

## FINDING OF NO SIGNIFICANT IMPACT

### PROCEDURAL REGULATIONS GOVERNING THE INCIDENTAL TAKING OF MARINE MAMMALS BY HARASSMENT

The Fish and Wildlife Service (Service) developed regulations under the Marine Mammal protection Act (MMPA)(16 U.S.C. § 1361 *et seq.*) that would authorize the nonlethal, incidental, unintentional take of small numbers of polar bears (*Ursus maritimus*) and Pacific walruses (*Odobenus rosmarus divergens*) during year-round oil and gas industry (Industry) exploration activities in the Chukchi Sea and adjacent western coast of Alaska. Industry exploration activities for the covered period are identical or similar to activities covered by the previous 5-year Chukchi Sea Incidental Take Regulations (ITRs) that were effective from June 11, 2008, through June 11, 2013 (73 FR 33212; June 11, 2008), as well as in ITRs for Industry exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska which are effective from August 3, 2011, through August 3, 2016 (76 FR 47010; August 3, 2011).

The preferred alternative is to promulgate ITRs, which will authorize incidental take of small numbers of Pacific walruses and polar bears associated with Industry exploration activities in the Chukchi Sea and adjacent western coast of Alaska. The intent of the preferred alternative is to provide oil and gas operators an overall "umbrella" set of guidelines which, when followed, allow the Industry exploration activities described above to be authorized under a Letter of Authorization (LOA). The LOAs would include all of the general monitoring and mitigation measures (as described in Section VI of the EA and Section 18.118 of the regulations), as well as specify additional monitoring and mitigation requirements, if necessary, that are tailored to the specific activity proposed by Industry. Conditioning LOAs would be accomplished on a case-by-case basis to afford additional protection to sensitive areas, such as areas utilized by denning polar bears or the Hanna Shoal area and coastal haul out areas utilized by walruses. Further, these regulations would not allow the intentional taking of polar bears or Pacific walruses.

The alternatives presented in this document are the result of agency input. Their impacts are analyzed in accordance with the National Environmental Policy Act (NEPA)( 42 USC § 4321 *et seq.*). The environmental assessment evaluated two alternatives: The preferred alternative described above, and the no action alternative. The Service also reviewed alternatives not considered feasible or practicable.

The no action alternative for this environmental assessment (EA) would result in no incidental take regulations being issued. The moratorium and prohibitions on the taking of marine mammals imposed by the MMPA prohibits "taking" marine mammals, including incidental taking. Therefore, no further mitigation to minimize the effects of Industry activities on polar

bears and walruses, monitoring, or reporting would be required. Under this alternative, takings that may occur incidental to Industry exploration activities would be subject to prohibitions found in the MMPA, and Industry would be liable for penalties should a take occur.

Consequently, as polar bears are listed as "threatened" and Pacific walruses are a candidate species for listing under the Endangered Species Act (ESA) (16 USC § 1531 *et seq.*), a No Action alternative would also influence the ESA Section 7 consultations and conferences for any activities that require a federal action in the range of the polar bear or Pacific walrus. For the Service to exempt incidental take under ESA, the Service must conclude that the take associated with a Federal action: (1) is not likely to jeopardize listed species, or destroy or adversely modify designated critical habitat; (2) results from an otherwise lawful activity; and (3) is incidental to the purpose of the action. Further, the exemption provided as a result of formal consultation must include measures to minimize take. Under the ESA and its regulations at 50 CFR §402.14(i), incidental take statements for marine mammals are not included in formal consultations until regulations, authorizations, or permits under section 101(a)(5) of the MMPA are in effect. Failure to promulgate ITRs could, therefore, compromise ESA section 7 consultations relative to polar bears and Pacific walruses.

Alternatives that the Service considered, but determined were not feasible, included: (1) initiating an Incidental Harassment Authorization (IHA) program; (2) separating Industry operations by the type of activity, as well as the location or timing of the activity; and (3) promulgating separate rules for each type of activity.

In contrast to the "umbrella" type of authorization provided by 5-year ITRs, an IHA entails issuing individual authorizations for each specified activity in a specific geographic area for no more than one year. For example, during the 2006 and 2007 open-water season, the Service authorized IHAs for Industry exploration activities in the Chukchi Sea as a means to establish temporary incidental take authorization for a limited number of projects occurring in the area prior to the promulgation of ITRs. This was a new process for the Service. The IHA process has limitations in that authorizations are issued on a piecemeal basis (project-by-project), and consequently they generally do not provide the comprehensive evaluation necessary to understand all potential impacts from the various onshore and offshore Industry activities that may affect walruses and polar bears during the next 5 years. While an IHA program is possible, it is not practicable and the Service believes that 5-year ITRs is a more thorough process for evaluating anticipated activities and their potential impacts, as well as a more efficient use of staff time.

Similar reasoning was used to evaluate alternatives that included separating Industry activities by type of activity, by timing or location of activity. In determining the impact of incidental taking, the Service must evaluate the "total taking" anticipated from the specified activity in a specific geographic area. The estimate of total taking involves the accumulation of impacts on polar bears and walruses from all anticipated activities to be covered by the ITRs. Each applicant's anticipated taking from their own activities is only one factor to consider; the total takings anticipated from all activities to be covered by the ITRs must be evaluated. Our analysis indicates that separating Industry activities is not a viable alternative, as we cannot separate, exclude, or exempt specific activities in making a negligible finding.

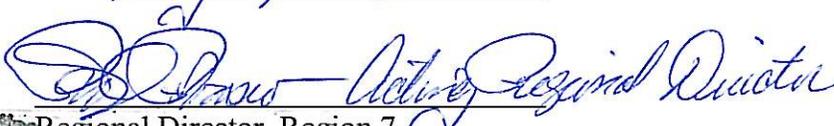
The Service analyzed the proposed action, i.e., issuance of ITRs, in accordance with the criteria of NEPA and made an initial determination that it does not constitute a major Federal action significantly affecting the quality of the human environment. Potential impacts of these ITRs on the species and the environment were analyzed in the EA rather than the potential impacts of the Industry activities. In addition, the Service found that the total expected takings of polar bears and Pacific walruses during oil and gas industry will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence use by Alaska Natives. The Service based this finding on the results of over 20 years of data on the encounters and interactions between polar bears, Pacific walruses, and Industry; recent studies of potential effects of Industry on these species; oil spill risk assessments; potential and documented Industry impacts on these species; and current information regarding the natural history and status of polar bears and Pacific walruses. Further, these regulations provide the Service with a means of interacting with Industry to insure that the impacts to polar bears and Pacific walrus are minimal.

Based on a review and evaluation of the information contained in the supporting references below, I have concluded that approval and promulgation of procedural regulations governing the incidental harassment of small numbers of marine mammals during specific activities (other than commercial fishing) at specific geographical areas would not significantly affect the quality of the human environment, and that the preparation of an Environmental Impact Statement on this action is not required by section 102(2) of the National Environmental Policy Act or its implementing regulations.

### Supporting References

1. U.S. Fish and Wildlife Service - Environmental Assessment, Final Rule to Authorize the Incidental Take of Small Numbers of Pacific Walruses (*Odobenus rosmarus divergens*) and Polar Bears (*Ursus maritimus*) During Oil and Gas Industry Exploration Activities in the Chukchi Sea.
2. U.S. Fish and Wildlife Service - Determination of Effects in the Final Rule.

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Acting Regional Director, Region 7  
U.S. Fish and Wildlife Service