

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 18**

[Docket No. FWS-R7-ES-2024-0140;  
FXES111607MRG01-245-FF07CAMM00]

RIN 1018-BI09

**Marine Mammals; Incidental Take of  
Polar Bears During Specified  
Activities; North Slope, Alaska**

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

**ACTION:** Proposed rule; availability of  
draft environmental assessment; request  
for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose to revise a portion of our regulations under the Marine Mammal Protection Act pertaining to incidental take of marine mammals. Existing regulations authorize the nonlethal, incidental, unintentional take by harassment of small numbers of polar bears from the Southern Beaufort Sea stock and Pacific walrus during year-round oil and gas industry activities in the Beaufort Sea (Alaska and the Outer Continental Shelf) and adjacent northern coast of Alaska. Such take may result from oil and gas exploration, development, production, and transportation activities occurring through August 5, 2026. The proposed revisions would authorize incidental take by Level A harassment of polar bears in addition to the incidental Level B harassment of polar bears and Pacific walrus already authorized in the existing regulations. No lethal take is or would be authorized. We request comments on these proposed regulations.

**DATES:** Comments on these proposed revisions to our incidental take regulations and the accompanying draft supplemental environmental assessment will be accepted on or before December 9, 2024.

**Information Collection Requirements:** If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by January 6, 2025.

**ADDRESSES:**

**Document availability:** You may view this proposed rule, the associated draft supplemental environmental

assessment, comments received, and other supporting material at <https://www.regulations.gov> under Docket No. FWS-R7-ES-2024-0140, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

**Comment submission:** You may submit comments on this proposed rule and draft supplemental environmental assessment by one of the following methods:

- **Electronic submission:** Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-ES-2024-0140. Comments submitted electronically must be received by 11:59 p.m. eastern time on the closing date.

- **U.S. mail:** Public Comments Processing, Attn: Docket No. FWS-R7-ES-2024-0140, Policy and Regulations Branch, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We will post all comments at <https://www.regulations.gov>. You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See *Request for Public Comments* for more information.

**Information collection requirements:** Send your comments on the information collection request to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov); or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041-3803. Please include "1018-0070" in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Burgess, Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS-341, Anchorage, AK 99503, Telephone 907-786-3844, or email: [R7mmmregulatory@fws.gov](mailto:R7mmmregulatory@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. Please see Docket No. FWS-R7-ES-2024-0140 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

**SUPPLEMENTARY INFORMATION:****Background**

In accordance with the Marine Mammal Protection Act of 1972, as

amended (MMPA; 16 U.S.C. 1371 *et seq.*), and its implementing regulations, the U.S. Fish and Wildlife Service (Service) finalized incidental take regulations in 2021 (2021-ITRs) in response to a request from the Alaska Oil and Gas Association (AOGA). The request was for regulations to provide for the issuance of letters of authorization (LOA) for incidental take of small numbers of Pacific walrus and Southern Beaufort Sea (SBS) polar bears during specified oil and gas industry ("Industry") activities in the Beaufort Sea and adjacent northern coast of Alaska over a 5-year period (86 FR 42982, August 5, 2021). The regulations were added to title 50 of the Code of Federal Regulations (CFR) in part 18 at subpart J and expire August 5, 2026. The 2021-ITRs authorize, via Service-issued LOAs, the incidental Level B harassment of up to 15 Pacific walrus and 92 SBS polar bears each year. The 2021-ITRs do not authorize (or facilitate the authorization of) any incidental Level A harassment or lethal take of any marine mammals during specified Industry activities, and any such take remains prohibited by the MMPA.

The term "take" as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13)). Harassment, as defined by the MMPA, for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government, 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" (the MMPA defines this as Level A harassment); 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" (the MMPA defines this as Level B harassment) (16 U.S.C. 1362(18)).

The 2021-ITRs, along with the accompanying National Environmental Policy Act (NEPA) environmental assessment and Endangered Species Act (ESA) biological opinion, were challenged in litigation that commenced in the United States District Court for the District of Alaska (District Court). On March 30, 2023, the District Court issued summary judgment in favor of the Service upholding the 2021-ITRs. Portions of this ruling were appealed to the United States Court of Appeals for the Ninth Circuit (Appellate Court). On March 19, 2024, a three-judge panel of

the Appellate Court issued an order that affirmed in part, and reversed in part, the District Court ruling. The Appellate Court panel declined to vacate the 2021–ITRs but issued a remand that requires the Service to conduct additional analysis and, depending on the results, potentially take regulatory action. In their remand order, specific only to polar bears, the Court directed (omitting internal references): “We . . . remand to the Service to offer a fuller explanation for its determination that no Level A incidents are expected during the period covered by the 2021 ITR. . . . In assessing the ‘negligible impact’ prong on remand, the Service may, consistent with its expertise, emphasize certain outputs over others. However, given the MMPA’s two-part conception of take, it must determine whether aggregating serious and non-serious Level A take yields a ‘reasonably likely’ result. . . . If so (as the 75 percent figure proffered by Plaintiffs suggests), the Service will then need to determine (i) whether any Level A take predicted will affect only ‘small numbers’ of bears and have a ‘negligible impact’ on the subpopulation and, if so, (ii) whether to issue an updated ITR covering Level A take or no ITR at all.”

The Court further stated, “Hence, we . . . remand to the Service so that it may (i) aggregate serious and non-serious Level A take together . . . and (ii) determine whether the five-year risk of such take of a denning cub is ‘reasonably likely’. . . . To the extent that it is, the Service must then evaluate whether the five-year impacts of Level A take is ‘negligible’ and whether such take will be of ‘small numbers’ of bears and possibly amend or reverse the 2021 ITR.”

Accordingly, the Service has conducted additional analysis consistent with the Appellate Court’s direction. As discussed below, this new analysis has resulted in preliminary determinations that, while no lethal take is predicted to occur, it is likely that Level A harassments of polar bears will occur, and that authorizing such take is consistent with MMPA standards. Therefore, this proposed rule, if finalized, would amend the 2021–ITRs to allow the issuance of LOAs authorizing take by Level A harassment of polar bears that may result from Industry activities.

Section 101(a)(5)(A) of the MMPA gives the Secretary of the Interior (Secretary) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than

commercial fishing) within a specified geographic region. The Secretary has delegated authority for implementation of the MMPA to the Service. According to the MMPA, the Service shall allow this incidental taking if we find the total of such taking for a 5-year period or less:

(1) will affect only small numbers of marine mammals of a species or population stock;

(2) will have no more than a negligible impact on such species or stocks;

(3) will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence use by Alaska Natives; and

(4) we issue regulations that set forth:

(a) permissible methods of taking;

(b) other means of effecting the least practicable adverse impact on the species or stock and its habitat, and on the availability of such species or stock for subsistence uses; and

(c) requirements for monitoring and reporting of such taking.

If final regulations allowing such incidental taking are issued, we may then subsequently issue LOAs, upon request, to authorize incidental take during the specified activities.

The terms “negligible impact” and “unmitigable adverse impact” are defined in 50 CFR 18.27 (the Service’s regulations governing small takes of marine mammals incidental to specified activities). “Negligible impact” is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. “Unmitigable adverse impact” means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term “small numbers” is also defined in § 18.27. However, we do not rely on that definition here as it conflates “small numbers” with “negligible impacts.” We recognize “small numbers” and “negligible impacts” as two separate and distinct requirements for promulgating incidental take regulations (ITRs) under the MMPA (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d

1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or stock.

The term “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. The Service ensures the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of Industry activities but are not so restrictive as to make Industry activities unduly burdensome or impossible to undertake and complete.

