(a) Date of the accident;

(b) City or town in which the accident occurred, or city or town closest to the scene of the accident;

(c) Driver's name and license number;

(d) Vehicle number and State license number;

(e) Number of injuries;

(f) Number of fatalities;

(g) Whether hazardous materials, other than fuel spilled from the fuel tanks of the motor vehicles involved in the accident, were released;

(h) The police-reported cause of the accident;

(i) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge; and

(j) Whether the driver was operating under the exemption, and if so, an estimate of the total driving time, on-duty time for the day of the accident and each of the seven calendar days prior to the accident.

Duration of the Exemption

The exemption is effective October 6, 2010 and will remain in effect until October 9, 2012 unless revoked earlier by FMCSA. The exemption may be renewed by the Agency; the Agency will provide notice and an opportunity for public comment prior to renewing the exemption. The exemption preempts inconsistent State or local requirements applicable to interstate commerce.

Safety Oversight of Carriers Operating Under the Exemption

FMCSA expects that any drivers and their employing motor carrier operating under the terms and conditions of the exemption will maintain their safety record. Should any deterioration occur, however, FMCSA will, consistent with the statutory requirements of TEA–21, take all steps necessary to protect the public interest. Use of the exemption is voluntary, and FMCSA will immediately revoke the exemption for any interstate driver or motor carrier for failure to comply with the terms and conditions exemption.

Issued on: September 30, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–25207 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

[Docket No. FWS–R7–FHC–2010–0002; 71490–1351–0000–L5–FY10]

RIN 1018–AW94

Marine Mammal Protection Act; Deterrence Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: These guidelines set forth best practices that we, the Fish and Wildlife Service, find are appropriate for safely and nonlethally deterring polar bears from damaging private and public property and endangering the public. Anyone deciding to carry out the deterrence measures or practices set out in this rule may do so without our written authorization or supervision. As discussed in the background section of the proposed rule (75 FR 21571) as well as in our responses to public comments, we authorize other, more aggressive deterrence activities through separate provisions of the Marine Mammal Protection Act. This rule is being promulgated to better inform the public on the safe deterrence of polar bears as directed under the MMPA and not because of specific or recurring incidences.

DATES: This rule becomes effective on November 5, 2010.

ADDRESSES: The final rule and associated environmental assessment are available for viewing at *http://regulations.gov.* Supporting documentation we used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907/786–3800; facsimile 907/786–3816.

FOR FURTHER INFORMATION CONTACT: Charles S. Hamilton, Wildlife Biologist, Office of Marine Mammals Management (*see* **ADDRESSES** section). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the deterrence of the polar bear as provided for in the 1994 amendments to the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*). For more information on the polar bear, including its status as a threatened species under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), refer to the final listing rule published on May 15, 2008 (73 FR 28212), the final special rule published on December 16, 2008 (73 FR 76249), the proposed designation of critical habitat published on October 29, 2009 (74 FR 56058), and the May 5, 2010 (75 FR 24545) notice of availability of the draft Economic Analysis for the polar bear proposed designation of critical habitat.

As discussed in our notice of April 26, 2010 (75 FR 21571), the 1994 amendments to the MMPA provide an exception to otherwise prohibited acts, allowing the use of measures that may deter a marine mammal from, among other things, damaging private property or endangering personal safety [16 U.S.C. 1371(a)(4)(A)(ii) and (iii), respectively]. These acts of deterrence must not result in the death or serious injury of a marine mammal. Section 101(a)(4)(A) of the MMPA specifically identifies the circumstances when the deterrence of a polar bear may be undertaken and by whom. These include the owner of fishing gear or catch (or his or her employee or agent) when deterring a polar bear from damaging that gear or catch and the owner (or his agent, bailee, or employee) of private property (other than fishing gear or catch) when deterring a polar bear from damaging their property. In addition, under section 101(a)(4)(A) of the MMPA any person may deter a polar bear from endangering personal safety and a government employee may also deter a polar bear from damaging public property. Separate from this authorization, section 101(a)(4)(B) of the MMPA directs the Fish and Wildlife Service (Service) to recommend specific measures that the public may use to safely, nonlethally deter marine mammals, including those listed as endangered or threatened under the ESA. Section 101(a)(4)(C) of the MMPA provides for the prohibition of certain forms of deterrence if the Service determines, using the best scientific information available, and subsequent to public comment, that the deterrence measure has a significant adverse effect on marine mammals.

