

Detailed Description of the U.S. Fish and Wildlife Service Position Regarding the Polar Bear Harassment Event at Mile 14.7, Badami Ice Road, April 2009

Harassment of Denning Female Polar Bear

Events leading to the unauthorized take by harassment of a denning female polar bear and her 2 cubs are described below.

On Sunday March 29, 2009, Service received an email from Savant, regarding a potential den site at mile (MP) 14.7 of the ice road between Badami and Endicott. This den was located approximately 150 meters from the active roadway. Savant was directed to assume the den was occupied and only allow essential traffic to continue until confirmation of occupation at which time the road surrounding the den would close. The Service and the companies agreed the mitigation of traffic would be similar to established protocols from previously known polar bear dens along the ice road (located on Foggy Island); the road would remain open conditional on: 1) movement of only essential traffic, with no stopping at den and no use of airbrakes, 2) a vehicle speed of no greater than 15 mph by den, 3) the placement of 24-hr monitors at MP 14.7, and 4) the placement of checkpoints on either side, approximately 1 mile from den.

The Service worked in cooperation with BPXA, Exxon, and Savant to implement mitigation measures as quickly as possible. In order to confirm the occupation of the den, the Service allowed den emergence researchers to establish a camera at the den site on March 31, 2009. By March 31, 2009, a 15 mph speed limit signs had been posted approximately 0.5 miles either side of the den. At approximately 1415 on April 1, 2009, during a conference call between the Service, BPXA, Exxon, Savant, Industry first reported that the adult polar bear was observed at the den (the video clearly shows that she had emerged numerous times since the morning of April 1). At this time the Service closed the road until further notice. The cubs were first reported out of the den at approximately 2200 on April 1, 2009 (the video shows one cub was out of the den during the 0800 hour of April 1). At 2230 the female with two cubs-of-the-year abandoned the den and they did not return. The road remained closed until the morning of April 4, 2009, when it reopened.

On April 17, 2009, while reviewing video footage of the den site, Service biologists observed multiple infractions that did not correspond to the agreed upon mitigation measures for activities near MP 14.7 polar bear den. Upon review of the video footage it was apparent that numerous violations of the LOA stipulations and bear/human interactions occurred prior to the first industry-reported sighting and eventual road closure by the Service. These interactions are violations to the LOAs of the companies. The types of infractions observed from the video on the Badami ice road on April 1, 2009 included:

1. **Speeding;** where at least 24 of 94 vehicles were classified as driving “fast,” large semi-trucks were driving proportionally faster than pick-up trucks, and Catco rolligons were all driving fast.
2. **Driving on the road during closure;** where limited “essential” traffic occurred at a higher proportion throughout the day, sometimes even with the bear visible and while mitigation measures went unheeded for most of 4/1/09 despite the presumed placement of a bear monitor and guard posts.
3. **Altering the behavior of the bears;** where in at least 17 events (involving 19 vehicles) the bears were on screen and interacted or reacted to anthropogenic stressors, such as vehicles passing and causing the female bear to seek refuge in the den. At least five (5) events occurred where the bears were out, but no apparent reaction was observed, at least four (4) events occurred where the female bear was completely out of den and retreated back into den, in at least one (1) event the bear reacted to something off screen, and in at least seven (7) events while the female bear was in the den with only her head out she reacted to vehicles by retreating into den. Vehicle types that were observed during the 17 bear/human interactions (19 total vehicles), included various types: 3 graders, 3 semis, 1 tanker, 8 PUs, and 4 box/cargo trucks.

Importance of Maternal Polar Bear Den Sites

Dens protect altricial cubs prior to emergence in the spring by providing shelter from weather, and insulative warmth against ambient conditions. Survival of pre-emergence neonatal cubs is dependent on shelter provided by the den and the care of the female. Den residence of the adult female from emergence to natural abandonment is important for preparing the cubs for their move onto the ice. Following den emergence, continued den residence is beneficial to cubs in that it provides environmental acclimatization, locomotor skills development, and allows for time to increase body weight and size.