The MMPA does not require Industry to obtain an incidental take authorization; however, any taking that occurs without authorization is a violation of the MMPA. Since 1993, the oil and gas industry operating in the Beaufort Sea and the adjacent northern coast of Alaska has requested, and we have issued, ITRs for the incidental take of Pacific walrus and polar bears within a specified geographic region during specified activities. For a detailed history of our current and past Beaufort Sea ITRs, refer to the **Federal Register** at 81 FR 52276, August 5, 2016; 76 FR 47010, August 3, 2011; 71 FR 43926, August 2, 2006; and 68 FR 66744, November 28, 2003. The current regulations are codified at 50 CFR part 18, subpart J (§§ 18.121 through 18.129), and were published in the **Federal Register** on August 5, 2021 (86 FR 42982).

### Proposed Changes to 50 CFR Part 18, Subpart J

Our reanalysis, as discussed in detail below, indicates that Level A harassment of polar bears is reasonably likely to occur during the 5-year effective period of the 2021–ITRs. Therefore, we are proposing revisions to our regulations that, if finalized, would allow the Service to authorize take by both Level A and Level B harassment of polar bears. The lethal incidental take of polar bears would continue to be prohibited under this proposed revision, as would any Level A harassment or lethal take of Pacific walrus.

### New Information and Analysis

#### *Aggregated Level A Harassment Across 5-Year Period*

In conducting the additional analysis required by the Court’s remand, the Service utilized best available scientific evidence. New information has been acquired and several advancements in the Service’s analytical methods have been made subsequent to the promulgation of the 2021–ITRs. Many of

these advancements were recently described and considered in an incidental harassment authorization that was issued by the Service to the Bureau of Land Management (88 FR 88943, December 26, 2023).

Specifically, the denning analysis described in the 2021–ITRs was conducted using the simulation of annual land-based maternal polar bear dens, spatially and temporally explicit descriptions of Industry activity, and predictions of polar bear response rooted in distributions established from den disturbance case studies (*see* 86 FR 42982, August 5, 2021). For each of the five winter seasons analyzed in the 2021–ITRs, a series of dens were simulated by assigning each a location on the landscape, the sow's entrance date, the number of cubs she bore, the cub(s)' birthdate, den emergence date, and den departure date. We then overlaid the season's Industry activity across the same landscape and simulated whether polar bears within maternal dens that fell within a mile of activity responded to Industry-caused disturbances, and if so, how. Potential responses include disturbance of the sow inside the den, den abandonment, early emergence from the den, and early departure from the den site. Polar bear disturbance responses that occurred during the den establishment period were estimated to result in Level B harassment of the sow (no cubs are present during this period). Responses that occurred during the early denning period were estimated to result in Level B harassment of the sow and lethal take of the cub(s). Responses that occurred during the late denning period were estimated to result in Level B harassment of the sow and "serious Level A harassment" (*i.e.*, likely to result in cub mortality) of the cub(s). Responses during the post-emergence period were estimated to result in Level B harassment of the sow and "non-serious Level A harassment" (*i.e.*, not likely to result in cub mortality) of the cub(s).

The denning model was created to assess individual denning seasons and has included several levels of assumptions that generate an estimate of the potential annual impacts to denning polar bears that is somewhat conservative in that it is more likely to overstate, rather than understate, potential impacts. Use of this methodology achieved the objective of ensuring that actual impacts would not exceed what was contemplated in the incidental take authorization and would remain consistent with applicable MMPA thresholds. However, when applied to activities spanning a 5-year

period, conservative aspects of certain model assumptions are amplified in a manner that risks unduly overstating projected aggregate impacts, raising the possibility that incidental take resulting from specified activities with acceptable levels of impacts could not be authorized, a scenario that would be inconsistent with the intent of section 101(a)(5)(A) of the MMPA. Thus, in complying with the remand's direction to aggregate Level A harassment estimates over a 5-year period, we reexamined the denning model to incorporate newly available scientific evidence and further refine certain model assumptions where appropriate to achieve greater accuracy.

Since 2021, LOA applicants have annually provided the Service with revised project descriptions and geospatial files that more precisely reflected the scope of their planned activities to be conducted during the ensuing (1-year) LOA period, as compared with the descriptions of specified activities provided during development of the 5-year ITRs. We used the revised files in the present analysis as they constitute the best available information concerning the scope of Industry's specified activities. We also account for AOGA's clarification that no onshore terrestrial seismic surveys will occur during the winter of 2024–2025. Potential seismic surveys in the winter of 2025–2026 remain within the scope of AOGA's specified activities and were analyzed during our re-analysis.

As a condition of their authorizations, LOA holders also submit records of all polar bear encounters during their activities. Using this information, and records from separate activities that were not operating under the 2021–ITRs, we incorporated data from recently observed dens into our disturbance probabilities and litter size distributions, modified the model to incorporate newly published data that describes the relationship between den emergence date, den departure time, and litter survival (Andersen et al. 2024), and updated the simulation of dens across the landscape to now include several previously unidentified areas that may sustain polar bear dens.

Four known dens (monitored in 2022 and 2023) have occurred near human activity since the promulgation of the 2021–ITRs. Of the four newly observed dens, three were extremely close to human activity (<50 meters), yet the sows remained in their dens until the late denning period. We updated polar bear disturbance probabilities and litter size distributions with the information from these dens, then reexamined the

historic dens that were used to create disturbance probabilities. We found that the distances between human activity and polar bear dens that experienced an observed disturbance response during the early denning period were considerably closer than those dens that experience an observed disturbance response during other denning periods. Specifically, of the 15 dens within the case studies that were exposed to human activity during the early denning period, only 1 was potentially disturbed at a distance greater than 800 meters. This single den record also had imprecise information on the distance to human activity, so activity was assumed to occur within 1,610 meters of the den and was likely closer.

The historic dens analyzed during the den establishment, late denning, and post-emergence periods did not follow this pattern. For those dens, disturbance distances commonly exceeded 805 meters. Evidence derived from dens exposed to human activity during the early denning period, including both new den records and historic dens, illustrates the reluctance of sows to abandon their maternal den/cubs in response to exposure to stimuli from nearby activity and support the concept that sows may be more risk tolerant during the early denning period. Additionally, sows may be less affected by sound from outside activities during the early denning period because dens are typically closed during that time, which can reduce propagation of noise into the den (Owen et al. 2021). Given this evidence, we modified the denning analysis model to adjust the impact area for the early denning period to range from 0 to 805 meters. As a result, dens that were simulated to be within 805 meters of human activity could be disturbed during all denning periods, while dens between 806–1,610 meters of human activity could be disturbed only during the den establishment, late denning, and post-emergence periods.

Finally, the method for categorizing certain disturbance responses was modified to comply with the Court's direction to provide aggregated estimates of Level A harassment and to better align the model results with the categories of "take" defined in the MMPA. In the preamble to the 2021–ITRs, we drew a distinction between "serious Level A" and "non-serious Level A" harassment and largely addressed these categories separately. If a sow and cub(s) emerged early (*i.e.*, during the late denning period), the litter was assigned serious Level A harassment(s). If the sow and cub(s) departed the den site early (*i.e.*, during the post-emergence period), the litter

was assigned non-serious Level A harassment(s). These categories were based on the historic den disturbance case studies. Now we omit the

“serious”/“non-serious” dichotomy and instead report results that aggregate all estimated Level A harassments. If an exposure resulted in disturbance during

either of these periods, we assigned a Level A harassment to each cub in the litter (table 1).

