

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Phlox hirsuta</i>	* Yreka phlox	* U.S.A. (CA)	* Polemoniaceae	* E	* 683		* NA
*	*	*	*	*	*		*

Dated: January 13, 2000.
Jamie Rappaport Clark,
Director, Fish and Wildlife Service.
 [FR Doc. 00-2310 Filed 2-2-00; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018-AF87

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule reinstates our existing rule issued Thursday, January 28, 1999 (64 FR 4328), and codified at 50 CFR Part 18, Subpart J to authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. This final rule authorizes incidental, unintentional take of small numbers of polar bears and Pacific walrus only for activities covered by our existing regulations at 50 CFR Part 18, Subpart J; incidental take resulting from any subsea pipeline activities located offshore in the Beaufort Sea is not authorized. This final rule reinstates regulations at 50 CFR Part 18, Subpart J effective through March 31, 2000.

DATES: This rule is effective February 3, 2000 through March 31, 2000.

ADDRESSES: Comments and materials received in response to this action are available for public inspection during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: John Bridges, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone (907) 786-3810 or 1-800-362-5148.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (Act) gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service (We) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals in response to requests by U.S. citizens (you) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specific geographic region. We may grant permission for incidental takes for periods of up to 5 years. On January 28, 1999, we published in the **Federal Register** (64 FR 4328) regulations to allow such incidental takes in the Beaufort Sea and adjacent northern coast of Alaska for the period January 28, 1999, through January 30, 2000. These regulations were based on the findings for the 1-year period that the effects of oil and gas related exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska would have a negligible impact on polar bears and Pacific walrus and their habitat and no unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives, if certain conditions were met.

Our present action reinstates the current regulations that expired on January 30, 2000, which are located at 50 CFR Part 18, Subpart J, effective through March 31, 2000. This rulemaking was intended to avoid a lapse in these regulations while we considered public comments on our proposed regulations published December 9, 1999 (64 FR 68973), the comment period for which closed on January 10, 2000. Those proposed regulations would allow the incidental,

unintentional take of small numbers of polar bears and Pacific walrus for a 3-year period during year-round oil and gas activities, including incidental takes resulting from the construction and operation of a subsea pipeline associated with the offshore Northstar facility.

We are reinstating our now expired regulations through March 31, 2000, to ensure that we have adequate time to thoroughly review and respond to public input on our December 9, 1999, proposed rule. We believe it is important to maintain the coverage and protection for polar bears and Pacific walrus provided by those regulations. Existing Letters of Authorization, which require monitoring and reporting of all polar bear interactions as well as site-specific mitigation measures, will be reissued.

Prior to issuing regulations at 50 CFR Part 18, Subpart J, we evaluated the level of industrial activities, their associated impacts to polar bears and Pacific walrus, and their effects on the availability of these species for subsistence use. Based on the best scientific information available and the results of 6 years of monitoring data, we found that the effects of oil and gas related exploration, development, and production activities in the Beaufort Sea and the adjacent northern coast of Alaska would have a negligible impact on polar bears and Pacific walrus and their habitat. We also found that the activities as described would have no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives.

The regulations that we are reinstating include permissible methods of taking and other means to ensure the least adverse impact on the species and its habitat and on the availability of these species for subsistence uses along with other relevant sections. This includes requirements for monitoring and reporting. The geographic coverage is the same as the regulations we issued on January 28, 1999. All existing Letters of Authorization will be reissued.

