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e-CFR Data is current as of October 21, 2010

Title 50: Wildlife and Fisheries

PART 18—MARINE MAMMALS

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Subpart I—Nonlethal Taking of Pacific Walruses and Polar Bears Incidental to Oil and Gas Exploration Activities in the Chukchi Sea and Adjacent Coast of Alaska

Source: 73 FR 33250, June 11, 2008, unless otherwise noted.

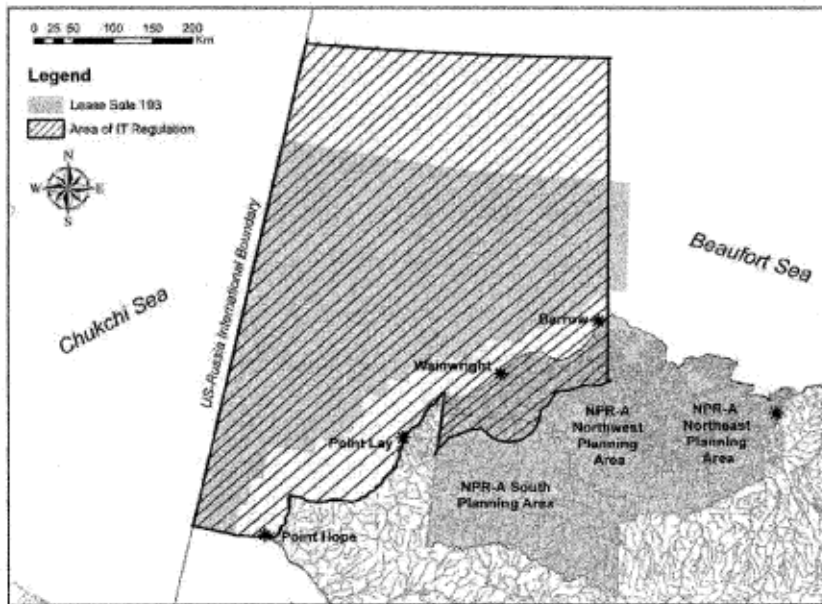
Effective Date Note: At 73 FR 33250, June 11, 2008, Subpart I was added, effective through June 11, 2013.

§ 18.111 What specified activities does this subpart cover?

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of Pacific walruses and polar bears by you (U.S. citizens as defined in §18.27(c)) while engaged in oil and gas exploration activities in the Chukchi Sea and adjacent western coast of Alaska.

§ 18.112 In what specified geographic region does this subpart apply?

This subpart applies to the specified geographic region defined as the continental shelf of the Arctic Ocean adjacent to western Alaska. This area includes the waters (State of Alaska and Outer Continental Shelf waters) and seabed of the Chukchi Sea, which encompasses all waters north and west of Point Hope (68°20'20" N, -166°50'40" W, BGN 1947) to the U.S.-Russia Convention Line of 1867, west of a north-south line through Point Barrow (71°23'29" N, -156° 28'30" W, BGN 1944), and up to 200 miles north of Point Barrow. The region also includes the terrestrial coastal land 25 miles inland between the western boundary of the south National Petroleum Reserve-Alaska (NPR-A) near Icy Cape (70°20'00" N, -148°12'00" W) and the north-south line from Point Barrow. This terrestrial region encompasses a portion of the Northwest and South Planning Areas of the NPR-A. Figure 1 shows the area where this subpart applies.



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Figure 1: The geographic area of the Chukchi Sea and onshore coastal areas covered by the incidental take regulations.

§ 18.113 When is this subpart effective?

Regulations in this subpart are effective from June 11, 2008 through June 11, 2013 for year-round oil and gas exploration activities.

§ 18.114 How do I obtain a Letter of Authorization?

(a) You must be a U.S. citizen as defined in §18.27(c).

(b) If you are conducting an oil and gas exploration activity in the specified geographic region described in §18.112 that may cause the taking of Pacific walrus (walrus) or polar bears and you want nonlethal incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity. You must submit the application for authorization to our Alaska Regional Director (see 50 CFR 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the specific location, and the estimated area affected by that activity, *i.e.*, a plan of operation.