TABLE 1—PROBABILITY OF SIMULATED EXPOSURES RESULTING IN DISTURBANCE RESPONSE TO DENNING POLAR BEARS [MMPA Level A and Level B harassment and lethal take]

Denning period	None (sow or cub(s))	Level B (sow)	Level B (cub(s))	Level A (cub(s))	Lethal cub(s)
Den establishment .....	0.750	0.250	0.000	0.000	0.000
Early denning .....	0.870	0.130	0.000	0.000	0.130
Late denning .....	0.510	0.490	0.000	0.490	0.000
Post emergence—previously undisturbed den .....	0.000	1.000	0.200	0.800	0.000
Post emergence—previously disturbed den .....	0.000	1.000	0.474	0.526	0.000

We also use newly described relationships between den emergence date, den departure time, and litter survival (Andersen et al. 2024) to assign litter survival rates to simulated dens that experienced Level A harassment, a method used in recent polar bear take authorizations (88 FR 88943, December 26, 2023). If an exposure resulted in a disturbance response during the late denning period, we first assigned that den a new random earlier emergence date. We then simulated whether that den was disturbed during the post-emergence period. Dens that were disturbed during the post-emergence period were also assigned a new random earlier den departure date. We relied on estimates of litter survival derived from

empirical data from approximately 100 days post emergence (Andersen et al. 2024) to determine the fitness consequence of the Level A harassment, and we consider this information below when addressing the MMPA’s negligible impact standard. This revised methodology provides a clearer and more in-depth understanding of the potential fitness consequence of polar bear disturbance.

As in the existing 2021–ITRs, some concepts and mitigation measures could potentially reduce impacts to polar bears, but they are not reflected in our take estimates because their mitigative benefit is not quantifiable. For example, LOA holders must train their staff to identify the characteristics of a polar

bear den, and if a suspected den is identified, they must cease operations and notify the Service. However, the efficacy of this technique cannot be quantified and could not be accounted for in the model results. Consideration of the conservative nature of certain model assumptions along with qualitative factors suggests that if the actual number of Level A harassment events does not align with the median model output, the actual number of Level A harassment events would be fewer than modeled. However, we preliminarily find, based on best professional judgment, that Level A harassment is reasonably likely to occur, and is anticipated, during the 5-year period of the 2021–ITRs (table 2).

TABLE 2—ANTICIPATED LEVEL A HARASSMENT OVER THE 5-YEAR PERIOD OF THE 2021–ITRS

Type of take	Probability	Mean	Median	95% CI *
Level A harassment .....	0.93	5.04	5	0–13

\* Confidence interval (CI).

We base this conclusion on the strength of the modeled probability of Level A harassment (0.93), the estimated median number of harassments (5), and denning observations that have occurred within the area of the 2021–ITRs subsequent to the promulgation of the regulations in 2021. Of the four dens that have been observed within 1 mile of the human activity since 2021, two polar bear family groups appear to have spent less time at the den site during the post emergence period than average. Following the relationship between den emergence date and den departure date described by Andersen et al. (2024), the cubs in the early departing family groups may have experienced a

reduction in fitness and, as a result, a temporary decrease in their probability of survival. The Service considers such reductions in fitness as “injuries” for the purposes of interpreting the MMPA’s definition of Level A harassment.

**Updated and Revised Findings**

Our reanalysis has led to the conclusion that Level A harassment of polar bears is reasonably likely to occur during the 5-year effective period of the 2021–ITRs. Due to this conclusion, and in light of the Court’s remand, we propose to revise aspects of the 2021–ITRs that pertain to polar bears (but not Pacific walrus).

**Updated “Small Numbers” and “Negligible Impact” Determinations**

In conducting analysis for this proposed revision to the 2021–ITRs, we began by focusing on the impact of AOGA’s specified activities that may occur during the 2 remaining years of the 2021–ITRs (which expire August 5, 2026), *i.e.*, the activities to which revised regulations would apply. Using the updated information and denning model methodology described above, we estimated the potential Level B harassment, Level A harassment, and lethal take of denning polar bears that may occur as a result of these specified activities (table 3).

TABLE 3—ANNUAL AND AGGREGATE ESTIMATES OF MMPA TAKE OF DENNING POLAR BEARS UNDER THE 2021–ITRS AUGUST 6, 2024, THROUGH AUGUST 5, 2026

Type of take	Probability	Mean	Median	95% CI
Level B harassment: 2-year .....	0.97	4.27	4	0–10
Level B harassment: 1-year .....	0.86	2.45	2	0–7
Level A harassment: 2-year .....	0.71	2.31	2	0–8
Level A harassment: 1-year .....	0.49	1.27	0	0–6
Lethal take: 2-year .....	0.45	1.05	0	0–5
Lethal take: 1-year .....	0.31	0.65	0	0–4

*Small Numbers*

We propose a determination that AOGA’s specified activities between December 1, 2024, and August 5, 2026, would incidentally take small numbers of SBS polar bears. For this determination, we consider whether the estimated number of marine mammals to be subjected to incidental take is small relative to the population size of the species or stock.

1. *Within the specified geographical region, the area of industry activity is expected to be small relative to the range of polar bears.* SBS polar bears range well beyond the boundaries of the Beaufort Sea 2021–ITRs region. As such, the region represents only a subset of the potential area in which SBS polar bears may occur. Further, only seven percent of the 2021–ITRs area (518,800 ha of 7.9 million ha) is estimated to be impacted by industry activities, even accounting for a disturbance zone surrounding industrial facility and transit routes. Thus, the area of industry activity will be relatively small compared to the range of polar bears.

We expect that only small numbers of the SBS polar bear stock would be taken by the industry activities specified in the 2021–ITRs because SBS polar bears are widely distributed throughout their expansive range, which encompasses areas beyond the Beaufort Sea 2021–ITRs region, meaning only a small proportion of the SBS polar bear stock will occur in the areas where industry activities will occur, and the estimated number of polar bears that could be impacted by the specified activities is small relative to the size of the stock.

2. *The estimated number of polar bears that will be harassed by industry activity is small relative to the number of animals in their stocks.* The Beaufort Sea 2021–ITRs region is completely within the range of the SBS stock of polar bears, and during some portions of the year polar bears can be frequently encountered by industry. From 2014 through 2018, industry made 1,166 polar bear reports comprising 1,698 bears. However, when we evaluated the effects upon the 1,698 bears observed, we found that 84 percent (1,434) did not

experience take. Over those 5 years, Level B harassments of polar bears totaled 264, approximately 15.5 percent of the observed bears. No other forms of take or harassment were observed. Annually an average of 340 polar bears were observed during industry activities. The number of observed Level B harassment events averaged 53 per year from 2014 to 2018. We conclude that over the remaining 2 years of the 2021–ITRs, industry activities will result in a similarly small number of incidental harassments of polar bears.

Based on this information derived from industry observations, along with the results of the Service’s own predictive modeling analysis described above, we estimate that no more than 184 Level B harassment takes and 2 Level A harassment takes of polar bears will occur during the remaining 2 years of the 2021–ITRs, with no more than 92 Level B and 2 Level A harassment takes occurring within a single year. Conservatively assuming that, in a given year, each estimated take will accrue to a different individual polar bear, we note that take of 94 animals is 10.36 percent of the best available estimate of the current stock size of 907 animals in the SBS stock (Bromaghin et al. 2015, Atwood et al. 2020)  $((94 \div 907) \times 100 \approx 10.36)$ , and we propose a finding that this proportion represents a “small number” of polar bears of that stock. While we do not have data to estimate the frequency of repeated Level B harassments to the same polar bear in different years, polar bears exhibiting terrestrial habitat preferences may be harassed repeatedly. Thus, it is highly probable that the number of individuals experiencing Level B harassment over the 2024–2026 period is less than 184.

