

ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 50: Wildlife and Fisheries
PART 18—MARINE MAMMALS

Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Contents

- [§18.121 What specified activities does this subpart cover?](#)
 - [§18.122 In what specified geographic region does this subpart apply?](#)
 - [§18.123 When is this subpart effective?](#)
 - [§18.124 How do I obtain a Letter of Authorization?](#)
 - [§18.125 What criteria does the Service use to evaluate Letter of Authorization requests?](#)
 - [§18.126 What does a Letter of Authorization allow?](#)
 - [§18.127 What activities are prohibited?](#)
 - [§18.128 What are the mitigation, monitoring, and reporting requirements?](#)
 - [§18.129 What are the information collection requirements?](#)
-

SOURCE: 76 FR 47049, Aug. 3, 2011, unless otherwise noted.

[↑ Back to Top](#)

§18.121 What specified activities does this subpart cover?

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

[↑ Back to Top](#)

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

This subpart applies to the specified geographic region defined by all Beaufort Sea waters east 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, including all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line to the Canadian border. The onshore region is the same north/south line at Barrow, 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is not included in the area covered by this subpart. Figure 1 shows the area where this subpart applies.

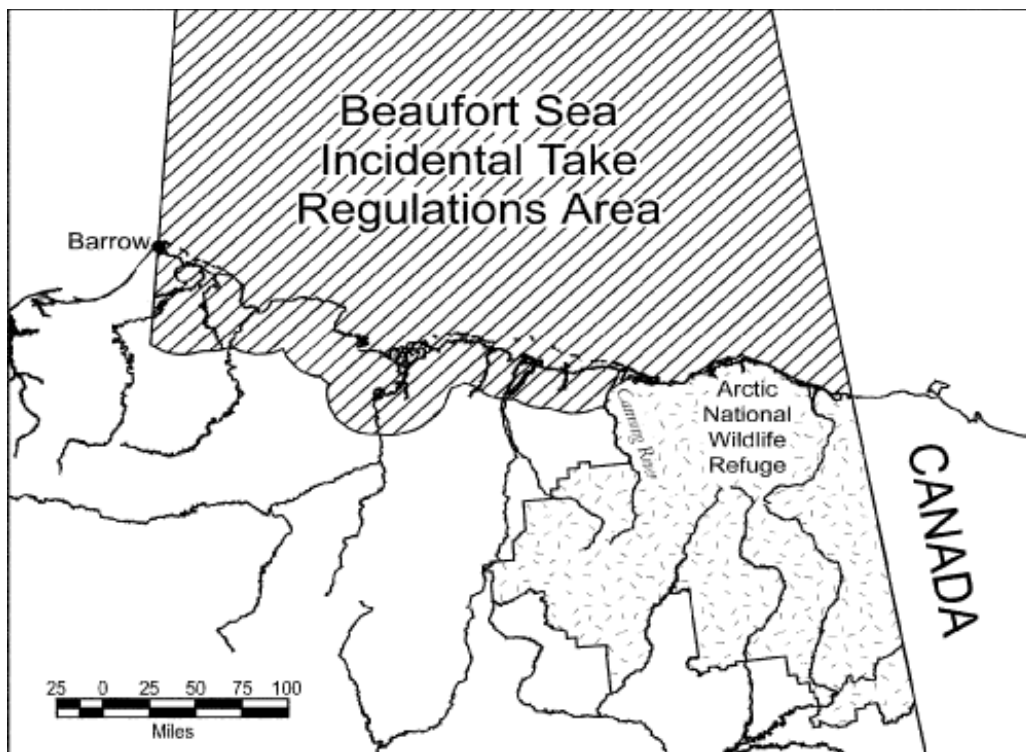


Figure 1. Specific geographic area covered by the Beaufort Sea incidental take regulations.

[View or download PDF](#)

[↑ Back to Top](#)

§18.123 When is this subpart effective?

Regulations in this subpart are effective from August 3, 2011, through August 3, 2016, for year-round oil and gas exploration, development, and production activities.

[↑ Back to Top](#)

§18.124 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, development, or production activity in the specified geographic region described in §18.122 that may cause the taking of polar bears or Pacific walrus in execution of those activities and you want nonlethal incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for activities in each development or production area. 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 the effects of the activity on the behavior of polar bears and Pacific walrus that may be present during the ongoing activities (*i.e.*, marine mammal monitoring and mitigation plan). Your monitoring program must document the effects to these marine mammals and estimate the actual level and type of take. The monitoring requirements provided by the Service will

vary depending on the activity, the location, and the time of year.

(3) A site-specific polar bear and/or walrus awareness and interaction plan. A polar bear interaction plan for each operation will outline the steps the applicant will take to limit human-bear interactions, increase site safety, and minimize impacts to bears.

(4) A Plan of Cooperation (POC) to mitigate potential conflicts between the proposed activity and subsistence hunting, where relevant. Applicants must consult with potentially affected subsistence communities along the Beaufort Sea coast (Kaktovik, Nuiqsut, 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. Some of these measures may include, but are not limited to, mitigation measures described in §18.128.

[↑ Back to Top](#)

§18.125 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 an 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) of subpart C of this part, 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 should we determine that an emergency exists that poses a significant risk to the well-being of the species or stocks of polar bears or Pacific walruses.

[↑ Back to Top](#)

§18.126 What does a Letter of Authorization allow?

