

**FINDING OF NO SIGNIFICANT IMPACT
FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION
TO THE U.S. FISH AND WILDLIFE SERVICE FOR THE TAKE OF
MARINE MAMMALS BY HARASSMENT INCIDENTAL TO A
POLAR BEAR CAPTURE-RECAPTURE PROGRAM IN THE
U.S. CHUKCHI SEA**

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

The National Marine Fisheries Service (NMFS) received an application from the U.S. Fish and Wildlife Service (USFWS) requesting an incidental harassment authorization (IHA) pursuant to NMFS' responsibility to authorize the take of small numbers of marine mammals incidental to an otherwise lawful activity, other than commercial fishing, pursuant to section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1631 *et seq.*) provided that NMFS: (1) determines that the action will have a negligible impact on the affected species or stocks of marine mammals; (2) finds the action will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals for taking for subsistence uses; and (3) sets forth the permissible methods of taking, other means of effecting the least practicable impact on affected species and stocks and their habitat, and requirements pertaining to the mitigation, monitoring, and reporting of such takes. NMFS has satisfied those requirements for an authorization for the take of small numbers of two species of marine mammals, by Level B harassment only, incidental to the preferred alternative of conducting a polar bear capture-recapture program in the U.S. Chukchi Sea from March through May. NMFS proposes to issue the IHA with mitigation measures, as described in Alternative 2 of the EA.

In accordance with the National Environmental Policy Act (NEPA) and its implementing regulations and agency NEPA procedures, NMFS completed an *Environmental Assessment for the Issuance of an Incidental Harassment Authorization to the U.S. Fish and Wildlife Service for the Take of Marine Mammals by Harassment Incidental to a Polar Bear Capture-Recapture Program in the U.S. Chukchi Sea*. This Finding of No Significant Impact has been prepared to evaluate the significance of the impacts of NMFS' proposed action and is specific to Alternative 2 in the Environmental Assessment (EA), which was identified in a March 2011 Final EA (the EA) as the preferred alternative. Alternative 2 is entitled "Issuance of an IHA with Required Mitigation, Monitoring, and Reporting Measures." Based on NMFS' review of the USFWS' proposed activities and the measures contained in Alternative 2, NMFS has determined that no significant impacts to the human environment would occur from implementing the Preferred Alternative.

SIGNIFICANCE REVIEW

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. §1508.27 state

that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on NOAA’s criteria and CEQ’s context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act and identified in fishery management plans?

Response: NMFS does not anticipate the proposed activity would cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act. The USFWS’ activity will occur in a helicopter or fixed-wing aircraft, which will fly over the Chukchi Sea during the ice-covered season. The aircraft will land on the sea ice for short periods of time to conduct the research on the polar bears (the target species). The sound and presence of the aircraft have the potential to cause hauled out pinnipeds to leave the ice. However, these temporary acoustic activities would not affect physical habitat features, such as substrates and water quality.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: NMFS does not expect the proposed action to have a substantial impact on biodiversity or ecosystem function within the affected area. The impacts of the proposed action on marine mammals are specifically related to the presence of and sound produced by the aircraft, and these are expected to be temporary in nature, affect pinnipeds hauled out on the sea ice, and not result in substantial impacts to marine mammals or to their role in the ecosystem. The IHA anticipates, and will authorize, the Level B harassment only, in the form of temporary behavioral disturbance, of two species of pinnipeds. However, neither serious injury nor mortality is anticipated or authorized, and the Level B harassment is not expected to affect biodiversity or ecosystem function. Because the USFWS’ proposed polar bear capture-recapture program would occur during the ice-covered season from a helicopter or fixed-wing aircraft flying over the ice and landing on the ice for only short periods of time, this action is not anticipated to have any impacts on lower trophic organisms or marine fishes.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: NMFS does not expect this action to have a substantial adverse impact on public health or safety. The activity will occur up to 100 miles offshore the U.S. Chukchi Sea coast over the sea ice. Therefore, people are not expected to occur in the area of the proposed activities.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: NMFS' proposed action will not adversely affect endangered or threatened species. First, no endangered or threatened species under NMFS' jurisdiction occur in the proposed action area. Additionally, there is no critical habitat in the proposed action area for any NMFS species. NMFS' proposed action may result in Level B (behavioral) harassment of ringed and bearded seals. Both of these species are proposed for listing as threatened under the Endangered Species Act (ESA). NMFS has determined that NMFS' proposed action of an issuance of an IHA will not jeopardize the continued existence of either of these species. The IHA will contain mitigation and monitoring measures to effect the least practicable impact on marine mammals in the proposed action area.

The spectacled eider and the polar bear also both occur in the proposed action area. Both of these listed species are under the jurisdiction of the USFWS. The polar bear is the target of the USFWS' proposed activities. The USFWS has applied for a MMPA permit to conduct the research and also consulted on the issuance of the research permit. As described in the EA, spectacled eiders are not anticipated to be impacted by the proposed action. Additionally, the USFWS' overflights will not occur in the designated critical habitat for spectacled eiders in the Chukchi Sea.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: The primary impacts to the natural and physical environment are expected to be acoustic and temporary in nature (and not significant), and not interrelated with significant social or economic impacts. Issuance of the IHA would not result in inequitable distributions of environmental burdens or access to environmental goods. NMFS has determined that issuance of the IHA will not adversely affect low-income or minority populations.