Description of Activity

This rulemaking covers activities as described in the existing rule issued on January 28, 1999, that we expect to occur during the brief duration of this rule. These activities include exploration activities such as geological and geophysical surveys, which include geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, air gun and water gun seismic data collection, explosive seismic data collection, geological surveys, and drilling operations. Development and production activities located on the North Slope along the shores of the Beaufort Sea are included. The activities are limited to those that occur during the winter. The level of activity expected is similar to that as occurred last winter under existing regulations that we issued on January 28, 1999. This region contains more than 11 separate oil fields. All of the fields lie within the range of polar bears.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Polar Bear

Winter oil and gas activities may affect polar bears. Polar bears that continue to move over the ice pack through the winter are likely to encounter Industry activities. Curious polar bears are likely to investigate artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for interactions between bears and industry. Offshore drill sites may modify habitat and attract polar bears to artificial open leads downwind from the activity. Polar bears attracted to these open water leads create the potential for Industry/polar bear encounters. Winter seismic activities have a potential of disturbing denning females, which are sensitive to noise disturbances. Prior to initiating surveys, industry consults with us through applications for Letters of Authorization. Specific terms of a Letter of Authorization require that industrial activities avoid known or observed dens by 1 mile through cooperative operating procedures. In addition, Letters of Authorization require development of polar bear interaction plans for each operation. Industry personnel participate in training programs while on site to minimize detrimental effects on personnel and polar bears. During the past 6 years, Letter of Authorization conditions have limited the time and location of Industry activities in known polar bear denning habitat. In addition to avoiding known den locations of

radio collared polar bears, Industry has conducted aerial survey overflights of potential denning habitat using forward looking infrared thermal sensors to detect dens located beneath snow. A number of den locations have been identified prior to Industry activities, avoiding potential disturbance. Regarding polar bear/human interactions, Industry has taken proactive steps to minimize the aspect of scent attraction to sites through proper disposal of garbage and waste products. Yet a number of potentially dangerous encounters have occurred in recent years. These encounters have not resulted in injury to polar bears or humans. A degree of credit for this success rate is attributed to enhanced employee awareness and proper responses to polar bear encounters brought about through materials contained within polar bear interaction plans.

Pacific Walrus

Pacific walrus rarely use the geographical area during the preferred open water season and do not occur in the area during the winter including the February and March period of the final regulations. Consequently, no direct or cumulative effect of Industry activities to Pacific walrus are expected.

Subsistence Use

Polar bears

Polar bears may be hunted in February and March by residents of Barrow, Nuiqsut, and Kaktovik, although the numbers of bears taken in mid-winter months is typically less than during the spring or fall seasons. Hunter success varies from year to year and with seasonal variations within a year. As required in the existing regulations, Industry is required to work through plans of cooperation with potentially affected subsistence communities to minimize and mitigate for potential impact on the availability of polar bears for subsistence uses, where necessary. We do not expect conflicts between subsistence users and Industry during the February and March term of these regulations. Previously, we have not noted conflicts between subsistence users and Industry under the existing regulations.

Pacific Walrus

Pacific walrus are not present and thus are unavailable for harvest during the winter in this area. No direct or cumulative effect on their availability for take for subsistence use would occur from industrial activities.

Conclusions

Based on the previous discussion of direct, indirect, and cumulative effects, and 6 years of results of prior monitoring programs, we make the following findings regarding this final rulemaking. We find, based on the best scientific evidence available and the results of 6 years' monitoring data, that the effects of oil and gas exploration, development, and production activities for the period February 3, 2000 through March 31, 2000, in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat, and that there will be no unmitigable adverse impacts on the availability of these species for take for subsistence uses by Alaska Natives if conditions contained within Letters of Authorization are met. Consistent with our regulations at 50 CFR Part 18, Subpart J, issued on January 28, 1999, our findings apply to exploration, development, and production related to oil and gas activities, excluding any construction and production activities associated with subsea pipelines at the Northstar facility.

Discussion of Comments on the Proposed Rule

The proposed rule and request for comments was published in the **Federal Register** (65 FR 105) on January 3, 2000. The closing date for comments was January 13, 2000. We received 2 comments in the same letter, as follows:

Comment: the public comment period was insufficient and should be extended 30 days.