While the Service does not propose to retroactively authorize any incidental take, we also address the remand directive to “evaluate the five-year impacts of Level A take” and determine whether that take “will be of ‘small numbers’ of bears.” Once again conservatively assuming that each estimated take over the 5-year period accrues to a different individual polar bear, we note that take is not anticipated

to exceed 94 animals in any of the 5 years and take of 94 animals is 10.36 percent of the best available estimate of the current stock size of 907 animals in the SBS stock. This proportion represents a “small number” of polar bears of that stock. We conservatively base this preliminary determination on all the specified activities originally described in AOGA’s request, *i.e.*, without discounting the estimated take associated with specified activities that were planned for the initial 3 years of the 2021–ITR but did not actually occur.

*Negligible Impact*

We proposed a determination that AOGA’s specific activities would result in a negligible impact to the SBS stock of polar bears. For our negligible impact determination finding, we consider the following:

1. *The number of polar bears that use the terrestrial habitat of the North Slope is small in relation to the entire SBS stock.* The distribution and habitat use patterns of polar bears indicate that relatively few polar bears will occur in the specified areas of activity at any particular time and, therefore, few polar bears are likely to be affected.

2. *Mitigation measures will reduce potential impacts.* If this proposed rule is finalized, the applicant will be required to adopt monitoring requirements and mitigation measures designed to reduce the potential impacts of their operations on polar bears. Den detection surveys for polar bears and adaptive mitigation and management responses based on real-time monitoring information (described in this proposed rule) will be used to avoid or minimize interactions with polar bears and, therefore, limit potential disturbance of these animals.

3. *The majority of human-polar bear interactions will result in no effect or short-term, temporary behavioral changes.* When developing estimates for Level B harassment, we have determined that there is a 99 percent chance that at least 81 percent of encounters with bears on the surface in the open water season and 63 percent of encounters with bears on the surface in

the ice season are expected to result in no significant change in a biologically important behavior. The remainder of encounters are anticipated to result in short-term, temporary changes in behavior.

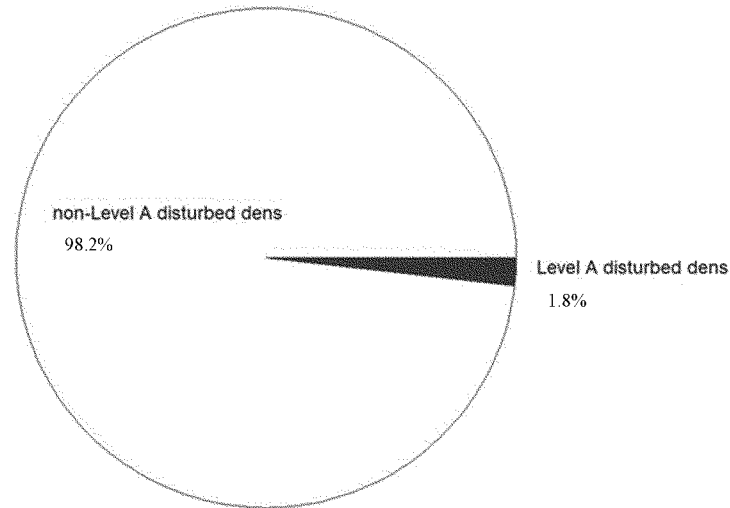
4. *Few dens would occur in proximity to Industry activities.* Our denning simulations show that on average six

dens are estimated to occur within 1 mile of the specified activities during each of the next two denning seasons (2024–2025 and 2025–2026). This number represents roughly 5 percent of the approximately 120 SBS polar bear dens that are established each year. The mitigation measures required by the 2021–ITRs reduce the estimated number

of Level A disturbed dens to 1.8 percent of the land-based dens and 0.9 percent of all dens in the SBS stock (figure 1).

Figure 1—Proportion of SBS land-based dens that are estimated to experience Level A disturbance each year. Land-based dens represent roughly half of the SBS maternal polar bear dens established each year.

Proportion of SBS land based dens with Level A disturbance



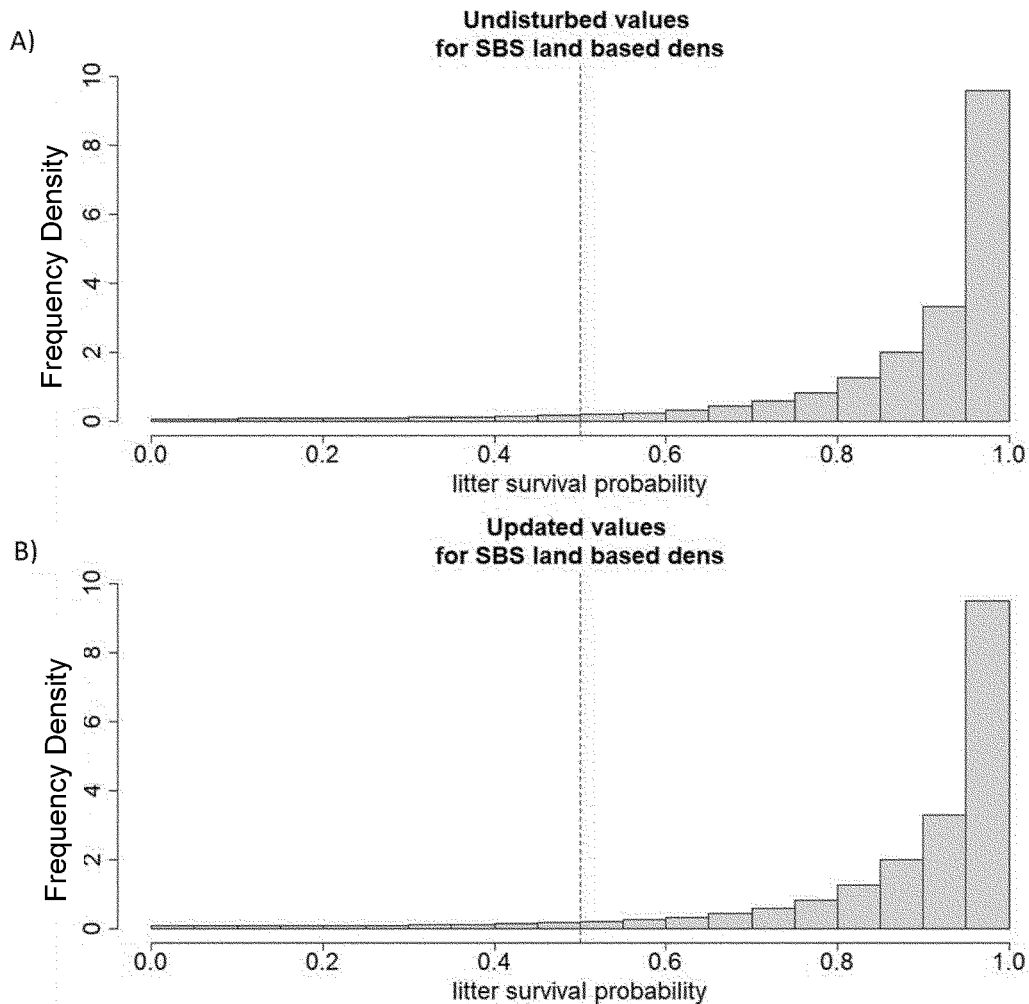
5. *Anticipated Level A harassments will not alter the distribution of cub survival probabilities for the SBS stock.* We anticipate two Level A harassment events may occur as a result of the specified activities over a period of 2 years. The updated denning analysis model allows us to examine the simulated dens to estimate the probability of litter survival to 100 days using both their undisturbed and disturbed (if applicable) emergence and departure dates. With this information, we can determine the average decrease

in survival probability that can be attributed to potential Industry disturbance. Only 0.9 percent of dens within the SBS stock are anticipated to experience Level A harassment annually. For those dens that experience harassment, the mean probability of litter survival before disturbance was 87.3 percent. After simulating disturbance, the mean probability of litter survival was 72.8 percent, a decrease of 14 percent. However, given the low percentage of SBS dens that are anticipated to experience Level A

harassment, the 14 percent decrease does not alter or shift the overall survival probability distribution for the SBS stock (figure 2).

