

**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. Identify any legal or administrative requirements that necessitate the collection.

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 the U.S. Fish and Wildlife Service (Service or we) 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. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

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 walruses (walruses) (*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 walruses to ensure that take is minimal to polar bear 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.

The majority of applicants and respondents indicate a preference for electronic submission of information, and we have worked to accommodate that preference. 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. Though not required, applicants may also submit information via hard-copy documents, if they so choose. A minority of applicants and respondents continue to submit at least some information via hard-copy documents as their preference.

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>.

We estimate that 100% of respondents will utilize electronic submission for the "Polar Bear Den Detection Report" and that 95% of respondents will utilize electronic submission for the remaining four (4) "Incidental Take of Marine Mammals" information collections.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

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 any methods used to minimize burden.

The 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 is 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 would not have critical information needed to make the required determinations, and thus, may not be able to authorize incidental taking under provisions of the MMPA. 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 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 walrus at the time of occurrence and follow up with a written report. We are not aware of any other circumstances that would cause us to collect information

in a manner that is inconsistent with OMB guidelines.

8. **If applicable, provide a copy and identify 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 and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

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.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On January 11, 2017, we published a notice in the *Federal Register* (82 FR 3350) 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 March 13, 2017. We received the following six comments:

Comment (1):

Email dated January 11, 2017, from Phyllis Malloy (on behalf of Dr. Rebecca Lent and Tiffini Brookens) of the Marine Mammal Commission: The Marine Mammal Commission (Commission) expressed support for the information collection request. The Commission stated that they believe that the requested information is necessary for the Service to evaluate incidental take applications and to determine whether to issue incidental take regulations and associated LOAs, as required under the MMPA. The Commission also agrees that the cost and burden estimates are appropriate. The Commission suggested that the Service should request that oil and gas industry companies submit information electronically (including both the applications and monitoring reports) and then make that information publicly accessible, barring any confidentiality concerns. The Commission further suggested that the Service make the collected information publically accessible consistent with the manner in which the National Marine Fisheries Service handles its incidental take authorizations and regulations.

FWS Response to Comment (1): We agree with the Commission that our information requests are necessary and appropriate for us to meet our obligations under the MMPA. We note that we recommend that oil and gas industry companies submit information electronically, though we do accept information in a variety of formats to accommodate convenience. We collect information primarily via electronic mail. Information that is restricted for confidentiality or privacy reasons is summarized and anonymized prior to public availability. The Service periodically posts issued authorizations and summaries of monitoring report data on our website and in other public media. The Service believes that we provide the public access to relevant information in a transparent manner while also fulfilling our responsibility to protect confidential information.

Comment (2):

Email dated January 11, 2017, from Jean Public: This commenter opposed the killing of polar bears, walrus, seals, or any other wildlife by the oil and gas industry. The commenter also thinks the Arctic should not be open to energy exploration and suggested significant fines for anyone killing those animals.

FWS Response to Comment (2): The information collection authorization, and the associated MMPA incidental take regulations, do not authorize the lethal or injurious take of any wildlife, including polar bears and walrus, nor do they authorize any activities, including oil and gas industry activities. The MMPA provides for both civil and criminal penalties for violations of the MMPA. The commenter did not address the information collection requirements, and we did not make any changes to our information collection; we therefore have no further response.

Comment (3):

Email dated January 13, 2017, from Timothy J. Luetkemeyer: This commenter claimed that the proposed information collection does not comply with the MMPA and that the proposed method of information collection would constitute an unlawful taking under the MMPA. The commenter claimed that the proposed information collection allows for intentional takings of polar bears. The commenter suggested that the proposed information collection must impose much stricter standards on obtaining data. The commenter further suggested that mandatory polar bear disturbance mitigation requirements should be imposed for any LOAs issued under the MMPA incidental take regulations.

FWS Response to Comment (3): We disagree with the commenter's understanding and interpretation of the MMPA, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this information collection authorization, and related enacting regulations, terms, and requirements. The commenter did not address the information collection requirements, and we did not make any changes to our information collection; we therefore have no further response.

Comments (4-6):

Email dated March 3, 2017, from Kaitlyn M. Payne of ExxonMobil Alaska Production Inc.;
Email dated March 9, 2017, from Terry S. Lauck of ConocoPhillips Alaska, Inc.; and
Email dated March 13, 2017, from BP Exploration (Alaska), Inc.:

Three oil and gas industry companies operating in Alaska and subject to our collection of information under this authorization provided substantially similar comments. The commenters support our request for information collection authorization and agree that our collection of information is necessary and useful, is not overly burdensome at current levels, and that our estimate of the burden and costs associated with collecting information is generally accurate. However, the commenters expressed a concern that the burden and costs in certain cases are occasionally greater than our estimate. For example, the location and monitoring of maternal polar bear dens or situations when individual polar bears linger in an area for an extended time require additional monitoring. The commenters suggested that it would improve the usefulness of the collected information, and provide a benefit for the regulated public, if the Service would provide more frequent public summaries and analyses of collected information. For example, more frequent summary and analysis of numbers of reported polar bear observations. The commenters also supported the continued use of electronic methods of information collection and reporting to reduce the burden and increase efficiency.

