

**1 Supporting Statement A for
Paperwork Reduction Act Submission**

**Incidental Take of Marine Mammals During Specified Activities
50 CFR 18.27 and 50 CFR Part 18, Subparts I and J**

OMB Control Number 1018-1070

Terms of Clearance. None.

1. Explain the circumstances that make the collection of information necessary.

The Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 et seq.) imposed, with certain exceptions, a moratorium on the taking of marine mammals. Section 101(a)(5)(A) of the MMPA directs the Secretary of the Interior (Secretary) to allow, upon request by citizens of the United States, the taking of small numbers of marine mammals incidental to specified activities (other than commercial fishing) if the Secretary makes certain findings and prescribes specific regulations that, among other things, establish permissible methods of taking. Once we (Fish and Wildlife Service) issue specific regulations, applicants seeking to conduct activities must request a Letter of Authorization (LOA) for the specific activity and submit onsite monitoring reports and a final report of the activity to the Secretary.

Procedural regulations outlining the requirements for the submission of a request are contained in 50 CFR 18.27. Specific regulations governing authorized activities are contained in 50 CFR 18, subparts I (Chukchi Sea) and J (Beaufort Sea).

2. Indicate how, by whom, and for what purpose the information is to be used.

We will use the information we collect to verify the finding required to issue incidental take regulations, to decide if we should issue an LOA, and, if issued, what conditions should be contained in the LOA. In addition, we will analyze the information to determine impacts to the marine mammals and the availability of those marine mammals for subsistence purposes of Alaska Natives.

This is a nonform collection. Applicants can find requirements in 50 CFR 18, subparts I and J. 50 CFR 18.27(d) requires that the applicant 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. These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine whether or not to issue specific regulations and, subsequently, LOAs. The information includes:

- Description of the activities or class of activities that can be expected to result in incidental taking of marine mammals.
- Dates and duration of such activity.
- Specific geographical region where the activity will occur.

Based on the best available scientific information, each applicant must:

- Estimate the species and numbers of marine mammals likely to be incidentally taken by age, sex, and reproductive condition.
- Estimate the type of taking (e.g., disturbance by sound, injury, etc.) as well as the number of times each type of taking is likely to occur.

- Describe the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities.
- Provide anticipated impacts of an activity on marine mammal habitats.
- Discuss the likelihood of restoration of affected habitat.
- Describe the impact of habitat loss or modification on the marine mammal population involved.

This information is necessary so that we can anticipate the impact of the activity on the species or stocks and on the availability of the species or stocks for 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.

Applicants must provide information on the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of affecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. This information is necessary to ensure that all available means for minimizing the incidental take associated with a specific activity are considered by the applicant. The MMPA requires that we specify the means of affecting the least practicable impact on the species or stock, its habitat, and its availability for subsistence uses.

We ask applicants to suggest means of:

- Accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species through analysis of the level of taking or impacts.
- Minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity.
- Encouraging and coordinating research opportunities and survey efforts (possible with other applicants), informing us of plans and activities related to reducing incidental taking from such specified activities, and evaluating their effects.

These requirements ensure that applicants are aware of related monitoring and research efforts that can be applied to their situation, and that the monitoring and reporting that we impose are the least burdensome to the applicant.

The regulations also require that each holder of an LOA submit a monitoring report indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specific activity. Since the inception of incidental take regulations for polar bears (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*), we have required monitoring and reporting during oil and gas industry activities. The purpose of monitoring and reporting requirements is to assess the effects of industrial activities on polar bears and walrus populations, and to detect any unanticipated effects of take. The monitoring focus has been site-specific, area-specific, or population-specific. Site-specific monitoring measures animal-human encounter rates, outcomes of encounters, and trends of animal activity in the industrial areas, such as polar bear numbers, behavior, and seasonal use. Area-specific monitoring includes analyzing animal spatial and temporal use trends, sex/age composition, and risk assessment to unpredictable events, such as oil spills. Population-specific monitoring includes investigating species life history parameters, such as population size, recruitment, survival, physical condition, status, and mortality.

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 (FLIR) imagery and/or polar bear scent-trained dogs in concert with denning habitat maps along the Alaskan coast. In accordance with 50 CFR 18.118(a)(6)(ii)(A) and 18.128(a)(2)(ii), 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 to be used in an individual LOA in order to minimize potential impacts and disturbance to polar bears.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements].

