

purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) * * *

(9)(i) Prior to September 1, 2000, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C1 to C4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D-4815-93, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography," for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method set forth in paragraphs (g)(1) through (g)(8) of this section.

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[FR Doc. 98-30402 Filed 11-16-98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018-AF02

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, and request for comments.

SUMMARY: The Fish and Wildlife Service (Service) is proposing regulations that would authorize for the next 5 years the incidental, unintentional take of small numbers of polar bears (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) during year-round oil and gas industry operations (exploration, development, and production) in the Beaufort Sea and adjacent northern coast of Alaska.

Under the provisions of the Marine Mammal Protection Act (Act), the Service will allow the taking of these marine mammals only if the Director of the Service finds, based on the best scientific evidence available, that the total of such taking for the 5 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 subsistence uses by Alaska Natives. If these findings are made, the Service will

establish specific regulations for the activity that set forth: permissible methods of taking; 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 requirements for monitoring and reporting.

Through the preparation of a draft Environmental Assessment, and the knowledge learned from four years of monitoring interactions between marine mammals and oil and gas industry activities, the Service has proposed a finding that the total expected takings of polar bear and walrus during oil and gas industry exploration, development and production activities would have a negligible impact on these species, and there would be no unmitigable adverse impacts on the availability of these species for subsistence uses by Alaska Natives.

DATES: Comments on the proposed rule must be received by December 11, 1998.

ADDRESSES: Written comments should be submitted by mail to Supervisor, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503. Comments may also be hand delivered to the same address. Comments and materials received in response to this proposal will be available for public inspection at this address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Bridges, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786-3800, FAX (907) 786-3816, or Internet John_Bridges@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Act gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service the authority to allow, on request by U.S. citizens [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographical region the incidental, but not intentional, taking of small numbers of marine mammals. The Service may grant permission for periods of up to 5 years.

If the Service finds, based on the best scientific evidence available, that the taking of marine mammals will have a negligible impact on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses, the taking of marine mammals may be

allowed. Also, the Service will publish regulations that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. The Service issues Letters of Authorization (LOA), upon request and receipt of appropriate data, to individual entities to conduct activities pursuant to the regulations.

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

Harassment as defined by the Act, as amended in September 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, the Service on September 29, 1989, published a final rule (54 FR 40338) amending 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) that included, among other things, a revised definition of "negligible impact" and a new definition for "unmitigable adverse impact." Negligible impact is now defined as "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." [50 CFR 18.27(c)]. "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." Id.

Oil and gas exploration, development, and production activities conducted in marine mammal habitat risk violating the moratorium on the taking of marine mammals and, therefore, violating the terms of the Act. It is probable that in

a period of five years, takes of polar bear and/or walrus will occur. Although there is no legal requirement for the oil and gas industry (Industry) to obtain incidental take authority, they have chosen to seek authorization to avoid the uncertainties of oil and gas industry activities in marine mammal habitat.

On December 17, 1991, BP Exploration (Alaska), Inc. (BPXA), for itself and on behalf of 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, petitioned the Service for the promulgation of regulations pursuant to Section 101(a)(5) of the Act.

Regulations were issued on November 16, 1993 (58 FR 60402), that allowed the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus in the event that such a taking occurred in the course of oil and gas exploration, development, or production activities during year-round operations in the Beaufort Sea, in Alaskan State waters and Outer Continental Shelf (OCS) waters and the adjacent northern coast of Alaska. The regulations were issued for a period of 18 months. The Secretary of the Interior directed the Service to develop and begin implementing a polar bear habitat conservation strategy prior to extending the regulations beyond the initial 18 months for a total 5-year period as allowed by the Act. *The Habitat Conservation Strategy for Polar Bears in Alaska* was developed to ensure that the regulations fully meet with the intent of the 1973 *International Agreement on the Conservation of Polar Bears*. On August 17, 1995, the final rule and notice of availability of a Completed Final Polar Bear Habitat Conservation Strategy was issued (60 FR 42805); and the regulations were extended for an additional 42 months to expire on December 15, 1998.

