

# **Supporting Statement for Paperwork Reduction Act Submission**

**OMB Control Number 1018-1070**

## **Incidental Take of Marine Mammals During Specified Activities Applications 50 CFR 18.27 and 50 CFR Part 18, Subpart J September 3, 2004**

### **General Instructions**

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

### **Specific Instructions**

#### **A. Justification**

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

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 specific regulations are issued, individuals seeking to conduct a specific activity must obtain a Letter of Authorization (LOA) for the specific activity and submit, on an annual basis, a 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 (attached). Specific regulations governing authorized activities are contained in 50 CFR 18, subpart J (65 FR 16828; attached).

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.]

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 to be submitted to the Fish and Wildlife Service (Service). These regulations provide the applicant with a detailed description of information required by the Service to evaluate the proposed activity and determine whether or not to issue specific regulations and, subsequently, LOAs. The information to be provided includes a description of the activities or class of activities that can be expected to result in incidental taking of marine mammals, the dates and duration of such activity, and the specific geographical region where the activity will occur. The Service requires this information in order to establish the scope of any specific regulations. The Service proposes to collect the same information as previously approved and collected under Office of Management and Budget (OMB) Control Number 1018-0070.

The applicant is also required, based on the best available scientific information, to: estimate the species and numbers of marine mammals likely to be taken by age, sex, and reproductive condition; estimate the type of taking (e.g., disturbance by sound, injury, or death resulting from collision, etc.) as well as the number of times each type of taking is likely to occur; and describe the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities. This information is required to 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, the Service 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. The information provided by the applicant will also provide a basis for estimating how many LOAs will be issued. In addition, information to anticipate the impact of an activity on marine mammal habitats, the likelihood of restoration of affected habitat, and the impact of habitat loss or modification on the marine mammal population involved is required.

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 that all available means for minimizing the incidental take associated with a specific activity are considered by the applicant. The MMPA requires the Service to specify the means of affecting the least practicable impact on the species or stock, its habitat, and its availability for subsistence uses.

Applicants are asked to suggest means of accomplishing the necessary monitoring and reporting, which will result in increased knowledge of the species through analysis of the level of taking or impacts. Further, they are asked to suggest means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity. Lastly, applicants are asked to suggest means of learning of, encouraging, and coordinating research opportunities, plans and activities related to reducing incidental taking from such specified activities, and evaluating its effects. These requirements ensure that applicants are aware of related monitoring and research efforts that can be applied to their situation, and that the monitoring and reporting imposed by the Service are the least burdensome to the applicant.

The regulations also require that a monitoring report indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specific activity be submitted by each entity that has been issued an LOA. That information is necessary for the Service to monitor the taking and assess the impacts to the species or stock and its habitat.

Since the inception of the incidental take regulations for polar bears (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) in the Beaufort Sea, the Service has required monitoring and reporting requirements for oil and gas industry activities. The purpose of monitoring and reporting requirements is to assess the effects of industrial activities on polar bears to ensure that take is minimal to the polar bear and walrus 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, activity, 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 recruitment, survival, physical condition, status, and mortality.

The Service has incorporated this information collected from the oil and gas industries under their monitoring programs to better address potential short-term and long-term impacts of oil and gas development on polar bears and Pacific walrus in Alaska, particularly in the Southern Beaufort Sea.

If the information described here were not collected, incidental taking could not be allowed under provisions of the MMPA and possibly the specific activity could not take place.

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 nature of the requested information provides very little opportunity to automate at the source level. Remote sensing technology, radio-tagging animals and Forward Looking Infrared technology have provided habitat information. When available, information from other sources is made known to prospective applicants who are encouraged to use it to supplement, or even supplant, their own information collection efforts, thereby reducing their information collection burden. However, the Service does accept submission of information from the applicant(s) in an electronic format or via electronic mail, thus, reducing the burden on the applicant of having to provide the Service with hard copies of reports or other documents.

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.