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Figure 2—Litter survival probability distributions for the annual land-based dens of the SBS polar bear stock (Graph A: Survival probabilities simulated with no disturbance from Industry; Graph B: Survival probabilities simulated with estimated Level A harassment from Industry activities).

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6. *Lethal take via den abandonment is rare within the Southern Beaufort Sea stock.* Records of den abandonment in the oilfield are rare—we have only 2 accounts of potential den abandonment within the 15 case studies used to develop early denning period disturbance rates. Applying the denning model, the greatest annual probability of lethal take in the final 2 years of the 2021–ITRs is 0.31. The aggregated probability of lethal take over a 2-year period is 0.45, indicating lethal take due to sow abandonment of the den and litter during the early denning period is unlikely. We do not believe the estimate of lethal take is inaccurate; however, it is potentially conservative.

7. *We do not anticipate that loss of a cub or litter will adversely affect annual recruitment rates at the population level.* If a den is disturbed and the disturbance resulted in cub mortality, such take would not be authorized under the revised 2021–ITRs. Any Level A harassment would be limited to only cubs during the denning period. Impacts to denning females, the demographic

group most important to annual recruitment, would be limited to take by Level B harassment. Therefore, the immediate number of potentially available reproductive females that would contribute to recruitment for the SBS stock would remain unaffected if a den disturbance were to result in the mortality of the cubs. If a den disturbance were to result in the mortality of the entire litter, the female would be available to breed during the next mating season and produce another litter during the next denning season.

Cubs inherently cannot contribute to annual rates of recruitment until they have reached sexual maturity. Further, while adult male bears would contribute to the overall number of individuals in the population, they do not contribute significantly to annual rates of recruitment. While a very small decrease in the number of males in a breeding population may be a concern if the stock was at risk of inbreeding depression or allee effects, this is not the case in the SBS stock. Female cubs have the opportunity to reach sexual

maturity and contribute to annual recruitment; however, natural rates of survival fluctuate in the SBS stock. As such, death of less than one female cub per year is within the natural variability found within the SBS stock and cannot be reasonably expected to cause an adverse impact on annual rates of recruitment.

Based on the low percentage of SBS stock polar bears potentially being removed from the stock if den disturbance were to result in the mortality of the cubs, and the expectation that the number of potentially available reproductive females that would contribute to recruitment would be unaffected by den disturbance, the Service does not anticipate that the loss of a cub or litter would adversely affect annual recruitment rates at the population level for the SBS stock of polar bears.

We reviewed the effects of Industry activities on polar bears, including impacts from surface interactions, aircraft overflights, marine vessel traffic, and den disturbance. Based on our

review of these potential impacts, past monitoring reports, and the biology and natural history of polar bears, we conclude that any incidental take reasonably likely to occur as a result of specified activities would be limited to short-term behavioral disturbances and temporary reductions in fitness that would not affect the rates of recruitment or survival for the SBS stock of polar bears.

We have analyzed the potential impact of the proposed taking in light of other factors affecting SBS polar bears, including subsistence harvest and other human-caused removals as well as climate change. Climate change is a global phenomenon and was considered as the overall driver of effects that could alter polar bear habitat and behavior. The Service is currently involved in research to understand how climate change may affect polar bears. As we gain a better understanding of climate change effects, we will incorporate the information in future authorizations. While climate change and other ongoing factors pose significant challenges to SBS polar bears, we do not expect them to influence the degree of impacts (*i.e.*, short-term behavioral responses and temporary reductions in fitness) resulting from the specified activities or incidental harassment to be authorized under a revised ITR.

Our analysis indicates that the impacts of these specified activities over the remaining 2 years addressed by the 2021–ITRs cannot be reasonably expected to, and are not reasonably likely to, adversely affect the SBS stock of polar bears through effects on annual rates of recruitment or survival. We therefore propose a determination that the total of the taking estimated above and to be authorized via the revised 2021–ITRs will have no more than a negligible impact on the SBS stock of polar bears.

While the Service does not propose to retroactively authorize any incidental take, we also address the remand directive to “evaluate whether the five-year impacts of Level A take is ‘negligible.’” Because we do not anticipate adverse effects to the SBS stock through effects on annual rates or recruitment or survival over the remaining 2 years, and because the scope of specified activities and the extent of estimated impacts is largely consistent across each year of the 5-year period, we propose a determination that the total of the taking estimated above over the 5-year period cannot be reasonably expected to, and is not reasonably likely to, adversely affect the SBS stock of polar bears through effect on annual rates or recruitment or

survival, and thus will have no more than a negligible impact on the SBS stock of polar bears. We conservatively base this preliminary determination on all the specified activities originally described in AOGA’s request, *i.e.*, without discounting the estimated impacts of specified activities that were planned for the initial 3 years of the 2021–ITR but did not actually occur.

#### Reevaluation of Other ITR Provisions

We have not identified any means through which the Level A harassment described above, in combination with the Level B harassment already contemplated in the 2021–ITRs, is likely to reduce the availability of SBS polar bears to a level insufficient for harvest to meet subsistence needs. Thus, we preliminarily reaffirm our finding that the total taking will not have an unmitigable adverse impact on the availability of SBS polar bears or Pacific walruses for taking for subsistence uses.

We have not identified any additional (*i.e.*, not already incorporated into the 2021–ITRs) mitigation measures that are effective in reducing the impact of Industry activities but are not so restrictive as to make Industry activities unduly burdensome or impossible to undertake and complete. Thus, we preliminarily reaffirm our finding that the mitigation measures required by the 2021–ITRs will ensure the least practicable adverse impacts on SBS polar bears and Pacific walruses.

We have not identified any additional (*i.e.*, not already incorporated into the 2021–ITRs) monitoring or reporting requirements to better assess the effects of industrial activities, ensure that the number of takes and the effects of taking are consistent with that anticipated in the ITR, or detect any unanticipated effects on SBS polar bears or Pacific walruses.

#### Administrative Updates

In addition to proposing amendments to the regulations in 50 CFR part 18 to accomplish the regulatory revisions described above, we also propose regulatory revisions to update our regulations that carry out the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*). The proposed revisions to §§ 18.4, 18.129, and 18.152 that are set forth in the rule portion of this document are administrative and nonsubstantive. These proposed changes would serve only to update and streamline the regulatory text that ensures our regulations in 50 CFR part 18 are in compliance with the PRA.

#### Request for Public Comments

If you wish to comment on this proposed rule or the associated draft environmental assessment, you may submit your comments by any of the methods described in **ADDRESSES**. Please identify if you are commenting on the proposed regulations, draft environmental assessment, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed regulations, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. We will consider all comments that are received by the close of the comment period (see **DATES**).