(2) A site-specific plan to monitor and mitigate the effects of the proposed activity on walrus and polar bears encountered during the ongoing activities, *i.e.*, a marine mammal monitoring and mitigation plan. Your monitoring program must document the effects on these marine mammals and estimate the actual level and type of take. The monitoring requirements will vary depending on the activity, the location, and the time of year.

(3) A site-specific polar bear awareness and interaction plan, *i.e.*, a polar bear interaction plan.

(4) A record of community consultation. Applicants must consult with potentially affected subsistence communities along the Chukchi Sea coast (Point Hope, Point Lay, Wainwright, and Barrow) and appropriate subsistence user organizations (the Eskimo Walrus Commission and the Alaska Nanuuq (polar bear) Commission) to discuss the location, timing, and methods of proposed operations and support activities and identify any potential conflicts with subsistence walrus and polar bear hunting activities in the communities. Applications for Letters of Authorization must include documentation of all

consultations with potentially affected user groups. Documentation must include a summary of any concerns identified by community members and hunter organizations, and the applicant's responses to identified concerns. Mitigation measures are described in §18.118.

§ 18.115 What criteria does the Service use to evaluate Letter of Authorization requests?

(a) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that analyzed by us in considering the number of animals likely to be taken and evaluating whether there will be a negligible impact on the species or adverse impact on the availability of the species for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

(b) In accordance with §18.27(f)(5), we will make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply if we determine that an emergency exists that poses a significant risk to the well-being of species or stocks of walrus or polar bears.

§ 18.116 What does a Letter of Authorization allow?

(a) Your Letter of Authorization may allow the nonlethal incidental, but not intentional, take of walrus and polar bears when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities; or

(3) Conducting environmental monitoring activities associated with exploration activities to determine specific impacts of each activity.

(b) Each Letter of Authorization will identify conditions or methods that are specific to the activity and location.

§ 18.117 What activities are prohibited?

(a) Intentional take and lethal incidental take of walrus or polar bears; and

(b) Any take that fails to comply with this part or with the terms and conditions of your Letter of Authorization.

§ 18.118 What are the mitigation, monitoring, and reporting requirements?

(a) *Mitigation.* Holders of a Letter of Authorization must use methods and conduct activities in a manner that minimizes to the greatest extent practicable adverse impacts on walrus and polar bears, their habitat, and on the availability of these marine mammals for subsistence uses. Dynamic management approaches, such as temporal or spatial limitations in response to the presence of marine mammals in a particular place or time or the occurrence of marine mammals engaged in a particularly sensitive activity (such as feeding), must be used to avoid or minimize interactions with polar bears, walrus, and subsistence users of these resources.

(1) *Operating conditions for operational and support vessels.*

(i) Operational and support vessels must be staffed with dedicated marine mammal observers to alert crew of the presence of walrus and polar bears and initiate adaptive mitigation responses.

(ii) At all times, vessels must maintain the maximum distance possible from concentrations of walrus

or polar bears. Under no circumstances, other than an emergency, should any vessel approach within a 805-m (0.5-mi) radius of walrus or polar bears observed on land or ice.

(iii) Vessel operators must take every precaution to avoid harassment of concentrations of feeding walrus when a vessel is operating near these animals. Vessels should reduce speed and maintain a minimum 805-m (0.5-mi) operational exclusion zone around feeding walrus groups. Vessels may not be operated in such a way as to separate members of a group of walrus from other members of the group. When weather conditions require, such as when visibility drops, vessels should adjust speed accordingly to avoid the likelihood of injury to walrus.

(iv) The transit of operational and support vessels through the specified geographic region is not authorized prior to July 1. This operating condition is intended to allow walrus the opportunity to disperse from the confines of the spring lead system and minimize interactions with subsistence walrus hunters. Exemption waivers to this operating condition 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.

(v) All vessels must avoid areas of active or anticipated subsistence hunting for walrus or polar bear as determined through community consultations.

(2) Operating conditions for aircraft.

(i) Operators of support aircraft should, at all times, conduct their activities at the maximum distance possible from concentrations of walrus or polar bears.

(ii) Under no circumstances, other than an emergency, should aircraft operate at an altitude lower than 305 m (1,000 ft) within 805 m (0.5 mi) of walrus or polar bears observed on ice or land. Helicopters may not hover or circle above such areas or within 805 m (0.5 mile) of such areas. When weather conditions do not allow a 305-m (1,000-ft) flying altitude, such as during severe storms or when cloud cover is low, aircraft may be operated below the 305-m (1,000-ft) altitude stipulated above. However, when aircraft are operated at altitudes below 305 m (1,000 ft) because of weather conditions, the operator must avoid areas of known walrus and polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mile) of these areas.

