

Issued on: February 23, 1999.

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*Associate Administrator for Safety  
Performance Standards.*

[FR Doc. 99-4947 Filed 2-26-99; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 990204042-9042-01;  
I.D.123198B]

RIN 0648-AM09

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Platforms in the Beaufort Sea**

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

**ACTION:** Notice of receipt of a petition for  
rulemaking and an application for a  
small take exemption; request for  
comment and information.

**SUMMARY:** NMFS has received a request  
for two Letters of Authorization (LOAs)  
from BP Exploration (Alaska), 900 East  
Benson Boulevard, Anchorage, AK  
99519 (BPXA) for the take of small  
numbers of marine mammals by  
harassment incidental to construction  
and operation of offshore oil and gas  
platforms at the Northstar and Liberty  
developments in the Beaufort Sea in  
state and Federal waters. BPXA has also  
petitioned NMFS for regulations to  
govern that take. In order to promulgate  
these regulations, NMFS must  
determine that these takings will have a  
negligible impact on the affected species  
and stocks of marine mammals, and will  
not have an unmitigable adverse impact  
on the availability of the species or  
stock(s) for subsistence uses. NMFS  
invites comment on the application, and  
suggestions on the content of the  
regulations.

**DATES:** Comments and information must  
be postmarked no later than March 31,  
1999.

**ADDRESSES:** Comments should be  
addressed to the Chief, Marine Mammal  
Division, Office of Protected Resources,  
National Marine Fisheries Service, 1315  
East-West Highway, Silver Spring, MD  
20910-3226. A copy of the application  
may be obtained by writing to this  
address or by telephoning one of the  
contacts listed here (see **FOR FURTHER**

**INFORMATION CONTACT**). A copy of the  
draft environmental impact statement  
(DEIS) for Northstar may be obtained by  
contacting the U.S. Army Engineer  
District, Alaska, Regulatory Branch, P.O.  
Box 898, Anchorage, AK 99506-0898.

**FOR FURTHER INFORMATION CONTACT:**  
Kenneth R. Hollingshead (301) 713-  
2055, Brad Smith, (907) 271-5006.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 101(a)(5)(A) of the Marine  
Mammal Protection Act (16 U.S.C. 1361  
*et seq.*) (MMPA) directs the Secretary of  
Commerce to allow, upon request, the  
incidental, but not intentional taking of  
marine mammals by U.S. citizens who  
engage in a specified activity (other than  
commercial fishing) within a specified  
geographical region if certain findings  
are made and regulations are issued.

Permission may be granted for periods  
of 5 years or less if the Secretary finds  
that the taking will have a negligible  
impact on the species or stock(s), will  
not have an unmitigable adverse impact  
on the availability of the species or  
stock(s) for subsistence uses, and  
regulations are prescribed setting forth  
the permissible methods of taking and  
the requirements pertaining to the  
monitoring and reporting of such taking.

##### **Summary of Request**

On November 30, 1998, NMFS  
received an application requesting a  
small take exemption under section  
101(a)(5)(A) of the MMPA from BPXA to  
take marine mammals incidental to the  
construction and operation of offshore  
oil and gas platforms at the Northstar  
and Liberty developments in the  
Beaufort Sea in state and Federal waters.

BPXA proposes to produce oil from  
two offshore oil developments,  
Northstar and Liberty. These two  
developments will be the first in the  
Beaufort Sea that use a subsea pipeline  
to transport oil to shore and then into  
the Trans-Alaska Pipeline System.

The Northstar Unit is located between  
2 and 8 miles (mi) (3.2 and 12.9  
kilometers (km)) offshore from Pt.  
Storkersen, AK. This unit is adjacent to  
the Prudhoe Bay industrial complex and  
is approximately 54 mi (87 km)  
northeast of Nuiqsut, a Native Alaskan  
community. During 1998-1999 (year 1),  
a gravel island will be constructed this  
winter and spring, followed by  
construction work on the island during  
the 1999 open-water season. Incidental  
takes of whales and seals during this  
period are expected to be authorized  
under an Incidental Harassment  
Authorization (IHA) issued under  
section 101(a)(5)(D) of the MMPA (see

63 FR 57096, October 26, 1998).

However, because of the possibility that  
construction might be delayed until  
after expiration of the IHA, work  
described in the cited **Federal Register**  
document may be conducted during the  
effectiveness period of these regulations.  
Following is a brief description of the  
proposed scope of work for Northstar  
and Liberty projects. For more detailed  
descriptions please refer to either the  
BPXA application or to the DEIS, both  
of which are available upon request (see  
**ADDRESSES**).

##### **Northstar**

The proposed construction activity  
includes the construction of several ice  
roads, one from West Dock and the Pt  
McIntyre drill site to the Northstar  
gravel mine and one from the mine site  
to Seal Island. In the second year of  
construction an ice road will be  
constructed parallel to the coast from Pt.  
McIntyre to the location of the pipeline  
crossing and then along the pipeline  
route to Seal Island. Construction of a  
gravel island work surface for drilling  
and oil production facilities will take  
place during the first winter and into  
the open water season. The transport  
and installation of the drill rig and  
associated equipment via the ice road,  
and the construction and installation of  
two 10 in (0.25 m) pipelines, one to  
transport crude oil and one for gas for  
field injection, will all occur during year  
2. The two pipelines will be buried  
together in a single trench.

It is estimated that during the winter  
approximately 16,800 large-volume haul  
trips between the onshore mine site and  
a reload area in the vicinity of Egg  
Island, and 28,500 lighter dump truck  
trips from Egg Island to Seal Island will  
be necessary to transport construction  
gravel to Seal Island. An additional 300  
truck trips will be necessary to transport  
concrete-mat slope protection materials  
to the island. During the summer  
approximately 90 to 100 barge trips  
from Prudhoe Bay or Endicott are  
expected to support construction.

