United States Department of the Interior

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

IN REPLY REFER TO:

AFES/MMM

1 0 FEB 2011

Mr. Bryan Lund
Project Manager
Marsh Creek, LLC
2000 East 88th Avenue, Suite 100
Anchorage, Alaska 99507

Dear Mr. Lund:

This responds to your January 16, 2011, request for Letters of Authorization (LOA) for the Incidental and Intentional Take of polar bears in association with the corrective action activities at the Umiat Test Well No. 9 site. Enclosed is an LOA (11-10) that will allow Marsh Creek to take small numbers of polar bears incidental to oil and gas industry remediation activities identified in your LOA request.

Our Incidental Take regulations authorize incidental takes within 25 miles (about 40 km) of the Beaufort Sea coast. Although the majority of the Umiat project activities are located outside the 25-mile area identified in our regulations, past experiences at sites, such as Umiat, which are located at farther distances from the coast, indicate that it is unlikely that polar bears will be encountered in the area of your project. Regardless, please use caution and report any polar bear sightings to the U.S. Fish and Wildlife Service (Service), Marine Mammals Management Office (MMM). The LOA 11-10 will allow Marsh Creek to take small numbers of polar bears incidental to that portion of the Umiat Test Well No. 9 project that will traverse through the geographic area (25 miles inland from the Arctic coast) of the Incidental Take Regulations as it applies to this LOA. This includes the use of an overland route to access the Umiat project site and the return route to Deadhorse.

If any changes develop in your projects during the 2011 season, such as activities or location, please notify the Service, MMM prior to the planned operation. This will allow us to evaluate the activity and, if appropriate, amend your LOA.

The Service believes that protection measures for polar bears described in Marsh Creek's Polar Bear and Wildlife Interaction Plan contain appropriate safeguards to limit human/polar bear interactions. Marsh Creek 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 unhindered. Marsh Creek will: (1) provide copies of the polar bear observation form to all Marsh Creek contractors operating under the LOA, (2) report any

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polar bear sightings, or signs of polar bears, such as tracks, scat, or diggings, to the MMM by phone or using the polar bear observation form, and (3) report any possible den locations that are found during work activities immediately to the Service, MMM. 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.

In addition, enclosed is a harassment authorization (11-INT-09; enclosed), where Marsh Creek and its representatives are granted authorization 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 during 2011 Activities. This LOA is issued specifically to Marsh Creek 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 Marsh Creek personnel to report all polar bear harassment events to our 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 necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Service, MMM 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. Also, please note that the Service, MMM is currently in the process of consulting the Service, ESA office on the Beaufort Sea Incidental Take Regulations in regards to the Critical Habitat designation of polar bears under 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 and meets the tracking and reporting requirements relative to the documentation of take as required by the MMPA and the ESA.

The incidental take authorization is issued in accordance with our regulations listed at 71 FR 43926, dated August 2, 2006. Please review these regulations. If you have any further questions, or need more information, please contact Mr. Craig Perham, of our Marine Mammals Management Office, at (907) 786-3800 or 786-3810.

Sincerely,

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

Enclosure

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

United States Department of the Interior

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

IN REPLY REFER TO:

AFES/MMM

ISSUED: February 11, 2011
EXPIRES: June 30, 2011

LETTER OF AUTHORIZATION
(11-11)

Kuukpik/Marsh Creek (Marsh Creek) is hereby authorized to take small numbers of polar bears incidental to activities occurring during the 2011 Corrective Action activities at the Umiat Test Well No. 9. This Letter of Authorization (LOA) will allow Marsh Creek to take small numbers of polar bears incidental to that portion of the Umiat Test Well No. 9 Project that will traverse through the geographic area, 25 miles (about 40 km) inland from the Arctic coast, of the Incidental Take Regulations as it applies to this LOA. This includes the use of a rolligon route to access the Umiat Project site and the return route to Deadhorse as described in Marsh Creek's application packet dated January 16, 2011.

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

1. The polar bear Interaction Plan (Polar Bear and Wildlife Interaction Plan, Umiat Test Well No. 9, Contaminated Soil Removal, Umiat, Alaska; Contract No. W911KB-11-C-00002, January 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. Marsh Creek 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 January 16, 2011, that are located within the geographical region of the Beaufort Sea Incidental Take Regulations. Marsh Creek will be responsible for any takes that occur outside the geographic region of the Beaufort Sea Incidental Take Regulations.

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

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- Marsh Creek 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.

- Marsh Creek must not conduct activities that operate nor pass within one mile (approximately 1600 meters) of known polar bear dens, and all observed dens must be reported to the Service, Marine Mammals Management Office (MMM) within 12 hours of discovery. If occupied dens are identified within one mile of activities, work within 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 Marsh Creek must comply with any additional measures specified.

- Marsh Creek 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.

- Marsh Creek must allow the Service to place an observer on the project site to monitor the impacts of the activity on polar bears, at the discretion of the Service.

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

6. 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.

7. This Letter of Authorization is valid for the period indicated on this authorization, unless extended or terminated in writing by the Service, Marine Mammals Management Office.

Chief, Marine Mammals Management Office

10 FEB 2011

Date