(iii) Plan all aircraft routes to minimize any potential conflict with active or anticipated walrus or polar bear hunting activity as determined through community consultations.

(3) Additional mitigation measures for offshore exploration activities.

(i) Offshore exploration activities will be authorized only during the open-water season, defined as the period July 1 to November 30. Exemption waivers to the specified open-water season 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.

(ii) To avoid significant additive and synergistic effects from multiple oil and gas exploration activities on foraging or migrating walrus, operators must maintain a minimum spacing of 24 km (15 mi) between all active seismic-source vessels and/or exploratory drilling operations. No more than four simultaneous seismic operations will be authorized in the Chukchi Sea region at any time.

(iii) No offshore exploration activities will be authorized within a 64-km (40-mi) radius of the communities of Barrow, Wainwright, Point Lay, or Point Hope, unless provided for in a Service-approved, site-specific Plan of Cooperation as described in paragraph (a)(6) of this section.

(iv) Aerial monitoring surveys or an equivalent monitoring program acceptable to the Service will be required to estimate the number of walrus and polar bears in a proposed project area.

(4) Additional mitigation measures for offshore seismic surveys. Any offshore exploration activity expected to include the production of pulsed underwater sounds with sound source levels ≥ 160 dB re 1 μ Pa will be required to establish and monitor acoustic exclusion and disturbance zones and implement adaptive mitigation measures as follows:

(i) *Monitor zones.* Establish and monitor with trained marine mammal observers an acoustically verified exclusion zone for walrus surrounding seismic airgun arrays where the received level would be ≥ 180

dB re 1 μ Pa; an acoustically verified exclusion zone for polar bear surrounding seismic airgun arrays where the received level would be ≥ 190 dB re 1 μ Pa; and an acoustically verified walrus disturbance zone ahead of and perpendicular to the seismic vessel track where the received level would be ≥ 160 dB re 1 μ Pa.

(ii) *Ramp-up procedures.* For all seismic surveys, including airgun testing, use the following ramp-up procedures to allow marine mammals to depart the exclusion zone before seismic surveying begins:

(A) Visually monitor the exclusion zone and adjacent waters for the absence of polar bears and walrus for at least 30 minutes before initiating ramp-up procedures. If no polar bears or walrus are detected, you may initiate ramp-up procedures. Do not initiate ramp-up procedures at night or when you cannot visually monitor the exclusion zone for marine mammals.

(B) Initiate ramp-up procedures by firing a single airgun. The preferred airgun to begin with should be the smallest airgun, in terms of energy output (dB) and volume (in^3).

(C) Continue ramp-up by gradually activating additional airguns over a period of at least 20 minutes, but no longer than 40 minutes, until the desired operating level of the airgun array is obtained.

(iii) *Power down/Shut down.* Immediately power down or shut down the seismic airgun array and/or other acoustic sources whenever any walrus are sighted approaching close to or within the area delineated by the 180-dB re 1 μ Pa walrus exclusion zone, or polar bears are sighted approaching close to or within the area delineated by the 190-dB re 1 μ Pa polar bear exclusion zone. If the power down operation cannot reduce the received sound pressure level to 180-dB re 1 μ Pa (walrus) or 190-dB re 1 μ Pa (polar bears), the operator must immediately shut down the seismic airgun array and/or other acoustic sources.

(iv) *Emergency shut down.* If observations are made or credible reports are received that one or more walrus and/or polar bears are within the area of the seismic survey and are in an injured or mortal state, or are indicating acute distress due to seismic noise, the seismic airgun array will be immediately shut down and the Service contacted. The airgun array will not be restarted until review and approval has been given by the Service. The ramp-up procedures provided in paragraph (a)(4)(ii) of this section must be followed when restarting.

