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## **Title 50 –Wildlife and Fisheries**

### **Chapter I –United States Fish and Wildlife Service, Department of the Interior**

#### **Subchapter B –Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants**

#### **Part 18 –Marine Mammals**

**Authority:** 16 U.S.C. 1361 *et seq.*

**Source:** 39 FR 7262, Feb. 25, 1974, unless otherwise noted.

#### **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

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#### **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**

**Source:** 86 FR 43070, Aug. 5, 2021, unless otherwise noted.

**Effective Date Note:** At 86 FR 43070, Aug. 5, 2021, Part 18, subpart J was revised, effective Aug. 5, 2021 through Aug. 5, 2026.

#### **§ 18.119 Specified activities covered by this subpart.**

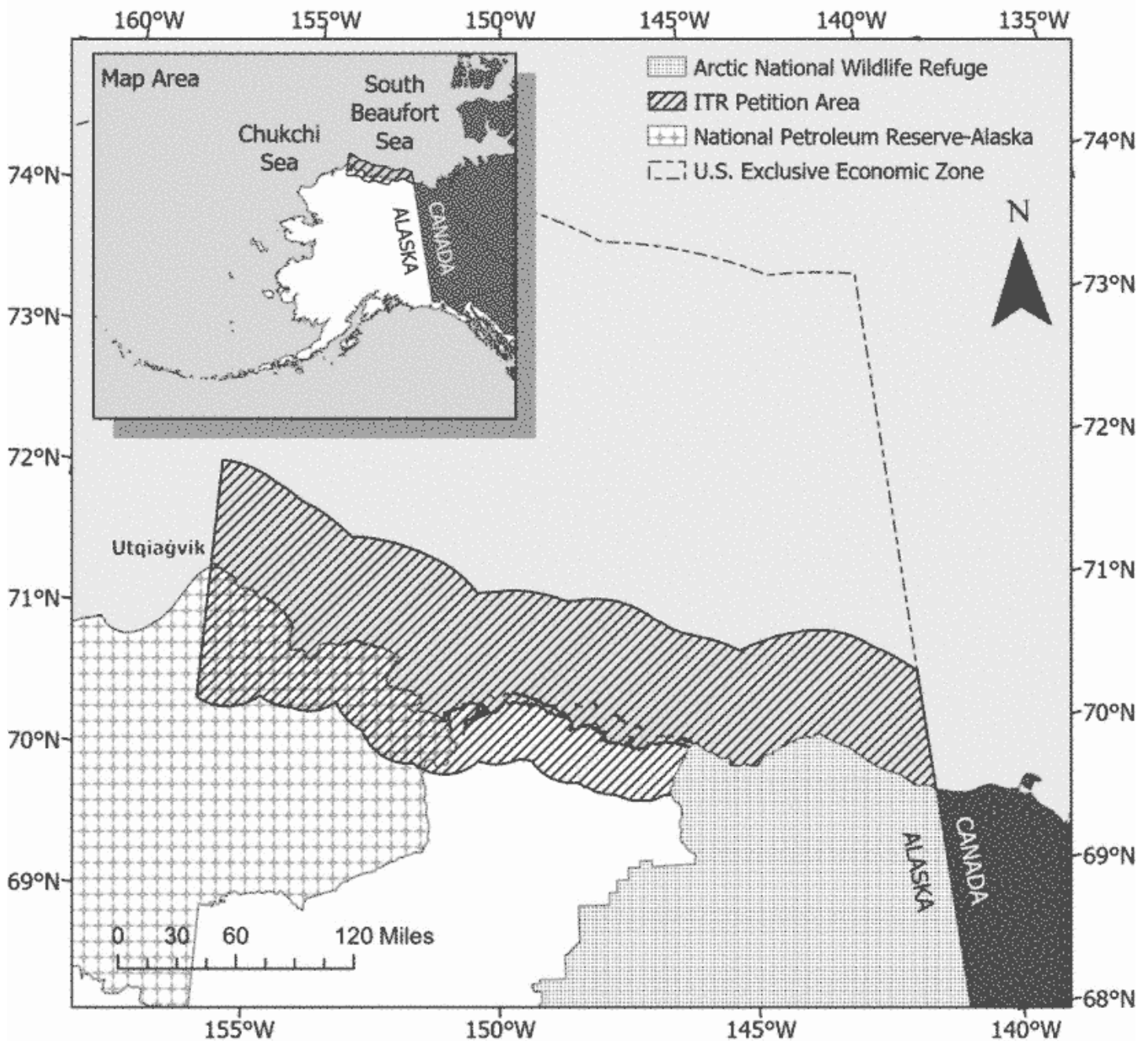
Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by certain U.S. citizens while engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska.

