

**DATES:** Comments must be received in writing on or before February 2, 2000.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, 1520 E. 6th Avenue, Helena, Montana, 59620-0901.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, EPA, Region VIII, (303) 312-6449.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this *Federal Register*.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 30, 1999.

**Max H. Dodson,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 99-33623 Filed 12-30-99; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 18

RIN 1018-AF87

#### Marine Mammals; Incidental Take During Specified Activities

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would extend our existing rule issued Thursday, January 28, 1999 (64 FR 4328), and codified at 50 CFR Part 18, Subpart J to authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. This proposed rule authorizes incidental, unintentional take of small numbers of polar bears and Pacific walrus only for activities covered by our existing regulations at 50 CFR Part 18, Subpart J; incidental take resulting from any subsea pipeline activities located

offshore in the Beaufort Sea is not authorized. If made final, this proposed rule would extend the effective period for the current regulations for 61 days through March 31, 2000.

**DATES:** Comments on this proposed rule must be received by January 13, 2000.

**ADDRESSES:** If you wish to comment, you may submit comments by any one of several methods.

1. By mail to: John Bridges, U.S. Fish and Wildlife Service, Office of Marine Mammals Management, 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-AF87" 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 U.S. Fish and Wildlife Service, Office of Marine Mammals Management (907) 786-3810 or 1-800-362-5148.

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

Comments and materials received in response to this action are available for public inspection during normal working hours of 8 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.

#### 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. We may grant permission for incidental takes for periods of up to 5 years. On January 28, 1999, we published in the *Federal Register* (64 FR 4328) regulations to

allow such incidental takes in the Beaufort Sea and adjacent northern coast of Alaska for the period January 28, 1999, through January 30, 2000. These regulations were based on the findings for the 1-year period that the effects of oil and gas related exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska would have a negligible impact on polar bears and Pacific walrus and their habitat and no unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives, if certain conditions were met.

Our present action proposes to extend the current regulations, which are located at 50 CFR Part 18, Subpart J, through March 31, 2000. This rulemaking will avoid a lapse in these regulations that could occur while we consider public comment on our proposed regulations published December 9, 1999 (64 FR 68973), the comment period for which closes on January 10, 2000. Those proposed regulations would allow the incidental, unintentional take of small numbers of polar bears and Pacific walrus for a 3-year period during year-round oil and gas activities, including incidental takes resulting from the construction and operation of a subsea pipeline associated with the offshore Northstar facility.

The expiration of our existing regulations on January 30, 2000, may not allow us sufficient time to fully consider and evaluate public comments on our December 9, 1999, proposed rule. Therefore, we propose extending our existing regulations for 2 months to ensure that we have adequate time to thoroughly review and respond to public input. We believe it is important to avoid a lapse in our regulations and maintain the coverage and protection for polar bears and Pacific walrus provided by those regulations. With the continued coverage, existing Letters of Authorization, which require monitoring and reporting of all polar bear interactions as well as site-specific mitigation measures, will remain in effect.

Prior to issuing the existing regulations, we evaluated the level of industrial activities, their associated impacts to polar bears and Pacific walrus, and their effects on the availability of these species for subsistence use. Based on the best scientific information available and the results of 6 years of monitoring data, we found that the effects of oil and gas related exploration, development, and production activities in the Beaufort Sea and the adjacent northern coast of

Alaska would have a negligible impact on polar bears and Pacific walrus and their habitat. We also found that the activities as described would have no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives.

If we reach final "negligible impact" and "no unmitigable adverse impact to subsistence take" findings, then we will extend the regulations that include permissible methods of taking and other means to ensure the least adverse impact on the species and its habitat and on the availability of the species for subsistence uses along with other relevant sections. This will include requirements for monitoring and reporting. The geographic coverage is the same as the existing regulations. All existing Letters of Authorization will be extended contingent upon these regulations being issued in final form.

#### **Description of Activity**

This rulemaking covers activities as described in the existing rule that we expect to occur during the brief duration of this rule. These activities include exploration activities such as geological and geophysical surveys, which include 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. Development and production activities located on the North Slope along the shores of the Beaufort Sea are included. The activities are limited to those that occur during the winter. The level of activity expected is similar to that as occurred last winter under the existing regulations. This region contains more than 11 separate oil fields. All of the fields lie within the range of polar bears.