Specifically, a north/south line at Barrow, Alaska, including all Alaska state waters and the OCS waters and east of that line to the Canadian border defines the offshore geographic region. The same north/south line at Barrow, 25 miles inland and east to the Canning River defines the onshore region. The Arctic National Wildlife Refuge was excluded from the proposal.

Summary of the Current Request

On August 28, 1997, BPXA submitted a petition for rule making pursuant to Section 101(a)(5)(A) of the Act, and Section 553(e) of the Administrative Procedure Act (APA). The request seeks regulations to allow the incidental, but not intentional, taking of small numbers of polar bears and Pacific walrus in the event that takings occur in the course of oil and gas exploration, development, and production operations in Arctic Alaska. Specifically, BPXA requested an extension of the current incidental take regulations beginning at 50 CFR 18.121 for an additional five-year term from December 16, 1998, through December 15, 2003. The request was submitted by BPXA for itself and on behalf of ARCO Alaska, Inc., Exxon Corporation, and Western Geophysical Company.

The geographical extent of this request is the same as the previous regulations; it is a north/south line at Barrow, Alaska, including all Alaska State waters and OCS waters, and east of that line to the Canadian border. The onshore region is the same north/south line at Barrow, 25 miles inland and east to the Canning River. The Service excludes the Arctic National Wildlife Refuge from this proposal.

Summary of Proposed Rule

The Service proposes specific regulations to allow the incidental, unintentional take of polar bear and Pacific walrus in the Beaufort Sea and northern coast of Alaska. The regulations would be in effect year-round for a five year period expected to begin at the expiration of the current regulations (December 15, 1998) for entities conducting oil and gas industry activities. This proposed regulation does not authorize the intentional harassment, hunting, capturing or killing of polar bear or walrus. Under these regulations, Industry operations will continue while functioning under the restrictions of the Act.

These regulations do not permit the actual activities associated with oil and gas exploration, development, and production, but rather allow the incidental, unintentional take of the two species of marine mammals. The Department of the Interior's Minerals Management Service (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.

Concern has been directed at polar bear encounter incidents where human

life is in jeopardy. When human activity occurs in polar bear habitat, polar bear/human encounters are possible. In over 25 years of industry activity in this area, only one polar bear died for the protection of human life. Each person operating under these regulations will have polar bear interaction training and knowledge of polar bear interaction plans. The Service authorizes deterrent activities under Section 109(h)(1) of the Act, and lethal takes (kills) in defense of self or others are authorized by Section 101(c) of the Act.

The proposed regulations authorizing the incidental take of polar bears and Pacific walrus is directed to incidents that occur between Industry and the two species during year-round oil and gas activities that might cause minor disturbances to polar bears or Pacific walrus, especially those incidents that may occur in the absence of any negligence or intentional action by a person carrying out an otherwise lawful activity.

The proposed regulations include requirements for monitoring and reporting, and measures to effect the least practicable adverse impact on these species and their habitat and on the availability of these species for subsistence uses. The regulations are based on the finding that exploration, development, and production activities in this area may involve the taking of the two aforementioned species of marine mammals. The Service believes that the total impact of the takings will have a negligible impact on these species and on their availability for subsistence uses. Monitoring reports submitted for each exploration, development, and production activity conducted from 1993-1997 support this believe.

Subsequent to establishing regulations, the Service requires a LOA to conduct activities pursuant to these regulations. Where there is the likelihood of taking polar bear or walrus, each group or individual conducting an oil and gas industry-related activity may request a LOA. The proposed regulations require those who request a LOA to submit a plan to monitor the effects on polar bear and walrus that are present during the authorized activities. Also, each applicant for a LOA must identify, in a Plan of Cooperation, measures taken to minimize adverse impacts on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. Each request for a LOA is evaluated on the specific activity and the specific location, and the Service

specifically conditions each LOA for that activity and location.