### **§ 18.120 Specified geographic region where this subpart applies.**

This subpart applies to the specified geographic region that encompasses all Beaufort Sea waters east of a north-south line through Point Barrow, Alaska (N71.39139, W156.475, BGN 1944), and 80.5 km (50 mi) north of Point Barrow, including Alaska State waters and Outer Continental Shelf waters, and east of that line to the Canadian border.

- (a) The offshore boundary of the Beaufort Sea incidental take regulations (ITR) region extends 80.5 km (50 mi) offshore. The onshore region is the same north/south line at Utqiagvik, 40.2 km (25 mi) inland and east to the Canning River.
- (b) The Arctic National Wildlife Refuge and the associated offshore waters within the refuge boundaries are not included in the Beaufort Sea ITR region. Figure 1 shows the area where this subpart applies.

Figure 1 to § 18.120—Map of the Beaufort Sea ITR region



**§ 18.121 Dates this subpart is in effect.**

Regulations in this subpart are effective from August 5, 2021, through August 5, 2026, for year-round oil and gas exploration, development, and production.

**§ 18.122 Procedure to obtain a Letter of Authorization (LOA).**

- (a) An applicant must be a U.S. citizen as defined in § 18.27(c) and among:
  - (1) Those entities specified in the request for this rule as set forth in paragraph (b) of this section;
  - (2) Any of their corporate affiliates; or

- (3) Any of their respective contractors, subcontractors, partners, owners, co-lessees, designees, or successors-in-interest.
- (b) The entities specified in the request are the Alaska Oil and Gas Association, which includes Alyeska Pipeline Service Company, BlueCrest Energy, Inc., Chevron Corporation, ConocoPhillips Alaska, Inc., Eni U.S. Operating Co. Inc., ExxonMobil Alaska Production Inc., Furie Operating Alaska, LLC, Glacier Oil and Gas Corporation, Hilcorp Alaska, LLC, Marathon Petroleum, Petro Star Inc., Repsol, and Shell Exploration and Production Company, Alaska Gasline Development Corporation, Arctic Slope Regional Corporation Energy Services, Oil Search (Alaska), LLC, and Qilak LNG, Inc.
- (c) If an applicant proposes to conduct oil and gas industry exploration, development, and production in the Beaufort Sea ITR region described in § 18.120 that may cause the taking of Pacific walruses and/or polar bears and wants nonlethal incidental take authorization under the regulations in this subpart J, the applicant must request an LOA. The applicant must submit the request for authorization to the Service's Alaska Region Marine Mammals Management Office (see § 2.2 for address) at least 90 days prior to the start of the activity.
- (d) The request for an LOA must comply with the requirements set forth in §§ 18.126 through 18.128 and must include the following information:
  - (1) A plan of operations that describes in detail the activity (e.g., type of project, methods, and types and numbers of equipment and personnel, etc.), the dates and duration of the activity, and the specific locations of and areas affected by the activity.
  - (2) A site-specific marine mammal monitoring and mitigation plan to monitor and mitigate the effects of the activity on Pacific walruses and polar bears.
  - (3) A site-specific Pacific walrus and polar bear safety, awareness, and interaction plan. The plan for each activity and location will detail the policies and procedures that will provide for the safety and awareness of personnel, avoid interactions with Pacific walruses and polar bears, and minimize impacts to these animals.
  - (4) A plan of cooperation to mitigate potential conflicts between the activity and subsistence hunting, where relevant. Applicants must provide documentation of communication with potentially affected subsistence communities along the Beaufort Sea coast (*i.e.*, Kaktovik, Nuiqsut, and Utqigvik) and appropriate subsistence user organizations (*i.e.*, the Alaska Nannut Co-Management Council, the Eskimo Walrus Commission, or North Slope Borough) to discuss the location, timing, and methods of activities and identify and mitigate any potential conflicts with subsistence walrus and polar bear hunting activities. Applicants must specifically inquire of relevant communities and organizations if the activity will interfere with the availability of Pacific walruses and/or polar bears for the subsistence use of those groups. Requests for an LOA 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.

