

Their request sought regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when takings occurred during Industry operations in Arctic Alaska. Specifically, they requested an extension of the incidental take regulations that begin at 50 CFR 18.121 for an additional 5-year term from December 16, 1998, through December 15, 2003. The geographic extent of the request was the same as that of previously issued regulations that begin at 50 CFR 18.121 that were in effect through December 15, 1998 (*see above*).

The petition to extend the incidental take regulations included two new oil fields (Northstar and Liberty). Plans to develop each field identified a need for an offshore gravel island and a buried subsea pipeline to transport crude oil to existing onshore infrastructure. The Liberty prospect was subsequently abandoned, while the Northstar prospect moved toward production. At the time, based on the preliminary nature of the information related to subsea pipelines published in a Draft Environmental Impact Statement (DEIS) for the Northstar project, we were unable to make a finding of negligible impact and issue regulations for the full 5-year period as requested by Industry.

On November 17, 1998, we published proposed regulations (63 FR 63812) to allow the incidental, unintentional take of small numbers of polar bears and Pacific walrus in the Beaufort Sea and northern coast of Alaska for a 15-month period. These regulations did not authorize the incidental take of polar bears and Pacific walrus during construction or operation of subsea pipelines in the Beaufort Sea. On January 28, 1999, we issued final regulations effective through January 30, 2000 (64 FR 4328).

The U.S. Army Corps of Engineers (Corps) finalized the Northstar Final Environmental Impact Statement (FEIS) in February 1999. On February 3, 2000, we issued regulations effective through March 31, 2000 (65 FR 5275), in order to finalize the subsequent longer-term regulations without a lapse in coverage. After a thorough analysis of the Northstar FEIS and other data related to oil spills, on March 30, 2000, we issued regulations effective for a 3-year duration, through March 31, 2003 (65 FR 16828). This assessment included a polar bear oil spill risk analysis, a model that simulated oil spills and their subsequent effects on estimated polar bear survival on the basis of distribution in the Beaufort Sea. The likelihood of polar bear mortality caused by oil spills during different seasons (open-water, ice-covered, broken ice) was also

analyzed. A 3-year period was selected, rather than a 5-year period, due to the potential development of additional offshore oil and gas production sites, such as the offshore Liberty Development, which would need increased oil spill analysis if development proceeded. The Liberty Development Plan was subsequently withdrawn by the operator to be re-evaluated.

Between January 1994 and March 2003, we issued 223 LOAs for oil and gas related activities. Activities covered by LOAs included: exploratory operations, such as seismic surveys and drilling; development activities, such as construction and remediation; and production activities for operational fields. Between January 1, 1994, and March 31, 2000, 77 percent (n=89) of LOAs issued were for exploratory activities, 10 percent (n=11) were for development, and 13 percent (n=15) were for production activities. Less than a third (32 of 115) of these activities actually sighted polar bears, and approximately two-thirds of sightings (171 of 258) occurred during production activities.

Summary of Current Request

On August 23, 2002, the Alaska Oil and Gas Association (AOGA), on behalf of its members, requested that we promulgate regulations for nonlethal incidental take of small numbers of Pacific walrus and polar bears pursuant to section 101(a)(5) of the MMPA. The request was for a period of 5 years, from March 31, 2003, through March 31, 2008. Members of AOGA include Alyeska Pipeline Service Company; Marathon Oil Company; Anadarko Petroleum Corporation Petro Star, Inc.; BP Exploration (Alaska) Inc.; Phillips Alaska, Inc.; ChevronTexaco Corporation; Shell Western E&P Inc.; Cook Inlet Pipe Line Company; Tesoro Alaska Company; Cook Inlet Region, Inc.; TotalFinaElf E&P USA; EnCana Oil & Gas (USA) Inc.; UNOCAL; Evergreen Resources, Inc.; Williams Alaska Petroleum, Inc.; ExxonMobil Production Company; XTO Energy, Inc.; and Forest Oil Corporation. Along with their request for incidental take authorization, Industry has also developed and implemented polar bear conservation measures. The geographic region defined in Industry's 2002 application is described later in this rule in the section titled "Description of Geographic Region."

On July 25, 2003, we published in the **Federal Register** (68 FR 44020) a proposal to promulgate regulations under section 101(a)(5)(A) of the MMPA that would allow the Industry to take

small numbers of polar bears and Pacific walrus incidental to year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska.

The comment period on the proposed rule was open from July 25, 2003, through August 25, 2003. To expedite the rulemaking process, a comment period of 30 days was selected because the previous regulations authorizing the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska had expired on March 31, 2003.

We are issuing new regulations that will remain in effect for 16 months to ensure that we have adequate time to thoroughly assess effects of Industry activities over the longer period (5 years) requested by Industry. We will assess the effects of Industry activities for the requested period (5 years) and expect to publish a longer-term proposed rule during the term described in this final rule.

Description of Regulations

The regulations that we are issuing include: Permissible methods of taking; measures to ensure the least practicable adverse impact on the species and the availability of these species for subsistence uses; and requirements for monitoring and reporting. The geographic coverage and the scope of industrial activities assessed in these regulations are the same as those in the regulations we issued on March 30, 2000. New LOAs will be issued following the effective date of these final regulations.

These regulations do not authorize the actual activities associated with oil and gas exploration, development, and production. Rather, they authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus associated with those activities. The U.S. Minerals Management Service (MMS), the Corps, and the U.S. Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands. The State of Alaska is responsible for activities on State lands and in State waters.

With final incidental take regulations, persons seeking taking authorization for particular projects will apply for an LOA to cover take associated with exploration, development, and production activities pursuant to the regulations. Each group or individual conducting an oil and gas industry-