The Service and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, (NOAA-Fisheries) share responsibilities under

the MMPA with each agency being responsible for different species. While the Service and NOAA-Fisheries may have similar regulations, they apply to different species of marine mammals. Therefore, information collection is not duplicated.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

The collection of information concerning impacts to marine mammals will not impact small businesses or other small entities. The regulations are specific to oil and gas industry exploration, development, and production activities on the North Slope of Alaska. As such, information collection will be conducted by companies primarily focused on oil and gas exploration, development, and production. These companies are not identified 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 the collection of certain information to determine if an authorization should be issued and to determine the impacts to marine mammals. The MMPA requires that a determination of negligible impact to the species or stock be made prior to issuance of regulations. Also, a determination must be made that the activity will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives. If this information were not collected, a determination could not be made to issue specific regulations or authorize LOAs.

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 or Pacific walruses are not predictable. If the encounter is persistent, the respondent is required to contact the Service to report the encounter and to request Service expertise in assistance. The respondent is also requested to verbally report an encounter with a polar bear or a Pacific walrus at the time of occurrence. The verbal report is followed up by a written report provided to the Service.

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. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 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 April 30, 2004, we published a 60-day *Federal Register* notice (69 FR 23803) informing the public of our intent to request renewal of information collection authority from the OMB. The formal public comment period on the 60-day notice closed on June 29, 2004. The Service received two comments, both from the same individual, regarding this *Federal Register* notice. The comments expressed opposition to use of the term “incidental” and further encouraged the Service to protect all animals. The Service notes the concerns raised by this individual; however, the Service is required under Section 101(a)(5)(A) of the MMPA to take certain actions with regard to the "incidental taking" of marine mammals. The regulations at 50 CFR 18.27(c) define incidental, but not intentional, taking as "takings which are infrequent, unavoidable, or accidental. It does not mean that the taking must be unexpected." We have not made any changes to our information collection as a result of these comments.

Additionally, at time of our last information collection request, the Service consulted with BP Exploration (Alaska), Inc., to determine the industry cost associated with collection of information. More recently, we consulted with:

Mr. Mike Williams, LGL Alaska Research Associates, Inc., Anchorage, Alaska, (907) 562-3339  
Dr. Bill Streever, BP Exploration (Alaska) Inc., Anchorage, Alaska, (907) 564-4383  
Mike Stahl, ConocoPhillips Alaska, Inc., Anchorage, Alaska, (907) 263-4766  
Allison Erickson, OASIS Environmental, Anchorage, Alaska: (907) 248-4880.

Based on these consultations, we determined that industry concurred with our estimated costs associated with the collection of this information. In addition, all responses indicated that the information we collect is necessary and appropriate and that the reporting burden is not excessive.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Not Applicable. No payment or gifts will be made 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 collection is a matter of public record; however, confidential geological and geophysical maps are submitted with requests to conduct geophysical seismic programs. The Freedom of Information Act (FOIA) (5 U.S.C. 552, as amended) allows the Service to withhold this confidential information concerning geophysical maps. FOIA section 522(b)(9) allows the Service to withhold "geological and geophysical information and data, including maps, concerning wells." Therefore, this information will not be released when requested under the FOIA.

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.

No questions are asked of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This information is not required to complete a request for rulemaking or an application for an LOA.

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 in Item 13 of OMB Form 83-I.
- \* 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. Instead, this cost should be included in Item 14.

We estimate that 10 oil and gas companies annually will request an average of 7 LOAs each for an annual total of 70 LOAs. Thus, the number of responses is predicted to be 141 per year (2 per project x 70 projects = 140 plus 1 application for regulations). The public burden associated with the 3-year period covered by this request for information collection authority is estimated at 6,080 hours. We estimate that the total annual burden associated with the request will be 2,027 hours (6,080 divided by 3). This represents an average annual estimated burden taken over a 3-year

period, which includes the initial 200 hours required to complete the request for specific procedural regulations. For each LOA expected to be requested and issued subsequent to issuance of specific procedural regulations, we estimate that 28 hours per project will be invested: 8 hours will be required to complete each request for a LOA, 12 hours will be required for onsite monitoring activities, and 8 hours will be required to complete each final monitoring report. We estimate that 10 companies will be requesting LOAs and submitting monitoring reports annually for each of 7 sites in the region covered by the specific regulations.