(v) *Adaptive response for walrus aggregations.* Whenever an aggregation of 12 or more walrus are detected within an acoustically verified 160-dB re 1 μ Pa disturbance zone ahead of or perpendicular to the seismic vessel track, the holder of this Authorization must:

(A) Immediately power down or shut down the seismic airgun array and/or other acoustic sources to ensure sound pressure levels at the shortest distance to the aggregation do not exceed 160-dB re 1 μ Pa; and

(B) Not proceed with powering up the seismic airgun array until it can be established that there are no walrus aggregations within the 160-dB zone based upon ship course, direction, and distance from last sighting. If shut down was required, the ramp-up procedures provided in paragraph (a)(4)(ii) of this section must be followed when restarting.

(5) *Additional mitigation measures for onshore exploration activities.*

(i) *Polar bear interaction plan.* Holders of Letters of Authorization will be required to develop and implement a Service-approved, site-specific polar bear interaction plan. Polar bear awareness training will also be required of certain personnel. Polar bear interaction plans will include:

(A) A description of the locations and types of activities to be conducted *i.e.*, a plan of operation;

(B) A food and waste management plan;

(C) Personnel training materials and procedures;

(D) Site at-risk locations and situations;

(E) A snow management plan;

(F) Polar bear observation and reporting procedures; and

(G) Polar bear avoidance and encounter procedures.

(ii) *Polar bear monitors*. If deemed appropriate by the Service, holders of a Letter of Authorization will be required to hire and train polar bear monitors to alert crew of the presence of polar bears and initiate adaptive mitigation responses.

(iii) *Efforts to minimize disturbance around known polar bear dens*. Holders of a Letter of Authorization must take efforts to limit disturbance around known polar bear dens.

(A) *Efforts to locate polar bear dens*. Holders of a Letter of Authorization seeking to carry out onshore exploration activities in known or suspected polar bear denning habitat during the denning season (November–April) must make efforts to locate occupied polar bear dens within and near proposed areas of operation, utilizing appropriate tools, such as forward looking infrared (FLIR) imagery and/or polar bear scent-trained dogs. All observed or suspected polar bear dens must be reported to the Service prior to the initiation of exploration activities.

(B) *Exclusion zone around known polar bear dens*. Operators must observe a 1-mile operational exclusion zone around all known polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should previously unknown occupied dens be discovered within 1 mile of activities, work in the immediate area must cease and the Service contacted for guidance. The Service will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the authorization must comply with any additional measures specified.

(6) *Mitigation measures for the subsistence use of walruses and polar bears*. Holders of Letters of Authorization must conduct their activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of Pacific walruses and polar bears for subsistence uses.

(i) *Community Consultation*. Prior to receipt of a Letter of Authorization, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence hunting of walrus and polar bear caused by the location, timing, and methods of proposed operations and support activities (see §18.114(c)(4) for details). If community concerns suggest that the proposed activities may have an adverse impact on the subsistence uses of these species, the applicant must address conflict avoidance issues through a Plan of Cooperation as described below.

(ii) *Plan of Cooperation (POC)*. Where prescribed, holders of Letters of Authorization will be required to develop and implement a Service-approved POC. The POC must include:

(A) A description of the procedures by which the holder of the Letter of Authorization will work and consult with potentially affected subsistence hunters; and

(B) A description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walruses and polar bears and to ensure continued availability of the species for subsistence use.

(C) 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.

(b) *Monitoring*. Depending on the siting, timing, and nature of proposed activities, holders of Letters of Authorization will be required to:

(1) Maintain trained, Service-approved, on-site observers to carry out monitoring programs for polar bears and walruses necessary for initiating adaptive mitigation responses.

(i) Marine Mammal Observers (MMOs) will be required on board all operational and support vessels to alert crew of the presence of walruses and polar bears and initiate adaptive mitigation responses identified in paragraph (a) of this section, and to carry out specified monitoring activities identified in the marine mammal monitoring and mitigation plan (see paragraph (b)(2) of this section) necessary to

evaluate the impact of authorized activities on walruses, polar bears, and the subsistence use of these subsistence resources. The MMOs must have completed a marine mammal observer training course approved by the Service.

(ii) Polar bear monitors.—Polar bear monitors will be required under the monitoring plan if polar bears are known to frequent the area or known polar bear dens are present in the area. Monitors will act as an early detection system in regard to proximate bear activity to Industry facilities.

(2) Develop and implement a site-specific, Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effects of authorized activities on polar bears, walruses, and the subsistence use of these resources.

