaufort Sea occupy a small, yet expanding portion of the range of polar bears. In our evaluation of the best available scientific information, we find that even if the operation of Northstar would influence the distribution of ringed seals or polar bears, or increase interactions between humans and polar bears, the magnitude of these changes would not appreciably affect species' rates of recruitment or survival.

We have evaluated monitoring reports from other "like" type exploratory drilling activities during open water, freeze up with broken ice conditions, solid ice, and break-up and note that polar bears can be expected to occur near these facilities during all seasons, although the magnitude of these encounters varies within and between seasons. Thus, while we expect that the rate of polar bear and human interactions will increase from conditions without development, we do not expect the number or types of encounters to adversely affect rates of recruitment and survival.

Regarding the effects of development activities on ringed seals, we note that scientific information is limited and does not allow for quantitative assessment of the effects of these activities on ringed seals. The National Marine Fisheries Service (NMFS) is conducting monitoring programs on the Northstar facility focused on assessing the effects of industrial development on ringed seal distribution. We anticipate further discussions with the NMFS on this study and its application to questions about polar bear and prey relationships near the Northstar facility, and for coordinating future monitoring programs of mutual interest by our agencies. Consideration of the best available scientific information indicates that Northstar or other industrial activities considered within the scope of the regulation are not likely to and not reasonably expected to affect ringed seal populations to the point of measurably reducing polar bear rates of recruitment or survival. The NMFS states in its proposed "taking" regulations published in the **Federal Register** on October 22, 1999, (64 FR 57010) that because the taking of ringed seals incidental to Northstar activities will be almost exclusively by incidental harassment and no serious injury or mortality is expected as a result of Northstar construction and operation, fluctuating population levels should be of little consequence.

## Assessment Risk

*Comment:* The number of bears potentially affected is unacceptable.

*Response:* Regulations that authorize the incidental take of polar bears and Pacific walrus have been in place on the North Slope of Alaska for 6 years. Our monitoring results during that period suggest that the impact of Industry activities have been negligible.

The greatest amount of concern appears to be in regard to the Northstar project and the use of a sub-sea pipeline. We acknowledge that, if an oil spill were to occur during the fall or spring broken-ice periods, a significant impact to polar bears could occur. In our risk assessment analysis, we followed Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. For example, while our analysis showed that up to 108 polar bears could be killed by a spill, we estimate the likelihood of this event is roughly 1 in 30,000. The specific Congressional direction that justifies balancing probabilities with impacts follow:

If the potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information. 53 FR at 8474: accord, 132 Cong. Rec. S 16305 (Oct 15, 1986)

In the event of a catastrophic spill, Section 101(a)(5)(B) of the Act states that we may withdraw, or suspend the permission to take polar bears if the taking allowed is having, or may have more than a negligible impact on polar bears.

*Comment:* Oil spill probabilities presented in the Northstar FEIS contain considerable uncertainty.

*Response:* The probabilities of an oil spill presented in the Northstar FEIS were based on spill probabilities from other data sets in the Gulf of Mexico and Europe. Those data sets contain causes of oil spills that are unlikely to occur in the Arctic, such as damage from anchors and fishing trawlers. Conversely, they do not contain potential causes of oil spills unique to the Arctic, such as ice gouging and strudel scour. In addition, the Northstar pipeline will incorporate

conservative design criteria, quality assurance programs, and internal inspection programs. While all these factors are likely to affect the actual Northstar spill probabilities, none of them can be quantified at this time. Therefore, we used oil spill probabilities calculated using the exposure variables presented in the Northstar FEIS.

*Comment:* The oil spill trajectory on polar bears provided shows major impacts from a spill.

*Response:* The oil spill trajectory analysis was designed to quantify the potential impacts of an oil spill from Northstar. The results are probabilistic and, therefore, cannot be directly compared to the mortality estimate in the Northstar FEIS, for which no probability was given.

