

Agency will publish a final decision in response to the petition.

#### VI. Effect of Variance in Arizona

EPA notes that Arizona is authorized to administer and enforce the RCRA hazardous waste program pursuant to section 3006 of RCRA. Generally, when EPA grants a variance under 40 CFR 260.30, the variance would be automatically effective only in unauthorized States. However, there are two circumstances that make this variance effective in the State of Arizona. First, WRC, EPA Region IX and the Arizona Department of Environmental Quality (ADEQ) executed a Consent Agreement and Consent Order (CA/CO) that finalized regulatory requirements for the WRC recycling facility at Phoenix. Under the CA/CO, if EPA makes a favorable decision regarding WRC's petition for a variance, Arizona is obligated to "honor and give legal effect to the variance determination within the State of Arizona." Second, Arizona's regulations at A.A.C. R18-8-260(J) (Supp. 98-2) (which incorporates and modifies 40 CFR 260.30 entitled "Variances from classification as a solid waste") provides that "any person wishing to submit a variance petition shall submit the petition, under this subsection, to EPA. Where the Administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, and 260.33, the Director shall accept the determination, provided the Director determines that the action is consistent with the policies and purposes of the HWMA" (the Hazardous Waste Management Act underlying Arizona's authorized status). Since the Director has made such a determination, no further action will be necessary before the variance takes effect under state law upon promulgation by EPA.

#### VII. Administrative Requirements:

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive

Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 3, 1999.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 99-31965 Filed 12-8-99; 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:** Proposed rule.

**SUMMARY:** These proposed regulations would 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. The operations are

similar to and include all activities covered by our original 5-year Beaufort Sea incidental take regulations effective from December 16, 1993, through December 15, 1998, and current regulations in effect from January 28, 1999, through January 30, 2000, except that these proposed regulations would also allow incidental, unintentional takes resulting from subsea pipeline activities placed offshore at the Northstar facility in the Beaufort Sea. We are proposing that this rule be effective for 3 years, from January 31, 2000, through January 31, 2003.

We propose 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 no unmitigable adverse impacts on the availability of these species for 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 spill trajectory models and polar bears density models to determine the likelihood of impacts to polar bears should an accidental oil release occur.

**DATES:** Comments on this proposed rule must be received by January 10, 2000.

**ADDRESSES:** You may submit comments by any of the following methods:

1. By mail to: John Bridges, Office of Marine Mammals Management, US Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

2. By FAX by sending to: 907-786-3816.

3. By Internet, electronic mail by sending to: FW7MMM@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AF54" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at US Fish and Wildlife Service, Office of Marine Mammals Management, 907-786-3810 or 1-800-362-5148.

4. By hand-delivery to: Office of Marine Mammals Management, US Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

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

**SUPPLEMENTARY INFORMATION:**

## Background

Section 101(a)(5)(A) of the Marine Mammals Protection Act (Act) gives the Secretary of the Interior (Secretary) through the Director of US 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 US citizens (You) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region. We may grant permission for incidental takes for periods of up to 5 years.

Under the provisions of the Act, we would allow the incidental taking of these marine mammals only if our Director finds, based on the best scientific evidence available, that the total of such taking for 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. If these findings are made, we will establish regulations for the activity that 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) Requirement for monitoring and reporting.

The term "take" as defined by the Act means to harass, hunt, capture, or kill, or attempt to harass, 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 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 area,

(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 mammals habitat, and risks violating the prohibitions on the taking of marine mammals. Although there is no legal requirements for industry 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 Service, Inc., Mobil Oil Corporation, Northern Geophysical of America Western, Texaco Inc., Unocal Corporation, and 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 Outer Continental Shelf (OCS) waters. The onshore region was defined by the name north/south line at Barrow, extending 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge was excluded from the proposal.

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. We developed *The 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. 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 do not authorize the

incidental take of polar bears and Pacific walrus during construction or operation of subsea pipelines in the Beaufort Sea.

Subsequent to January 28, 1999, 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 are 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) has published a Preliminary Draft EIS, and a Draft EIS is currently in preparation.

### Summary of Current Request

The proposed regulations respond to the August 28, 1997, request by BP Exploration (Alaska), Inc. for the extension of 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 will expire on January 30, 2000. The current proposal addresses the time period from January 31, 2000, through January 31, 2003.

### Description of Proposed Regulations

Due to the preliminary nature of the Liberty environmental assessment, we are unable to evaluate the potential impact of that development at this time. These proposed regulations are for a 3-year period from January 31, 2000, through January 31, 2003, and include consideration of subsea pipeline activities associated with the Northstar project. The proposed regulations will allow Industry to incidentally take polar bear and Pacific walrus within the same area as covered by our previous regulations; defined by a north/south line at Barrow, Alaska, including all Alaska State waters and 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. Once again, the Arctic National Wildlife Refuge is excluded from the proposal.