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)(5)(A) of the Act.

Activities that are covered in the petition are 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. The latter include: drill ships, floating drill platform such as the Kulluk, ice pads, artificial islands, caisson-retained islands, and two types of bottom-founded structures: (1) concrete island drilling system, and (2) single steel drilling caisson.

Development and production activities are located on the North Slope along the shores of the Beaufort Sea. This region contains more than 11 separate oil and gas fields. All of the fields lie within the range of polar bears, while those in the offshore/near shore may encounter Pacific walrus on an irregular basis. At present, seven fields are in production: Prudoe Bay, Kuparuk, Endicott, Lisburne, Milne Point, Niakuk, and Point McIntyre. Additional fields expected to be in production over the next few years are: Northstar, Badami, Liberty, Tarn, and Alpine. The Trans-Alaska Pipeline System transports oil from each of the producing fields 800 miles south to Valdez, Alaska.

Potential sources of incidental take are noise, physical interactions, and permitted and unpermitted discharges (oil spills). Oil and gas well drilling operations will include artificial islands, caisson-retained islands, ice island, bottom-founded structures and ice pads and drill ships.

During the life of these proposed regulations, the Service anticipates a similar level of activity as during the previous five years, with the addition of a number of new developments as mentioned above. Because of the large number of variables influencing exploration activity, any predictions as to the exact dates and locations of the operations that will take place over the next five years would be highly speculative. However, requests for LOAs must include specific details regarding dates, duration, and geographic locations of proposed activities.

Biological Information

Polar bears and Pacific walrus utilize the proposed area as habitat which is vital to their survival, more so for polar bears than the Pacific walrus. The geographical area is the land and water area east of a north/south line through Barrow, Alaska. The onshore area is 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is outside of the proposed area. Offshore, the area extends through Alaska State waters and into the OCS waters of the Beaufort Sea from Barrow east to the Canadian border.

Walrus

The Pacific walrus primarily occurs in the waters of the Chukchi Sea along the western coast of Alaska. Most of the population congregates near the ice edge of the Chukchi Sea pack ice during the summer. The primary summer range of the walrus does not extend east of Point Barrow. In the winter, walrus occur in areas where there are polynyas, open leads, or thin ice in which they can create and maintain breathing holes, and major winter concentrations occur in the southeastern Bering Sea. Walrus do occur in the Beaufort Sea but in small numbers. Data from the Service's Marking, Tagging, and Reporting Program show that from 1994 through 1997, 73 walrus were reported killed by Barrow hunters. Tagging certificates shows that nearly all walrus were taken west of Barrow. Based on four years of monitoring Industry's activities in the Beaufort Sea required as a condition to LOAs, only two walrus were observed by on-site monitors.

Polar bear

Polar bears occur only 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. The Service estimates the world population at 21,000–28,000, with possibly as many as 5,000 bears in Alaska. The most extensive north-south movements of polar bears occur with the ice in the spring and fall.

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, sometimes one and rarely three, 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. 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 conditions, a polar bear may produce about ten cubs in her lifetime.

The fur and blubber of the polar bear provide vital protection 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. For this reason the mother is very protective of the cubs. 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; occasionally, they hunt bearded seals (*Erignathus barbatus*) and walrus calves. Polar bears scavenge on marine mammal carcasses washed up on shore. They also eat non-food items such as Styrofoam, plastic, car-batteries, anti-freeze and lubricating fluids.

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

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

Walrus

Oil and gas industry activities such as air and vessel traffic, noise from air traffic, seismic surveys, ice breakers, supply ships and drilling may frighten or displace walrus. However, as previously stated in this document, the primary range of the Pacific walrus is west of Point Barrow and the likelihood of many walrus being in the Beaufort Sea is small. Therefore, it is unlikely that oil and gas industry activities will result in more than a negligible impact on the species. Likewise, activities during the ice covered periods and the onshore development and production activities should not impact the species.

