

Alaska Oil and Gas Association



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FINAL

VIA FEDERAL eRULEMAKING PORTAL

U.S. Fish and Wildlife Service
Public Comments Processing
FWS-R7-FHC-2010-0002
Division of Policy and Directives Management
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

Re: Proposed Rule - Polar Bear Deterrence Guidelines (FWS-R7-2010-0002)

Dear Sir or Madam:

This letter provides the comments of the Alaska Oil and Gas Association ("AOGA") in response to the U.S. Fish and Wildlife Service's ("Service's") proposed rule establishing guidelines for nonlethal deterrence of polar bears. *See* 75 Fed. Reg. 21571-21576 (April 26, 2010). The guidelines are being proposed pursuant to the provisions of the Marine Mammal Protection Act ("MMPA") enacted at 16 U.S.C. § 1371(a)(4)(B).

AOGA is a private, non-profit trade association located in Anchorage, Alaska. Its member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska. AOGA's members are the principal industry stakeholders that operate within the range of, and that incidentally interact with, polar bears in Alaska and in the adjacent U.S. Outer Continental Shelf. As a result of the location and nature of oil and gas activities in Alaska, AOGA's members have substantial direct experience, data and knowledge about polar bear behavior and nonlethal deterrence best practices. Moreover, AOGA and its members are longstanding supporters of polar bear conservation, management and research in Alaska and western Canada.

AOGA's comments in response to the proposed guidelines are four-fold as outlined below:

1. AOGA appreciates and endorses the clarifying statements in the proposed rule stating that the deterrence guidance is non-binding. *See* 75 Fed. Reg. at 21571, 21573 ("We would not require anyone to implement these guidelines, nor would anyone be liable if they did not implement them"; "[T]he Service does not intend these proposed guidelines, if issued, to replace or supersede [incidental and intentional take] protocols or programs."). These guidelines are being proposed in the context of a settlement by the Service with certain advocacy groups (most notably, the Center for Biological Diversity ("CBD")). CBD is a long-standing and determined opponent of oil and gas activity in

Alaska, and has consistently sought to use regulatory measures applicable to polar bears under either the MMPA or the Endangered Species Act to further its litigation campaign. The Service's clarifying statements regarding the enforceability and applicability of the proposed guidance are both accurate and appropriate given the potential for misuse of the guidance by CBD and other advocacy groups.

2. AOGA has no specific comments regarding the proposed deterrence practices identified in the guidelines. There are, however, numerous other proven and successful nonlethal methods for deterring, deflecting and hazing away polar bears that have no more than a negligible impact on individual polar bears, polar bear populations and the polar bear species. Accordingly, the minimalist measures identified in the guidance are clearly a non-exclusive list of well-known best practices for nonlethal deterrence.

3. AOGA commends and endorses the Service's decision not to prohibit any specific deterrence measures as authorized by the MMPA at 16 U.S.C. § 1371(a)(4)(C). We are aware of no currently employed deterrence practices that when properly and knowledgeably employed result in more than a negligible impact.

4. Although AOGA is supportive of the proposed rule, we suggest that the underlying draft environmental assessment ("EA") be strengthened to ensure compliance with the requirements of the National Environmental Policy Act ("NEPA"). For example, Section 5.0, which addresses the "Affected Environment", consists of a single sentence stating that a description of the Affected Environment is not required for purposes of an "Ecological Assessment." Apart from the apparent inadvertent use of the term "ecological" in place of "environmental," we are unaware of any authority excusing an "Environmental Assessment" under NEPA from addressing the Affected Environment. Given the likelihood of a litigation challenge to any perceived error in this assessment, we believe that the Service should prepare a thoughtful concise statement of the probable environmental impacts. For this purpose, including with respect to the Affected Environment, the Service may efficiently adopt by reference and briefly summarize portions of analyses previously published. *See* 40 C.F.R. 1502.21.

Thank you for consideration of AOGA's comments regarding the Service's proposed rule establishing nonlethal deterrence guidance for polar bears pursuant to the MMPA.

Sincerely,



Marilyn Crockett
Executive Director