We have developed these guidelines based on information gained over the past twenty years from our Incidental Take program and cooperative agreements with Alaska Native organizations. Additionally, we received

comment on our proposed guidelines from both the public and experts in the field. These guidelines provide measures that the public may use safely and, if applied properly, will not kill or seriously injure a polar bear. These guidelines are needed to reduce potential occurrences of bear-human interactions and result in no more than minor, short-term behavioral effects on polar bears.

Additional deterrence measures are available under other provisions of the MMPA. As discussed below, these exceptions may be carried out by certain individuals even if they may pose the risk of serious injury or mortality to the polar bear. Section 109(h) of the MMPA allows a Federal, State, or local government employee, acting in their official capacity, to take a polar bear for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance marine mammals. Private persons who have a section 112(c) cooperative agreement with the Service may also carry out such deterrence activities under section 109(h) but only in their capacity as designated persons under such agreement and in full compliance with its terms and conditions. Section 101(c) of the MMPA also allows any person to take a polar bear if the taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours.

Summary of Comments and Recommendations

During the public comment period, we requested written comments from the general public on the proposed deterrence guidelines for the polar bear. Also, as directed under section 101(a)(4)(B), we invited appropriate experts to peer review the proposed guidelines. These experts included representatives from the State of Alaska's Department of Fish and Game, and local community experts that have had experience in areas where the polar bear and human population overlap.

The comment period on the proposed deterrence guidelines opened on April 26, 2010 (75 FR 21571) and closed on May 26, 2010. During that time, we received 8 public comments, and 1 peer review comment on the proposed deterrence guidelines: 1 from the United States Marine Mammal Commission; 1 from the North Slope Borough; 1 from an appropriate expert; and the remainder from organizations and individuals. We reviewed all comments, which are part of the Docket for this rulemaking, received for substantive issues, new information, and recommendations regarding deterrence guidelines for the polar bear. These comments are summarized and addressed below, and are incorporated into the final rule as appropriate.

Comments and Responses

Comment 1: The guidelines are not all inclusive, nor are they exhaustive of the means by which polar bears may be deterred; there are a number of other well recognized and accepted methods which may be used to deter, deflect and haze polar bears.

Response: We recognize there are a number of devices and actions individuals can and do take to protect themselves, or their property, from bears. For example, people use bear spray (*see* comment 2 below), electric fences (see comment 3 below), cracker shells, bean bags, rubber or plastic bullets, and other projectile devices, to successfully haze polar bears. Yet, all such activities which necessitate interactions between humans and bears (especially those activities which include use of a firearm), without appropriate training, may result in either personal injury or injury to a polar bear. These specified deterrence guidelines include activities that any individual may take, regardless of skill, training, or ability. By following these guidelines, we believe the possibility that a polar bear-human interaction will escalate to a circumstance where a polar bear, or an individual, is killed or seriously hurt is minimized.

Apart from these guidelines, the MMPA does provide for the use of other means to deter polar bears. As discussed in the preamble above, section 101(a)(4)(A) allows for certain persons in certain situations to conduct acts of deterrence, as long as they do not result in the death or serious injury of the polar bear. Under section 109(h), Federal, State, or local governmental officials or employees may also deter polar bears when acting in the course of their official duties, and private persons who have a section 112(c) cooperative agreement with the Service may carry out deterrence measures when acting in their capacity as designated persons under such agreement and in full compliance with its terms and conditions.

Comment 2: There is no discussion of bear spray and its effectiveness.

Response: We acknowledge that bear spray (a product registered by the EPA with use directions on the label specifically for repelling bears) is an important tool for deterring bears when used properly. However, bear spray is not effective in all circumstances. For example, according to the Interagency Grizzly Bear Committee [1] (IGBC), bear spray should be used as a deterrent only in an aggressive or attacking confrontation with a bear. According to the IGBC, the more agitated a bear is, the more effective bear spray is. A bear that is charging or attacking breathes deeply and draws the active ingredient into its throat and lungs. Bear spray is not designed to be used on non-aggressive bears. Non-aggressive bears that have been sprayed while feeding tend to walk off and return in a short time.