Stationary drilling structures may affect the movement of walrus. Walrus are attracted to certain activities or repelled from others by noise or smell. In the 1989 drilling season an incident

occurred in a Chukchi Sea operation where a young walrus surfaced in the center hole (moonpool) of the drill ship. A cargo net removed the walrus from the drilling area, after which the walrus left the scene of the incident and was not seen again.

The majority of the population congregates during the summer months (open water season) in the southern region of the Chukchi Sea pack ice between Long Strait and Wrangle Island to the west and Point Barrow, Alaska, to the east. These animals stray or are blown by storms into the proposed regulation area. The remainder of the population, primarily adult males, stay in the Bearing Sea, especially along the Anadyr Gulf coast and in several areas in northern Bristol Bay.

In winter, walrus are found in two major regions where open leads, polynyas, or thin ice occur (Fay et al. 1984). Generally, one group ranges from the Gulf of Anadyr into the region southwest of St. Lawrence Island, and a second group is found in the southeastern Bering Sea from south of Nunivak Island into northwestern Bristol Bay. No impacts to walrus are expected during winter oil and gas industry activities since the winter range of the Pacific walrus is not within the geographical area of the proposed regulations.

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

Subsistence

Few walrus are harvested in the Beaufort Sea along the northern coast of Alaska. The walrus constitutes a small portion of the harvest for the village of Barrow. For the four year period that the current incidental take regulations have been in place, 1994 through 1997, 73 walrus were reported taken by Barrow hunters. Reports indicate that all but one of the 73 walrus were taken west of Point Barrow, outside the limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik have not reported taking any walrus this time.

Polar Bear

Oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska may affect the polar bear. Drill ships and icebreaker activity may be physical obstructions to normal movement. Noise, sights, and smells produced by activities may attract or repel bears. These disruptions may introduce detrimental changes in the bears' natural behavior.

Exploration activities during the open-water season are not likely to impact the movements or natural behavior of the polar bear. Although polar bears have been documented in open water, miles from the ice edge or ice floes, they normally are found near the ice edge. Therefore, it is unlikely that exploration activities in the open-water season will have more than a negligible impact on the polar bear.

Winter oil and gas activities have a greater possibility of having detrimental impacts on the polar bear. Polar bears that continue to move over the ice pack throughout the year are likely to encounter Industry activities. Curious polar bears are likely to investigate drill ships and artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for Industry/bear interactions.

Offshore drill sites within the pack ice may modify the habitat by creating open water leads down current from the activity. Polar bears are attracted to open water leads which create temporary niches for subadult or non-breeding ringed seals, the primary prey species for the polar bear. Polar bears attracted to these artificial open water leads create possibilities of Industry/polar bear encounters.

Polar bear interaction plans are developed for each operation. Industry personnel participate in a polar bear interaction training program while on-site. These training programs and interaction plans insure that the activity and possible interactions have the least detrimental effect on industry personnel and the polar bear. Occasionally, work is performed on the ice adjacent to elevated drill ships or platforms. In such cases, well-lighted and open work areas are provided to reduce the likelihood of an encounter with an undetected polar bear.

Winter seismic activity (survey crews) have a potential of disturbing denning females which are sensitive to noise disturbances. Denning females may stop seeking a preferred denning site, or may abandon dens, thereby risking the lives of their offspring. Prior to initiating seismic survey activity, Industry provides the Service with the proposed survey route. Through satellite observations of radio collared bears the Service is able to inform Industry of known denning sites, and from knowledge of the geographical area the Service can identify areas of probable denning sites. Industry cooperates with the Service to alter survey routes to pass within no less than one mile of denning sites. As a result of the ongoing cooperative operating procedures,

Industry activities avoid known den sites within all practicable limits.

