



United States Department of the Interior



U.S. FISH AND WILDLIFE SERVICE
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IN REPLY REFER TO:

AFES/MMM

SEP 01 2016

Dr. Rebecca J. Lent
Executive Director
Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, Maryland 20814-4498

Dear Dr. Lent:

Thank you for your letter, dated July 7, 2016, providing the U.S. Fish and Wildlife Service (Service) with the Marine Mammal Commission's (Commission) comments and recommendations on the Service's proposed 5-year Incidental Take Regulations (ITRs) (81 FR 36664 July 7, 2016) under section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended (MMPA), for the incidental take of small numbers of polar bears and Pacific walrus (walrus) during year-round oil and gas industry (Industry) activities in the Beaufort Sea and adjacent northern coast of Alaska. The ITRs are the Service's response to a petition we received on May 5, 2014, (amended on July 1, 2015) from the Alaska Oil and Gas Association on behalf of its members and other participating companies. We appreciate your thoughtful review, comments, and recommendations.

We finalized the ITRs on August 5, 2016 and included our responses to the Commission's recommendations in the *Federal Register* publication of the final rule (81 FR 52276). Our responses to the Commission's recommendations are organized below by topic and in the order the recommendations appear in the Commission's letter. We first provide a summary of the Commission's recommendation, followed by our response.

Plan of cooperation

The Commission recommended that the Service clarify when it is appropriate for applicants to submit a Plan of Cooperation (POC).

The Service responds that we agree we should clarify when we consider a POC appropriate. Accordingly, we revised text in the final rule preamble section "**Description of Plans of Cooperation (POCs)**."

Authorized companies/entities and types of activities

The Commission recommended that the Service should specify, in section 18.121 of the rule, the specific companies/entities, and types of activities that Service has evaluated as part of its rulemaking and that would be authorized under the final rule.

The Service responds that we believe we described and evaluated the anticipated activities appropriately. Consistent with numerous previous ITRs, these ITRs provide an overall “umbrella” set of requirements which, when followed, allow the incidental take of small numbers of polar bears and walruses during certain Industry activities. The requirements ensure that there is no more than a negligible impact on these species, effect the least practicable adverse impacts, and that there will not be unmitigable impacts on the availability of these species for subsistence use. To that end, the Service has described the types of activities to be authorized, the projected scale of each activity, the anticipated impacts that could occur during the 5-year period of the ITR, and included other activities the Service anticipates may occur. We acknowledge that in the planning phases, most projects contain some element of uncertainty. Consequently, in addition to requiring mitigation measures common to all projects, a separate LOA will be required for each project. This allows us to evaluate each LOA request for mitigation methods in addition to those required by the ITRs. The ITRs specify those mitigation measures required for all Industry activities, mitigation measures required for specific activities, and under what circumstances the various mitigation measures will be required. Section 101(a)(5)(A)(i)(II) of the MMPA requires that the ITRs set forth permissible methods of taking, means of effecting the least practicable adverse impact (on the species or stock and its habitat), the availability of such species or stock for subsistence uses, and the monitoring and reporting of such taking. Section 101(a)(5)(A)(i) of the MMPA states that citizens of the United States may request the incidental, but not intentional, taking of marine mammals. To request an LOA under these ITRs an applicant must be a U.S. citizen as defined in 50 CFR section 18.27(c). The Service believes we have complied with both the letter and spirit of the MMPA with these ITRs.

Proposed oil and gas activities and takes

The Commission recommended that the Service (1) specify, in section 18.121 of the final rule, the number of the various exploration, development, and production activities that would be authorized, (2) revise its take estimates based on a more quantitative assessment of proposed activities (including geophysical and geological surveys, exploratory drilling, expanded leasing, and new construction activities, in addition to the development and production activities) and ensure its determinations regarding small numbers, negligible impact, and adverse impact on the availability of the species for subsistence use are valid, and (3) specify, in section 18.121 of the final rule, the numbers of takes to be authorized for both polar bears and walruses (total and/or annual).

The Service responds that the level of quantitative specificity recommended by the Commission regarding the various Industry activities is not available and the petitioners were not able to provide such information. The Service described the types of activities provided by the petitioner, as well as other activities the Service anticipates may occur, the projected scale of

each activity, and the anticipated impacts from those activities. We reiterate that we do not permit or authorize Industry activities; we only authorize the incidental take associated with the activities. Therefore, we have estimated the number of takes likely to occur during the 5-year period of these ITRs. We acknowledge that in the planning phases most projects contain some element of uncertainty. If activities for an individual LOA are proposed that were not included or anticipated in this ITR, the Service will evaluate the potential impacts, and any associated takes of walruses and polar bears, to determine whether they are within the scope of these ITRs. We believe our take estimate and determinations are valid. Further, we do not believe there is a requirement, or even a need, to repeat the description of activities and take estimates again in section 18.121 of the ITRs.