Den sites can also play a role in acclimating the cubs to their “new” post-emergent environment prior to natural abandonment by the female. Polar bear families often remain at the den site for up to several weeks. During this time cubs continues rapid growth, learn to negotiate terrain, and acclimate to the arctic environment. Hence, premature abandonment of the den site to the pack ice may reduce the cubs’ survival on the ice as they may be too young and too weak to have acclimated, or not large enough to be physiologically able to survive the rigors of the Arctic environment.

Harassment of denning polar bears can lead to Level A takes under the Marine Mammal Protection Act, where injury or death can occur. The Service considers undisturbed denning females with dependent young an essential cohort of the Alaskan polar bear population. Coastal habitat between Foggy Island Bay and the Canning River has been extensively documented as polar bear denning habitat. Disturbance during denning can lead to premature abandonment of the den by the adult female and possible mortality of

cubs. Recently, polar bear cub survival has declined from 65% (in years prior to 1995) to 43% (in the years 2001 to 2006). For these reasons, the Service seeks to limit disturbance to maternal polar bear den sites.

To emphasize the importance of, and provide protection for denning polar bears and their habitat, the Service stipulates mitigation measures in their LOAs that directly respond to the necessary heightened awareness around denning bears. Stipulation 5 of their Service-issued LOAs required BPXA, Exxon, and Savant to limit industrial impacts to denning bears in the project areas due to the above-stated reasons. Stipulation 5 was designed to limit the disturbance to any denning polar bears in the project areas. By accepting the incidental take authorization BPXA, Exxon, and Savant agreed to the terms of the authorization and the requirements. BPXA, Exxon, and Savant and its contractors, however, violated the terms of the Service's incidental take authorization by failing to follow these requirements - resulting in the unauthorized harassment of polar bears.

Stipulation 5 of the BPXA, Exxon, and Savant Incidental Take Authorization reads:

- "5. Polar bear monitoring, reporting, and survey activities will be conducted in accordance with 50 CFR 18, section 18.128. The basic monitoring and reporting requirements follow:
- COMPANY X must cooperate with the Service, and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration activities on polar bears;
 - COMPANY X must not conduct activities that operate nor pass within 1 mile of known polar bear dens, and all observed dens must be reported to the Marine Mammals Management Office, Fish and Wildlife Service within 12 hours of discovery. Should occupied dens be identified within one mile of activities, work within a one-mile area will cease and 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 COMPANY X must comply with any additional measures specified;
 - COMPANY X 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;

BPXA, Exxon, and Savant failed to follow Bullet 2 of Stipulation 5 which resulted in unauthorized take by harassment of denning polar bears.

In addition, the Service requested that 24-hr den monitors, a reduction to essential traffic, and checkpoints were requested to be in place on March 31, 2009. Video from April 1, 2009 clearly shows the bear exiting and emerging from the den repeatedly during the morning prior to the first reported observation by industry on the afternoon of April 1 (approximately 1400). For example, at 0755 in the morning the adult female is near the road when she reacts to a Nabors PU driving faster than 15 mph. Even if the 24-hr monitors were not present to monitor this event and report it immediately to the Service to close the road, this event should have prompted enactment of the Polar Bear Action Level 2 protocols established in the polar bear interaction plans of Exxon (page 8 of 17 of the Exxon polar bear interaction plan) and Savant (page 29 of the Savant polar bear interaction plan). Polar Bear Action Level 2 states that:

“Level 2 will become effective immediately upon the sighting of a polar bear. Level 2 response actions will include the following: temporary stoppage of work to inform all personnel, assessment of the situation by the site manager and Advisor, resumption of work with a minimum of two dedicated polar bear monitors.”

There was a failure on the part of BPXA, Exxon, and Savant to ensure that this happened.