Despite the lack of data related to the use of bear spray on polar bears, bear spray can likely be effectively used with polar bears as they are similar to grizzly bears, having evolved from the brown bear. However, the Service believes proper training is necessary prior to using bear spray as a preventive deterrence measure when faced with something other than an aggressive animal, such as a curious bear. In addition, aversive conditioning may be an appropriate use of bear spray on a curious animal to prevent the bear from interacting with humans in the future. Multiple deterrent sessions may be necessary to condition the bear. This would entail an increased level of training and knowledge of bear behavior for the user. For this reason, the Service believes that bear spray can be addressed in our other intentional take programs, which address more aggressive deterrent techniques, rather than these guidelines. However, should additional data become available, either from the Service's own management actions or the public, on the use of bear spray for polar bears, including non-aggressive bears, the Service will be able to better evaluate bear spray as a preventive deterrent for the public. Additionally, the appropriate use of bear spray as a means of self-defense or to save the life of a person in immediate danger would not be a violation per section 101(c) of the MMPA.

Comment 3: Electric fences and other electrified products, such as electrified door mats, should be included in the guidelines.

Response: The Service acknowledges that electric fencing is an important tool

[1] In 1983, the Interagency Grizzly Bear Committee (IGBC) was created to coordinate management efforts and research actions across multiple Federal lands and States within the various Recovery Zones to recover the grizzly bear in the lower 48 States. Its objective was to change land management practices to more effectively provide security and maintain or improve habitat conditions for the grizzly bear. The IGBC is made up of upper level managers from affected State, Federal, and Tribal entities. More information about the IGBC may be found on line at: *http://www.igbconline.org/index.html*. The IGBC is still in service today.

that can be used by the public for deterring polar bears when used properly. However, because training is necessary to properly install, use, and maintain an electric fence in the arctic environment, electric fences are not included in these deterrence guidelines.

Comment 4: The use of sound at strengths no greater than 150 dB SPL (sound pressure level) needs to be further evaluated to assess the efficacy in deterring polar bears.

Response: The Service acknowledges there are limited field trials looking at the response of polar bears to sound (for example, Wooldridge 1983, Miller 1987, and Anderson and Aars 2008) and agrees that further investigation is desirable. However, based on available information, as discussed under Preventative Deterrence below, the Service has determined that the reasonable use of acoustic devices may startle or dissuade a bear from approaching a person or their environs thus reducing the likelihood of a more deleterious encounter to the bear or human. Additionally, the use of an acoustic device may also alert other individuals in a village or worksite to the presence of a bear.

Comment 5: The guidelines should be broad in nature and scope to make it easier (and more attractive) for Alaska Natives, who have significant experience with polar bears, to deter polar bears from private property rather than killing them for subsistence purposes.

Response: We readily acknowledge that coastal Alaska Natives have had a long and unique coexistence with the polar bear. These guidelines do not limit the ability of Alaska Natives, or any other individual, to continue to use appropriate means to deter a polar bear but rather provide measures that the Service has determined may be used by **any** individual regardless of training, experience, or ability, to safely deter a polar bear. As noted in our proposed rule, the Service works with Alaska Natives and Alaska Native organizations to authorize more aggressive techniques for hazing polar bears. Integral to these authorizations, issued under sections 109(h) and 112(c) of the MMPA, is an understanding that individuals implementing deterrence or hazing activities are either experienced, or have been trained in their uses, thus limiting the possibility of an individual inadvertently hurting themselves, others, or a polar bear. Similarly, under our Incidental Take program, we issue Letters of Authorization [under section 101(a)(5)(A) of the MMPA for incidental take, or 109(h) and 112(c) for intentional take] that ensure individuals, who may be hazing polar bears, are adequately experienced and trained in the tools of deterrence and the behavior of bears. The Service does not intend for these guidelines to replace or supersede existing protocols or programs, but rather, consistent with the MMPA, we are issuing these guidelines to supplement those efforts.

There are two inherent components to successful deterrence of a polar bear, first an understanding of the tools being used, second, and equally important, an understanding of the general nature of the animal's behavior and responses. These guidelines are targeted towards anyone who has a basic understanding of both polar bear behavior and various deterrence measures regardless of their level of skill or training. The extensive knowledge gleaned from living and working in polar bear habitat for generations is relevant but is not required to implement the measures set out in these guidelines.

Comment 6: Why is fencing limited to 10,000 square feet or larger? Fencing seems appropriate to any size building located on pilings or cribbing that would offer a place for bears to hide.

Response: We agree and this final rule has been revised appropriately.

Comment 7: Distance between bars on exclusion cages is currently at 3 inches. A 4 inch distance between the bars would be sufficient to prevent a bear from reaching through, while providing more visible space between bars.

Response: We agree and this final rule has been revised appropriately.

Comment 8: There is no discussion of bear-resistant containers for remote seasonal camps.

Response: We agree and this final rule has been revised appropriately.

Comment 9: The guidelines should clarify if automobile sirens or horns are included in these guidelines.