(i) The marine mammal monitoring and mitigation plan must enumerate the number of walruses and polar bears encountered during specified exploration activities, estimate the number of incidental takes that occurred during specified exploration activities, and evaluate the effectiveness of prescribed mitigation measures.

(ii) Applicants must fund an independent peer review of proposed monitoring plans and draft reports of monitoring results. This peer review will consist of independent reviewers who have knowledge and experience in statistics, marine mammal behavior, and the type and extent of the proposed operations. The applicant will provide the results of these peer reviews to the Service for consideration in final approval of monitoring plans and final reports. The Service will distribute copies of monitoring reports to appropriate resource management agencies and co-management organizations.

(3) Cooperate with the Service and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration activities in the Chukchi Sea on walruses or polar bears. Where insufficient information exists to evaluate the potential effects of proposed activities on walruses, polar bears, and the subsistence use of these resources, holders of Letters of Authorization may be required to participate in joint monitoring and/or research efforts to address these information needs and insure the least practicable impact to these resources. Information needs in the Chukchi Sea include, but are not limited to:

(i) Distribution, abundance, and habitat use patterns of walruses and polar bears in offshore environments; and

(ii) Cumulative effects of multiple simultaneous operations on walruses and polar bears.

(c) *Reporting requirements.* Holders of Letters of Authorization must report the results of specified monitoring activities to the Service's Alaska Regional Director (see 50 CFR 2.2 for address).

(1) *In-season monitoring reports* —(i) *Activity progress reports.* Operators must keep the Service informed on the progress of authorized activities by:

(A) Notifying the Service at least 48 hours prior to the onset of activities;

(B) Providing weekly progress reports of authorized activities noting any significant changes in operating state and or location; and

(C) Notifying the Service within 48 hours of ending activity.

(ii) *Walrus observation reports.* The operator must report, on a weekly basis, all observations of walruses during any Industry operation. Information within the observation report will include, but is not limited to:

(A) Date, time, and location of each walrus sighting;

(B) Number of walruses: sex and age;

(C) Observer name and contact information;

(D) Weather, visibility, and ice conditions at the time of observation;

(E) Estimated range at closest approach;

- (F) Industry activity at time of sighting;
- (G) Behavior of animals sighted;
- (H) Description of the encounter;
- (I) Duration of the encounter; and
- (J) Actions taken.

(iii) *Polar bear observation reports.* The operator must report, within 24 hours, all observations of polar bears during any Industry operation. Information within the observation report will include, but is not limited to:

- (A) Date, time, and location of observation;
- (B) Number of bears: sex and age;
- (C) Observer name and contact information;
- (D) Weather, visibility, and ice conditions at the time of observation;
- (E) Estimated closest point of approach for bears from personnel and facilities;
- (F) Industry activity at time of sighting, possible attractants present;
- (G) Bear behavior;
- (H) Description of the encounter;
- (I) Duration of the encounter; and
- (J) Actions taken.

(iv) *Notification of incident report.* Reports should include all information specified under the species observation report, as well as a full written description of the encounter and actions taken by the operator. The operator must report to the Service within 24 hours:

- (A) Any incidental lethal take or injury of a polar bear or walrus; and
- (B) Observations of walruses or polar bears within prescribed mitigation-monitoring zones.

(2) *After-action monitoring reports.* The results of monitoring efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of completing the year's activities. Results must include, but are not limited to, the following information:

- (i) A summary of monitoring effort including: total hours, total distances, and distribution through study period;
- (ii) Analysis of factors affecting the visibility and detectability of walruses and polar bears by specified monitoring;
- (iii) Analysis of the distribution, abundance, and behavior of walrus and polar bear sightings in relation to date, location, ice conditions, and operational state; and
- (iv) Estimates of take based on density estimates derived from monitoring and survey efforts.

§ 18.119 What are the information collection requirements?

(a) We 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. The Office of Management and Budget has approved the collection of information contained in this subpart and assigned control number 1018–0139. You must respond to this information collection request to obtain a benefit pursuant to section 101 (a)(5) of the Marine Mammal Protection Act. We will use the information to:

- (1) Evaluate the application and determine whether or not to issue specific Letters of Authorization and;
- (2) Monitor impacts of activities conducted under the Letters of Authorization.

(b) You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222 ARLSQ, 1849 C Street, NW., Washington, DC 20240.

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