

### Summary of Request

On September 30, 2003, NMFS received a request from BPXA for a renewal of an LOA issued on September 18, 2000 (65 FR 58265, September 28, 2000) and reissued on December 14, 2001 (66 FR 65923, December 21, 2001), and December 9, 2002 (67 FR 77750, December 19, 2002) for the taking of marine mammals incidental to oil production operations at Northstar, under section 101(a)(5)(A) of the MMPA. This request (BPXA, 2003) contains information in compliance with 50 CFR 216.209, which updates information provided in BPXA's original application for takings incidental to construction and operations at Northstar. The current LOA for the taking of marine mammals incidental to oil production at the Northstar facility will expire on December 9, 2003.

Impacts on marine mammals may occur through noise from barge, helicopter traffic, drilling, and other noise sources on the island facility. Impacts may also result if there is an oil spill resulting from production. While noise impacts on marine mammals will be low (activities on Northstar Island will make less noise than that from standard jack-up rigs, the concrete island drilling structure, or seismic activity), bowhead whales will likely hear the noise at distances up to 10 km (6.2 mi) from the island. In addition, there may be some harassment, injury, or mortality of ringed seals during winter ice-road construction. Noise impacts may result in Level B harassment of approximately 765 bowheads (i.e., the LOA authorizes up to 765 bowheads annually, with a maximum of 1,533 in 2 out of 5 seasons, and a total of 3,585 in 5 years), 5 gray whales and 91 beluga whales. Year-round operations at Northstar may result in the harassment of up to approximately 191 ringed seals, 10 bearded seals, and 5 spotted seals being harassed and the incidental mortality of up to 5 ringed seal pups. No take is authorized for an oil spill. NMFS and BPXA believe that these estimates remain conservative since, for example, monitoring between November, 2001 and October, 2002 indicate that approximately 110 ringed seals, 1 bearded seal and 10–20 beluga whales were present in the area and potentially may have been affected (Moulton *et al.*, 2003). MacLean and Williams (2003) and Moulton *et al.* (2003) indicate that Northstar production probably had little or no effect on most of the seals and no seals were injured or killed by activities along the ice road or operations at

Northstar Island during the late 2002 through early 2003 ice-covered season.

The best estimates of the numbers of bowhead whales displaced offshore by 2 km (1.2 mi) or more during the autumn migrations of 2001 and 2002 were approximately 13 and 19 respectively (Moulton *et al.*, 2003). Presumably, a larger number of bowheads was displaced by less than 2 km (1.2 mi), but current monitoring methods are not capable of quantifying displacement over distances shorter than 2 km (BPXA, 2003). These estimates are based on acoustic monitoring of bowhead whales passing Northstar in the fall, 2001 and 2002 (Greene *et al.*, 2002, 2003). It is possible that the apparent offshore deflection of a small number of bowheads was, at least in part, attributable to a change in calling behavior rather than an actual deflection (BPXA, 2003).

As oil spills are highly unlikely, impacts on marine mammals from an oil spill are also unlikely to take place. However, in order to mitigate the potential for impacts on bowheads and the subsistence use of bowheads, BPXA will not drill into oil-bearing strata during periods of open water or broken ice, essentially the time period between June 13 and ending with the presence of 18 inches of continuous ice cover for one-half mile in all directions. This mitigation is warranted because oil spill cleanup methods are currently inadequate. Additional mitigation has been proposed by BPXA to the North Slope Borough native community to ensure that, in the event that an oil spill does occur, it will not have an unmitigable adverse impact on the subsistence use of the bowhead whale.

### Monitoring and Reporting

Monitoring and reporting requirements are contained in the Northstar regulations (50 CFR 216.206) and described on May 25, 2000 (65 FR 34014). Additional information was provided on December 21, 2001 (66 FR 65923) when NMFS issued an LOA to BPXA for oil production at Northstar. Monitoring reports are submitted annually as required by the regulations and the LOA and plans and reports are peer-reviewed as required by the MMPA and regulations. A list of these reports is available upon request (see ADDRESSES). In June, 2003, a peer-review meeting was held in Seattle, WA. Participants at that meeting recommended that the future characteristics of the project be reviewed in early- to mid-2004 by a technical committee, which might be constituted and convened under the auspices of the North Slope Borough's

Science Advisory Committee. BPXA plans to continue monitoring in 2003/2004 as suggested by the Seattle peer-review panel and accepted by NMFS.

### Determinations

Accordingly, NMFS issued an LOA to BPXA on December 4, 2003, authorizing the taking of marine mammals incidental to oil production operations at the Northstar offshore oil and gas facility in state and federal waters in the U.S. Beaufort Sea. Issuance is based on findings, described in the preamble to the final rule (65 FR 34014, May 25, 2000), that the activities described in the LOA will result in the taking of no more than small numbers of bowhead whales, beluga whales, ringed seals, and, possibly California gray whales, bearded seals and spotted seals and that the total taking will have a negligible impact on these marine mammal stocks and would not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. NMFS also prescribed the means for effecting the least practicable adverse impact on these stocks. As the results from the monitoring program carried out since 1999 have not indicated that the determinations made in 2000 and 2001 were in error, nor that estimated levels of incidental harassment have been exceeded, and as the activity that was reviewed in 2001 (oil production activities) has not changed, these determinations remain valid.

Dated: December 4, 2003.

**Stephen L. Leathery,**

*Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## COMMODITIES FUTURE TRADING COMMISSION

### Sunshine Act Meetings

**AGENCY:** Commodity Futures Trading

**TIME AND DATE:** 1 p.m., Wednesday, December 17, 2003.

**PLACE:** 1155 21st St., NW., Washington, DC, Room 1012.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hold a hearing to receive testimony from industry participants relating to the Commission's consideration of the application of U.S. Futures Exchange, LLC, for contract market designation.