Response: We agree and this final rule has been revised appropriately.

Comment 10: Commercial audio products have not been addressed. There are on the market existing commercial products that have proven effective at deterring bears, including grizzly bears around a carcass.

Response: We agree and this final rule has been revised appropriately.

Comment 11: Why are only enclosed vehicles included? Having the vehicle enclosed (as in the cab of an automobile) does not necessarily confer greater protection.

Response: We agree and this final rule has been revised appropriately.

Comment 12: The Service should clarify that any action taken to deter a polar bear from damaging property or injuring a person, that does not kill or seriously injure the animal, is permissible.

Response: Any taking of a polar bear that results from a person carrying out one of the measures enumerated in these deterrence guidelines (*i.e.,* promulgated under section 101(a)(4)(B)) would not be considered a violation of the MMPA as long as that person complies with the conditions and limitations set out in the guidelines. Separate from this, section 101(a)(4)(A) of the MMPA, as discussed in the background section above, allows for certain persons to carry out other deterrence measures so long as such measures do not result in the death or serious injury of the affected polar bear. In addition, the authority afforded under section 101(a)(4)(A) of the MMPA differs depending on the particular person carrying out the measure. For example: Only the owner of fishing gear or catch (or his or her employee or agent) may deter a marine mammal from damaging the gear or catch; only the owner (or his agent, bailee, or employee) of private property (other than fishing gear or catch) may deter a polar bear from damaging such property; any person may deter a polar bear from endangering personal safety; and a government employee may deter a polar bear from damaging public property. As is the case with deterrence measures prescribed in these guidelines under paragraph (B), persons eligible to carry out deterrence measures under paragraph (A) may do so without any written authorization from the Service.

Comment 13: The Service should consider less formal ways of adopting and implementing measures of deterring the polar bear.

Response: The Service did consider less formal ways of adopting and implementing measures to deter a polar bear consistent with the provisions of the MMPA. However, these polar bear deterrence guidelines adopted under section 101(a)(4)(B) of the MMPA establish, if followed by a person otherwise subject to the provisions of the MMPA, an exception to the taking prohibition of the MMPA. As such, the guidelines establish a binding norm that has the effect of law in any future interaction between the public and the Service on the issue of polar bear deterrence. Under the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy" is a "rule" (5 U.S.C. 551(4)), and the process governing the promulgation of a "rule" is set out at 5 U.S.C. 553. The Service was obligated to

use the public notice-and-comment procedure of the APA in adopting these deterrence guidelines. The Service will continue working with Alaska Native villages, industry, and individuals to implement, and where appropriate, refine our polar bear deterrence efforts. Of course, we will pursue all effective means possible to solicit input and inform the public on actions that may reduce bear-human interactions; the promulgation of this final rule is but one means to that end.

Summary of Changes From the April 26, 2010 Proposed Rule

Comments on our April 26, 2010 proposed rule (75 FR 21571) to issue guidelines for the safe deterrence of the polar bear generally indicated a belief that additional, more aggressive means of deterrence should be included. For reasons stated in our response to comments section, the Service did not adopt more aggressive deterrence measures for the polar bear. A number of comments recommended the Service clarify the applicability of the guidelines as well as other provisions of the law and the Service adopted those recommendations and clarified this final rule where needed.

As stated in our proposed rule (75 FR 21571) the Service encourages individuals living, travelling, or working in areas that polar bears may frequent to become aware of the practices in these guidelines to reduce the likelihood of bear-human interactions. Polar bears are generally found in the marine environment and along the coastline. Polar bears can be found far inland; however, most recorded polar bear-human interactions have occurred within 5 miles or less of the coastlines of the Chukchi and Beaufort seas.

We also encourage people, especially those within 5 miles of the coastline and within the range of the polar bear, to develop practices that may help prevent a bear-human interaction. These practices include: (1) Developing and attending polar bear awareness training; and (2) attending outreach events hosted by local communities or by the Service that provide information to reduce bear-human interactions.

For example, by attending an outreach event [2], people can share information on developing and implementing *detection systems,* which allow for early observation of polar bears in the vicinity of human settlement. Detection systems could include any of the following: Bear monitors (*i.e.,* individuals trained to watch for and alert others to the presence of bears); trip-wire fences; closed-circuit TV; and electronic alarm systems. Furthermore, constant vigilance for polar bears by all personnel working at a work site augments a detection system web and can significantly reduce the occurrence of a bear-human interaction.