We estimate that, on average, the total annual cost to respondents (incurred as a result of developing and submitting a petition for specific regulations, 70 requests for LOAs, and recordkeeping and reporting requirement provisions) for the 3-year period covered by this request will be \$243,000 for the third year when 200 hours will be required to request new regulations, and \$220,500 for each other year. The following are the methods used to estimate cost factors and were based on an average environmental consultant fee of \$112.50 (\$75 - \$150) per hour:

- \$22,500 for the third year for development of the request for new incidental take regulations (200 hours x \$112.50 per hour consulting fees);
- \$63,000 per year to prepare 70 requests for LOAs (8 hours preparation x 70 requests x \$112.50 per hour consulting fees);
- \$94,500 per year to conduct on-site monitoring activities (12 hours x 70 activities x \$112.50 per hour consulting fees); and
- \$63,000 per year to prepare 70 final monitoring reports (8 hours preparation x 70 monitoring reports x \$112.50 per hour consulting fees).

**Burden Estimates Associated With Incidental Take Regulations and Letters of Authorization for Year-Round Oil and Gas Operations in the Beaufort Sea and Adjacent Northern Coast of Alaska**

Type of Action	Annual Number	Average Burden Hours per Action	Annual Burden Hours	Annual Burden @ \$112.50 per Hour
One time application for procedural regulations	1 request per term of regulations	200 hours	One time 200 hour burden for life of regulations	\$22,500
LOA Requests	70	8 Hours	560	\$63,000
Onsite Monitoring Activities	70	12 Hours	840	\$94,500
Final Monitoring Report	70	8 Hours	560	\$63,000

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 shown in Items 12 and 14).

- \* 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]. 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.

The following is the estimate for the total annual cost burden (cost of any hour burden shown in items 12 and 14 not included):

- The total capital and start-up costs associated with the respondents or recordkeepers will be insignificant because, due to the small requirement of this task, they will be absorbed by existing employees and equipment.
- No additional service components were purchased to fulfill information gathering requirements.

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. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

The total annual cost to the Service is estimated to be \$77,921 determined as follows:

- Manpower cost to the Government will be \$76,526 for one full-time position (\$54,662 for a GS-12/2 base pay, 15% overhead of \$8,199, and \$13,665 for 25% Alaska base pay differential) for an average cost per pay period of \$2,943.
- Estimated Federal Register printing and publication costs are \$7,440 for a proposed rule and \$8,370 for a final rule, for a total of \$15,810. Federal Register printing cost to print and publish three Federal Register notices of issuance of LOAs is estimated to be \$1,395.

**Estimated Annual Cost to Federal Government Associated With Incidental Take Regulations and Letters of Authorization for Year-Round Oil and Gas Operations in the Beaufort Sea and Adjacent Northern Coast of Alaska**

Expense	Quantity	Calculation	Total
Manpower	Equivalent to one full time position	Salary + 15% Overhead + 25% Pay Differential (\$54,662 + \$8,199 + \$13,665)	\$76,526
Publication of Proposed Rule	16 pages	16 pages @\$465/page	\$7,440
Publication of Final Rule	18 pages	18 pages @\$465/page	\$8,370
Publication of LOAs	3 notices @ 1 page/notice	3 notices @465/notice	\$1,395

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

The Service issued specific regulations on November 28, 2003 (68 FR 66744) in accordance with Section 101(a)(5)(A) of the MMPA. This action was in response to a request by the oil and gas industry to extend current incidental take regulations that would expire. The incidental take regulations, which require the information collection authorization, have changed very little over the years. Likewise, our information collection requirements have changed little; however, oil and gas industry activities operating under the incidental take authorization has increased. Henceforth, the reason for program adjustments is the increase in hour burden and associated cost to the respondent and the increased workload to the Government.

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.

Collection of information will not be published in a form in which it is received. Annually, the information collected will be analyzed to determine impacts to the marine mammals, and on the availability of those marine mammals for subsistence purposes of Alaskan Natives (i.e., Indians,

Aleuts, or Eskimos), resulting from incidental take authorization. The information will be used to verify the finding required to issue incidental take regulations, to decide if LOAs should be issued and, if so, what conditions should be contained in them. The Service publishes information, as appropriate, in its annual report to Congress on actions taken by the agency to administer the provision of the MMPA.

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.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

There are no exceptions to the certification statement identified in Item 19, OMB Form 83-I.

**B. Collections of Information Employing Statistical Methods**

This collection does not employ statistical methods.