### **§ 18.123 How the Service will evaluate a request for a Letter of Authorization (LOA).**

- (a) We will evaluate each request for an LOA 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 estimated to be taken and evaluating whether there will be a negligible impact on the species or stock and an unmitigable adverse impact on the availability of the species or stock 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 combined estimated take of the greater level of activity that the applicant has requested and all other activities proposed during the time of the activities in the LOA request. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

- (b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals of an LOA, 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.

### § 18.124 Authorized take allowed under a Letter of Authorization (LOA).

- (a) An LOA allows for the nonlethal, non-injurious, incidental, but not intentional take by Level B harassment, as defined in § 18.3 and under section 3 of the Marine Mammal Protection Act (16 U.S.C. 1362), of Pacific walruses and/or polar bears while conducting oil and gas industry exploration, development, and production within the Beaufort Sea ITR region described in § 18.120.
- (b) Each LOA will identify terms and conditions for each activity and location.

### § 18.125 Prohibited take under a Letter of Authorization (LOA).

Except as otherwise provided in this subpart, prohibited taking is described in § 18.11 as well as:

- (a) Intentional take, Level A harassment, as defined in section 3 of the Marine Mammal Protection Act (16 U.S.C. 1362), and lethal incidental take of polar bears or Pacific walruses; and
- (b) Any take that fails to comply with this subpart or with the terms and conditions of an LOA.

### § 18.126 Mitigation.

- (a) *Mitigation measures for all Letters of Authorization (LOAs)*. Holders of an LOA must implement policies and procedures to conduct activities in a manner that affects the least practicable adverse impact on Pacific walruses and/or polar bears, their habitat, and the availability of these marine mammals for subsistence uses. Adaptive management practices, such as temporal or spatial activity restrictions in response to the presence of marine mammals in a particular place or time or the occurrence of Pacific walruses and/or polar bears engaged in a biologically significant activity (e.g., resting, feeding, denning, or nursing, among others), must be used to avoid interactions with and minimize impacts to these animals and their availability for subsistence uses.
  - (1) All holders of an LOA must:
    - (i) Cooperate with the Service's Marine Mammals Management Office and other designated Federal, State, and local agencies to monitor and mitigate the impacts of oil and gas industry activities on Pacific walruses and polar bears. Where information is insufficient to evaluate the potential effects of activities on walruses, polar bears, and the subsistence use of these species, holders of an LOA may be required to participate in joint monitoring and/or research efforts to address these information needs and ensure the least practicable impact to these resources.