In addition, *operational management plans* [3] for communities or private companies operating in polar bear habitat can be used to establish a formalized structure to incorporate passive and preventive deterrence measures. These could include measures for:

- Attractants management—Establishing protocols and procedures to limit attractants to wild animals within property boundaries by storing garbage, human waste, food, and other products in areas not accessible to bears;
- Garbage management—Establishing protocols and procedures for how communities or sites will control and dispose of garbage to limit its attraction to bears as a food source (*e.g.,* the use of incinerators);
- Snow management—Establishing protocols and procedures to remove snow around buildings and work areas to increase visibility, such as planning the placement of snow berms; and
- Lighting systems management—Establishing protocols and procedures to install lighting in areas where it is needed to detect bears that may be in the vicinity.

The Service recognizes our dual responsibilities to provide for the conservation of the polar bear and minimize the threat to public safety posed by the presence of a large, curious, and at times hungry predator in their vicinity. In the past, we have worked with local communities to identify actions that may ameliorate the potential impacts of the presence of polar bears in local communities. We will continue to do so by working with Alaska coastal communities on the implementation of these guidelines and other deterrence measures authorized by the Service. Further, and in situations where there is an imminent risk to public safety, Federal, State, and local government officials have the authority to take marine mammals if doing so is for the protection or welfare of the animals or for the protection of the public health and welfare. Regulations governing such takings, which take into account the special training and experience levels of such officials, are in place at 50 CFR 18.22.

Guidelines

These guidelines, for use in safely deterring polar bears in the wild, provide acceptable types of deterrence actions that any person, or their employee, or their agent can utilize to deter a polar bear from damaging their private property. The guidelines, developed using the best available information, call for caution and restraint in their use and give direction to ensure that deterrence actions do not result in the serious injury or death of a polar bear. Further, the Service believes that adhering to these guidelines will minimize the possibility that a polar bear-human interaction escalates to the point where a polar bear must be killed in the interest of public safety.

There are two levels of deterrence a person could follow under these guidelines in order to nonlethally deter a problem polar bear: Passive and preventive. Each type of measure includes a suite of appropriate actions that the public may use.

Passive deterrence measures are those that prevent polar bears from gaining access to property or people. The proper use of these passive deterrence devices provides for human safety and does not increase the risk of serious injury or death of a polar bear. Such measures include rigid fencing and other fixed barriers such as gates and fence skirting to limit a bear's access, bear exclusion cages to provide a protective shelter for people in areas frequented by bears, and bear-proof garbage containers to exclude polar bear access and limit food-conditioning and habituation to humans. The Service also recognizes the IGBC, *see* footnote 1, which has published minimum design and structural standards, inspection and testing methodology for grizzly bear resistant containers. Bear-resistant products approved for use on public lands can be considered as well (Web site: *http://www.igbconline.org/FinalBearResistantContTesting May2008-09.pdf*). The IGBC bear-resistant standards can be used as a resource when selecting appropriate bear-resistant containers for polar bears.

[2] The Service, as well as the North Slope Borough, and local communities hold ad hoc outreach events throughout the year regarding polar bears and polar bear safety, these may be informal discussions or more formal events, which are advertised at the local level; all are encouraged to attend.

[3] For an example of an operational management plan that incorporates elements of minimizing bear-human interactions see Shell's "Polar Bear, Pacific Walrus, and Grizzly Bear Avoidance and Human Encounter/Interaction Plan 2010 Exploration Drilling Program Chukchi Sea, Alaska" available on the Service's Web page at: *http://alaska.fws.gov/fisheries/mmm/Chukchi_Sea/2010_shell_exploratory_drilling_program/Shell%20Chukchi%20Bear-walrus%20interaction%20Plan%202010.pdf.*

Preventive deterrence measures are those that can dissuade a polar bear from initiating an interaction with property or people. The proper use of these preventive deterrence devices provides for safe human use and does not increase the risk of serious injury or death of a polar bear. Such measures include the use of acoustic devices to create an auditory disturbance causing polar bears to move away from the area and vehicles or boats to deter or block an approaching polar bear.

The use of acoustic deterrence is limited to those devices that create no more than a reasonable level of noises, *e.g.,* vehicle engines, automobile sirens, or horns, or an air horn, where such auditory stimuli could startle a bear and disrupt its approach to property or people. Recent research on responses of captive polar bears to auditory stimuli has shown that polar bears are able to detect sounds down to 125 Hertz (Hz) (Bowles *et al.* 2008) and high-frequency sounds up to 22.5 kHz (Nachtigall *et al.* 2007).