Subsistence

The polar bear is not a primary subsistence species of the villages of Barrow, Nuiqsut or Kaktovik. Preliminary data from the Service's Marking, Tagging, and Reporting Program indicate that from July 1, 1993, to June 30, 1997, a total of 83 polar bears were reported harvested by the Natives of Barrow; 5 polar bears from the village of Nuiqsut; and 9 polar bears from the village of Kaktovik. Hunting success varies considerably from year-to-year because of variable ice and weather conditions.

Industry works with the local Native groups to achieve a cooperative relationship between oil and gas activities and subsistence activities. It is assumed that oil and gas exploration, development, and production will not have more than a negligible impact on subsistence activities.

Oil Spills

The accidental discharge of oil into the environment during Industry activities could result from operational spills during refueling, handling of lubricants and liquid products, and during general maintenance. The spills are small in quantity, generally less than a barrel of oil per incident. Drilling units maintain onboard cleanup equipment and train personnel to handle operational spills. These spills do not pose a threat to polar bear or walrus.

A blowout (i.e., the loss of control of a well during drilling) is a potentially more serious type of spill accident. However, based on data calculated by the MMS, the probability of a major blowout in the Beaufort Sea is extremely low; data compiled by that agency verify that although blowouts occur during exploratory drilling on the OCS, no oil has been spilled.

Based upon historical data, the probability of a blowout not occurring is calculated to be 99.36 percent. This data set includes all blowouts including those caused by gas or water, as well as oil. All blowouts do not necessarily result in the release of oil.

Swimming polar bears are directly impacted by contacting oil-contaminated waters. Bears that are fouled by oil may suffer thermoregulatory problems, ingest oil, and exhibit other detrimental effects such as inflammation of the nasal passages or damage to their renal and central nervous system.

The Service acknowledges that while there is a low probability of oil spills

connected with a blowout, the potential negative effects to polar bears or their habitats may be significant. Bears that contact oil are likely to die. The Service balances the probability of an oil spill with the potential severity of harm to the species or stock when determining negligible impact. Even if the potential effects of a spill are significant but the probability of occurrence is low, a finding of negligible impact may be appropriate.

Due to the small number of walrus in the Beaufort Sea area, impacts resulting from oil spills are foreseen as negligible.

Conclusions

Based on the previous discussion and monitoring results from the previous five years' monitoring program, the Service makes the following preliminary findings regarding the proposed action.

Impact on Species

The Service finds, based on the best scientific information available and the results of four years of monitoring data, the effects of oil and gas related exploration, development, and production activities for the next five years 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 on the availability of the species for subsistence uses if certain conditions are met. Oil and gas activities have occurred in the Beaufort Sea and the adjacent northern coast of Alaska for many years. To date, there has been only one documented case of a lethal take of a polar bear at an exploratory drill site. In the event of a catastrophic spill, the Service would reassess the impacts to the polar bear and/or walrus populations and reconsider the appropriateness of authorization for taking thorough Section 101(a)(5)(A) of the Act.

The finding of "negligible impact" applies to exploration, development, and production activities related to oil and gas activities. The following are generic conditions that are proposed to eliminate interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. The Service may expand the conditions in the LOA's based upon site specific and species specific reasons.

(1) These regulations do not authorize intentional taking of polar bear or walrus. When an intentional take (e.g., harassment associated with deterrent activities and/or lethal take) situation arises, the Service can allow such action under the authority of Section 109(h)(1) or Section 101(c) of the Act.

(2) For the protection of pregnant polar bears during denning activities (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 a request for each LOA. In potential denning areas, pre-activity surveys, as determined by the Service, may be required to determine the presence or absence of denning activity.

(3) Each activity authorized by a LOA will require a site-specific plan of operation, and a site-specific monitoring and reporting plan. The purpose of the required plans is to ensure that the level of activity and possible takes will be consistent with the finding that the cumulative total of takes will have a negligible impact on polar bear and Pacific walrus, their habitat, and where relevant, on the availability of the species for subsistence uses.