Determination of risk involves two components: (1) The likelihood that an event will occur, and (2) the consequences of that event. The number of polar bears potentially impacted by a spill do not constitute "risk" without a measure of likelihood. We acknowledge that, if a spill were to occur during broken ice periods, major impacts to polar bears could result. However, the likelihood of this occurrence is sufficiently small to warrant a finding of negligible impact.

*Comment:* Oil spill trajectory information shows additional risk, such as spills during September or aggregations of bears, that were not considered in this analysis.

*Response:* Ice conditions in the Beaufort Sea are variable during September. In some years, the ice is adjacent to the shore, and in other years it remains offshore. The distribution of polar bears is largely dependent on the distribution of sea ice. Therefore, we chose to model a broken ice scenario in October when polar bear distributions are less variable. While the analysis could have been conducted on a month-by-month basis, we did not feel that this level of resolution would significantly improve the model.

Polar bear distribution data was based on over 10,000 radio and satellite-telemetry relocations. Anecdotal information on polar bear sightings is not suitable for incorporation into the analysis. Similarly, we did not have sufficient information (location, dates or occurrence, duration, number of bears, etc.) about polar bear aggregations to include them in the model. However, since capture and telemetry observations constitute a random sample of the population, the results reflect an "average" distribution of polar bears.

*Comment:* Oil spill trajectory analysis was not done for maximum-sized spill

or for the full duration of time that oil would spread and be available in the environment.

*Response:* In the oil spill trajectory model, we modeled the spill that would be consistent with the oil spill probabilities presented in the Northstar FEIS. We did not choose to model the worst-case scenarios, as they are associated with well blowouts. While blowouts are possible, data from the Alaska Oil and Gas Conservation Committee indicate that only 6 gas blowouts, and no oil blowouts, have occurred during all North Slope drilling operations over the past 50 years. Therefore, we conclude that the likelihood of occurrence for these worst-case scenarios are exceedingly small, constitute little risk to polar bears, and need not be modeled.

The trajectory model showed considerable variability in the spread of oil; some trajectories moved considerable distances, while others did not. This variability is reflected in the estimated numbers of polar bears that would be impacted by a spill. Therefore, the results of this analysis must be considered from a probabilistic perspective. The purpose of this modeling exercise was to quantify the risk to polar bears in general terms. We feel the level of detail included in the oil spill trajectory model, polar bear distribution model, and risk assessment was appropriate for the data at hand.

*Comment:* The Polar Bear Risk Analysis for the Northstar Project in the proposed rule is scientifically flawed, ignores available information, and cannot be used to overturn the results of the Northstar Draft and Final Environmental Impact Statements (EIS) prepared by the U.S. Army Corps of Engineers, nor to make findings of negligible impact to polar bear populations or subsistence.

*Response:* The Polar Bear Risk Analysis was favorably reviewed by other scientists, statisticians, and modeling experts. The oil spill probabilities used in the risk analysis were calculated based on exposure variables and oil production estimates from the Northstar EIS. Additional "important oil spill risks" could not be quantified and, therefore, were not included in the analysis.

We disagree with the stated opinion that "a risk analysis approach is inappropriate, given the devastating effects of a spill in the event that it occurs." Managing by the worst-case scenario without consideration of the likelihood of occurrence is not practical. Following that rationale, people would not fly on commercial airlines, as the worst-case scenario is for hundreds of

fatalities. To the contrary, risk analysis indicates that air travel is one of the safest modes of transportation available.

We acknowledge that the risk analysis was simplistic, but we believe the level of analysis used was appropriate for the available data. We disagree with the statement that the results "downgrade conclusions about impacts from a spill." In our opinion, the results provide the context necessary to interpret those impacts. We consider this approach to be an improvement over previous impact assessments.

*Comment:* Regardless of the probability of a major spill, or series of smaller spills, the effect on polar bear populations and habitats would be significant and cannot be ignored.

*Response:* We remain concerned about the impacts from a potential oil spill from Northstar. However, without some measure of probability, assessing the risk to polar bears is impossible. In this regard, we believe a risk assessment approach is appropriate.