Polar bears possess an acute hearing ability at a wider frequency range than humans, which is less than 20 kHz. Data indicate that polar bears hear very well within the frequency range of 11.2 to 22.5 kHz (Nachtigall *et al.* 2007). Sounds ('roars') with frequency content between 100 and 600 Hz and broadcast directionally at over 120 dB SPL (sound pressure level) appeared to have the most success in deterring bears (Wooldridge 1978, Wooldridge and Belton 1980). However, there are no data available to indicate minimum received sound levels required to cause damage (*e.g.,* a temporary threshold shift [TTS]) to polar bear hearing.

While these upper limits are unknown for polar bears, the nearest species, ecologically, to extrapolate from is likely the California sea lion (*Zalophus californianus*). Like polar bears, sea lions have, primarily, a land-adapted ear that goes in and out of water. Kastak *et al.* (2007) conducted noise-induced TTS studies in air on a California sea lion and in summarizing their findings stated that an aircraft flying over a sea lion rookery and exposing the animals to broadband noise for 30 seconds to 1 minute would need to generate received levels of 140–145 dB in order to induce a TTS. The Service believes that appropriate and reasonable use of sound deterrent devices will not harm polar bears and, therefore, sound deterrence is allowable as long as the sound level of the directed acoustic device used to deter bears has a sound strength of no greater than 140 dB SPL and is deployed for no more than 30 seconds per occasion. The use of commercially available air horns and other similar devices designed to deter wild animals falls below this upper limit, can be modulated, and may be effective in deterring bears while causing no lasting or permanent harm to individual animals.

MMPA Consultation

Section 101(a)(4) of the MMPA (16 U.S.C. 1371(a)(4)) requires the Service to consult with appropriate experts on the development of safe and nonlethal deterrence provisions. The Service provided the proposed guidelines to three appropriate experts that have experience and knowledge of interactions with polar bears and/or the use of deterrence devices, including representatives from the State of Alaska Department of Fish and Game, and local and Alaska Native experts, and invited them to peer review the proposed guidelines. We received comments back from one of these experts and carefully considered their comments and recommendations in preparing this final rule. We have summarized all comments, including expert comments, in the Comments and Responses section above.

Required Determinations

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3225 of January 19, 2001 [Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)], Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy), and the Native American Policy of the U.S. Fish and Wildlife Service, June 28, 1994, we acknowledge our responsibilities to work directly with Alaska Natives in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing conservation concerns for listed species, to remain sensitive to Alaska native culture, and to make information available to Tribes.

For these guidelines we consulted with and requested expert comment from the Alaska Nanuuq Commission (Commission). The Commission, established in 1994, is a Tribally Authorized Organization created to represent the interests of subsistence users and Alaska Native polar bear hunters when working with the Federal Government on the conservation of polar bears in Alaska. We also met with the North Slope Borough Assembly in order to provide information on and receive comment from Assembly members on the development of these guidelines.

We do not anticipate that the guidelines will have an effect on Tribal activities especially as they may pertain to Tribal subsistence activities. We have reached this determination because: (1) Under our incidental or intentional take programs, as discussed above, activities that whole communities are taking to minimize bear-human interactions are being developed in partnership with the Service and under separate and relevant authorities; and (2) the taking of polar bears for subsistence or handicraft purposes is exempted from these guidelines and, therefore, not impacted by these guidelines. The guidelines are designed to provide people with means to safely deter polar bears.

Intra-Service Consultation Under Section 7 of the ESA

On May 15, 2008, the Service listed the polar bear as a threatened species under the ESA (73 FR 28212). Section 7(a)(1) and (2) of the ESA (16 U.S.C. 1536(a)(1) and (2)) direct the Service to review its programs and to utilize such programs in the furtherance of the purposes of the ESA and to ensure that a proposed action is not likely to jeopardize the continued existence of an ESA-listed species. Consistent with these statutory requirements, the Service's Marine Mammal Management Office conducted a consultation over these guidelines with the Service's Fairbanks Fish and Wildlife Field Office. On July 16, 2010, the Service's Fairbanks Fish and Wildlife Office responded to our request for an Intra-Service Consultation under the ESA concurring that the guidelines may affect, but are not likely to adversely affect the polar bear.