Since some behavioral harassment of marine mammals is anticipated, the impacts to subsistence needs and culture were fully analyzed in the supporting EA. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. The species hunted include: bowhead and beluga whales; ringed, spotted, ribbon, and bearded seals; walruses; and polar bears. (Note that walrus and polar bear are under the jurisdiction of the USFWS.) The importance of each of the various species varies among the communities and is based largely on availability. The proposed activities may overlap with some spring beluga and bowhead whale hunts and also some ice seal hunts. However, as described in the EA, the majority of the hunts occur much closer to shore than the polar bear program. Additionally, the USFWS has agreed to certain no fly zones in order to avoid areas of subsistence harvests. Based on this information, NMFS has determined that there will not be any significant social or economic impacts interrelated with natural or physical environmental effects.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: The effects of this action on the quality of the human environment are not likely to be highly controversial. The proposed IHA *Federal Register* notice (76 FR 330, January 4, 2011) invited the public to submit comments for up to 30 days from the date of

publication of the notice. The only comments received on the proposed IHA were sent by the Marine Mammal Commission. The Marine Mammal Commission provides comments on all proposed IHAs as part of their established role under the MMPA (§ 202 (a)(2), *humane means of taking marine mammals*). No other organizations or private citizens submitted comments. The comments and NMFS' responses will be published in the final IHA *Federal Register* notice. The received comments did not specifically address NEPA-related issues.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: The area where the USFWS' activities would occur does not contain any historic resources, park land, prime farmlands, wetlands, wild and scenic rivers, or critical habitat; therefore, none would be affected by NMFS' proposed action. As described in the response to question 1, no substantial impacts are anticipated to essential fish habitat. Certain marine mammal species are important cultural resources to Native Alaskans. As described in the response to question 5, no substantial impacts are anticipated to the marine mammals legally hunted by Native Alaskans in the proposed action area.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: The effects of the proposed action on the human environment are not likely to be highly uncertain or involve unique or unknown risks. NMFS' issuance of an IHA will allow for the incidental take of ringed and bearded seals by Level B (behavioral) harassment from aerial overflights of the sea ice in the Chukchi Sea. Weather in the region can make flying dangerous in certain situations; however, the USFWS follows strict flight protocols to ensure human and personnel safety.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: The proposed action of the USFWS conducting the polar bear capture-recapture program in the Chukchi Sea and NMFS' proposed action of issuing an IHA to the USFWS that authorizes take (by Level B behavioral harassment only) of a small number of marine mammals, incidental to the conduct of the USFWS' polar bear capture-recapture program are interrelated. The polar bear capture-recapture program and the issuance of an IHA are not expected to result in cumulatively significant impacts when considered in relation to other separate, yet insignificant actions.

The EA specifically analyzes the fact that the USFWS intends to obtain an IHA from NMFS in order to conduct the research program. The EA briefly examined the impact of the polar bear research program in light of other human activities within the study area. Other Federal activities that occur near the proposed action area include oil and gas exploration and development. However, these activities occur at different times of the year or in different locations. Additionally, all of these activities are subject to implementation of mitigation and

monitoring measures to reduce impacts to affected marine mammal species or stocks. Therefore, NMFS has determined that this action is not likely to result in cumulatively significant impacts to individual marine mammals or marine mammal populations in the area.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: No. The proposed action area does not contain any districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. Additionally, it would not cause loss or destruction of any significant scientific, cultural, or historic resources.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No. The proposed action would not remove nor introduce any species out of or into the environment. Therefore, it would not result in the introduction or spread of non-indigenous species.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: This action will not set a precedent for future actions with significant effects or represent a decision in principle. NMFS' actions under sections 101(a)(5)(A) and (D) of the MMPA must be based on the best available information, which is continuously evolving. Moreover, each action for which an incidental take authorization is sought must be considered in light of the specific circumstances surrounding the action. Mitigation and monitoring may vary depending on those circumstances.

13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. The proposed USFWS polar bear capture-recapture program and NMFS' issuance of an IHA would not result in any violation of Federal, State, or local laws for environmental protection.


14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. None of the marine mammal species under NMFS' jurisdiction are the target of the proposed polar bear capture-recapture program. Additionally, the research on polar bears is designed to gain information that will aid in the management and conservation of this threatened species. Mitigation and monitoring measures, which will be included in the IHA, will help to reduce impacts to marine mammals in the proposed action area. Because of the time of year when the proposed activities would occur, no impacts to marine fishes or lower trophic

organisms would be anticipated to occur. Marine birds may occur in parts of the proposed action area; however, no impacts to any of those species are anticipated to occur. The IHA would authorize only the Level B (behavioral) harassment of marine mammals. Any harassment of these marine mammal species that may potentially occur would be short-term and minimal. Moreover, because of the nature of the activity and the monitoring and mitigation measures that will be required in the IHA, no serious injury or mortality is expected of any marine mammals in the proposed action area. Therefore, no cumulative adverse effects that could have a substantial effect on any species would be expected.

DETERMINATION

In view of the information presented in this document and the analyses contained in the supporting *Environmental Assessment for the Issuance of an Incidental Harassment Authorization to the U.S. Fish and Wildlife Service for the Take of Marine Mammals by Harassment Incidental to a Polar Bear Capture-Recapture Program in the U.S. Chukchi Sea*, prepared by NMFS, it is hereby determined that the issuance of an IHA to the USFWS for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a polar bear capture-recapture program in the Chukchi Sea, Alaska, in accordance with Alternative 2 in NMFS' 2011 EA will not significantly impact the quality of the human environment, as described above and supported by NMFS' EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.



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Date