



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