The Northstar FEIS did not present a probability associated with the mortality estimate of 30 bears. The probability of an oil spill impacting an aggregation of polar bears is the product of: (1) the probability of a spill occurring; (2) the probability of an aggregation of bears being present; and (3) the probability of the spill contacting the aggregation.

*Comment:* Movement patterns and habitat use by females may not be representative of those of other demographic classes (i.e., males and juveniles) in the polar bear population.

*Response:* At this time, a technique to follow movements of adult males is not available, although some testing of ear tag transmitters and subcutaneous implanted transmitters has been attempted with limited success. Radio collars have not been successful on male polar bears due to the shape of their neck and head. Also, radio collars are not used to collect information on cubs because of their rapid rate of growth and possible injury to the bear. Without adequate information about these other demographic classes, we made the untested assumption that females were representative of the entire population. We acknowledge that additional data in this area would be desirable.

*Comment:* Cumulative impacts from Northstar should be considered beyond the 3-year period of the regulations.

*Response:* While operation of the Northstar facility is anticipated to last for at least 15 years, our cumulative impact assessment can only look 3 years into the future. We are obligated to assess cumulative impacts for the duration of the regulation and not to include information that is speculative,

incomplete, or beyond the scope of the regulations. Any information and our assessment of effects on polar bears regarding future operations at the Northstar site would occur in future regulations.

*Comment:* Unpublished data, modeling activities, and reports used in determining the effects of oil and gas industry activities should be available for review

*Response:* The proposed rule announced that persons seeking further information on the proposed rulemaking should contact our Marine Mammals Management Office. Persons still seeking materials used in the production of these implementing regulations may request them from the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503.

### Oil Spill Response

*Comment:* It is impossible to clean up an oil spill during broken ice conditions.

*Response:* In our risk assessment analysis, we assumed that cleanup would not occur, but we also assumed that the chance of a spill is small and that containment would occur. Industry is working to develop better technology for cleanup and spill detection.

*Comment:* Spill response drill results and failure to comply with conditions of the Northstar Oil Spill Contingency Plan (C-Plan) provide reason for concern.

*Response:* The oil spill contingency plan was approved by the Alaska Department of Environmental Conservation, the U.S. Department of Transportation, the U.S. Coast Guard, and the Minerals Management Service. We were actively involved in the development of the Area Plan that establishes standards for the oil spill contingency plan and identifies sensitive resource areas. We believe the oil spill contingency plan does describe feasible techniques to minimize impacts of oil spills.

We are concerned about the efficacy of cleanup and containment efforts should a spill occur in the marine environment. Given the uncertainties associated with cleanup and containment, modeling all the possible cleanup and containment scenarios that could occur was not possible. Instead, we modeled a spill that was contained 72 hours after the final release of oil as required in the Northstar C-Plan. Any cleanup or containment that might occur prior to that point would decrease the size of the spill and, therefore, the potential impacts.

*Comment:* Incidental take associated with oil spill response activities was not considered.

*Response:* Incidental take associated with oil spill response activities was considered. Similar to mortality levels, the level of the type of incidental take, which includes harassment and deterrence, must be balanced with a likelihood of occurrence of a spill, which we believe to be small. However, in the event of a spill, we feel that nonlethal takes in the form of deterrence are preferable to the alternative.

*Comment:* Spilled oil trapped under solid ice may impact polar bears at a later time when the ice melts.

*Response:* In our modeling exercise, we believed that movement of oil during solid ice conditions and the potential for contact with polar bears is minimal and removed the scenario from further analysis. We recognized that movement of oil trapped beneath ice is possible over time, but believe that recovery of a portion of the oil trapped beneath ice and weathering of remaining oil would minimize potential impacts that may occur to polar bears at a later time. The indirect or latent effects of oiling are not qualified. We disagree with the assumption that no effective means exist for containing removing oil trapped beneath ice during the winter months. Review of the techniques for containment and removal of spilled oil in the solid ice conditions detailed in the oil spill contingency plan provides plausible explanation of the potential for greater effectiveness in cleanup of oil in these conditions. We acknowledge that 100 percent effectiveness of containment or cleanup is not possible. We believe that a greater potential impact to polar bears is illustrated in the open water or broken ice conditions scenarios, and we have chosen to focus our analysis on these scenarios. We have further clarified our rationale for excluding impact analysis for solid ice conditions within the final regulation and have included reference to the BPX oil spill contingency plan.