- (ii) Designate trained and qualified personnel to monitor for the presence of Pacific walrus and polar bears, initiate mitigation measures, and monitor, record, and report the effects of oil and gas industry activities on Pacific walrus and/or polar bears.
  - (iii) Have an approved Pacific walrus and polar bear safety, awareness, and interaction plan on file with the Service's Marine Mammals Management Office and onsite and provide polar bear awareness training to certain personnel. Interaction plans must include:
    - (A) The type of activity and where and when the activity will occur (*i.e.*, a summary of the plan of operation);
    - (B) A food, waste, and other "bear attractants" management plan;
    - (C) Personnel training policies, procedures, and materials;
    - (D) Site-specific walrus and polar bear interaction risk evaluation and mitigation measures;
    - (E) Walrus and polar bear avoidance and encounter procedures; and
    - (F) Walrus and polar bear observation and reporting procedures.
  - (2) All applicants for an LOA must contact affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the Service documentation of communications as described in § 18.122.
- (b) **Mitigation measures for onshore activities.** Holders of an LOA must undertake the following activities to limit disturbance around known polar bear dens:
- (1) **Attempt to locate polar bear dens.** Holders of an LOA seeking to carry out onshore activities during the denning season (November-April) must conduct two separate surveys for occupied polar bear dens in all denning habitat within 1.6 km (1 mi) of proposed activities using aerial infrared (AIR) imagery. Further, all denning habitat within 1.6 km (1 mi) of areas of proposed seismic surveys must be surveyed three separate times with AIR technology.
    - (i) The first survey must occur between the dates of November 25 and December 15, the second between the dates of December 5 and December 31, and the third (if required) between the dates of December 15 and January 15.
    - (ii) AIR surveys will be conducted during darkness or civil twilight and not during daylight hours. Ideal environmental conditions during surveys would be clear, calm, and cold. If there is blowing snow, any form of precipitation, or other sources of airborne moisture, use of AIR detection is not advised. Flight crews will record and report environmental parameters including air temperature, dew point, wind speed and direction, cloud ceiling, and percent humidity, and a flight log will be provided to the Service within 48 hours of the flight.
    - (iii) A scientist with experience in the in-air interpretation of AIR imagery will be on board the survey aircraft to analyze the AIR data in real-time. The data (infrared video) will be made available for viewing by the Service immediately upon return of the survey aircraft to the base of operations.
    - (iv) All observed or suspected polar bear dens must be reported to the Service prior to the initiation of activities.
  - (2) **Observe the exclusion zone around known polar bear dens.** Operators must observe a 1.6-km (1-mi) operational exclusion zone around all putative polar bear dens during the denning season (November-April, or until the female and cubs leave the areas). Should previously unknown occupied

dens be discovered within 1 mile of activities, work 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.

(3) **Use the den habitat map developed by the USGS.** A map of potential coastal polar bear denning habitat can be found at: [https://www.usgs.gov/centers/asc/science/polar-bear-maternal-denning?qt-science\\_center\\_objects=4#qt-science\\_center\\_objects](https://www.usgs.gov/centers/asc/science/polar-bear-maternal-denning?qt-science_center_objects=4#qt-science_center_objects). This measure ensures that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.

(4) **Polar bear den restrictions.** Restrict the timing of the activity to limit disturbance around dens, including putative and known dens.

(c) **Mitigation measures for operational and support vessels.**

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

(2) At all times, vessels must maintain the maximum distance possible from concentrations of walruses or polar bears. Under no circumstances, other than an emergency, should any vessel approach within an 805-m (0.5-mi) radius of walruses or polar bears observed on land or ice.

(3) Vessel operators must take every precaution to avoid harassment of concentrations of feeding walruses 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 walruses (*i.e.*, greater than two) 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 walruses.

(4) Vessels bound for the Beaufort Sea ITR region may not transit through the Chukchi Sea prior to July 1. This operating condition is intended to allow walruses the opportunity to move through the Bering Strait and disperse from the confines of the spring lead system into the Chukchi Sea with minimal disturbance. It is also intended to minimize vessel impacts upon the availability of walruses for Alaska Native subsistence hunters. Exemption waivers to this operating condition may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

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

(6) In association with marine activities, we may require trained marine mammal monitors on the site of the activity or onboard ships, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of oil and gas industry activity on polar bear and Pacific walruses.

(d) **Mitigation measures for aircraft.**

(1) Operators of support aircraft shall, at all times, conduct their activities at the maximum distance possible from concentrations of walruses or polar bears.

(2) Aircraft operations within the ITR area will maintain an altitude of 1,500 ft above ground level when safe and operationally possible.