Impact on Subsistence

Polar bear and Pacific walrus contribute a small amount of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. However, this does not mean that the harvesting of these species is not important to Alaska Natives. To ensure that the impact of oil and gas activity on the availability of the species or stock for subsistence uses is negligible, prior to receipt of a LOA, Industry must provide evidence to the Service that a plan of cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission, Alaska Nanuq Commission, and the North Slope Borough. This plan of cooperation will 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 subsistence, the Service will reevaluate its findings regarding permissible limits to take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of the monitoring program is 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. Plans must identify the methods used to assess the effects on the movements, behavior, and

habitat use of polar bear and walrus in response to Industry's activities. Monitoring activities are summarized and reported each year, and reviewed by the Service. The Service bases each year's monitoring objective on the previous year's monitoring results.

The Service requires 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 a LOA. The applicant must submit an annual monitoring and reporting plan, at least 90 days prior to initiation of proposed activity, for each exploratory activity; and the applicant must submit a final monitoring report to the Service no later than 90 days after completion of the exploratory activity. Since development production activities are continuous long-term activities, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until expiration of the regulations, whichever occurs first. The Service will require that the operator submit development and production activity monitoring results associated with LOAs annually for review by the Service no later than January 15 for the previous activity. The Service requires annual approval of the monitoring results for continued operation under the LOA.

Required Determinations

The Service has prepared a draft Environmental Assessment in conjunction with this proposed rulemaking. Subsequent to closure of the comment period for this proposed rule, the Service 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 of 1969. For a copy of the draft Environmental Assessment, contact the individual identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT.**

Through preparation of a Record of Compliance for a Rulemaking Document, the Department of the Interior has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12866. The proposed regulations are not likely to result in: (1) an annual effect on the economy of \$100 million or more, with the Service estimating actual Industry and Federal government costs associated with developing petitions, specific regulations, and LOAs at \$500,000-\$1 million (Note that without specific regulations and LOAs, the cost

to Industry resulting from lost profits, relinquishing leases earlier than expected, and writing off bonus payments against current income; and the cost to American society from lost royalties and tax payments might be substantial if incidental takes occurred and legal challenges succeeded in long-term stoppages of oil and gas operations on Federal and State lands and waters. However, it is unlikely that such stoppages will occur, but if any such cessation of activities did occur, they likely would be only short-term and would not have an annual effect on the economy surpassing \$100 million.); (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) 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. It has also been 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 proposed regulations. These potential applicants have not been identified as small businesses. The Record of Compliance for this proposed rule is available from the individual identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT.**

This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt them from civil and criminal liability. The proposed rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The reinstatement of authority (under OMB Number 1018-0070) to collect information contained in this rule was submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). On April 1, 1998, the Service published a notice in the

Federal Register with a 60-day comment period announcing to the public its intention to seek OMB approval for the collection of information associated with this rulemaking. On September 22, 1998, the Service published a **Federal Register** notice with 30-day comment period announcing to the public that this collection of information has been submitted to OMB for reinstatement. On October 24, 1998, OMB granted approval of our request for reinstatement of this information collection requirement.

This rulemaking is not a significant rule subject to OMB review under Executive Order 12866. The Service has determined that the rapidly approaching expiration of the current regulation necessitates a public comment period of less than 60 days. Therefore, comments on this Proposed Rule will be accepted through December 11, 1998.

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 for 50 CFR part 18 continues to read as follows: 16 U.S.C. 1361 *et seq.*

2. Subpart J is revised 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 Specified activity and specified geographical region.
- 18.122 Effective dates.
- 18.123 Permissible methods.
- 18.124 Prohibitions.
- 18.125 Level of activity.
- 18.126 Measures to ensure availability of species for subsistence.
- 18.127 Requirements for monitoring and reporting.
- 18.128 Letters of Authorization.
- 18.129 Information collection requirements.

