

## Alaska Oil and Gas Association

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*Kate Williams, Regulatory Affairs Representative*

April 11, 2011

Tina Campbell, Chief  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive, Suite 222  
Arlington, VA 22203

**Attn: Docket No. FWS-R7-FHC-2010-0098  
Beaufort Sea Incidental Take Regulations**

Dear Ms. Campbell:

The Alaska Oil and Gas Association (“AOGA”) appreciates this opportunity to submit comments on the regulations proposed by the U.S. Fish and Wildlife Service (“USFWS”) authorizing the nonlethal, incidental, unintentional take of small numbers of polar bears and Pacific walruses during year-round oil and gas exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. AOGA is a private, nonprofit trade association whose member companies account for the majority of oil and gas exploration, development, production, transportation, refining, and marketing activities in Alaska.

On April 22, 2009, AOGA submitted a petition to renew the Beaufort Sea Incidental Take Regulations (“ITRs”) for the 5-year period August 3, 2011 through August 3, 2016. The projected level of oil and gas activity at existing development facilities as well as levels of new exploration and production activities during this time frame will be similar to the activities covered by the previous 5-year Beaufort Sea ITRs effective from August 2, 2006 through August 2, 2011. AOGA fully supports adoption of the proposed regulations. Importantly, the proposed regulations would only authorize the take of small numbers of polar bears and Pacific walruses associated with these activities – based on standards set forth in the Marine Mammal Protection Act (“MMPA”) – not authorize, or “permit,” the actual activities associated with oil and gas exploration, development, and production. Under the proposed regulations, each industry group or individual operator conducting an oil and gas activity within the area covered by these regulations would then be required to apply for a Letter of Authorization (“LOA”) pursuant to

which the USFWS may authorize the nonlethal, incidental take for a specific oil and gas-related activity.

Consultation with Native communities and subsistence user groups most likely to be affected by a proposed activity remains a requirement of the industry to obtain an LOA. This process involves discussions between industry and the affected groups to identify procedures that will help avoid or minimize interference with subsistence hunting of polar bears and Pacific walruses and ensure the continued availability of the species for subsistence uses. Polar bear and walrus encounter and interaction plans and marine mammal monitoring and mitigation plans also remain requirements for an LOA. These provisions taken together serve to provide certainty to subsistence communities and user groups, industry, and the USFWS that oil and gas activities will be carried out with negligible impact on polar bears and Pacific walrus and no unmitigable adverse impact on the availability of these species for subsistence uses, while allowing responsible resource development to proceed.

As the USFWS highlighted in the proposed regulations, industry consultations with the potentially affected communities of Barrow, Nuiqsut, and Kaktovik, have identified no unmitigable concerns regarding the availability of polar bears or walruses for subsistence uses. Furthermore, using current mitigation measures, industry activities have had no known polar bear population-level effects during the period of previous regulations, dating back to 1993. AOGA agrees with the conclusion in the proposed regulations that, with continued mitigation measures, the impacts to polar bears will be at this same low level during the 5-year period August 3, 2011 through August 3, 2016 as under previous regulations. The same holds true for Pacific walruses.

Additionally, specific to polar bears, AOGA would like to emphasize that the threats posed to this species are not immediate, have not been realized in terms of a reduction in abundance or range, and are not expected to be realized during the 5-year period of the proposed regulations. The USFWS previously acknowledged this actuality. Specifically, the USFWS has stated:

As the administrative record clearly shows, polar bears fit into none of the four categories for species currently on the brink of extinction. They do not face a sudden and calamitous threat analogous to the Tellico Dam. They are not a narrowly endemic species vulnerable to extinction from elevated threats. They are instead a widespread, indeed circumpolar, species that has not been restricted to a critically small range or critically low numbers, and has yet to suffer any substantial reduction in numbers or range. Thus, they are unlike any of the species described in those four categories. They face a serious threat, loss of sea ice habitat, as the Service found when it made its listing determination, but they currently are not rare, on the brink of extinction, or critically imperiled. ” (See p. 15 Attachment A).

AOGA agrees with the USFWS on these points.

AOGA strongly supports the findings proposed by the USFWS that the total expected takings of polar bears and Pacific walrus during the above-referenced oil and gas operations will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence use by Alaska Natives. These findings are based on the best scientific information available; the results of 16 years of monitoring and reporting data on the encounters and interactions between polar bears, walrus, and industry; the status of the polar bear and walrus populations; the effectiveness of the Plans of Cooperation (“POC”) between industry and the affected Native communities and subsistence user groups; and the anticipated 5-year effects of industry activities on subsistence hunting.

However, while AOGA fully supports adoption of the proposed regulations, we believe that the spill risk assessment significantly overstates quantified risks from spills by use of extremely conservative modeling assumptions. For example, there is no consideration of response efforts or oil weathering which reduces residence time on the surface even without active cleanup activities. While we understand that the risk assessment modeling is a broad effort to identify potential risks to habitats and species, we believe that acknowledgement of the unlikelihood of the assumptions, individually and in aggregate, would show that actual risks are significantly lower. Nevertheless, we agree with the conclusion that, even under such “worst case” assumptions, the impacts to the polar bear and walrus populations would be negligible and adoption of the regulations is fully justified.

Similarly, while still supporting the regulations, AOGA believes that the language regarding consultation with potentially affected subsistence communities and subsistence user groups where a POC is relevant is unclear and should be clarified. Although we obviously support consultation, we believe this provision, if applied literally, could result in a process that would inundate and overly burden these communities and user groups with consultation requests. We understand the language is not intended to impose a specific requirement that each industry group or individual operator consult with each community and user group listed in the proposed regulations for every proposed oil and gas activity, or mandate any form of consultation in particular, and suggest clarifying this provision to reflect that intent.

AOGA thanks the USFWS for its efforts to consider the April 22, 2009 petition and issue these proposed regulations. AOGA’s member companies continue to be committed to safe, environmentally sound, and successful operations in Alaska, both onshore and offshore. We urge the USFWS to finalize the regulations as soon as practicable and standby ready and willing should our assistance be necessary to move this process forward.

Tina Campbell  
Beaufort Sea Incidental Take Regulations  
April 11, 2011

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If you have any questions on these comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kate Williams". The signature is written in a cursive, flowing style.

KATE WILLIAMS  
Regulatory Affairs Representative

Attachment(s)