- (3) Under no circumstances, other than an emergency, will 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 mi) 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 this altitude. However, when weather conditions necessitate operation of aircraft at altitudes below 457 m (1,500 ft), the operator must avoid areas of known walrus and polar bear concentrations and will take precautions to avoid flying directly over or within 805 m (0.5 mile) of these areas.
  - (4) Plan all aircraft routes to minimize any potential conflict with active or anticipated walrus or polar bear hunting activity as determined through community consultations.
- (e) **Mitigation measures for the subsistence use of walrus and polar bears.** Holders of an LOA 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.
- (1) **Community consultation.** Prior to receipt of an LOA, 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 operations and support activities (see § 18.122 for details). If community concerns suggest that the activities may have an adverse impact on the subsistence uses of these species, the applicant must address conflict avoidance issues through a plan of cooperation as described in paragraph (e)(2) of this section.
  - (2) **Plan of cooperation (POC).** When appropriate, a holder of an LOA will be required to develop and implement a Service-approved POC.
    - (i) The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and 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.
    - (ii) 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.

### § 18.127 Monitoring.

Holders of an LOA must develop and implement a site-specific, Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on walrus, polar bears, and the subsistence use of these species and provide trained, qualified, and Service-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

### § 18.128 Reporting requirements.

Holders of a Letter of Authorization (LOA) must report the results of monitoring and mitigation activities to the Service's Marine Mammals Management Office via email at: [fw7\\_mmm\\_reports@fws.gov](mailto:fw7_mmm_reports@fws.gov).

- (a) **In-season monitoring reports.**



- (1) **Activity progress reports.** Holders of an LOA must:
  - (i) Notify the Service at least 48 hours prior to the onset of activities;
  - (ii) Provide the Service weekly progress reports of any significant changes in activities and/or locations; and
  - (iii) Notify the Service within 48 hours after ending of activities.
- (2) **Walrus observation reports.** Holders of an LOA must report, on a weekly basis, all observations of walruses during any industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:
  - (i) Date, time, and location of each walrus sighting;
  - (ii) Number of walruses;
  - (iii) Sex and age (if known);
  - (iv) Observer name and contact information;
  - (v) Weather, visibility, sea state, and sea-ice conditions at the time of observation;
  - (vi) Estimated range at closest approach;
  - (vii) Industry activity at time of sighting;
  - (viii) Behavior of animals sighted;
  - (ix) Description of the encounter;
  - (x) Duration of the encounter; and
  - (xi) Mitigation actions taken.
- (3) **Polar bear observation reports.** Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:
  - (i) Date, time, and location of observation;
  - (ii) Number of bears;
  - (iii) Sex and age of bears (if known);
  - (iv) Observer name and contact information;
  - (v) Weather, visibility, sea state, and sea-ice conditions at the time of observation;
  - (vi) Estimated closest distance of bears from personnel and facilities;
  - (vii) Industry activity at time of sighting;
  - (viii) Possible attractants present;
  - (ix) Bear behavior;
  - (x) Description of the encounter;

- (xi) Duration of the encounter; and
  - (xii) Mitigation actions taken.
- (b) **Notification of LOA incident report.** Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a walrus or polar bear occurs. Reports must include:
- (1) All information specified for an observation report;
  - (2) A complete detailed description of the incident; and
  - (3) Any other actions taken.
- (c) **Final report.** The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of the expiration of an LOA, or for production LOAs, an annual report by January 15th of each calendar year. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final (or annual) report must include, but is not limited to:
- (1) Copies of all observation reports submitted under the LOA;
  - (2) A summary of the observation reports;
  - (3) A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;
  - (4) Analysis of factors affecting the visibility and detectability of walruses and polar bears during monitoring;
  - (5) Analysis of the effectiveness of mitigation measures;
  - (6) Analysis of the distribution, abundance, and behavior of walruses and/or polar bears observed; and
  - (7) Estimates of take in relation to the specified activities.

### § 18.129 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 Office of Management and Budget (OMB) control number. OMB has approved the collection of information contained in this subpart and assigned OMB 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 request and determine whether or not to issue specific Letters of Authorization; and
  - (2) Monitor impacts of activities and effectiveness of mitigation measures conducted under the Letters of Authorization.
- (b) Comments regarding the burden estimate or any other aspect of this requirement must be submitted to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed in 50 CFR 2.1.