

§ 18.90 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

- (1) A statement containing a description of the history of the proceedings;
- (2) Findings on the issues of fact with the reasons therefor; and
- (3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Director the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that to the best of his knowledge and belief the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Upon receipt of the recommended decision, the Director shall send a copy thereof to each party by certified mail and shall publish in the FEDERAL REGISTER a notice of the receipt of the recommended decision by the Director. The notice shall include:

- (1) A summary of the recommended decision;
- (2) A statement that any interested person may file written comments on the recommended decision with the Director by a specified date;
- (3) The time(s) and place(s) where the record of the hearing transmitted to the Director pursuant to paragraph (b) of this section may be inspected by interested persons; and
- (4) The time(s) and place(s) where the recommended decision may be inspected and/or copied by interested persons.

(d) Within thirty days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Director any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the thirty-

day period to the Director at the above address.

§ 18.91 Director's decision.

(a) Upon receipt of the recommended decision and transcript and after the thirty-day period for receiving written comments on the recommended decision has passed, the Director shall make a final decision on the proposed regulations and waiver, where applicable. The Director's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

- (1) A statement containing a description of the history of the proceeding;
- (2) Findings on the issues of fact with the reasons therefor;
- (3) Rulings on issues of law; and
- (4) Any other relevant information which the Director deems appropriate.

(c) The Director's decision shall be published in the FEDERAL REGISTER. If the waiver is approved, the final adopted regulations shall be promulgated with the decision, or as soon thereafter as practicable.

Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

SOURCE: 41 FR 14373, Apr. 5, 1976, unless otherwise noted.

§ 18.92 Purpose of regulations.

The regulations contained in this subpart fulfill the requirements of section 103 of the Act for regulations to govern the taking and importation of each species of marine mammal for which the moratorium imposed by section 101 has been waived.

§ 18.93 Scope of regulations.

(a) The provisions in this subpart apply only after (1) the Director has made a decision to waive a moratorium pursuant to section 101(a)(3)(A) of the Act, (2) the opportunity for a hearing

§ 18.94

required by section 103(d) of the Act has been provided, and (3) the Director has made a determination, in the case of State laws and regulations, to approve such State laws and regulations pursuant to section 109(a)(2) of the Act and subpart F of this part.

(b) The provisions of this subpart, unless specifically stated, apply to all taking and/or importation of each species of marine mammal for which the moratorium has been waived other than takings for scientific research or public display, which are governed by § 18.31 of this part, or takings incidental to commercial fishing operations which are governed by § 18.24.

§ 18.94 Pacific walrus (Alaska).

(a) Pursuant to sections 101(a)(3)(A) 103, and 109 of the Marine Mammal Protection Act of 1972, the moratorium on the hunting and killing of Pacific walrus (*Odobenus rosmarus*) in waters or on lands subject to the jurisdiction of the State of Alaska, the United States, or on the high seas by any person, vessel, or conveyance subject to the jurisdiction of the State of Alaska or the United States, is waived, provided that beginning August 2, 1979 this waiver shall not be effective, and no taking or importation under the waiver shall be allowed, until this section is amended to establish regulations to effectively control taking and otherwise implement the waiver.

(b) [Reserved]

[41 FR 14373, Apr. 5, 1976, as amended at 44 FR 45566, Aug. 2, 1979]

Subpart I [Reserved]

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

SOURCE: 58 FR 60410, Nov. 16, 1993, unless otherwise noted.

EFFECTIVE DATE NOTE: At 58 FR 60410, Nov. 16, 1993, subpart J was added to part 18, effective Dec. 16, 1993 through June 16, 1995. At 60 FR 31258, June 14, 1995, the effective date was extended for 60 days through Aug. 15, 1995. At

50 CFR Ch. I (10–1–98 Edition)

60 FR 42805, Aug. 17, 1995, the effective date was further extended through Dec. 15, 1998.

§ 18.121 Specified activity and specified geographical region.

Regulations in this subpart apply to the incidental, but not intentional, take of polar bear and walrus by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The specified geographical area is defined by a North/South line at Barrow, Alaska, and includes all Alaska State waters, and Outer Continental Shelf waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is excluded.

[58 FR 60410, Nov. 16, 1993, as amended at 60 FR 42809, Aug. 17, 1995]

EFFECTIVE DATE NOTE: At 60 FR 42809, Aug. 17, 1995, § 18.121 was amended by removing "Outer Continental Shelf waters east of" and adding in its place "Outer Continental Shelf waters east of", effective Aug. 15, 1995 through Dec. 15, 1998.

§ 18.122 Effective dates.

Regulations in this subpart will continue in effect through December 15, 1998, for oil and gas exploration, development, and production activities.

[60 FR 42809, Aug. 17, 1995]

EFFECTIVE DATE NOTE: At 60 FR 42809, Aug. 17, 1995, § 18.122 was revised, effective Aug. 15, 1995 through Dec. 15, 1998.

§ 18.123 Permissible methods.

(a) The incidental, but not intentional, take of polar bear and walrus by U.S. citizens holding a Letter of Authorization (see § 18.128) is permitted for takes resulting from:

- (1) Activities associated with conducting geological and geophysical surveys;
- (2) Activities associated with drilling exploratory wells and associated activities; and
- (3) Activities associated with drilling production wells and performing production support operations.

(b) The methods and activities identified in § 18.123(a) must be conducted in a manner that minimizes to the