Comments, including names and street addresses of respondents, will become part of the administrative record. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

#### Required Determinations

##### *National Environmental Policy Act (NEPA)*

We have prepared a draft supplemental environmental assessment in accordance with NEPA (42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that the proposed revisions to additionally authorize two takes by Level A harassment of polar bears during the remaining 2 years of the 2021–ITRs would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this proposed rule is not required by section 102(2) of NEPA or its implementing regulations. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

##### *Endangered Species Act (ESA; 16 U.S.C. 1531 et seq.)*

Under the ESA, all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. The polar bear is listed as a threatened species under the ESA at 50 CFR 17.11(h) with provisions



issued under section 4(d) of the ESA at 50 CFR 17.40(q) and designated critical habitat for polar bear subpopulations in the United States at 50 CFR 17.95(a). On August 3, 2021, the Service issued a biological opinion on the 2021–ITRs, concluding that, “[Issuance of the 2021–ITRs] is not likely to jeopardize the continued existence of polar bears by appreciably reducing the likelihood of both survival and recovery of the species in the wild by reducing its reproduction, numbers, or distribution.” Because this proposed regulation change, if finalized, would allow both Level A and B taking of polar bears, whereas the 2021–ITRs provide for only Level B taking of polar bears, our Marine Mammal Management Office has re-initiated intra-Service ESA section 7 consultation regarding the effects of these proposed regulations with our Fairbanks’ Ecological Services Field Office. We would complete the consultation prior to finalizing these proposed regulation revisions.

*Regulatory Planning and Review*  
(Executive Orders 12866, 13563, and 14904)

Executive Order (E.O.) 14094 amends and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

*Small Business Regulatory Enforcement Fairness Act*

We have determined that this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule is 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.

*Regulatory Flexibility Act*

We have also determined that this proposed rule would 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, and these potential applicants have not been identified as small businesses. Therefore, neither a regulatory flexibility analysis nor a small entity compliance guide is required.

*Takings Implications*

This proposed rule does not have takings implications under Executive Order 12630 because it authorizes the nonlethal, incidental, but not intentional, take of polar bears by Industry and thereby, exempts these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

*Federalism Effects*

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect polar bears.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule would 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 would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. Therefore, this proposed rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

*Government-to-Government Coordination*

It is our responsibility to communicate and work directly on a government-to-government basis with federally recognized Alaska Native Tribes in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska

Native culture, and to make information available to Alaska Tribal organizations and communities. Our efforts are guided by the following policies and directives:

- (1) The Native American Policy of the Service (January 20, 2016);
- (2) The Alaska Native Relations Policy (currently in draft form; see 87 FR 66255, November 3, 2022);
- (3) Executive Order 13175 (January 9, 2000);
- (4) Department of the Interior Secretary’s Orders 3206 (June 5, 1997), 3225 (January 19, 2001), 3317 (December 1, 2011), 3342 (October 21, 2016), and 3403 (November 15, 2021) as well as Director’s Order 227 (September 8, 2022);
- (5) The Alaska Government-to-Government Policy (a departmental memorandum issued January 18, 2001); and

(6) the Department of the Interior’s policies on consultation with Alaska Native Tribes and organizations.

We have evaluated possible effects of the proposed rule on federally recognized Alaska Native Tribes and ANCSA (Alaska Native Claims Settlement Act) Corporations. The Service has determined that authorizing two takes by Level A harassment of polar bears during the remaining 2 years of the 2021–ITRs, with no more than two Level A harassment takes occurring within a single year from the SBS stock of polar bears, would not have any Tribal implications or ANCSA Corporation implications and, therefore, government-to-government consultation or Government-to-ANCSA Corporation consultation is not necessary. However, we invite continued discussion through the public comment process.

*Civil Justice Reform*

The Department’s Office of the Solicitor has determined that these proposed regulations do not unduly burden the judicial system and meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

*Paperwork Reduction Act*

This proposed rule requests a revision to an existing information collection. All information collections (ICs) require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB previously reviewed and approved the information collection requirements associated with incidental take of marine mammals in 50 CFR part 18, subparts J and L, and assigned OMB

Control Number 1018–0070 (expires July 31, 2026).

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to revise OMB Control Number 1018–0070 and on our request for a new control number as described below. This input will help us assess the impact of our information collection requirements and minimize the public's reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This is a nonform collection. Respondents must comply with the regulations at 50 CFR part 18, which outline the procedures and requirements for submitting a request. Specific regulations governing authorized incidental take of marine mammal activities are contained in 50 CFR part 18, subparts J (incidental take

of polar bears and Pacific walruses in the Beaufort Sea) and L (incidental take of northern sea otters in the Gulf of Alaska). These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine if it is appropriate to issue specific regulations and, subsequently, LOAs. We use the information to verify the findings required to issue incidental take regulations, to decide if we should issue an LOA, and (if an LOA is issued) what conditions should be included in the LOA. In addition, we analyze the information to determine impacts to polar bears, Pacific walruses, northern sea otters, and the availability of those marine mammals for subsistence purposes of Alaska Natives.

In conjunction with this rulemaking, we propose the following revisions for OMB approval:

(1) *Revise and renew OMB Control No. 1018–0070 to retain the currently approved ICs and burden estimates associated with 50 CFR part 18, subpart J—Beaufort Sea*—This ITR in subpart J, issued to the Alaska Oil and Gas Association (AOGA) is effective August 5, 2021, through August 5, 2026. It authorizes the nonlethal incidental, but not intentional, take of small numbers of polar bear and Pacific walrus for oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. Unless a new ITR is issued for subpart J, we will discontinue OMB Control No. 1018–0070 when the ITR expires in 2026.

We request OMB approval to renew the following ICs and to adjust the currently approved burden associated with the ICs in subpart J that will remain in OMB Control No. 1018–0070:

(A) *Incidental Take of Marine Mammals—Application for Regulations*—Regulations at 50 CFR part 18 require the applicant to provide information on the activity as a whole, which includes, but is not limited to, an assessment of total impacts by all persons conducting the activity. Applicants can find specific requirements in 50 CFR part 18, subpart J. These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine whether to issue specific regulations and, subsequently, LOAs. The required information includes:

1. A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals.

2. The dates and duration of such activity and the specific geographical region where it will occur.

3. Based on the best available scientific information, each applicant must also provide:

a. An estimate of the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions;

b. The type of taking (*e.g.*, disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

c. A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

d. The anticipated impact of the activity upon the species or stocks; and

e. The anticipated impact of the activity on the availability of the species or stocks for subsistence uses.

4. The anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat.

5. The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. (The applicant and those conducting the specified activity and the affected subsistence users are encouraged to develop mutually agreeable mitigating measures that will meet the needs of subsistence users.)

6. Suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity.

7. Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking from such specified activities, and evaluating its effects.

8. Applicants must develop and implement a site-specific (or umbrella plan addressing site-specific considerations), Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on marine

mammals and the subsistence use of these species.

9. Applicants must also provide trained, qualified, and Service-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

This information is necessary for the Service to anticipate the impact of the activity on the species or stocks and on the availability of the species or stocks for Alaska Native subsistence uses. Under requirements of the MMPA, we cannot authorize a take unless the total of all takes will have a negligible impact on the species or stocks and, where appropriate, will not have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses. These requirements ensure that applicants are aware of related monitoring and research efforts they can apply to their situation, and that the monitoring and reporting that we impose are the least burdensome to the applicant.

