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Public Comments Processing
Attn: Docket No. FWS-R7-ES-2024-0140
Policy and Regulations Branch
U.S. Fish and Wildlife Service
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Submitted via www.regulations.gov (Docket No. FWS–R7–ES–2024–0140)

Public Comment Re: Taking or Importing of Marine Mammals: Polar Bears During Specified Activities; North Slope, AK; Docket (FWS-R7-ES-2024-0140)

Dear U.S. Fish & Wildlife Service,

We are writing to express opposition to the proposed changes to the Incidental Take Regulations (ITR) for the Southern Beaufort Sea (SBS) polar bear population, as they contradict science-based recommendations for this already threatened population—and species—and violate international and federal protections.

The polar bear is listed as "vulnerable" range-wide under the IUCN Red List, citing sea ice loss from climate change as the single biggest threat to their survival.[9] Continued expansion of fossil fuel development directly threatens polar bear sea ice habitat.[2] The SBS polar bear population is broadly considered one of the most at risk from warming driven habitat loss, and research has already shown this population declined by nearly 40% in the last 30 years.[5] Absent significant reductions in global fossil fuel emissions, science forecasts continued population decline for the SBS polar bears. With a business-as-usual approach to fossil fuel emissions, these bears are expected to disappear by 2100. Even with moderate reductions to fossil fuel emissions—with an average end of century temperature of 2.4 degrees Celsius above pre-industrial levels—research shows that this population is "very likely" to disappear.[7] Sea ice loss aside, fossil fuel development threatens, and potentially excludes, bears from critical denning habitat, increases risks for oil spill related habitat damage and direct exposure, and generally increases disturbance and potential displacement for a species already in decline.[6] Therefore, not only are the activities being considered here—the exploration for and production of fossil fuels—incompatible with the recovery of polar bears across their range, but allowing incidental take by Level A harassment of, or injury to, SBS polar bears puts stress on an already vulnerable population.

We also disagree that the proposed ITR changes reflect that only "small numbers" of polar bears will experience "negligible impacts." Our concerns include:

First, the passages below suggest that because SBS polar bears occur across a large area, the numbers affected by ITRs are likely to be small. However, polar bears are not evenly distributed across the SBS region and instead focus their activity in coastal regions that offer the best opportunities for hunting seals, and for creating maternal dens. As acknowledged elsewhere in the document, these dens are also concentrated in terrestrial habitats that are particularly vulnerable to industry activity.[8] Thus it is not reasonable to assert that impacts will be "small" because of the large total spatial extent of this subpopulation.

"SBS polar bears range well beyond the boundaries of the Beaufort Sea 2021-ITRs region…Thus, the area of Industry activity will be relatively small compared to the range of polar bears."

"The distribution and habitat use patterns of polar bears indicate that relatively few polar bears will occur in the specified areas of activity at any particular time and, therefore, few polar bears are likely to be affected."

Second, the proposed changes note that in data collection since the current ITRs went into effect, half of observed dens (two of four) appeared to have exhibited a disturbance response; and that conservatively, roughly 10% of the entire subpopulation is expected to be subject to a harassment take on an annual basis. Neither of these pieces of information support the finding of only a "small number" of polar bears being affected.

Third, these changes state that *"den detection surveys for polar bears and adaptive mitigation and management responses based on real-time monitoring information (described in this proposed rule) will be used to avoid or minimize interactions with polar bears and, therefore, limit potential disturbance of these animals."* However, the best available den detection estimate includes a 0.15 success rate (credible interval 0.02 to 0.23).[10] This is the only study to date that has used a controlled, experimental approach—combined with the aircraft, pilots, sensors, and protocols that are currently used by industry—to quantify how well polar bear dens can be detected. Using the study data which "was the most similar to industry AIR surveys", Woodruff et al. 2022 found that only 0.15 of dens would be detected, contradicting the assumption that real-time monitoring has the capability to limit potential disturbances.

Fourth, the updated denning analysis evaluates the probability of litter survival to 100 days, but the basis for this is not clear. The cited source for this model (Andersen et al. 2024) only observed litter survival to a mean of 26 days (range 0 to 74 days).

Fifth, it is not clear how the Andersen et al. (2024) model is being applied, based on the passage below. Importantly, Andersen et al. (2024) found that both the date of the emergence, and the duration of the post-emergence stay near the den, were highly associated with cub survival during the first 26 days (on average) of life. But it is not clear if the proposed ITR changes consider the effects of disturbance on both the date of emergence and on the duration of the post-emergence stay near the den.

