

## Supporting Statement for Incidental Take Applications (OMB 83-I)

### A. Justification

1. The Marine Mammal Protection Act of 1972 (Act), 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 Act (included at Attachment one) 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. After specific regulations are issued, Letters of Authorization must be obtained by those conducting the activity, and annual reports must be submitted. Procedural regulations outlining the requirements for the submission of request are contained in 50 CFR 18.27 (Attachment two). Specific Regulations governing authorized activities are contained in 50 CFR Part 18, Subpart J (65 FR 16828)( Attachment three).

2. Regulations in 50 CFR 18.27(d) require 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 U.S. Fish and Wildlife Service (Service). The regulations provide the applicant with a detailed description of information needed by the Service to evaluate the application and determine whether or not to issue specific regulations and, subsequently, Letters of Authorization. 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 it will occur. This information is needed to establish the scope of the specific regulations. The information proposed to be collected is virtually identical information previously approved and collected under OMB Control Number 1018-0070, which expires on October 31, 2001.

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.) and 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 Act, the Service cannot authorize a take unless the total taking 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 of stocks for subsistence uses. It will also provide a basis for estimating how many Letters of Authorization 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 are required to 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 were relevant, on 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 Act 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 also to suggest means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species through analysis of the level of taking or impacts. Further, they are to suggest means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity. Lastly, applicants are 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 incidental to the specific activity be submitted by each entity that has been issued a Letter of Authorization. That information is necessary for the Service to monitor the taking, and to assess the impacts to the species or stock and its habitat.

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

3. 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.

4. The Service and the National Oceanic and Atmospheric Administration (NOAA Fisheries, formerly National Marine Fisheries Service), U.S. Department of Commerce, share responsibilities under the Act with each agency being responsible for different species. NOAA-Fisheries and the Service may have similar regulations, but the regulations cover different species of marine mammals. Therefore, information collection is not duplicated.

5. 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. 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. The Act requires the collection of certain information to determine if an authorization should be issued and to determine the impacts to marine mammals of such authorizations. The Act 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 is not collected, a determination cannot be made to issue specific regulations or to issue Letters of Authorization.

7. Visual sightings and interactions with polar bears or Pacific walrus 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 requested to report an encounter with a polar bear or a Pacific walrus at the time of occurrence. The request report is verbally followed by a written report.

8. A request for information collection has been submitted to the Office of Management and Budget. A Notice of Intent to Request Information Collection Authority was published in the Federal Register on February 14, 2001 (66 FR 10311). No comments were received during the 60-day comment period which ended on April 16, 2001.

The Service consulted with BP Exploration (Alaska), Inc., to determine the industry cost associated with collection of information.

9. No payment or gifts will be made to respondents.

10. The information collection is a matter of public record; however, confidential geological and geophysical maps are submitted by the oil and gas industry with requests to conduct geophysical seismic programs. The Freedom of Information Act ( 5 U.S.C. § 552, as amended)(FOIA) allows the Service to withhold this confidential information concerning geophysical maps. 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 or if requested under the FOIA.

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

12. Subsequent to issuance of specific regulations, the Service estimates that seven oil and gas companies annually will request an average of seven LOAs each for an annual total of 49 LOAs. Thus, the number of responses is predicted to be 49 per year (seven respondents x seven

requests = 49 requests per year). The total public burden associated with the 3-year period covered by this request for information collection authority is estimated at 3,140 hours, calculated as follows: 200 hours is required to complete a one-time request for specific regulations; eight hours is required to complete each LOA request (eight hours x 49 requests = 392 hours); four hours is required for on-site monitoring reports (four hours x 49 reports = 196 hours); and eight hours is required for each final monitoring report (eight hours x 49 reports = 392 hours). From this, the total burden is estimated to be 392 hours + 196 hours + 392 hours = 980 hours x three years + 200 hours (one time request) = 3,140 hours. This averages to 1,047 hours per year (as shown in #13 on the accompanying form 'OMB 83-I') for the 3-year period covered by this request for information collection approval.

Based on an average environmental consultant fee of \$112.50 (\$75-\$150) per hour, the annualized cost burden to all respondents or record keepers resulting from the collection of information will be \$110,250 (980 hours x \$112.50 fee).

The Service estimates that, on average, the total annual cost to respondents (incurred as a result of developing and submitting a petition for specific regulations, 49 requests for Letters of Authorization, and record keeping and reporting requirement provisions) for the 3-year period covered by this request will be \$132,750 the third year when 200 hours will be required to request new regulations, and \$110,250 each for the other two years. The estimated total 3-year cost is \$353,250. The following are the methods used to estimate cost factors:

- \$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);
- \$44,100 per year to prepare 49 requests for Letters of Authorization (eight hours preparation x 49 requests x \$112.50 per hour consulting fees);
- \$22,050 per year to prepare on-site monitoring reports (four hours x 49 activities x \$112.50 per hour consulting fees); and
- \$44,100 per year to prepare 49 final monitoring reports (eight hours preparation x 49 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	49	8 Hours	392	\$44,100
On-site Monitoring Repots	49	4 Hours	196	\$22,050
Final Monitoring Report	49	8 Hours	392	\$44,100

13. 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 record keepers 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. The total annual cost to the Service is estimated to be \$ 86,295 determined as follows:

- Manpower cost to the government will be \$72,309 for one full time position (\$51,650 for a GS-12/4 base pay, 15% overhead of \$7,747, and \$12.912 for 25% Alaska base pay differential) for an average cost per pay period of \$2,781. This position will be responsible for promulgating Federal Incidental Take Regulations in response to petitions for specific regulations (at an estimated effort of 12 pay periods) at a cost of \$33,373, managing the issuance of Letters of Authorization and managing the associated monitoring and reporting process. The Service also estimates that it will cost \$1,475 to process each Letter of Authorization from receipt of request to receipt of final monitoring

reports.

- Estimated *Federal Register* printing and publication costs are \$4,560 for a proposed rule and \$7,426 for a final rule for a total of \$11,986. For the three year period, it will cost an estimated \$22,000 to publish notices of issuance of Letters of Authorization in the *Federal Register*.

15. The Service issued specific regulation on March 30, 2000 [65 FR 16828] in accordance with Section 101(a)(5)(A) of the Act. 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 work load to the government. Requests for Letters of Authorization increased from 16 in 1998 to 34 in 1999 to 42 in 2000. We predict that this trend will level off and remain somewhat constant for the next three years.

16. 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 Alaska 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 Letters of Authorization 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 provisions of the Act. This collection of information does not employ statistical methods.

17. This agency is not seeking approval to not display the expiration date for OMB approval.

18. There are no exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I (or OMB 83-I).