### Monitoring

*Comment:* Monitoring results for 1998 and 1999 were not analyzed.

*Response:* In June 1998, we prepared a monitoring report, which is available for public review, that covered the period from 1994 to 1997. That monitoring report identifies activities that were recorded under the authority of an LOA. Our monitoring database is continually updated, and a new monitoring report will be prepared after monitoring results are compiled for the winter 1999/2000 season. Preliminary analysis of monitoring reports from

1998 and 1999 indicate that the number of encounters between polar bears and industry activities were comparable to 1997.

*Comment:* Monitoring and reporting requirements are vague and inadequate.

*Response:* The site-specific monitoring programs are designed to provide information on the number of bears encountered at or near industrial sites, how bears react, information regarding hazing of bears if necessary, and information on lethal interactions should they occur. It is true that existing site-specific monitoring observations, by themselves, do not entirely provide the type of information necessary to evaluate the long-term, indirect, subtle effects of the activity or provide a quantitative measurement of effect on the population. We are currently considering changes to monitoring and reporting requirements that, while not specified in these regulations, can be implemented as conditions to LOAs.

#### Required Determinations

We have prepared an Environmental Assessment (EA) in conjunction with this rulemaking and concluded in a Finding of No Significant Impact (FONSI) that this is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. For a copy of the EA and FONSI, contact the individual identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT**.

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review). This final rule will not have an annual effect of \$100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. Expenses will be related to, but not necessarily limited to, the development of applications for regulations and LOAs, monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting.

Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 1997) and LOA requests probably does not exceed \$500,000 per year, short of the "major rule" threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits will accrue to Industry; royalties and taxes will accrue to the Government; and the rule will have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have also determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the person in Alaska identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT**.

This final rule is not expected to have a potential takings implication under Executive Order 12630 because it will authorize the incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability.

This final rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The

Service had determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

The Departmental Solicitor's Office has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The information collection contained in this rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018-0070. The OMB approval of our collection of this information will expire in October 2001. Section 18.129 of this document contains the public notice information—including identification of the estimated burden and obligation to respond—required under the Paperwork Reduction Act. Information from our Marking, Tagging, and Reporting Program is cleared under OMB Number 1018-0066 pursuant to the Paperwork Reduction Act. For information on our Marking, Tagging, and Reporting Program, see 50 CFR 18.23(f)(12).

The Administrative Procedure Act, 5 U.S.C. 553(d), generally requires that the effective date of a final rule not be less than 30 days from publication date of the rule. Section 553(d)(1) provides that the 30-day period may be waived if the rule grants or recognizes an exemption or relieves a restriction. Since this rule relieves certain restrictions concerning take of marine mammals, and is expected to be published prior to expiration of existing regulations, we have determined that this final rule should be made effective upon date of publication.

#### List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and record keeping requirements, Transportation.

For the reasons set forth in the preamble, the Service amends part 18, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations as set forth below:

#### PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

2. Revise Subpart J to read as follows:

**Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska**

Sec.

- 18.121 What specified activities does this rule cover?  
 18.122 In what specified geographic region does this rule apply?  
 18.123 When is this rule effective?  
 18.124 How do you obtain a Letter of Authorization?  
 18.125 What criteria do we use to evaluate Letter of Authorization requests?  
 18.126 What does a Letter of Authorization allow?

- 18.127 What activities are prohibited?  
 18.128 What are the monitoring and reporting requirements?  
 18.129 What are the information collection requirements?

