



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
1011 East Tudor Road
Anchorage, Alaska 99503



In Reply Refer to:
FWS/IR11/AFES/MMM

Ms. T. Riker
Director, Fleet Installations and Environment and Deputy Chief of Staff
Department of the Navy, U.S. Fleet Forces Command
1562 Mitscher Avenue, Suite 250
Norfolk, Virginia 23551-2487

Dear Ms. Riker:

The U.S. Fish and Wildlife Service Marine Mammals Management Office (MMM) has reviewed your request, dated December 7, 2021, for a Letter of Authorization (LOA) for intentional take by Level B non-lethal harassment (deterrence) of polar bears (*Ursus maritimus*). Polar bear deterrence will be conducted during activities associated with the Navy Ice Exercise 2022. Your planned activities will occur during a six-week period between February and the end of April, 2022. We have determined that your request is consistent with management activities to protect human life as well as polar bears.

In providing this LOA I note that questions my staff had regarding frequency of waste backhaul, reporting requirements, and deterrence methods were resolved on January 25, 2022, following a conversation on January 18, 2022. Therefore, and in accordance with sections 101(a)(4)(A), 109(h), and 112(c) of the Marine Mammal Protection Act of 1972, as amended, enclosed is LOA 22-INT-01 authorizing deterrence of small numbers of polar bears for the protection of life, both human and polar bears, under specified terms and conditions.

Should you have any questions regarding this LOA and the required terms and conditions, please contact Wildlife Biologist, Ms. Heather Patterson at 907-205-9389, or via email at heather_patterson@fws.gov, or Regulatory Program Branch Manager, Ms. Sierra Franks, at 907-268-0577 or via email at sierra_franks@fws.gov. You may also contact MMM at fw7_mmm_reports@fws.gov.

Sincerely,

Chief, Marine Mammals Management

Enclosure

Email cc: Mr. Richard Shideler, Alaska Department of Fish and Game
Ms. Kaiti Ott, Fairbanks Fish and Wildlife Field Office, U.S. Fish and Wildlife
Service
Office of Law Enforcement, U.S. Fish and Wildlife Service
Department of Law, North Slope Borough



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LETTER OF AUTHORIZATION

(22-INT-01)

VALID: February 1, 2022
EXPIRES: May 31, 2022

In accordance with sections 101(a)(4)(A), 109(h), and 112(c) of the Marine Mammal Protection Act of 1972, as amended (MMPA), the U.S. Fish and Wildlife Service (Service) Marine Mammals Management Office (MMM) is hereby issuing this Letter of Authorization (LOA) to the U.S. Navy Fleet Forces Command (Navy) allowing intentional take of small numbers of polar bears (*Ursus maritimus*), by Level B non-lethal harassment (deterrence) during activities associated with the Navy Ice Exercise 2022 (ICEX 22). The project involves the establishment of a temporary ice camp situated on an ice floe, submarine training and testing, and the execution of research activities. The vast majority of submarine training and testing and all research objectives would occur near the ice camp. Some submarine training and testing activities may occur outside of the study area throughout the deep Arctic Ocean basin. The ice camp would be established in an area approximately 100-200 nautical miles north of Prudhoe Bay, Alaska. The study area would be approximately 18,630 square miles (mi²) (48,258 square kilometer [km²]) and the ice camp would be no more than 1 mile (1.6 kilometer) in diameter [approximately 0.79 mi² (2 km²) in area].

The project is expected to begin around late February, 2022, and end in late April, 2022. Full project details are provided in the following documents:

- A letter regarding *application for an LOA for Intentional Harassment* (dated December 7, 2021); and
- Navy's *Polar Bear Interaction and Avoidance Management Plan for Ice Exercise 2022* (includes project description, dated December 7, 2021).

Section 101(a)(4)(A) of the MMPA states that, "Except as provided in subparagraphs (B) and (C), the provisions of this chapter [prohibiting take] shall not apply to the use of measures:

- i. by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;
- ii. by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;
- iii. by any person, to deter a marine mammal from endangering personal safety; or
- iv. by a government employee, to deter a marine mammal from damaging public property, so long as such measures do not result in the death or serious injury of a marine mammal."

Section 109(h) states that, "nothing in this title [Conservation and Protection of Marine Mammals]... shall prevent a Federal, State, or local government official or employee or a person

designated under section 112(c) from taking, in the course of his or her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for: A) the protection or welfare of the mammal; B) the protection of the public health and welfare; or C) the non-lethal removal of nuisance animals.”

Section 112(c) allows for the Service to, “...enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this title [Conservation and Protection of Marine Mammals]... and on such terms as he [the Secretary] deems appropriate with any Federal or State agency, public or private institution, or other person.”