The operational phase will begin with  
drilling, which will continue for 2 years.  
Drilling is scheduled to begin in  
February 2000, using power supplied by  
diesel generators. This phase of drilling  
will continue until the power plant is  
operational in November 2000. Drilling  
will continue until February 2002, when  
all 23 development wells (15  
production, 7 gas injection) are expected  
to be drilled. After drilling is completed,  
only production-related site activities  
will occur. In order to support  
operations at Northstar, the proposed  
operations activity includes the annual  
construction of an ice road from Pt.  
McIntyre to the shore crossing of the

pipeline and along the pipeline route to Seal Island. Ice roads will be used to resupply needed equipment, parts, foodstuffs, and products, and for hauling wastes back to existing facilities. During the summer, barge trips will be required between West Dock or Endicott and the island for resupply.

Year-round helicopter access to Northstar is planned for movement of personnel, foodstuffs and emergency movement of supplies and equipment. Helicopters will fly at an altitude of at least 1,000 ft (305 m), except for takeoffs, landings, and safe-flight operations.

#### *Liberty*

The BPXA Liberty development will be a self-contained offshore drilling/production facility located on a man-made gravel island with pipelines to shore. The facility will be constructed in Foggy Island Bay in approximately 22 ft (7 m) of water.

The proposed construction and production activities are similar to those for the Northstar development described previously, except that Liberty involves construction of a new island, located south of the barrier islands whereas Northstar is to be constructed on the existing remains of Seal Island, north of the barrier islands. Liberty construction will begin in December, 1999, ending in summer, 2001, with planned production startup in November, 2001.

Construction may take 2 years or may be compressed into a single year. Well drilling is expected to be completed by February, 2003.

#### **Description of Habitat and Marine Mammal Affected by the Activity**

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in the DEIS prepared for the Northstar development (Corps of Engineers (Corps), 1998) and in the BPXA application. This information is not repeated here but will be considered part of the record of decision for this rulemaking. A copy of the DEIS is available from the Corps upon request (see ADDRESSES).

#### *Marine Mammals*

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of

others can be found in several documents (e.g., Hill *et al.*, 1997) including the BPXA application and the DEIS. Please refer to those documents for information on these species.

#### **Summary of Impacts**

Although the potential impacts to the several marine mammal species known to occur in these areas is expected to be limited to harassment, a small number of marine mammals may incur lethal and serious injury. The applicant also requests that in the unlikely event that a small number of marine mammals might be contacted by oil from an oil spill, that these takes also be covered by the regulations.

Sounds and non-acoustic stimuli are expected to be generated by vehicle traffic, ice cutting, pipeline construction, offshore trenching, gravel dumping, pile driving, vessel and helicopter operations, and general operations of oil and gas facilities (e.g., generator sounds and gas flaring). The sounds generated from construction operations and associated transportation activities will be detectable underwater and/or in air some distance away from the area of activity. The distance will depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the animal receiving the sound. At times, some of these sounds are likely to be strong enough to cause avoidance or other disturbance reactions by small numbers of marine mammals. The type and significance of behavioral reaction is likely to depend on the behavior of the animal at the time of reception as well as the distance and level of the sound relative to ambient conditions.

Because of the potential impact to marine mammals, BPXA has requested NMFS to promulgate regulations under section 101(a)(5)(A) of the MMPA and issue two LOAs that would authorize the incidental taking.

#### **National Environmental Policy Act (NEPA)**

On June 12, 1998 (63 FR 32207), the Environmental Protection Agency noted the availability for public review and comment a DEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until August 31, 1998 (63 FR 43699, August 14, 1998). NMFS is a cooperating agency, as defined by the Council on Environmental Quality regulations (40 CFR 1501.6), on the preparation of this document. This

DEIS, which supplements information contained in the petition and application, is considered part of NMFS' record of decision for determining whether the activity proposed for receiving a small take authorization is having a negligible impact on affected marine mammal stocks and not having an unmitigable adverse impact on subsistence needs.

On February 12, 1998 (63 FR 9015), the Minerals Management Service announced its intent to prepare a DEIS on the proposed development and production plan for the Liberty Project. That DEIS is not presently available to the public.

NMFS proposes that these two comprehensive documents will meet its NEPA responsibilities. These documents will be considered part of NMFS' record of decision for determining whether the activity proposed for receiving a small take authorization is having a negligible impact on affected marine mammal stocks and not having an unmitigable adverse impact on subsistence needs. Based upon a review of the respective Final EIS (FEIS) and the comments received during rulemaking, NMFS will (1) adopt the Corps and MMS FEISs, (2) amend the Corps and or MMS FEIS to incorporate relevant comments, suggestions and information, or (3) prepare supplemental NEPA documentation.

#### **Information Solicited**

NMFS requests interested persons to submit comments, information, and suggestions concerning the BPXA request and the structure and content of the regulations to allow the taking. In particular, NMFS is requesting comment on its plan to propose a single set of 5-year regulations that would govern incidental takings for Northstar and Liberty construction and operation with issuance of annual LOAs for these activities; and provide for authorizations for additional Beaufort Sea oil and gas development projects after notice-and-comment rulemaking. If NMFS proposes regulations governing the taking, interested parties will be provided an additional comment period on the content of the proposed rule.

Dated: February 22, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 99-5010 Filed 2-26-99; 8:45 am]

BILLING CODE 3510-22-F