Applicants may submit information via email or in an electronic format, thus, reducing the burden on the applicant of having to provide hard copies of reports or other documents. If necessary, applicants can also submit information via hard-copy documents.

Information requested by the Service, such as petitions and applications, are available to the public on the Service's website: <http://www.fws.gov/alaska/fisheries/mmm/itr.htm>

4. Describe efforts to identify duplication.

Under the MMPA, we share responsibilities with the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (NOAA-Fisheries), with each agency being responsible for different species. While both agencies may have similar regulations, they apply to different species of marine mammals. Therefore, information collection is not duplicated.

When available, we provide information from other sources to prospective applicants and encourage them to use it to supplement, or even supplant, their own information collection efforts, thereby reducing their information collection burden.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

This collection of information will not impact small businesses or other small entities. The regulations are specific to oil and gas industry exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska and to oil and gas exploration activities in the Chukchi Sea and adjacent western coast of Alaska. As such, information collection will be conducted by companies primarily focused on oil and gas exploration, development, and production, depending on the area. These companies are not identified as small businesses or small entities.

6. Describe the consequence to Federal program or policy activities if the collection were not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The MMPA requires that we determine what impacts proposed activities will have on marine

mammals. The MMPA requires that a determination of negligible impact to the species or stock be made prior to issuance of regulations. Also, a determination must be made that the activity will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives. If we do not collect the information described in this supporting statement, we could not allow incidental taking under provisions of the MMPA and possibly the specific activity could not take place. In addition, conducting information collection less frequently would limit the Service's ability to monitor potential adverse impacts to federal trust species.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**
- * **requiring respondents to report information to the agency more often than quarterly;**
 - * **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
 - * **requiring respondents to submit more than an original and two copies of any document;**
 - * **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
 - * **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
 - * **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
 - * **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
 - * **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Visual sightings and interactions with polar bears or Pacific walrus are not predictable. If the encounter is persistent, the respondent must contact us to report the encounter and to request our expertise in assistance. At times, we also request that the respondent verbally report an encounter with a polar bear or a Pacific walrus at the time of occurrence and follow up with a written report. There are no other circumstances that would cause us to collect information in a manner that is inconsistent with OMB guidelines.

- 8. If applicable, provide the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice (or in response to a PRA statement) and describe actions taken by the agency in response to these comments.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

On October 3, 2013, we published a notice in the *Federal Register* (78 FR 61379) informing the public of our intent to request revision of this information collection and soliciting comments for 60 days. The public comment period closed on December 3, 2013. We received two

comments.

One commenter expressed opposition to authorization of activities for the oil and gas industry. We note the concerns raised by this individual; however, we do not grant authorization for industry activities. Instead, we are required under Section 101(a)(5)(A) of the MMPA to take certain actions with regard to the "incidental taking" of marine mammals that may result from specified activities. The regulations at 50 CFR 18.27(c) define incidental, but not intentional, taking as "takings which are infrequent, unavoidable, or accidental. It does not mean that the taking must be unexpected." The commenter did not address the information collection requirements, and we did not make any changes to our information collection.

The other commenter expressed support for the information collection process. The commenter stated that the specified information allowed the Service: "to make the required findings for issuing the appropriate authorizations for the incidental taking of marine mammals under the statute and implementing regulations, and ensures permittee compliance with specific monitoring and reporting measures." The information also helped: "to provide a better understanding of the types of effects the oil and gas industry activities are having on polar bear and walrus populations and the effectiveness of mitigation and monitoring requirements."

In addition to the *Federal Register* notice, we consulted with the following individuals on: (1) whether or not the collection of information is necessary for the proper performance of our functions, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection; (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 respondents.

Mr. Greg Horner Umiaq Anchorage Alaska (907) 646-7131	Ms. Caryn Rea ConocoPhillips Alaska, Inc. Anchorage, Alaska (907) 265-6515
Ms. Chrissy May BP Exploration (Alaska), Inc. Anchorage, Alaska (907) 564-4857	Ms. Julie Lina Pioneer Natural Resources, Inc. Anchorage, Alaska: (907) 343-2106