"We also use newly described relationships between den emergence date, den departure time, and litter survival (Andersen et al. 2024) to assign litter survival rates to simulated dens that experienced Level A harassment, a method used in recent polar bear take authorizations (88 FR 88943, December 26, 2023). If an exposure resulted in a disturbance response during the late denning period, we first assigned that den a new random earlier emergence date. We then simulated whether that den was disturbed during the post-emergence period. Dens that were disturbed during the post-emergence period were also assigned a new random earlier den departure date. We relied on estimates of litter survival derived from empirical data from approximately 100 days post emergence (Andersen et al. 2024) to determine the fitness consequence of the Level A harassment, and we consider this information below when addressing the MMPA's negligible impact standard."

Sixth, it is faulty reasoning to assert that take of cubs does not threaten a wildlife population because adult females may produce more cubs in the future, as the passage below appears to do. Population trajectories reflect the integration of reproductive output over time, thus a reproductive failure in one year is not "balanced out" by a reproductive success in a following year. The fact that cubs are not yet reproductively active is not a justification for considering their increased take to be a negligible impact.

"If a den disturbance were to result in the mortality of the entire litter, the female would be available to breed during the next mating season and produce another litter during the next denning season"

Seventh, data clearly indicate that SBS polar bears are a declining population that is experiencing sea ice loss from climate change, and cub survival, in particular, appears to be sensitive to changes in environmental conditions.[3, 4] Contrary to the passage below, these data are already available for consideration. Also contrary to the passage below, we do not believe that reducing the survival probabilities of an already-declining population is a negligible impact.

"The Service is currently involved in research to understand how climate change may affect polar bears. As we gain a better understanding of climate change effects, we will incorporate the information in future authorizations. While climate change and other ongoing factors pose

significant challenges to SBS polar bears, we do not expect them to influence the degree of impacts (i.e., short-term behavioral responses and temporary reductions in fitness) resulting from the specified activities or incidental harassment to be authorized under a revised ITR."

Numbers aside, Level A harassment of, or injury to, even a few bears goes against the precautionary principle in harming a listed species under the Endangered Species Act (ESA) and a depleted species protected under the Marine Mammal Protection Act (MMPA) whose population is already declining.

Finally, this proposed change also contravenes existing international and federal protections for the species. Polar bears are managed under a legally binding international treaty, the 1973 Agreement on the Conservation of Polar Bears, which requires a science and ecosystem-based approach to conservation, with special attention to habitat components like denning sites (Article II).[1] Article III of the Agreement states that all "take" is prohibited except for in the following circumstances: "a) for bona fide scientific purposes; or b) by that Party for conservation purposes; or c) to prevent serious disturbance of the management of other living resources, subject to forfeiture to that Party of the skins and other items of value resulting from such taking; or d) by local people using traditional methods in the exercise of their traditional rights and in accordance with the laws of that Party; or e) wherever polar bears have or might have been subject to taking by traditional means by its nationals."[1] Industrial activity is very clearly not listed among permitted "take" activities, and while "take" under the Agreement is specific to lethal removal, the probability that injury to a polar bear—or Level A harassment—could be lethal is high given the harshness of their environment and their position as obligatory predators. Polar bears are also listed as "threatened" under the ESA, and "depleted" under the MMPA. The proposed changes to these regulations—allowing possible injury to polar bears—are at odds with the species' recovery and run counter to the conservation goals outlined in these pieces of federal legislation.

We must acknowledge the scientific consensus that polar bears are facing enormous threats due to the rapid loss of sea ice, which is the foundation of their habitat and their survival. Therefore, we need to ensure that any human activity in polar bear habitat is conducted in a manner that does not exacerbate these threats. We understand that some human impact on neighboring wildlife is unavoidable as we are always leaving footprints on our environment in some way. Still, we would like to see USFWS deny requests for activity that could outright injure polar bears of a threatened—and federally and internationally protected—population.

In conclusion, we urge the U.S. Fish and Wildlife Service to reject the proposed changes to the Incidental Take Regulations for the Southern Beaufort Sea polar bear population. Strong protections are vital to ensuring the survival of the species in the face of growing environmental challenges.

Thank you for your service and for considering these comments.

Sincerely,

John Whiteman Chief Research Scientist Polar Bears International	Geoff York Senior Director of Research & Policy Polar Bears International	Emily Ringer Director of Policy & Advocacy Polar Bears International

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