United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. Tudor Road
Anchorage, Alaska 99503-6199

IN REPLY REFER TO:

AFES/MMM

12 JAN 2011

Mr. Bob Nodwell
Team Lead, D&C Engineering
FEX L.P.
3601 C Street, Suite 370
Anchorage, Alaska 99503

Dear Mr. Nodwell:

This responds to your October 4, 2010, requests for Letters of Authorization (LOA) for the Incidental and Intentional Take of polar bears in association with the 2011 FEX L.P. (FEX) Plug and Abandonment (P&A) Project for Aklaqyaaq #1, Aklaq #2 and Aklaq #6 wells in the National Petroleum Reserve-Alaska (NPR-A). Enclosed is LOA (11-05) that would allow FEX to take small numbers of polar bears incidental to oil and gas industry remediation activities identified in your LOA request. Activities would occur from February to April 30, 2011.

The test wells are located west of Teshekpuk Lake, east of the Alaska Native Village of Atqasuk, and the specific well locations are identified in maps and other materials provided in the October 4, 2009, request. The camp, equipment, and materials will be mobilized on trucks using the existing road system from Deadhorse to Oliktok Point. From Oliktok staging area, the P&A and camp equipment will be transported on snow trails with the use of off-road vehicles pulling a Cat Train Camp and skid sleighs with support equipment. If any changes develop in your project during the 2011 project season, such as barge schedules or traffic, activities or location, please notify the Marine Mammals Management Office (MMM) prior to the planned operation. This would allow us to evaluate the activity and, if appropriate, amend your LOA.

Historic polar bear denning activity reveals that polar bear denning habitat occurs along coastal and river bluffs. For example, polar bears have denned near Atigaru Point and the Eskimo Islands. Disturbance during denning could lead to abandonment of dens and possible mortality to cubs. Rolligon and ice road activities occurring in these areas near preferred denning habitat may encounter denning polar bears. The U.S. Fish and Wildlife Service (Service) seeks to limit disturbance to maternal polar bear den sites, both known dens and those areas that could possibly be preferred by denning polar bears. With this in mind, please use caution when operating near these areas, such as the Eskimo Islands, during the maternal denning period (mid November to mid April).

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The Service believes that protection measures for polar bears described in FEX's Wildlife Avoidance and Interaction Plan contain appropriate safeguards to limit human/polar bear interactions. FEX field camps and personnel can limit encounters of polar bears by being observant of approaching animals (i.e., the use of polar bear guards) and where practicable, by allowing the animals to pass without disturbance. FEX will provide copies of the polar bear observation form to all FEX contractors operating under the LOA. Report any polar bear sightings, or signs of polar bears, such as tracks, scat, or diggings, to this office by phone or using the polar bear observation form. Report any possible den locations that are found during work activities immediately to our office. Service biologists are available for consultation if questions or concerns arise during the project period at the phone numbers listed below and noted in your interaction plan.

As a precondition to the P&A program, a den detection survey using Forward Looking Infrared (FLIR) was conducted along the travel corridor between Oliktok and the P&A sites January 3 - 7, 2011. This survey was a cooperative effort between ConocoPhillips Alaska, Inc., FEX, and the Service. No polar bear dens were identified near the P&A sites or along the travel corridor during the FLIR survey.

In addition, this letter includes a harassment authorization (enclosed; 11-INT-05), for FEX and its representatives to take polar bears by harassment (deterrent activities) for the protection of both human life and polar bears while conducting activities in polar bear habitat for FEX's 2011 activities. This authorization is issued specifically to FEX employees who are responsible for ensuring that trained and qualified personnel are assigned the task to harass (deter) polar bears. It is the responsibility of FEX personnel to report all polar bear harassment events to MMM within 24 hours. Intentional take is authorized under Sections 101 (a)(4)(A), 109(h), and 112(c) of the Marine Mammal Protection Act (MMPA).

If a polar bear interaction escalates into a life threatening situation, Section 101(c) of the MMPA allows, without specific authorization, the take (including lethal take) of a polar bear if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the U.S. Fish and Wildlife Service, Marine Mammal Management Office within 24 hours.

Furthermore, in accordance with Section 7 of the Endangered Species Act of 1973 (ESA), as amended, issuance of this LOA also fulfills the requirements for Tier 2 Consultation of the Programmatic Biological Opinion (BO) for the activities described herein. In the "Programmatic Biological Opinion for Polar Bears (*Ursus maritimus*) on Beaufort Sea Incidental Take Regulations" (Regulations) (June 2008; Tier 1 BO), the Service determined that the total take anticipated as a result of the issuance of the Regulations is not likely to result in jeopardy to the polar bear, in accordance with Section 7 of the ESA. In order for the Tier 2 BO to be consistent with the "no jeopardy" conclusion of the Tier 1 BO and for an ESA incidental take statement (ITS) to be provided: (1) the proposed activity must provide the required information, as

described in §18.124 of the Regulations, (2) the LOA must include any mitigation measures that the MMM believes appropriate for the specific activity and location, as described in §18.128 of the Regulations, and (3) the MMM must determine that the incidental take for the specific activity will be consistent with the negligible impact finding for the total take allowed under the Regulations.

Reasonable and prudent mitigation measures, as well as implementing terms and conditions were included for MMM in the Tier 1 BO and have been incorporated into the LOA process. Issuance of this ITS with the LOA completes ESA requirements for authorization of incidental take of the polar bear. Compliance with the terms and conditions of this LOA insures that the LOA holder is also in compliance with the ESA.