Industry representatives stated that: (1) the total annual burden hours for an application for procedural regulations has increased from 200 hours to 300 hours as the complexity of the regulations increase; (2) the average time to complete the majority of final monitoring reports is 10 hours, although final monitoring report time for one to two Chukchi Sea LOAs can be upwards of 100-200 hours, depending on the duration of the season and number of activities conducted.; and (3) the \$175.00/hour rate for consultants is current. The increase in completion time and consultant fees is reflected in items 12 and 13.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We do not make any payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The information collected is a matter of public record; however, companies submit confidential geological and geophysical maps with requests to conduct geophysical seismic programs. Section 522(b)(9) of the Freedom of Information Act (5 U.S.C. 552, as amended) allows us to withhold “geological and geophysical information and data, including maps, concerning wells.” Therefore, we will not release this information in response to a FOIA request.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

We estimate that up to 20 oil and gas companies will submit approximately 356 responses totaling 1,800 annual burden hours. The hourly burdens of the collection of information for incidental take regulations are described below. Respondents submit applications for procedural regulations (one each for Beaufort and Chukchi Seas) every 5 years. Industry estimates that each application will take approximately 750 hours to complete, or a total of 1,500 hours. The table below annualizes the burden over the 3-year period of approval.

Costs to respondents are included in item 13 as consultant or flat fees. Respondents’ costs will be higher during the year that applications are required.

TYPE OF ACTION	ANNUAL NUMBER OF RESPONSES	AVERAGE COMPLETION TIME	TOTAL ANNUAL BURDEN HOURS
Application for procedural regulations	2	150	300
LOA Requests	25	24	600
Onsite Monitoring and Observation Reports	300	1.5	450
Final Monitoring Report	25	10	250
Polar Bear Den Detection Report	4	50	200
Total	356		1,800

13. Provide an estimate of the total annual [nonhour] cost burden to respondents or recordkeepers resulting from the collection of information.

We estimate the nonhour burden to be \$480,000, for consultant and flat fees as follows. Consultant costs are calculated at \$175 per hour.

REQUIREMENT	NO. OF HOURS	CONSULTANT COSTS	FLAT FEE	TOTAL COSTS
Application for procedural regulations	300	\$ 52,500		\$ 52,500
LOA Requests	600	105,000		105,000
Onsite Monitoring and Observation Reports	450	78,750		78,750
Final Monitoring Report	250	43,750		43,750
Polar Bear Den Detection Report - 4			\$200,000	200,000
TOTAL NONHOUR BURDEN COSTS				\$480,000

14. Provide estimates of annualized costs to the Federal Government.

We estimate the total annual cost to the Federal Government to administer this information collection is \$241,370 (\$214,370 for salary/benefits and \$27,000 for printing costs)). We used the Office of Personnel Management's Salary Table 2014-AK to determine the salary for staff involved in reviewing and processing the information collected. To calculate benefits, we multiplied the salary costs by 1.5 in accordance with BLS news release USDL 13-2349.

POSITION/GRADE	ANNUAL SALARY	ANNUAL SALARY INCLUDING BENEFITS	TIME SPENT ON INFORMATION COLLECTION	TOTAL ANNUAL SALARY COST
Clerical, GS 4, step 5	\$ 34,992	\$ 52,488	30%	\$ 15,746
Biologist, GS-9, step 5	59,321	88,982	80%	71,186
Biologist, GS-12, step 7	91,087	136,631	80%	109,305
Management, GS-14, step 5	120,884	181,326	10%	18,133
Total				\$214,370

Printing - \$27,000

- \$24,000 – average annual printing and publication costs for proposed and final rules (two each over 3-year period)
- \$ 3,000 – printing costs for issuance of LOAs (four per year)

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

We are reporting 356 responses and 1,800 annual burden hours, which is an increase of 4 responses and 300 burden hours from our previous submission.

We are reporting an adjustment increase of 100 annual burden hours. We increased the completion time based on our outreach and experience in administering this collection.

We are reporting as a program change 4 responses, 200 burden hours, and \$200,000 in nonhour burden costs for the polar bear den detection report. The requirement to provide this report is in existing regulations, but was mistakenly not included in our previous submission. We are also reporting as a program change \$280,000 in nonhour burden costs for consultant fees associated with this collection. Although the consultant costs were never reported as a nonhour burden cost, they were listed in item 12 of previous submissions.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

We do not publish the information in the form in which it is received. We do analyze the information annually to determine impacts resulting from incidental take authorizations.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

These are regulatory requirements; however, we will display the OMB control number and expiration date on appropriate materials.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.