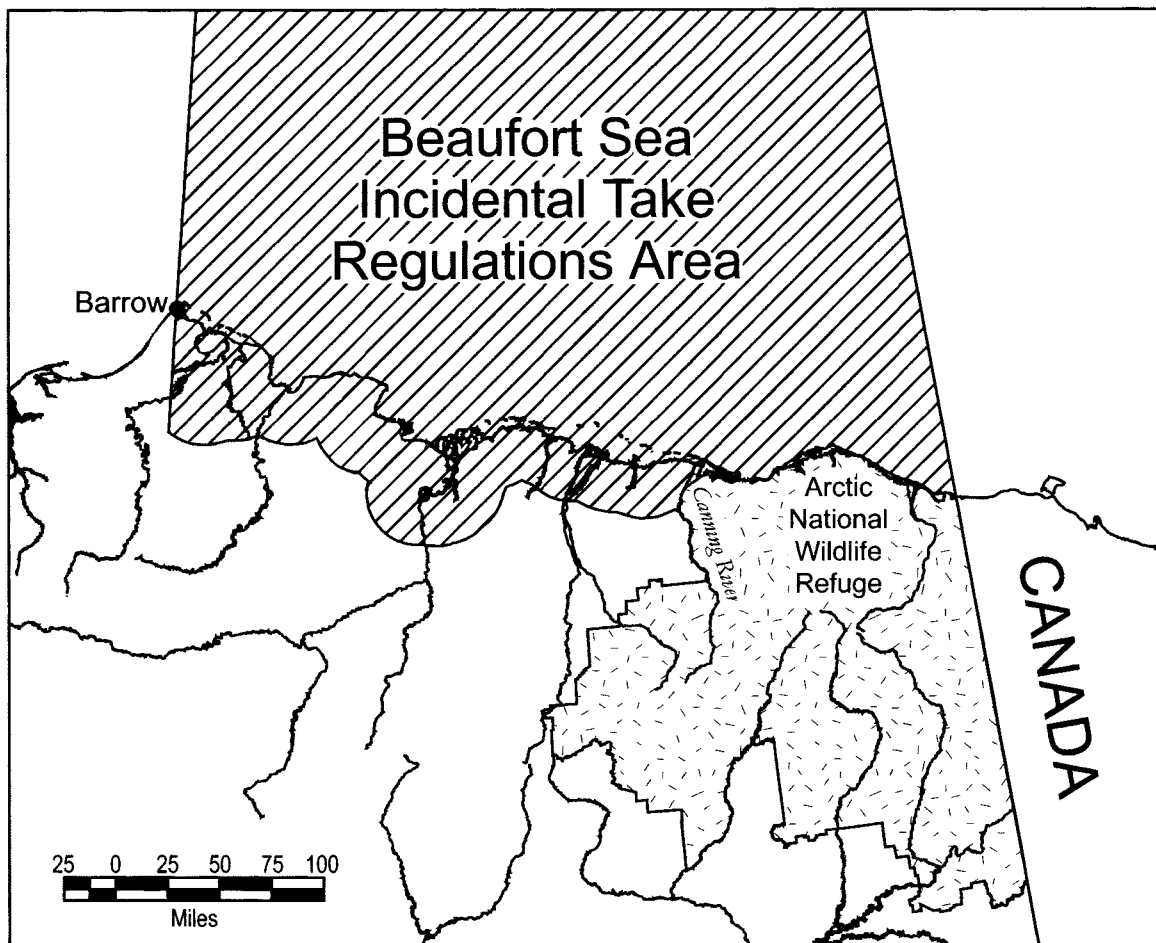
**§ 18.121 What specified activities does this rule cover?**

Regulations in this subpart apply to the incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration, development, and production activities and environmental monitoring associated with oil and gas industry activities in the Beaufort Sea and adjacent northern coast of Alaska. The offshore

exploration, development, and production facility, known as Northstar, is covered by this rule. Future offshore development and production, such as the proposed Liberty project, is not covered by this rule.

**§ 18.122 In what specified geographic region does this rule apply?**

This rule applies to the specified geographic region defined by a north/south line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and all Outer Continental Shelf waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is excluded from this rule.



