

§ 18.88

that such facts are inaccurate or are erroneously noticed.

§ 18.88 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the examination; and

(2) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 18.89 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument by parties at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any party may file with the presiding officer proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state

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his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 18.90 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Director the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that to the best of his knowledge and belief the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Upon receipt of the recommended decision, the Director shall send a copy thereof to each party by certified mail and shall publish in the FEDERAL REGISTER a notice of the receipt of the recommended decision by the Director. The notice shall include:

(1) A summary of the recommended decision;

(2) A statement that any interested person may file written comments on the recommended decision with the Director by a specified date;

(3) The time(s) and place(s) where the record of the hearing transmitted to the Director pursuant to paragraph (b) of this section may be inspected by interested persons; and

(4) The time(s) and place(s) where the recommended decision may be inspected and/or copied by interested persons.

(d) Within thirty days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Director any written

comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the thirty-day period to the Director at the above address.

§ 18.91 Director's decision.

(a) Upon receipt of the recommended decision and transcript and after the thirty-day period for receiving written comments on the recommended decision has passed, the Director shall make a final decision on the proposed regulations and waiver, where applicable. The Director's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor;

(3) Rulings on issues of law; and

(4) Any other relevant information which the Director deems appropriate.

(c) The Director's decision shall be published in the FEDERAL REGISTER. If the waiver is approved, the final adopted regulations shall be promulgated with the decision, or as soon thereafter as practicable.

Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

SOURCE: 41 FR 14373, Apr. 5, 1976, unless otherwise noted.

§ 18.92 Purpose of regulations.

The regulations contained in this subpart fulfill the requirements of section 103 of the Act for regulations to govern the taking and importation of each species of marine mammal for which the moratorium imposed by section 101 has been waived.

§ 18.93 Scope of regulations.

(a) The provisions in this subpart apply only after (1) the Director has made a decision to waive a moratorium pursuant to section 101(a)(3)(A) of the Act, (2) the opportunity for a hearing required by section 103(d) of the Act has been provided, and (3) the Director has made a determination, in the case of State laws and regulations, to approve such State laws and regulations pursuant to section 109(a)(2) of the Act and subpart F of this part.

(b) The provisions of this subpart, unless specifically stated, apply to all taking and/or importation of each species of marine mammal for which the moratorium has been waived other than takings for scientific research or public display, which are governed by § 18.31 of this part, or takings incidental to commercial fishing operations which are governed by § 18.24.

§ 18.94 Pacific walrus (Alaska).

(a) Pursuant to sections 101(a)(3)(A) 103, and 109 of the Marine Mammal Protection Act of 1972, the moratorium on the hunting and killing of Pacific walrus (*Odobenus rosmarus*) in waters or on lands subject to the jurisdiction of the State of Alaska, the United States, or on the high seas by any person, vessel, or conveyance subject to the jurisdiction of the State of Alaska or the United States, is waived, provided that beginning August 2, 1979 this waiver shall not be effective, and no taking or importation under the waiver shall be allowed, until this section is amended to establish regulations to effectively control taking and otherwise implement the waiver.

(b) [Reserved]

[41 FR 14373, Apr. 5, 1976, as amended at 44 FR 45566, Aug. 2, 1979]

Subpart I—Nonlethal Taking of Pacific Walruses and Polar Bears Incidental to Oil and Gas Exploration Activities in the Chukchi Sea and Adjacent Coast of Alaska

SOURCE: 73 FR 33250, June 11, 2008, unless otherwise noted.