The purpose of authorizing take by Level B non-lethal harassment, or deterrence, is to maintain human safety in polar bear habitat and reduce the likelihood of a polar bear death or injury. The primary objectives are to:

- Prevent polar bears from associating food with humans and facilities;
- Condition polar bears to avoid people;
- Allow polar bears to use travel routes (natural and human made) to move along the coast; and
- Prevent polar bears from extended use of areas around facilities.

This LOA is subject to the following conditions:

1. Navy’s Polar Bear Interaction and Avoidance Management Plan for Ice Exercise 2022, including project description, are approved and incorporated in this LOA by reference. Project activities must be conducted in accordance with these plans. A copy of the plans and this LOA must be kept on-site and available for reference by all personnel.
2. It is the responsibility of the Navy to ensure that only trained and qualified personnel are assigned the task of polar bear deterrence. Prior to initiation of activities, a list of trained personnel responsible for deterrence and a description of their training shall be submitted to the Service MMM. Certifications must be obtained by attending a course led either by USFWS Marine Mammal Regulatory staff or an instructor trained and certified by USFWS Marine Mammal Regulatory staff.
3. Should firearms be used for polar bear deterrence, it is the responsibility of the Navy to ensure that personnel operating under this LOA comply with all laws and regulations regarding the carry and use of firearms.
4. Within 48 hours of occurrence, Navy, or its designated agent, is responsible for documenting and reporting to the Service MMM all instances involving polar bear deterrence activities. A final report of all polar bear deterrence activities shall be submitted to the Service MMM no later than 60 days from the expiration date of this LOA. Reports shall be submitted to the Service MMM via email at *fw7_mmm_reports@fws.gov*.
5. Appropriate deterrence techniques may include, but are not limited to bear monitors; air

horns; electric fences; bear spray; acoustic recordings; vehicles; and projectiles (e.g., beanbags, “cracker” shells, “bangers,” and “screamers”). Deterrence techniques must not cause the injury or death of a polar bear. Any injury or death of a polar bear must be reported to the Service MMM as soon as possible but not later than 48 hours after the incident.

6. Prior to conducting a deterrence activity, operators must:
 - a. Make a reasonable effort to reduce or eliminate attractants;
 - b. Secure the site, notify supervisor, and move personnel to safety;
 - c. Ensure the polar bear has escape route(s); and
 - d. Ensure communication with all personnel.

7. When conducting a deterrence activity, operators must:
 - a. Never deter a polar bear for convenience or to aid project activities. The safety and welfare of the polar bear is second only to the safety and welfare of humans in a deterrence situation;
 - b. Shout at the polar bear before using projectiles or other techniques; and
 - c. Begin with the lowest level of force or intensity that is effective and increase the force or intensity of the technique, or use additional techniques, only as necessary to achieve the desired result.

8. After a deterrence event, operators must:
 - a. Monitor polar bear’s movement (to ensure no return);
 - b. Notify supervisor and personnel when it is safe to resume work; and
 - c. Submit a report to the Service MMM within 48 hours.

The Service is also requesting that the Navy field team contact:

Alaska Native Affairs Specialist, Mr. Ernest Nageak, Utqiagvik U.S. Fish and Wildlife Service field office; contact number 907-852-2058, email ernest_nageak@fws.gov; and Mr. Billy Adams North Slope Borough Department of Wildlife Management Polar Bear Patrollers, contact number 907-852-0350, email billy.adams@north-slope.org in the event of an observed polar bear in the area. These contacts all have local field knowledge and polar bear deterrence response authorities in Utqiagvik and should be able to directly assist in the event of a polar bear encounter. They may also have current day-to-day knowledge of any polar bears on shore in the area.

The Service MMM must be notified of changes in the project, including changes to activities, locations, or methods, prior to their implementation. Such changes may invalidate this LOA unless approved in writing by the Service MMM.

The Service has completed intra-Service consultation under the Endangered Species Act of 1973, as amended (ESA), on the issuance of this LOA under the *Biological Opinion for the USFWS Region 7 Polar Bear Deterrence Program* (November 23, 2020), and has determined its issuance is not likely to jeopardize the continued existence of polar bears so long as the Navy follows the terms/conditions of this LOA. No additional authorization under the ESA is required.

Should you have any questions regarding this LOA and the required terms and conditions, please contact Wildlife Biologist, Ms. Heather Patterson at 907-205-9389, or via email at heather_patterson@fws.gov, or Regulatory Program Branch Manager, Ms. Sierra Franks, at 907-268-0577 or via email at sierra_franks@fws.gov. You may also contact MMM at fw7_mmm_reports@fws.gov.

Chief, Marine Mammals Management

Date