(B) *Incidental Take of Marine Mammals—Requests for LOA*—LOAs, which may be issued only to U.S. citizens, are required to conduct activities pursuant to any specific regulations established. Once specific regulations are effective, the Service will, to the maximum extent possible, process subsequent requests for LOAs within 30 days after receipt of the request by the Service. All LOAs will specify the period of validity and any additional terms and conditions appropriate for the specific request. Issuance of LOAs will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

(C) *Incidental Take of Marine Mammals—Final Monitoring Report*—The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of the expiration of an LOA. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final (or annual) report must include, but is not limited to:

1. Copies of all observation reports submitted under the LOA;
2. A summary of the observation reports;
3. A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;
4. Analysis of factors affecting the visibility and detectability of walruses and polar bears during monitoring;

5. Analysis of the effectiveness of mitigation measures;

6. Analysis of the distribution, abundance, and behavior of walruses and/or polar bears observed; and

7. Estimates of take in relation to the specified activities.

(D) *Polar Bear Den Detection Report*—Holders of an LOA seeking to carry out onshore activities in known or suspected polar bear denning habitat during the denning season must make efforts to locate occupied polar bear dens within and near proposed areas of operation. They may use any appropriate tool, such as forward-looking infrared imagery and/or polar bear scent-trained dogs, in concert with denning habitat maps along the Alaskan coast.

1. In accordance with 50 CFR 18.128(b)(1) and (2), LOA holders must report all observed or suspected polar bear dens to us prior to the initiation of activities. We use this information to determine the appropriate terms and conditions in an individual LOA in order to minimize potential impacts and disturbance to polar bears.

2. Holders of an LOA seeking to carry out onshore activities during the denning season (November–April) must conduct two separate surveys for occupied polar bear dens in all denning habitat within 1.6 km (1 mi) of proposed activities using aerial infrared (AIR) imagery. Further, all denning habitat within 1.6 km (1 mi) of areas of proposed seismic surveys must be surveyed three separate times with AIR technology.

3. Flight crews will record and report environmental parameters including air temperature, dew point, wind speed and direction, cloud ceiling, and percent humidity, and a flight log will be provided to the Service within 48 hours of the flight.

(E) *In-Season Monitoring—Activity Progress Reports*—Holders of an LOA must:

1. Notify the Service at least 48 hours prior to the onset of activities;
2. Provide the Service weekly progress reports of any significant changes in activities and/or locations; and
3. Notify the Service within 48 hours after ending of activities.

(F) *In-season Monitoring—Observation Reports*—Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in

the observation report must include, but is not limited to:

1. Date, time, and location of observation;
2. Number of bears;
3. Sex and age of bears (if known);
4. Observer name and contact information;
5. Weather, visibility, sea state, and sea-ice conditions at the time of observation;
6. Estimated closest distance of bears from personnel and facilities;
7. Industry activity at time of sighting;
8. Possible attractants present;
9. Bear behavior;
10. Description of the encounter;
11. Duration of the encounter; and
12. Mitigation actions taken.

(G) *Notification of LOA Incident Report*—Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any Industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a marine mammal occurs. Reports must include:

1. All information specified for an observation report;
2. A complete detailed description of the incident; and
3. Any other actions taken.

(H) *Mitigation—Interaction Plan*—All holders of an LOA must have an approved polar bear safety, awareness, and interaction plan on file with the Service's Marine Mammals Management Office and onsite and provide polar bear awareness training to certain personnel. Interaction plans must include:

1. The type of activity and where and when the activity will occur (*i.e.*, a summary of the plan of operation);
2. A food, waste, and other "bear attractants" management plan;
3. Personnel training policies, procedures, and materials;
4. Site-specific walrus and bear interaction risk evaluation and mitigation measures;
5. Bear avoidance and encounter procedures; and
6. Bear observation and reporting procedures.

(I) *Mitigation—3rd Party Notifications*—All applicants for an LOA must contact affected Alaska Native subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the Service documentation of communications.

(J) *Mitigation—Requests for Exemption Waivers*—Exemption waivers to the operating conditions in 50 CFR 18.126(c) may be issued by the

Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(K) *Mitigation—Plan of Cooperation*—When appropriate, a holder of an LOA will be required to develop and implement a Service-approved plan of cooperation (POC).

1. The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected Alaska Native subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of otters, walruses, and polar bears and to ensure continued availability of the species for subsistence use.

2. The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of walruses and polar bears for subsistence use.

(2) *Revise OMB Control No. 1018-0070 to remove references to, and all burden associated with, information collections (ICs) in 50 CFR part 18, subpart K—Cook Inlet, to include updating the title of this collection*—The ITR in subpart K, issued to Hilcorp Alaska, LLC, Harvest Alaska, LLC, and the Alaska Gasline Development Corporation on August 1, 2019, authorized the nonlethal, incidental, but not intentional, take of small numbers of northern sea otters (*Enhydra lutris kenyoni*) for activities associated with or in support of oil and gas exploration, development, production, and transportation in Cook Inlet, Alaska. This ITR expired on August 1, 2024, and is no longer active; therefore, we are removing the reference to the ICR, along with the associated burden, from OMB Control No. 1018-0070.

(3) *Request a new control number for the currently approved ICs and burden estimates associated with 50 CFR part 18, subpart L—U.S. Coast Guard*—We will submit a separate information collection request to OMB for approval that will contain the applicable ICs and associated burden for subpart L previously approved by OMB under OMB Control No. 1018-0070. The ITR in subpart L, effective May 19, 2023, authorizes the nonlethal, incidental, unintentional take by harassment of small numbers of northern sea otters (otters; *Enhydra lutris kenyoni*) while engaged in activities associated with or

in support of marine construction activities in the Gulf of Alaska. Unless a new ITR is issued for subpart L, we will discontinue the newly assigned control number when the ITR expires on May 19, 2028.

We propose to transfer the following currently approved ICs from OMB Control No. 1018-0070 into a new control number:

(A) *Incidental Take of Marine Mammals—Application for Regulations*—Regulations at 50 CFR part 18 require the applicant to provide information on the activity as a whole, which includes, but is not limited to, an assessment of total impacts by all persons conducting the activity. Applicants can find specific requirements in 50 CFR part 18, subpart J. These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine whether to issue specific regulations and, subsequently, LOAs. The required information includes:

1. A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals.

2. The dates and duration of such activity and the specific geographical region where it will occur.

3. Based on the best available scientific information, each applicant must also provide:

a. An estimate of the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions;

b. The type of taking (e.g., disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

c. A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

d. The anticipated impact of the activity upon the species or stocks; and

e. The anticipated impact of the activity on the availability of the species or stocks for subsistence uses.

4. The anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat.

5. The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds,

and areas of similar significance. (The applicant and those conducting the specified activity and the affected subsistence users are encouraged to develop mutually agreeable mitigating measures that will meet the needs of subsistence users.)

6. Suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity.

7. Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking from such specified activities, and evaluating its effects.

8. Applicants must develop and implement a site-specific (or umbrella plan addressing site-specific considerations), Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on marine mammals and the subsistence use of these species.

9. Applicants must also provide trained, qualified, and Service-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

This information is necessary for the Service to anticipate the impact of the activity on the species or stocks and on the availability of the species or stocks for Alaska Native subsistence uses. Under requirements of the MMPA, we cannot authorize a take unless the total of all takes will have a negligible impact on the species or stocks and, where appropriate, will not have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses. These requirements ensure that applicants are aware of related monitoring and research efforts they can apply to their situation, and that the monitoring and reporting requirements that we impose are the least burdensome to the applicant.