The proposed regulations do not authorize the actual activities associated with oil and gas exploration, development, and production, but rather authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus associated with those activities. The MMS and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and

on Federal lands, respectively, and the State of Alaska is responsible for activities on State lands and in State waters.

As in previous regulations, the proposed rule requires an applicant to obtain 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.

Further, applicants for LOAs must submit a plan to monitor the effects on polar bear 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 continue to be 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 bear and walrus.

Each request for an LOA is evaluated on the specific activity and the specific location, and we condition each LOA for that activity and location if necessary. For example, a request to conduct activities on barrier islands with active polar bear dens or a history of polar bear denning will 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 has submitted a request for the promulgation of incidental take regulations pursuant to Section 101(a)(b)(A) of the Act. Activities covered in this proposed rule include exploration, development, and production of oil and gas, as well as wildlife monitoring associated with these activities.

Exploration activities include geological and geophysical surveys, which may involve geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, air gun and water gun seismic data collection, explosive seismic data collection, geological surveys, and drilling operations. Drilling operations include drill ships, floating drill platforms such as the *Kulluk*, ice pads, artificial islands, caisson-retained islands, and two types of bottom-founded structures, concrete island drilling system, and single steel drilling caisson.

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 would be 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 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 Apline fields, both of which are now in the development phase. Discovery has also been made at the Liberty site, where development is planned for 2003.

During the period covered by the proposed regulations, we anticipate a similar level of activity at existing production facilities as during the previous 6 years. One notable difference is the new Northstar project, the first offshore production facility on the North Slope, and the only offshore production facility considered in this proposal.

### 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 4 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. The average reproduction interval for 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 10 cubs in her lifetime.

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 are 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. As previously stated in this document, 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 Gwyder 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, 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 the proposed 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 proposed regulations, oil and gas industry 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.

##### *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, 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 time 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, there is increased likelihood of interactions between polar bears and Industry activities. 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 their 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 of 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 one-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 involves deterring the bear from the site, with minimal effect. Without such plans and training, the 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 which 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 would have a significant overall effect on the population.

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.

#### *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 onshore, 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 Northstar will begin 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 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 Northeast 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 would affect polar bears. When calculated for the 3-year period covered by the proposed regulations, 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.

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 affected 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 would 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. The U.S. Geological Survey, Biological Resources Division, developed a polar bear distribution model based on extensive telemetry data that estimates the number of bears expected to occur within a grid of the Beaufort Sea with a cell size of 0.25 km<sup>2</sup>. 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 aggregations 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 for the year, and summing those probabilities over the entire year. We calculate that the probability of a spill that would 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. Thus the probability of a spill that would 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 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 the validity of oil spill probabilities as presented in the Northstar FEIS. However, if the probability of a spill were actually twice the estimated value, the probability of a spill that would 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 spilled constituent mortality, aggregations of bears not included, etc. We determined that the assumptions that would overestimate and underestimate mortalities were generally in balance.

We conclude that if an oil spill were to occur during the fall of spring broken-ice periods, there could be a significant impact to polar bears. 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 we conclude that the effect of operations associated with the Northstar development will have a negligible impact on polar bears.

#### *Subsistence Use of Polar Bear*

Within the area covered by the proposed regulations, polar bears are taken in Barrow, Nuiqsut, or 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.

#### *Cumulative Effects*

Based on past LOA monitoring reports, the level of interaction between Industry and marine mammals (Pacific walrus and polar bears) has had a negligible impact on these species. Additional information, such as subsistence harvested 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 proposed regulations (existing onshore development and proposed exploratory activities) are similar in scale to previous levels. Therefore, we conclude that 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 would kill a significant number of polar bears and found it to be negligible. Thus, after considering the cumulative effects of existing onshore development, proposed exploratory activities, and the new Northstar subsea pipeline, we find that these activities will have a negligible impact on polar bears and Pacific walrus.

#### **Conclusions**

Based on the previous discussion, we propose 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 the effects of oil and gas related exploration, development, and production activities from January 31, 2000, through January 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 proposed 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))

In the event of a catastrophic spill, we would 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 proposed 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 regulation 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 will 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 monitoring and reporting plan. The purpose of the required plan is to ensure that the level of activity and possible takes will be consistent with our proposed finding that the cumulative total of incidental takes will have a negligible impact on polar bear and Pacific walrus, 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 propose to 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. However, the low numbers do not mean 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 Nanuuq Commission, and the North Slope Borough. The plan will ensure that oil and gas activities will continue to not 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 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 annual approval of the monitoring results for continued operation under the LOA.

#### **Required Determinations**

We have prepared a draft Environmental Assessment (EA) in conjunction with this proposed rulemaking. Subsequent to closure of the comment period for this proposed rule, we will decide whether this is 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 (NEPA) of 1969. For a copy of the draft Environmental Assessment, contact the individual identified above in the section **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 rule will not have an 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, of 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 entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. The

proposed rule is not likely to result in an annual effect on the economy of \$100 million or more. 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 would accrue to Industry; royalties and taxes would accrue to the Government; and the rule would have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed 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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have also determined that this proposed 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, **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1)

Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, § 18.123 *When is this rule effective?*) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state that prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would 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 proposed 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 has determined

and certifies pursuant to the Unfunded Mandates 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 Service has determined and certifies pursuant to the Unfunded Mandates 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.