FWS Response to Comments (4-6): We agree that our collection of information from oil and gas industry companies is necessary and useful, is not overly burdensome, and that our

estimate of the burden and costs is generally accurate. Regarding specific cases where the burden or cost is greater than the estimate, we point out that the estimate we provide is an annualized average over the 3-year period of the information collection authorization for all of the regulated public subject to our collection of information. We are confident that the overall estimates are generally accurate. Nevertheless, we will continue to work with the regulated public to ensure that our information collection is not unduly burdensome and that our estimates accurately reflect reality. Furthermore, we are currently developing additional technological capability to collect information electronically and to enhance our ability to provide feedback to the public with relevant information products based on the information we collect.

In addition to the *Federal Register* notice, we consulted with individuals from the following four companies 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.

ExxonMobil Alaska Production, Inc.
ConocoPhillips Alaska, Inc.
BP Exploration (Alaska), Inc.
Caelus Energy Alaska, LLC

We sent two emails and made a follow-up phone call to each company. We received responses from three of the four companies. They chose to respond via the *Federal Register* online comment portal. Their comments are summarized in Comment 2 above. We did not receive a comment from the fourth company.

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 may 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 Freedom of Information Act 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. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.
- * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.

We estimate that we will receive up to 20 LOA requests from oil and gas companies and will receive 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.

We estimate the total dollar value of the annual burden hours will be **\$200,718** (1,800 hours X \$111.51). Bureau of Labor Statistics (BLS) occupational code [11-1021](#) states a mean hourly rate of \$84.86 for general and operations managers within the oil and gas extraction industry. In accordance with BLS News Release [USDL-16-2255](#), December 8, 2016, Employer Costs for Employee Compensation—September 2016, we multiplied this rate by 31.4% to determine benefits, resulting in an hourly cost factor of \$111.51.

Type of Action	Number of Annual Respondents	Number of Responses Each	Total Annual Responses	Average Completion Time (Hours)	Total Annual Burden Hours
Incidental Take of Marine Mammals - Application for Regulations	20	0.1	2	150	300
Incidental Take of Marine Mammals - LOA Requests	20	1.25	25	24	600
Incidental Take of Marine Mammals - Onsite Monitoring and Observation Reports	20	15	300	1.5	450
Incidental Take of Marine Mammals - Final Monitoring Report	20	1.25	25	10	250
Polar Bear Den Detection Report	4	1	4	50	200
Total			356		1,800

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

- * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and

disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

We estimate the nonhour burden to be \$200,000 for the Polar Bear Den Detection Survey and Report (4 responses X \$50,000 each).

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

We estimate the total annual cost to the Federal Government to administer this information collection is \$300,947 (\$270,947 for salary/benefits and \$30,000 for printing costs).

To determine average annual salary costs, we used the Office of Personnel Management Salary Table [2017-AK](#) to determine the annual salary costs for staff involved in reviewing and processing the information collected as shown below. The benefits rate was calculated from Bureau of Labor Statistics News Release [USDL-16-2255](#), December 8, 2016, Employer Costs for Employee Compensation—September 2016. We multiplied the annual salaries by 1.57 to account for benefits, in accordance with USDL-16-2255.

Position/Grade	Annual Salary	Annual Salary (Inc. Benefits)	Time Spent on Collection	Total Annual Salary Costs
Clerical, GS-07/05	\$ 50,947	\$ 79,987	30%	\$ 23,996
Biologist, GS-12/05	90,372	141,884	80%	113,507
Biologist, GS-12/05	90,372	141,884	80%	113,507
Management, GS-14/05	126,988	199,371	10%	19,937
Total				\$ 270,947

Printing - \$30,000

- \$27,000 – 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 (one per year)

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

We are reporting no changes to the cost and burden to respondents from our previous submission. However, we are reporting the following adjustments in ROCIS:

In November, 2015, OMB advised DOI we should discontinue including costs (paid by respondents) for consultants to complete paperwork as a non-burden hour cost. Previously, an additional cost burden of \$280,000 for consultant fees was included in total burden reported in question 13. For this submission, the hourly cost burden is being reported as \$200,718 (1,800 hours X \$111.51) under question 12 (rather than under question 13). This amount was calculated using specialized oil and gas extraction salary information from the BLS which resulted in a net decrease of \$79,282 in hourly burden costs. Therefore, the removal of \$280,000 in consultant costs from question 13 (previously \$480,000; now \$200,000) is categorized as an adjustment to this submission to comply with OMB's directive.

We also adjusted the costs to the Federal government to reflect updated salary and printing costs based on FY 2017 rates.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

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 topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions to the certification statement.