

**1SUPPORTING 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 J and K**

OMB Control Number 1018-0070

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 incidental take of marine mammals activities are contained in 50 CFR 18, subparts J (Beaufort Sea) and K (Cook Inlet – new subpart proposed via RIN 1018-BD63 (proposed rule published March 19, 2019 [84 FR 10224](#))) addressing incidental take of northern sea otters (otters) (*Enhydra lutris kenyoni*)).

NOTE: Specific regulations governing authorized incidental take of marine mammals activities previously approved by OMB in 50 CFR 18, subpart I (Chukchi Sea) expired and we removed references to subpart I from this information collection.

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 J and K. 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 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 the applicant considers all available means for minimizing the incidental take associated with a specific activity. 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 they can apply 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 authorizations for polar bears (*Ursus maritimus*), Pacific walruses (walruses) (*Odobenus rosmarus divergens*), and northern sea otters (otters) (*Enhydra lutris kenyoni*) 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, walrus, and otters to ensure that take is minimal to marine mammal 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 18.128(b)(1 and 2); 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 in an individual LOA in order to minimize potential impacts and disturbance to polar bears.

REVISION BASED ON EXPIRED SUBPART I

Specific regulations governing authorized activities previously approved by OMB in 50 CFR 18, subpart I (Chukchi Sea) expired and we removed references to this subpart from this collection. We also removed the burden associated with related information collection activities under subpart I from the burden table in question 12.

REVISION TO COLLECTION BASED ON FINAL RULE 1018-BD63

This rule revises this information collection to include burden associated with the incidental take of otters in Cook Inlet, Alaska, during oil and gas exploration, development, and production activities (subpart K).

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, there is no duplication of information collected.

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 Cook Inlet, Alaska. As such, this information collection affects companies primarily focused on oil and gas exploration, development, and production, depending on the area. These companies do not identify 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 would have on marine mammals. The MMPA requires we make a determination of negligible impact to the species or stock prior to issuance of regulations. In addition, we must determine 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. As a result, we could not 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, walruses, and sea otters are not always predictable. If the encounter is persistent or unusual, 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 marine mammal 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 March 19, 2019, we published a proposed rule soliciting public comment on the new and revised information collection requirements described in this supporting statement ([84 FR 10224](#)). In that proposed rule, we solicited comments for 30 days, ending on April 18, 2019. We received no comments in response to the proposed rule.

We have prepared final regulations to authorize the nonlethal, incidental take by harassment, of small numbers of northern sea otters in Cook Inlet, Alaska, resulting from oil and gas exploration, development, and production activities occurring between [EFFECTIVE DATE OF THE FINAL RULE], and March 31, 2024. We provided a copy of the draft final rule as a supplemental document in ROCIS. The draft final rule solicits public comment for a period of 30 days on the new and revised information collection requirements described in this supporting statement.

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 **356 responses** totaling **1,800 annual burden hours**. We described the hourly burdens of the collection of information for incidental take regulations below.

NOTE: Data from the last few years indicates the number of applicants and LOA applications in the Southern Beaufort Sea has slightly declined since we issued the IC. We can incorporate the addition of Cook Inlet region applicants and LOA applications into previously submitted and approved burden estimates without need for adjustment. Therefore, we are not reporting any burden change to this collection. If Cook Inlet were not to be included, these estimates should be adjusted slightly downward.

We estimate the total dollar value of the annual burden hours will be **\$194,112** (1,800 hours X

\$107.84). Bureau of Labor Statistics (BLS) Occupational Employment and Wages (May 2018) states the mean hourly rate for occupational code [11-1021](#), General and Operations Managers, as \$75.41. In accordance with BLS News Release [USDL-19-0449](#), December 14, 2018, Employer Costs for Employee Compensation—December 2018, we multiplied this rate by 1.43 to determine benefits, resulting in an hourly cost factor of \$107.84.

Table. 12.1

| 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 | 84 | | 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 **\$316,041** (\$286,041 for salary/benefits and \$30,000 for printing costs).

To determine average annual salary costs, we used the Office of Personnel Management Salary Table [2019-AK](#) to determine the annual salary costs for staff involved in reviewing and processing the information collected as shown below. In accordance with BLS News Release [USDL-19-0449](#), December 14, 2018, Employer Costs for Employee Compensation—December 2018, we multiplied the annual salaries by 1.59 to account for benefits.

| Position/Grade | Annual Salary | Annual Salary (Inc. Benefits) | Time Spent on Collection | Total Annual Salary Costs |
|----------------------|---------------|-------------------------------|--------------------------|---------------------------|
| Clerical, GS-07/05 | \$ 53,108 | \$ 84,442 | 30% | \$ 25,333 |
| Biologist, GS-12/05 | 94,206 | 149,788 | 80% | 119,830 |
| Biologist, GS-12/05 | 94,206 | 149,788 | 80% | 119,830 |
| Management, GS-14/05 | 132,376 | 210,478 | 10% | 21,048 |
| Total: | | | | \$ 286,041 |

*All figures rounded

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.

This submission removes the references to 50 CFR 18 subpart I that is expired and adds a reference to 50 CFR 18 subpart K (Cook Inlet – new subpart proposed via RIN 1018-BD63 ([84 FR 10224](#))) addressing incidental take of northern sea otters (*Enhydra lutris kenyoni*). Data from the last few years indicates the number of applicants and LOA applications in the Southern Beaufort Sea has slightly declined since we issued the IC. We can incorporate the addition of Cook Inlet region applicants and LOA applications into previously submitted and approved burden estimates without need for adjustment. Therefore, we are not reporting any burden change to this collection.

We uploaded a copy of the draft final rule as a supplemental document in ROCIS.

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.