An additional requirement of this LOA is to provide observational data of polar bears throughout the project and a complete report of all observations at the conclusion of the project to document take. This final report will be provided to the MMM. This report meets the tracking and reporting requirements relative to the documentation of take as required by the MMPA and the ESA.

If you have any questions, please contact Mr. Craig Perham, of our Marine Mammals Management Office, at (907) 786-3800.

Sincerely,

Rosa Meehan, Ph.D.
Chief, Marine Mammals Management

Enclosures

cc: Ms Debbie Nigro, BLM
Mr. Richard Schideler, ADF&G
Fairbanks Fish and Wildlife Field Office (FFWFO)
USFWS Office of Law Enforcement (OLE)
North Slope Borough Department of Law
Mr. Glenn Ruckhaus, ARCADIS, Anchorage

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Anchorage, Alaska 99503-6199

IN REPLY REFER TO:

AFES/MMM

ISSUED: January 10, 2011
EXPIRES: June 30, 2011

LETTER OF AUTHORIZATION
(11-05)

FEX L.P. (FEX) is hereby authorized to take small numbers of polar bears incidental to activities occurring during the 2011 FEX L.P. Plug and Abandonment (P&A) Project for Aklaqyaaq #1, Aklaq #2 and Aklaq #6 wells in the National Petroleum Reserve-Alaska (NPR-A). This includes the use of a travel corridor to access the P&A sites in NPR-A from Deadhorse as described in FEX's application packet dated October 4, 2011.

The Letter of Authorization (LOA) is valid from the date of issuance to June 30, 2011. This authorization and the required conditions below include contractors of FEX performing FEX-approved work under the scope of operations to be conducted. The LOA is subject to the following conditions:

1. The polar bear interaction plan (Wildlife Avoidance and Interaction Plan, FEX LP, NW NPR-A Plug and Abandon Program 2011) is approved and all provisions, unless noted specifically, are incorporated into this LOA by reference. A copy of the polar bear interaction plan must be available on site for all personnel.

2. FEX Operations Managers, or their designates, must be fully aware, understand, and capable of implementing the conditions of this LOA.

3. Intentional take is prohibited under this LOA.

4. This authorization is valid only for those activities identified in the request for a Letter of Authorization dated October 4, 2011, "Request for Letter of Authorization for the Incidental Take of Polar Bears and the Intentional Take of Polar Bears by harassment FEX Plug and Abandonment (P&A) Project."

5. Polar bear monitoring, reporting, and survey activities must be conducted in accordance with 50 CFR Section 18.128. In addition, FEX must comply with the following monitoring, mitigation, and reporting requirements:

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- FEX must cooperate with the U.S. Fish and Wildlife Service (Service), and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration activities on polar bears;

- FEX must not conduct activities that operate nor pass within one mile of known polar bear dens (including those encountered in the field), and all observed dens must be reported to the Service, Marine Mammals Management Office immediately. Should occupied dens be identified within one mile of activities, work in the immediate area will cease and the Service must be 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 FEX must comply with any additional measures specified;

- FEX must designate a qualified individual or individuals to observe, record, and report the effects of the activity on polar bears to the Service within 24 hours of visual observation. Evidence of polar bears, such as tracks, carcass, or dens, will also be reported;

- Every polar bear observed will be recorded on a Polar Bear Observation Form. Information within the observation report will include, but is not limited to:

    1. Date
    2. Time
    3. Observer name
    4. Contact number/email
    5. Location, with latitude, longitude, and datum, if applicable
    6. Weather conditions at time of observation
    7. Temperature
    8. Visibility
    9. Number of bears: sex and age
    10. Estimated closest point of bears from personnel and facilities
    11. Possible attractants present
    12. Bear behavior
    13. A description of the encounter
    14. Duration of the encounter
    15. Type of Deterrents used and distance from bear when used
    16. Agency/Contacts

- FEX must allow the Service to allow an observer on the site to monitor the impacts of the activity on polar bears, at the discretion of the Service;

- FEX must submit an annual monitoring report to the Marine Mammals Management Office as required under 18 CFR 18.128(f), which will be received up to 90 days after the expiration date of the LOA.

6. Specific mitigation measures for the transportation corridor will include:

   - A set-back of ½ mile (approximately 800 meters) from coastal bluff habitat on shorefast ice is imposed to limit the disturbance of possible denned polar bears along all the transportation corridors of the work site that are located along the Beaufort Sea coastline. If necessary, the route may be placed closer to the coast, up to 1,000 feet (320 meters) from coastline. This stipulation will be removed April 15, 2011.

   - All travel along the coast will be restricted to designated areas that have been previously surveyed for polar bear den sites or those areas with mitigation measures in place to reduce disturbance to denning bears.

7. Per the "Programmatic Biological Opinion for the Beaufort Sea Incidental Take Regulations for Polar Bear (June 2008)", your request also initiates the second of the two-tiered programmatic process. In order for incidental take of the polar bear to be exempted from the prohibitions of the Endangered Species Act of 1973 (ESA), the LOA also serves as an "Incidental Take Statement" (ITS), required under Section 7 of the ESA. Issuance of the LOA/ITS fulfills the requirements for Tier 2 Consultation of the Programmatic Biological Opinion for the activities described in this letter.

8. This Letter of Authorization expires June 30, 2011.

Roger Mach

Chief, Marine Mammals Management

12 JAN 2011

Date