(B) *Incidental Take of Marine Mammals—Requests for LOA*—LOAs, which may be issued only to U.S. citizens, are required to conduct activities pursuant to any specific regulations established. Once specific regulations are effective, the Service will, to the maximum extent possible, process subsequent requests for LOAs within 30 days after receipt of the request by the Service. All LOAs will

specify the period of validity and any additional terms and conditions appropriate for the specific request. Issuance of LOAs will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

(C) *Incidental Take of Marine*

*Mammals—Final Monitoring Report*—The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of the expiration of an LOA. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final (or annual) report must include, but is not limited to:

1. A summary of monitoring efforts (hours of monitoring, activities monitored, number of protected species observers (PSOs), and, if requested by the Service, the daily monitoring logs).
2. A description of all project activities, along with any additional work yet to be done. Factors influencing visibility and detectability of otters (*e.g.*, sea state, number of observers, and fog and glare) will be discussed.
3. A description of the factors affecting the presence and distribution of sea otters (*e.g.*, weather, sea state, and project activities). An estimate will be included of the number of sea otters exposed to noise at received levels greater than or equal to 160 dBRMS re: 1  $\mu$ Pa (decibels root-mean squared referenced to 1 microPascal) (based on visual observation).
4. A description of changes in sea otter behavior resulting from project activities and any specific behaviors of interest.
5. A discussion of the mitigation measures implemented during project activities and their observed effectiveness for minimizing impacts to sea otters. Sea otter observation records will be provided to the Service in the form of electronic database or spreadsheet files.

(D) *In-Season Monitoring—Activity Progress Reports*—Holders of an LOA must:

1. Notify the Service at least 48 hours prior to the onset of activities;
2. Provide the Service weekly progress reports of any significant changes in activities and/or locations;
3. Injured, dead, or distressed sea otters that are not associated with project activities (*e.g.*, animals known to be from outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage)

must be reported to the Service within 24 hours of the discovery to either the Service MMM (1–800–362–5148, business hours); or the Alaska SeaLife Center in Seward (1–888–774–7325, 24 hours a day); or both. Photographs, video, location information, or any other available documentation must be provided to the Service.

4. Notify the Service within 48 hours after ending of activities.

(E) *In-season Monitoring—Observation Reports*—Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any Industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

1. Date, time; the observer's locations, heading, and speed (if moving); weather; visibility; number of animals; group size and composition (adults/juveniles); and the location of the animals (or distance and direction from the observer);
2. Initial behaviors of the sea otters, descriptions of project activities and underwater sound levels being generated, the position of sea otters relative to applicable monitoring and mitigation zones, any mitigation measures applied, and any apparent reactions to the project activities before and after mitigation;
3. Distance from the vessel to the sea otter upon initial observation, the duration of the encounter, and the distance at last observation in order to monitor cumulative sound exposures; and
4. Any instances of animals lingering close to or traveling with vessels for prolonged periods of time.

(F) *Notification of LOA Incident Report*—Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any Industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a marine mammal occurs. Reports must include:

1. All information specified for an observation report;
2. A complete detailed description of the incident; and
3. Any other actions taken.

(G) *Mitigation—Interaction Plan*—All holders of an LOA must have an approved polar bear safety, awareness, and interaction plan on file with the Service's Marine Mammals Management Office and onsite and provide polar bear

awareness training to certain personnel. Interaction plans must include:

1. The type of activity and where and when the activity will occur (*i.e.*, a summary of the plan of operation);
2. Personnel training policies, procedures, and materials;
3. Site-specific sea otter interaction risk evaluation and mitigation measures;
4. Sea otter avoidance and encounter procedures; and
5. Sea otter observation and reporting procedures.

(H) *Mitigation—3rd Party*

*Notifications*—All applicants for an LOA must contact affected Alaska Native subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the Service documentation of communications.

(I) *Mitigation—Requests for Exemption Waivers*—Exemption waivers to the operating conditions in 50 CFR 18.126(c) may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on marine mammal distributions in the area of interest.

(J) *Mitigation—Plan of Cooperation*—When appropriate, a holder of an LOA will be required to develop and implement a Service-approved plan of cooperation (POC).

1. The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of marine mammals and to ensure continued availability of the species for subsistence use.

2. The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of marine mammals for subsistence use.

*Title of Collection: Incidental Take of Marine Mammals During Specified Activities*, 50 CFR 18.27 and 50 CFR part 18, subpart J.

*OMB Control Number: 1018–0070.*

*Form Numbers: None.*

*Type of Review: Revision of a currently approved collection.*

*Respondents/Affected Public: Oil and gas industry representatives, including applicants for ITRs and LOAs, operations managers, and environmental compliance personnel.*

*Total Estimated Number of Annual Respondents: 61.*

*Total Estimated Number of Annual Responses:* 201.

*Estimated Completion Time per Response:* Varies from 1.25 hours to 150 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 1,426.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* \$350,000.

*Title of Collection:* Incidental Take of Marine Mammals During Specified Activities, 50 CFR 18.27 and 50 CFR part 18, subpart L.

*OMB Control Number:* 1018–New.

*Form Numbers:* None.

*Type of Review:* New.

*Respondents/Affected Public:* Federal Government—U.S. Coast Guard.

*Total Estimated Number of Annual Respondents:* 10.

*Total Estimated Number of Annual Responses:* 22.

*Estimated Completion Time per Response:* Varies from 1.25 hours to 150 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 325.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

Send your comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov) (email). Please reference OMB Control Number 1018–New/0070 in the subject line of your comments.

#### *Energy Effects*

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This proposed rule provides exceptions from the MMPA's taking prohibitions for Industry engaged in specified oil and gas activities in the specified geographic region. By providing certainty regarding compliance with the MMPA, this

proposed rule would have a positive effect on Industry and its activities. Therefore, this proposed rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No statement of energy effects is required.

#### **References**

For a list of the references cited in this proposed rule, see Docket No. FWS–R7–ES–2024–0140, available at <https://www.regulations.gov>.

#### **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.

#### **Proposed Regulation Promulgation**

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

#### **PART 18—MARINE MAMMALS**

■ 1. The authority citation of part 18 continues to read as follows:

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

#### **§ 18.4 [Removed]**

■ 2. Remove § 18.4.

■ 3. Revise § 18.124 to read as follows:

#### **§ 18.124 Authorized take allowed under a Letter of Authorization (LOA).**

(a) An LOA allows for the nonlethal, non-injurious, incidental, but not intentional take by Level B harassment, as defined in § 18.3 and under section 3 of the Marine Mammal Protection Act (16 U.S.C. 1362), of Pacific walrus while conducting oil and gas industry exploration, development, and production within the Beaufort Sea ITR region described in § 18.120.

(b) An LOA allows for the nonlethal, incidental, but not intentional take by Level A harassment and Level B harassment, as defined in § 18.3 and under section 3 of the Marine Mammal Protection Act (16 U.S.C. 1362), of polar

bears while conducting oil and gas industry exploration, development, and production within the Beaufort Sea ITR region described in § 18.120.

(c) Each LOA will identify terms and conditions for each activity and location.

■ 4. Revise § 18.125 to read as follows:

#### **§ 18.125 Prohibited take under a Letter of Authorization (LOA).**

Except as otherwise provided in this subpart, prohibited taking is described in § 18.11 as well as:

(a) Level A harassment, as defined in section 3 of the Marine Mammal Protection Act (16 U.S.C. 1362), of Pacific walrus and intentional take and lethal incidental take of polar bears or Pacific walrus; and

(b) Any take that fails to comply with this subpart or with the terms and conditions of an LOA.

■ 5. Revise § 18.129 to read as follows:

#### **§ 18.129 Information collection requirements.**

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this subpart and assigned OMB Control Number 1018–0070. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Direct comments regarding the burden estimate or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

#### **§ 18.152 [Amended]**

■ 6. Amend § 18.152 by removing the words, “contained in this part and assigned OMB Control Number 1018–0070” and adding in their place the words, “contained in this subpart and assigned OMB Control Number 1018–New”.

**Shannon A. Estenoz,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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