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

##### *Polar Bear*

Winter oil and gas activities may affect polar bears. Polar bears that continue to move over the ice pack through the winter are likely to encounter Industry activities. Curious polar bears are likely to investigate artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for interactions between bears and industry. Offshore drill sites may modify habitat and attract polar bears to artificial open leads downwind from the activity. Polar bears attracted to these open water leads create the potential for Industry/polar

bear encounters. Winter seismic activities have a potential of disturbing denning females, which are sensitive to noise disturbances. Prior to initiating surveys, industry consults with us through applications for Letters of Authorization. Specific terms of a Letter of Authorization require that industrial activities avoid known or observed dens by 1 mile through cooperative operating procedures. In addition, Letters of Authorization require development of polar bear interaction plans for each operation. Industry personnel participate in training programs while on site to minimize detrimental effects on personnel and polar bears. During the past 6 years, Letter of Authorization conditions have limited the time and location of Industry activities in known polar bear denning habitat. In addition to avoiding known den locations of radio collared polar bears, Industry has conducted aerial survey overflights of potential denning habitat using forward looking infrared thermal sensors to detect dens located beneath snow. A number of den locations have been identified prior to Industry activities, avoiding potential disturbance. Regarding polar bear/human interactions, Industry has taken proactive steps to minimize the aspect of scent attraction to sites through proper disposal of garbage and waste products. Yet a number of potentially dangerous encounters have occurred in recent years. These encounters have not resulted in injury to polar bears or humans. A degree of credit for this success rate is attributed to enhanced employee awareness and proper responses to polar bear encounters brought about through materials contained within polar bear interaction plans.

##### *Pacific Walrus*

Pacific walrus rarely use the geographical area during the preferred open water season and do not occur in the area during the winter including the February and March period of the proposed regulations. Consequently, no direct or cumulative effect of Industry activities to Pacific walrus would be expected.

#### **Subsistence**

##### *Polar Bears*

Polar bears may be hunted in February and March by residents of Barrow, Nuiqsut, and Kaktovik, although the numbers of bears taken in mid-winter months is typically less than during the spring or fall seasons. Hunter success varies from year to year and with seasonal variations within a year.

As required in the existing regulations, Industry is required to work through plans of cooperation with potentially affected subsistence communities to minimize and mitigate for potential impact on the availability of polar bears for subsistence uses, where necessary. We do not expect conflicts between subsistence users and Industry during the February and March term of these regulations. Previously, we have not noted conflicts between subsistence users and Industry under the existing regulations.

##### *Pacific Walrus*

Pacific walrus are not present and thus are unavailable for harvest during the winter in this area. No direct or cumulative effect on their availability for take for subsistence use would occur from industrial activities.

#### **Conclusions**

Based on the previous discussion of direct and cumulative effects of the proposed activities, and 6 years of results of prior monitoring programs, we make the following findings regarding this proposed rulemaking. We find, based on scientific information and the results of 6 years' monitoring data, that the effects of oil and gas exploration, development, and production activities for the period January 31, 2000, through March 31, 2000, in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat, and that there will be no unmitigable adverse impacts on the availability of these species for take for subsistence uses by Alaska Natives if conditions contained within Letters of Authorization are met. Consistent with our current regulations at 50 CFR Part 18, Subpart J, our findings apply to exploration, development, and production related to oil and gas activities, excluding any construction and production activities associated with subsea pipelines at the Northstar facility.

#### **Required Determinations**

Environmental documents prepared for our regulations at 50 CFR Part 18, Subpart J concluded in a finding of no significant impact. These proposed regulations cover the same activities as analyzed under the current environmental assessment and are therefore consistent with those findings and the requirements of the National Environmental Policy Act.

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, 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 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 Letters of Authorization (LOA), 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 U.S.-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.

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 this request 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. Coordination with appropriate Alaska State agencies has occurred, and necessary permits have been received to ensure State consistency. In addition, extensive coordination with the North Slope Borough and other Alaska Native organizations has occurred concerning this issue. 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 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 50 CFR Part 18, Subpart J 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 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).

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

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

For the reasons set forth in the preamble, we propose 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 for 50 CFR Part 18 continues to read as follows:

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

2. Revise § 18.123 to read as follows:

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

Regulations in this subpart are effective through March 31, 2000, for oil and gas exploration, development, and production activities.

Dated: December 23, 1999.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 99-34066 Filed 12-28-99; 4:08 pm]

**BILLING CODE 4310-55-P**