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. The proposed section 18.129 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 Report Program, see 50 CFR 18.23(f)(12).

Comments and materials received in response to this action are available for public 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, Alaska 99503.

#### 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 proposes to amend 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 of 50 CFR part 18 continues to read as follows: 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 does the Service 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?

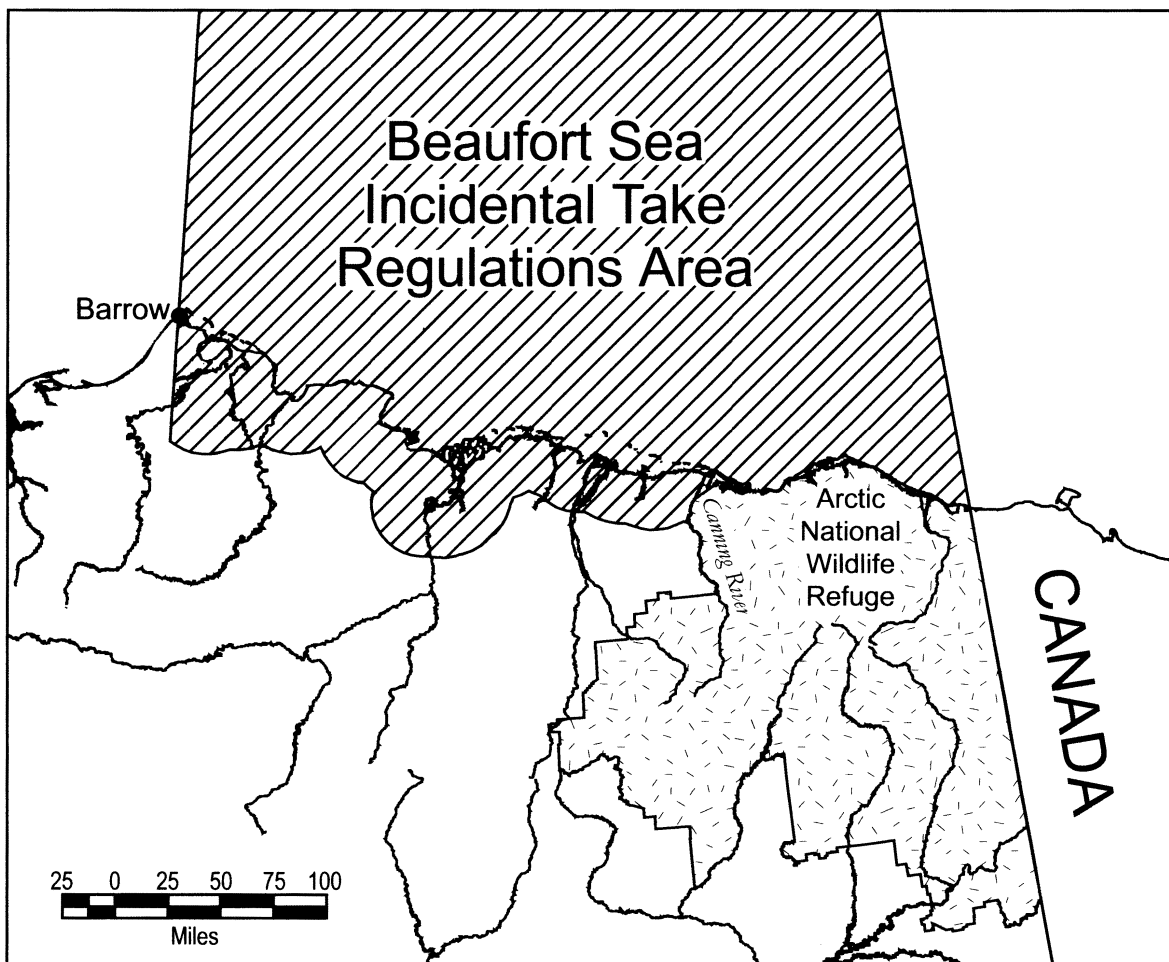
Regulations in this subpart apply to the incidental, but not intentional, task of small numbers of polar bear and Pacific walrus by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The offshore exploration, development, and production facility, known as Northstart, is covered by this rule. Further 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 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.

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

Regulations in this subpart are effective January 31, 2000, through January 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 least 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 does the Service 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 bear 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) Holders 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 Letters 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 Letters 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 the information in order to describe the proposed activity and estimate the impacts of potential taking 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 Letters 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, DC 20240, and

the Office of Management and Budget, Paperwork Reduction Project (1018-0070), Washington, D.C. 20503.

Dated: November 17, 1999.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 99-31906 Filed 12-6-99; 12:13 pm]

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