**§ 18.123 When is this rule effective?**

Regulations in this subpart are effective March 30, 2000 and remain effective through March 31, 2003, for year-round oil and gas exploration, development, and production activities.

**§ 18.124 How do you obtain a Letter of Authorization?**

- (a) You must be a U.S. citizen as defined in § 18.27(c) of this part.  
 (b) If you are conducting an oil and gas exploration, development, or production activity in the specified geographic region described in § 18.122 that may take a polar bear or Pacific walrus in execution of those activities

and desire incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for each development and production area. You must submit the application for authorization to our Alaska Regional Director (See 50 CFR 2.2 for address) at last 90 days prior to the start of the proposed activity.



(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the specific location, and the estimated area affected by that activity.

(2) A site-specific plan to monitor the effects of the activity on the behavior of polar bear and Pacific walrus that may be present during the ongoing activities. Your monitoring program must document the effects to these marine mammals and estimate the actual level and type of take. The monitoring requirements will vary depending on the activity, the location, and the time of year.

(3) A polar bear awareness and interaction plan. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(4) A Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting. This Plan of Cooperation must identify measures to minimize adverse effects on the availability of polar bear and Pacific walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. You must contact affected subsistence communities to discuss potential conflicts caused by location, timing, and methods of proposed operations. You must make reasonable efforts to assure that activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or Pacific walrus are properly mitigated.

**§ 18.125 What criteria do we use to evaluate Letter of Authorization requests?**

(a) When you request a Letter of Authorization, we will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that considered by us in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for take for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may allow the authorization to stand as is, add further conditions, or withdraw the authorization.

(b) In accordance with § 18.27(f)(5) of this part, we will make decisions concerning withdrawals of Letters of Authorization, either on an individual

or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in § 18.125(b) will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stock of polar bear or Pacific walrus.

**§ 18.126 What does a Letter of Authorization allow?**

(a) Your Letter of Authorization may allow the incidental, but not intentional, take of polar bear and Pacific walrus when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities;

(3) Developing oil fields and associated activities;

(4) Drilling production wells and performing production support operations; and

(5) Conducting environmental monitoring activities associated with exploration, development, and production activities to determine associated impacts.

(b) You must use methods and conduct activities identified in your Letter of Authorization in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and Pacific walrus, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

**§ 18.127 What activities are prohibited?**

(a) Intentional take of polar bears or Pacific walrus; and

(b) Any take that fails to comply with the terms and conditions of these specific regulations or of your Letter of Authorization.

**§ 18.128 What are the monitoring and reporting requirements?**

(a) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and Pacific walrus.

(b) Holder of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bear and Pacific walrus.

(c) We may place an observer on site of the activity on board drill ships, drill rigs, aircraft, icebreakers, or other

support vessels or vehicles to monitor the impacts of your activity on polar bear and Pacific walrus.

(d) For exploratory activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director within 90 days after completion of activities. For development and production activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information:

- (1) Dates and times of activity;
- (2) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and
- (3) Results of the monitoring activities including an estimated level of take.

**§ 18.129 What are the information collection requirements?**

(a) The collection of information contained in this subpart has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018-0070. We need to collect information in order to describe the proposed activity and estimate the impacts of potential takings by all persons conducting the activity. We will use the information to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization.

(b) For the initial year, we estimate your burden to be 200 hours to develop an application requesting us to promulgate incidental take regulations. For the initial year and annually thereafter when you conduct operations under this rule, we estimate an 8-hour burden per Letter of Authorization, a 4-hour burden for monitoring, and an 8-hour burden per monitoring report. You must respond to this information collection request to obtain a benefit pursuant to Section 101(a)(5) of the Marine Mammal Protection Act. You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222 ARLSQ, 1849 C Street, NW., Washington, D.C. 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018-0070), Washington, D.C. 20503.

Dated: March 23, 2000.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00-7912 Filed 3-29-00; 8:45 am]

**BILLING CODE 4310-55-M**