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

§ 18.121 Specified activity and specified geographical region.

Regulations in this subpart apply to the incidental, but not intentional, take of polar bear and Pacific walrus by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The specified geographical area is 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 in 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 proposal.

§ 18.122 Effective dates.

Regulations in this subpart are effective for a five year period, beginning December 16, 1998, for year-round oil and gas exploration, development, and production activities.

§ 18.123 Permissible methods.

(a) A Letter of Authorization (see § 18.128) permits the incidental, but not intentional, take of polar bear and walrus by U.S. citizens:

- (1) Conducting geological and geophysical surveys;
- (2) Drilling exploratory wells and associated activities; and
- (3) Drilling production wells and performing production support operations.

(b) The operator must conduct methods and activities identified in § 18.123(a) in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and walrus, their habitat and on the availability of these marine mammals for subsistence uses.

(c) The Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.124 Prohibitions.

(a) These regulations do not authorize intentional takes of polar bear or walrus. (Pursuant to Section 109(h)(1) and Section 101(c) of the Marine Mammal Protection Act, the Service may authorize the intentional take (e.g., harassment associated with deterrent activities, and taking in defense of self or others.)

(b) Letters of Authorization prohibit any take that fails to comply with the terms and conditions of these specific regulations.

§ 18.125 Level of activity.

When a U.S. citizen requests a Letter of Authorization, the Service will determine whether the level of activity identified in the request exceeds that considered by the Service 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 subsistence. If the level of activity is greater, the Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the greater level of activity. Depending on the results of the evaluation, the service may allow the authorization to stand as is, add further conditions, or withdraw the authorization.

§ 18.126 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies measures to minimize adverse effects on the availability of polar bear and walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. The applicant should contact affected subsistence communities to discuss potential conflicts with the location, timing, and methods of proposed operations. The applicant must make reasonable efforts to assure that exploration activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or walrus are properly mitigated.

§ 18.127 Requirements for monitoring and reporting.

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

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

(c) When applying for a Letter of Authorization, the applicant must include a site-specific plan to monitor the effects of the activity on the populations of polar bear and walrus that are present during the on-going activities. The Service's Alaska Regional Director must approve the plan which

identifies the survey techniques that determine the actions of the polar bear and walrus in response to the on-going activity. The monitoring program must document the actions of these marine mammals and estimate the actual level of take. The monitoring requirements will vary depending on the activity, the location, and the time.

(d) The operator must develop a polar bear awareness and interaction plan if the activity is on ice or in an area of active ice movement. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(e) At its discretion, the Service 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 the activity on polar bear and walrus.

(f) For exploratory activities, holders of a Letter of Authorization must submit a report to the Service's 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 the Service's Alaska Regional director by January 15 each year for the preceding calendar year's activities. Reports must include, at a minimum, the following information:

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

§ 18.128 Letters of Authorization.

(a) Each person or entity conducting an oil and gas exploration, development, or production activity in the geographical area described in § 18.121, that may take a polar bear or walrus in execution of those activities, should apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for each development and production area. At least 90 days prior to the start of the proposed activity, the operator must submit the application for authorization to the Service's Alaska Regional Director.

(b) An application for a Letter of Authorization must include the following information:

- (1) A description of the activity, the dates and duration, the specific location and the estimated area affected by that activity;
- (2) A plan to monitor the behavior and effects of the activity on polar bear and walrus;

(3) A polar bear awareness and interaction plan;

(4) Where relevant, a Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting.

(c) In accordance with § 18.27(f), decisions made concerning withdrawals of Letters of Authorization, either on an individual or class basis, will be made only after notice and opportunity for public comment.

(d) The requirement for notice and public comment in § 18.128(c) will not apply should the Service determine that an emergency exists which poses a significant risk to the well-being of the species or stocks of polar bear or walrus.