National Environmental Policy Act (NEPA) Considerations

We have prepared an environmental assessment in conjunction with these guidelines in which the Service determined that the guidelines do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the NEPA of 1969. Specifically we found that the guidelines for the deterrence of the

polar bear may be accomplished safely and will not likely result in the serious injury or death to polar bears and that the environmental consequences of the guidelines are negligible. Because we have found that these guidelines will have no significant impact on the human environment an environmental impact statement is not required. For a copy of the environmental assessment, go to *http://www.regulations.gov* and search for Docket No. FWS–R7–FHC–2010–0002 or contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is significant and has conducted a review under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Small Business Regulatory Enforcement Fairness Act

We have determined that 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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Expenses will be related to, but not necessarily limited to, the purchase of bear-proof garbage containers, fencing material, air horns, and additional lighting. Any costs associated with implementing a guideline should be offset by reductions in potential bear–human interactions and safety.

Regulatory Flexibility Act

We have determined that this 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.* Any costs associated with implementing a guideline should be offset by reductions in potential bear-human interactions and safety. Therefore, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Any costs associated with implementing a guideline should be offset by reductions in potential bear-human interactions and safety. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implications

This rule does not have takings implications under Executive Order 12630. Therefore, a takings implications assessment is not required.

Federalism Effects

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect polar bears and specifically allows for people to undertake activities to deter polar bears.

Civil Justice Reform

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required.

Information Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section.

References

We include a list of the references cited in this final rule:

Anderson M. and J. Aars. 2008. Short-term behavioral response of polar bears (*Ursus maritimus*) to snowmobile disturbance. Polar Bio. 31:501–507.

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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.

Regulation Promulgation

■ For the reasons set forth in the preamble, the Service amends part 18, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

■ 1. The authority citation for part 18 continues to read as follows:

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

Subpart D—Special Exceptions

■ 2. Add § 18.34 to subpart D to read as follows:

§ 18.34 Guidelines for use in safely deterring polar bears.

(a) These guidelines are intended for use in safely deterring polar bears in the wild. They provide acceptable types of deterrence actions that any person, or their employee, or their agent, can use to deter a polar bear from damaging private property; or that any person can use to deter a polar bear from endangering personal safety; or that a government employee can use to deter a polar bear from damaging public property, and not cause the serious injury or death of a polar bear. Anyone acting in such a manner and conducting activities that comply with the guidelines in this subpart does not need authorization under the MMPA to conduct such deterrence. Furthermore, actions consistent with these guidelines do not violate the take prohibitions of the MMPA or this part. A Federal, State or local government official or employee may take a polar bear in the course of his duties as an official or employee, as long as such taking is accomplished in accordance with § 18.22 of this part.

(b) There are two types of deterrence measures that a person, or their employee, or their agent could follow to nonlethally deter a polar bear. Each type of measure includes a suite of appropriate actions that the public may use.

(1) *Passive deterrence measures.* Passive deterrence measures are those that prevent polar bears from gaining access to property or people. These measures provide for human safety and do not increase the risk of serious injury or death of a polar bear. They include:

(i) *Rigid fencing.* Rigid fencing and other fixed barriers such as gates and fence skirting can be used around buildings or areas to limit bears from accessing community or industrial sites and buildings. Fencing areas 5 acres (~2 ha) and smaller can be used to limit human–bear interactions. Industry standard chain-link fencing material can be used. Chain-link fencing can be placed around buildings on pilings as fence skirting to limit access of bears underneath the buildings.

(ii) *Bear exclusion cages.* Bear exclusion cages provide a protective shelter for people in areas frequented by bears. Cages erected at building entry and exit points exclude polar bears from the immediate area and allow safe entry and exit for persons gaining access to, or leaving, a building should a polar bear be in the vicinity. Additionally, they provide an opportunity for people exiting a building to conduct a visual scan upon exit. Such a scan is especially important in areas where buildings are constructed above ground level due to permafrost because bears may be resting underneath. These cages can be used at homes or industrial facilities to deter bears as well. Cages can be used in remote areas where bear use is not known, and along bear travel corridors, *e.g.,* within 0.5 mile from coastline, to deter bears from facilities. Cages must be no smaller than 4 ft (width) by 4 ft (length) by 8 ft (height). Bars must be no smaller than 1 inch wide. Distance between bars must be no more than 4 inches clear on stairways and landings or when otherwise attached to a habitable structure; they may be no more than 5 inches clear for use in cages not attached to any habitable structure. A 4-inch distance between the bars would be sufficient to prevent a bear from reaching through, while providing visible space between bars. The ceiling of the cage must be enclosed.