Appropriate thresholds for various activities

The Commission recommended that the Service, under section 18.128(e)(1)(i) of the final rule, (1) include monitoring measures for the 160 decibels (dB) (dB herein are re 1 μ Pa) monitoring zone for polar bears as well as walruses and (2) specify that any individual of either species would be considered taken if observed within that monitoring zone.

The Service responds that we believe the monitoring and mitigation measures in section 18.128(e)(1)(i), and the ITRs as a whole, are appropriate. The underwater hearing characteristics of polar bears are poorly known and we are not aware of any information that indicates that underwater sound at 160 dB may cause biologically significant changes in behavior to polar bears, much less an injury. Section 18.128(e)(1)(i) states that walruses observed in the 160 dB monitoring zone are assumed to experience Level B take. Based on the available information, biology, and behavior of polar bears, the Service does not believe polar bears within the 160 dB monitoring zone will experience Level B take.

The Commission recommended that the Service reassess whether Level B harassment takes of both polar bears and walruses are expected to occur from drilling and ice-breaking activities based on the 120 dB threshold and include the requirement to monitor the 120 dB monitoring zone for continuous sources under section 18.128(e)(1)(i) of the final rule.

The Service responds that we believe the monitoring and mitigation measures in section 18.128(e)(1)(i), and the ITRs as a whole, are appropriate. The underwater hearing characteristics of polar bears and walruses are poorly known and we are not aware of any information that indicates that continuous underwater sound of 120 dB may cause biologically significant changes in behavior to polar bears or walruses, much less an injury. The acoustic thresholds established in the ITRs are based upon the best available information for polar bears and walruses. There is some information for underwater hearing for certain otariid pinnipeds that the Service uses as a proxy for walruses, however, there is not sufficient information to conclude that walruses are likely to experience harassment or injury due solely to exposures of 120 dB from continuous sound sources. Based on the available information, biology, and behavior of polar bears and walruses, the Service does not believe a 120 dB threshold and monitoring zone for continuous underwater sound from drilling activities, ice-breaking activities, or other sound sources is appropriate. As new information becomes available, the Service will continue to evaluate how

Industry activities affect polar bears and walruses and what mitigation measures are required to minimize the impacts of such activities. The Service may amend these ITRs if new information indicates changes are appropriate.

Oil spill risk analysis

The Commission recommended that prior to issuing the final rule, the Service incorporate updated spill trajectory data for all sites (Oooguruk, Nikaitchuq, Northstar, and Endicott/Liberty) and updated polar bear movement and distribution data to reassess the risk of oil spills to polar bears.

The Service responds that the analysis of Industry activities for these ITRs used the best available information and encapsulates all of the known and anticipated Industry activities that will occur in the Beaufort Sea ITR Region during the 5-year period of these ITRs. The Service considers spill probabilities alone insufficient to assess the risk to polar bears and walruses. To address this issue, our risk assessment incorporates the likelihood that a spill would occur as well as the potential impacts of such a spill. We understand that variables for risk assessment from various offshore sites will be different; however, our analysis was not intended to assess the risk of an oil spill from each individual site. The Service believes analysis of the Northstar and Liberty sites led to a valid representation of the types of risks polar bears would encounter if a large spill occurred in the nearshore areas of the Beaufort Sea. The rule contains a discussion of these quantified impacts as well as qualitative analysis of other potential sources, such as spills from pipelines, and sizes of oil spills. Although spill probabilities for other offshore facilities, and those in development, would provide the Service better insights into the impacts of oil spills on polar bears and walrus, oil spill trajectories were unavailable for these other sites. The analysis presented represents the best data and science available. The Service is currently working on an updated oil spill trajectory analysis, an updated oil spill impacts analysis, and an updated polar bear distribution analysis. However, those studies are not completed and not available for consideration for these ITRs. The Service will continue to evaluate the potential risk and impacts of oil spills as new information becomes available.

Once again, we appreciate your comments and recommendations and we look forward to our continued collaborations on marine mammal conservation and management activities. Should you have any questions or concerns please do not hesitate to contact Mr. Christopher Putnam at (907) 786-3844 or Ms. Kimberly Klein at (907) 786-3621 or via email at christopher_putnam@fws.gov or kimberly_klein@fws.gov.

Sincerely,



Chief, Marine Mammals Management