§ 18.129 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. It is necessary to collect the information in order to describe the proposed activity and estimate the impacts of potential takings by all persons conducting the activity. The Service 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 only, the Service estimates a 200 hour application burden. For the initial year and annually thereafter, the Service estimates 8 hours per LOA, 4 hours for monitoring, and 8 hours per monitoring report for each of 5 companies for each of 3 active sites (20 hours x 5 companies x 3 sites). Therefore, the Service estimates that there is a total 1,100 hour public burden associated with this rulemaking for the full 3-year period of OMB authorization (200 hours to complete a one-time request for specific regulations; 8 hours for each LOA request, 4 hours per monitoring activity, and 8 hours for each monitoring report). Responses to this information collection are required to obtain a benefit pursuant to Section 101(a)(5) of the Marine Mammal Protection Act. Direct comments regard 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 224 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018-0070), Washington, DC 20503.

Dated: November 10, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981106278-8278-01; I.D. 101598B]

RIN 0648-AL76

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 1999 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule and proposed 1999 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 1999 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish

specifications for the upcoming fishing year and to provide an opportunity for the public to comment. This action is intended to fulfill this requirement and promote the development and conservation of the U.S. MSB fisheries. This action also proposes making an inseason adjustment of as much as 15,000 mt to the 1999 mackerel joint venture processing (JVP) annual specifications. Further, it proposes to grant the Administrator, Northeast Region, NMFS (Regional Administrator), the authority to prohibit incidental catches of *Loligo*, *Illex*, or butterfish when the Regional Administrator determines that closure of the incidental fishery is necessary to assure that the *Loligo*, *Illex*, or butterfish annual specifications will not be exceeded.

DATES: Public comments must be received on or before December 14, 1998.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations, the Environmental Assessment, and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Jon C. Rittgers, Acting Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

Comments should be sent to Jon C. Rittgers, Acting Regional Administrator,

Northeast Region Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the envelope, "Comments—1999 MSB specifications."

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978-281-9273.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations require NMFS to publish a proposed rule specifying the initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. Regulations implementing Amendment 4 to the FMP allow the Council to recommend specifications for these fisheries for up to 3 consecutive years. Procedures for determining the initial annual amounts are found in § 648.21.

The following table contains the proposed initial specifications for the 1999 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries as recommended by the Council.

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1999

[mt]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	¹ N/A	16,000
ABC	21,000	19,000	383,000	7,200
IOY	21,000	19,000	² 75,000	5,900
DAH	21,000	19,000	³ 75,000	5,900
DAP	21,000	19,000	50,000	5,900
JVP	0	0	10,000	0
TALFF	0	0	0	0

¹ Not applicable.

² OY may be increased during the year, but the total will not exceed 383,000 mt.

³ Includes 15,000 mt of Atlantic mackerel recreational allocation.

1999 Proposed Specifications

Atlantic Mackerel

The FMP provides that ABC in U.S. waters for the upcoming fishing year is that quantity of mackerel that could be caught in U.S. and Canadian waters minus the estimated catch in Canadian waters, while still maintaining a spawning stock size in the year following the year for which catch estimates and quotas are being prepared,

equal to, or greater than, 900,000 mt or a catch associated with $F_{0.1}$, whichever is less. Therefore, the ABC specification for Atlantic mackerel is proposed at 383,000 mt. This level of ABC is the catch associated with a fishing mortality rate of $F_{0.1}$ while taking into account a projected Canadian catch of 22,000 mt. The proposed IOY for the 1999 Atlantic mackerel fishery is set at 75,000 mt, equal to the proposed DAH plus TALFF. The specification for DAH is computed

by adding the estimated recreational catch, the proposed DAP and JVP. The recreational component of DAH is estimated to be 15,000 mt. DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey. However, for the years 1994 through 1998, response was low and did not contain projections from the large, known processors. In addition, inquiries regarding the utilization of displaced New England