(iii) *Bear-resistant garbage containers.* Bear-resistant garbage containers prevent bears from accessing garbage as a food source and limit polar bears from becoming food-conditioned or habituated to people and facilities. The absence of habituation further reduces the potential for bear–human interactions. Bear-resistant garbage cans and garbage bins are manufactured by various companies and in various sizes. Commercially designed residential bear-resistant containers (32–130 gallons) can be used. Two- to 6-cubic yard containers can be specifically designed by commercial vendors as bear-proof containers or have industry-standard lid locks to prohibit bear entry, depending on the need and location. For remote seasonal camps, garbage can be temporarily stored in steel drums secured with locking rings and a gasket, and removed from the site when transportation is available. Larger garbage containers, such as dumpsters or "roll-offs" (20 to 40 cubic yards), can limit bear–human interactions when the containers have bear-proof lids. Lids must be constructed of heavy steel tubing or similarly constructed with heavy expanded metal.

(2) *Preventive deterrence measures.* Preventive deterrence measures are those that can dissuade a polar bear from initiating an interaction with property or people. These measures provide for safe human use and do not increase the risk of serious injury or death of a polar bear. These are:

(i) *Acoustic devices.* Acoustic deterrent devices may be used to create an auditory disturbance causing polar bears to move away from the affected area. The reasonable use of loud noises, *e.g.,* vehicle engines, automobile sirens or horns, and air-horns, where such auditory stimuli could startle a bear and disrupt its approach to property or people, is authorized. This authorization is limited to deterrent devices with a sound strength of no greater than 140 dB SPL to be deployed for no more than a 30-second continuous time interval. The use of commercially available air horns or other audible products used as perimeter alarms, which create sounds that fall below this upper limit, is acceptable.

(ii) *Vehicle or boat deterrence.* Patrolling the periphery of a compound or encampment using a vehicle, such as a truck or all-terrain vehicle (*e.g.,* a snowmobile or a four wheeler), and deterring, but not chasing, polar bears with engine noise, or by blocking their approach without making a physical contact with the animal, is an acceptable preventive deterrence. Similarly patrolling an area in a small boat using similar methods is acceptable.

(c) The deterrence guidelines are passive or preventive in nature. Any action to deter polar bears that goes beyond these specific measures could result in a taking and, unless otherwise exempted under the MMPA, would require separate authorization. The Service acknowledges that there will be numerous new techniques developed, or new applications of existing techniques, for deterring bears. The Service will work to establish a system for evaluating

new bear deterrence applications and techniques and will update this set of guidelines with examples of future approved methods. Deterrence actions (other than the measures described in these guidelines) that do not result in serious injury or death to a polar bear remain permissible for persons identified in section 101(a)(4)(A) of the MMPA. Prior to conducting activities beyond those specifically described in these guidelines, persons should contact the Service's Alaska Regional Office's Marine Mammal Program for further guidance (for the location of the Alaska Regional Office see 50 CFR 2.2(g)).

Dated: September 22, 2010.

Tom Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–25044 Filed 10–5–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XZ38

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) 36 hours after opening directed fishing for pollock, effective 2400 hrs, Alaska local time (A.l.t.), October 2, 2010. This adjustment is necessary to manage the pollock total allowable catch limit in Statistical Area 630 of the GOA.

DATES: Effective 2400 hrs, Alaska local time (A.l.t.), October 2, 2010, through 2400 hrs, A.l.t., December 31, 2010. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 18, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XZ38, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 19,118 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

As of September 29, 2010, approximately 5,700 mt of pollock remain in the 2010 TAC for pollock in Statistical Area 630. The D season allowance of the pollock TAC in Statistical Area 630 is 5,912 mt for the period beginning October 1, 2010 through November 1, 2010. Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the catching capacity of vessels catching pollock in Statistical Area 630 of the GOA is in excess of 4,000 mt per day. The Administrator, Alaska Region, (Regional Administrator) has determined that the pollock TAC could be exceeded if a 48-hour fishery were allowed to occur. NMFS intends that the TAC not be exceeded and, therefore, will not allow a 48-hour directed fishery. NMFS, in accordance with § 679.25(a)(1)(i), is issuing an inseason adjustment prohibiting directed fishing for pollock in Statistical Area 630 of the GOA by closing the fishery at 2400 hrs, A.l.t., October 2, 2010. This action has the effect of opening the fishery for 36 hours. NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the pollock TAC. In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., October 2, 2010, after a 36 hour opening is the least restrictive management adjustment to achieve the pollock TAC and will allow other fisheries to continue in noncritical areas and time periods. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of pollock in Statistical Area 630 of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock directed fishing in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September, 29, 2010. NMFS will be accepting comments after the effective date of this closure (*See* **DATES**).

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.