Response: We acknowledge that 10 days is a brief comment period. Nonetheless, the short comment period was considered unavoidable given the timeframe for publishing a rule intended to extend existing regulations at 50 CFR part 18, subpart J by 61 days through March 31, 2000, thereby avoiding a lapse in polar bear and Pacific walrus protections. Reinstating the current regulations will provide sufficient time to evaluate public comments received on our proposed 3 years regulations (64 FR 68973) published on December 9, 1999, the comment period for which closed on January 10, 2000, for the incidental take of polar bears and Pacific walrus in the Beaufort Sea region. The primary benefit of maintaining regulations while we continue our review is to ensure that mitigation and monitoring requirements remain in place for the ongoing activities in the region. However, because existing regulations at 50 CFR part 18, subpart J expired before this

final rule could be published, this final rule now reinstates those regulations effective on date of publication through March 31, 2000.

Comment: The expected level of activity is much greater than in previous years and significant harassment could occur in 60 days.

Response: We do not anticipate a significant increase in activity in the region that would cause a greater than negligible effect on the polar bear and Pacific walrus populations, or an unmitigable adverse impact on the availability of these species for taking for subsistence uses by Alaska Natives. Monitoring of the activity associated with the Northstar Project during the previous year's construction season reported minimal interaction with polar bears. Based on polar bear distribution and movements during mid-winter (the period of the 2 month extension), we do not expect significant differences in the rate of encounters as compared to last year.

Required Determinations

Environmental documents prepared for our regulations at 50 CFR Part 18, Subject J concluded in a finding of no significant impact. These final regulations cover the same activities as analyzed under the current environmental assessment and are therefore consistent with those findings and the requirements of the National Environmental Policy Act.

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review). This rule will not have an effect of \$100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. The final rule is not likely to result in an annual effect on the economy of \$100 million or more. Expenses will be related to, but not necessarily limited to, the development of applications for regulations and Letters of Authorization (LOA), monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of

operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 1997) and LOA requests probably does not exceed \$500,000 per year, short of the "major rule" threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits would accrue to Industry; royalties and taxes would accrue to the Government; and the rule would have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have also determined that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the person in Alaska identified above in the section, **FOR FURTHER INFORMATION CONTACT.**

This final rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize the incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability.

This final rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. Coordination with appropriate Alaska State agencies has occurred, and necessary permits have been received to ensure State consistency. In addition, extensive

coordination with the North Slope Borough and other Alaska Native organizations has occurred concerning this issue. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

The Departmental Solicitor's Office has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The information collection contained in 50 CFR part 18, subpart J has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018-0070. The OMB approval of our collection of this information will expire in October 2001. Section 18.129 contains the public notice information—including identification of the estimated burden and obligation to respond—required under the Paperwork Reduction Act. Information from our Marking, Tagging, and Reporting Program is cleared under OMB Number 1018-0066 pursuant to the Paperwork Reduction Act. For information on our Marking, Tagging, and Reporting Program, see 50 CFR 18.23(f)(12).

The Administrative Procedure Act, 5 U.S.C. 553(d), generally requires that the effective date of a final rule not be less than 30 days from publication date of the rule. Section 553(d)(1) provides that the 30 day period may be waived if the rule grants or recognizes an exemption or relieves a restriction. Since this rule relieves certain restrictions concerning take of marine mammals, and the previous exemption has expired, we have determined that this final rule should be made effective upon the date of publication.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

For the reasons set forth in the preamble, we amend Part 18,

Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR Part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Revise § 18.123 to read as follows:

§ 18.123 When is this rule effective?

Regulations in this subpart are effective February 3, 2000 through March 31, 2000, for oil and gas exploration, development, and production activities.

Dated: January 28, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00-2443 Filed 2-1-00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210331-0017-02; I.D. 102899B]

RIN 0648-AN34

Fisheries of the Exclusive Economic Zone off Alaska; Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component Under Section 206(b)(1) of the American Fisheries Act (AFA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final regulations implementing an inshore fee system for all pollock harvested under the inshore component (IC) of the Bering Sea/Aleutian Islands directed fishing allowance under section 206(b)(1) of the AFA. The AFA authorized a \$75 million loan to reduce fishing capacity for offshore component (OC) pollock and an inshore fee system as the means of repaying the loan. The proceeds of the loan partly paid the cost of removing nine OC catcher-processors from all commercial fishing in the U.S. exclusive economic zone (EEZ). The intent of this rule is to implement the inshore fee system.