(a) Your Letter of Authorization may allow the nonlethal incidental, but not intentional, take of polar bears and Pacific walruses 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;
- (3) Developing oil fields and associated activities;
- (4) Drilling production wells and performing production support operations;

(5) Conducting environmental monitoring activities associated with exploration, development, and production activities to determine specific impacts of each activity;

(6) Conducting restoration, remediation, demobilization programs, and associated activities.

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

[↑ Back to Top](#)

§18.127 What activities are prohibited?

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

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

[↑ Back to Top](#)

§18.128 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 walruses 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, walruses, and subsistence users of these resources.

(1) *All applicants.* (i) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bears and Pacific walruses.

(ii) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bears and Pacific walruses.

(iii) Holders of Letters of Authorization must have an approved polar bear and/or walrus interaction plan on file with the Service and onsite, and polar bear awareness training will also be required of certain personnel. Interaction plans must include:

(A) The type of activity and, where and when the activity will occur, *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) Walrus and bear observation and reporting procedures; and

(F) Bear and walrus avoidance and encounter procedures.

(iv) All applicants for a Letter of Authorization must contact affected subsistence communities to discuss potential conflicts caused by location, timing, and methods of proposed operations and submit to us a record of communication that documents these discussions. If appropriate, the applicant for a Letter of Authorization must also submit to us a POC that ensures that activities will not interfere with subsistence hunting and that adverse effects on the availability of polar bear or Pacific walruses are minimized (see §18.124(c)(4)).

(v) 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.

(2) *Onshore activities.* (i) *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.

(ii) *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 activities.

(iii) *Exclusion zone around known polar bear dens.*—Operators must observe a 1.6-km (1-mi) 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 1.6 km (1 mi) of activities, work 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.

(iv) *Use of a den habitat map developed by the USGS.*—A map of potential coastal polar bear denning habitat can be found at: http://alaska.usgs.gov/science/biology/polar_bears/pubs.html. This measure ensures that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.

(v) *Timing restrictions.*—Operators must restrict the timing of their activity to limit disturbance around dens.

(3) *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 an 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) All vessels shall avoid areas of active or anticipated walrus or polar bear hunting activity as determined through community consultations.

(v) We may require the use of trained marine mammal monitors on the site of the activity or on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of Industry's activity on polar bear and Pacific walrus.

(4) *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 457 m (1,500 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 457-m (1,500-ft) flying altitude, such as during severe storms or

when cloud cover is low, aircraft may be operated below the 457-m (1,500-ft) altitude stipulated above. However, when aircraft are operated at altitudes below 457 m (1,500 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.

(5) *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)(5)(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 shutdown 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 shutdown was required, the ramp-up procedures provided in paragraph (a)(5)(ii) of this section must be followed when restarting.

(6) *Mitigation measures for the subsistence use of walrus 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 walrus 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 walrus and polar bear hunting caused by the location, timing, and methods of proposed operations and support activities (see §18.124(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 POC 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 walrus 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 walrus and polar bears for subsistence use.

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

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

(i) For offshore activities, Marine Mammal Observers (MMOs) will be required on board all operational and support vessels to alert crew of the presence of walrus 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 walrus, 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, walrus, and the subsistence use of these resources. The marine mammal monitoring and mitigation plan must enumerate the number of walrus and polar bears encountered during specified activities, estimate the number of incidental takes that occurred during specified exploration activities, and evaluate the effectiveness of prescribed mitigation measures.

(3) Cooperate with the Service and other designated Federal, State, and local agencies to monitor the impacts of oil and gas activities in the Beaufort Sea on walrus or polar bears. Where insufficient information exists to evaluate the potential effects of proposed activities on walrus, 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 Beaufort Sea include, but are not limited to:

(i) Distribution, abundance, and habitat use patterns of polar bears, and to a lesser extent walrus in offshore environments; and

(ii) Cumulative effects of multiple simultaneous operations on polar bears and to a lesser extent walrus.

(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) For exploratory and development activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director (*Attn:* Marine Mammals Management Office) within 90 days after completion of activities. For production activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director (*Attn:* Marine Mammals Management Office) by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information:

(i) Dates and times of activity;

(ii) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and

(iii) Results of the monitoring activities required under paragraph (c)(1)(iv) of this section, including an estimated level of take.

(iv) Monitoring requirements include, but are not limited to:

(A) For all activities, all sightings of polar bears must be recorded. Information within the sighting report will include, but is not limited to:

(1) Date, time, and location of observation;

(2) Number of bears: sex and age;

(3) Observer name and contact information;

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

(5) Estimated closest point of approach for bears from personnel and facilities;

(6) Industry activity at time of sighting, possible attractants present;

(7) Bear behavior;

(8) Description of the encounter;

(9) Duration of the encounter; and

(10) Actions taken.

(B) [Reserved]

(v) Activities within the coast of the geographic region may incorporate daily polar bear watch logs.

(2) *In-season monitoring reports for offshore exploration activities*—(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:

(A) Any incidental lethal take or injury of a polar bear or walrus immediately; and

(B) Observations of walruses or polar bears within prescribed mitigation-monitoring zones to the Service within 24 hours.

(3) *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 polar bears and walruses by specified monitoring;

(iii) Analysis of the distribution, abundance, and behavior of polar bear and walrus 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.

[↑ Back to Top](#)

§18.129 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 1018-0070. 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 2042-PDM, 1849 C Street, NW., Washington, DC 20240.

[↑ Back to Top](#)

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