DATES: This final rule is effective February 10, 2000.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) may be obtained from Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this final rule should be sent to both Michael L. Grable, at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer). Comments sent by e-mail or the Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713-2390.

SUPPLEMENTARY INFORMATION:

Background

The President signed the AFA into law on October 20, 1998, as part of the Omnibus Appropriations Bill for fiscal year 1999 (Pub. L. 105-277). The AFA required the Federal Government to pay, not later than December 31, 1998, \$90 million to the owners of nine large catcher processors harvesting OC pollock. In return, eight of these vessels had to stop all commercial fishing in the EEZ immediately and be scrapped by December 31, 2000. Although the ninth vessel did not have to be scrapped, it also had to stop all commercial fishing in the EEZ immediately and the owner had to certify that neither the owner nor anyone who purchased the vessel from the owner intended to use the vessel outside the EEZ to harvest any fish that also occur within the EEZ.

On December 30, 1998, NMFS paid the required amount to the owners of these vessels. In accordance with the AFA, NMFS paid \$15 million of this amount from an AFA appropriation and the remaining \$75 million from the proceeds of a fishing capacity reduction loan under sections 1111 and 1112 of Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and g) (Title XI). The AFA requires the loan to be repaid by fees under section 312(d)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(d)(2)(C)) (Magnuson-Stevens Act).

Upon payment of the \$90 million, NMFS revoked all nine vessels' domestic fishing permits, one owner provided the certificate required for the

ninth vessel, and the other owners began preparing for scrapping the remaining eight vessels. All eight vessels are presently undergoing scrapping. Scrapping is scheduled to be completed before December 31, 2000.

Under the AFA and section 312(d)(2)(C) of the Magnuson-Stevens Act, all vessel owners harvesting IC pollock (fish sellers) are required to pay the fee and all parties making the first ex-vessel purchase of IC pollock (fish buyers) are required to collect the fee and account for and forward the fee revenue to NMFS for the purpose of repaying the loan. The fish sellers pay, and the fish buyers collect, the fee when the fish buyers deduct the fee from the ex-vessel value of all IC pollock before paying the net ex-vessel value of the fish to the fish sellers.

The fee is six-tenths (0.6) of one cent for each pound, round-weight, of all IC pollock that fish sellers land. The AFA provides that fee payment and collection shall begin on or after January 1, 2000. Under this final rule, the fee must be paid and collected for all landed fish that were harvested after February 10, 2000.

Although the loan's scheduled maturity is 30 years, the AFA also provides that fee payment and collection "shall * * * continue without interruption until such loan is fully repaid * * *" (section 207(b)(2)). Whether the loan is repaid before, at, or after its scheduled maturity depends on when fee payment begins, the rate at which loan principal bears interest, annually determined total allowable pollock catches after December 31, 1999, and IC pollock allocations after December 31, 2004.

NMFS has determined the loan's principal will bear interest under the statutory formula at the rate of 7.09 percent per annum. Under the AFA, the loan's interest rate is 2 percent plus the percentage rate of interest that the U.S. Treasury charges NMFS for the \$75 million that NMFS borrowed from the U.S. Treasury. The latter percentage rate is 5.09 percent.

The other variables controlling the time required to fully repay the loan are not presently determinable. Several assumptions are, consequently, necessary to project how long repayment will take. The first assumption involves the time at which fee payment begins. For projection purposes, NMFS assumes that the fee will be paid on all IC pollock harvested in calendar year 2000 and in each year thereafter until the loan is fully repaid. The second assumption involves the annual total allowable catch (TAC) of pollock after December 31, 1999, which