



MARINE MAMMAL COMMISSION

17 December 2013

Mr. P. Michael Payne, Chief
Permits, Conservation, and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Mr. Payne:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by Excelerate Energy L.P. and TetraTech EC, Inc., on behalf of Northeast Gateway Energy Bridge L.P. (Northeast Gateway) and Algonquin Gas Transmission L.L.C. (Algonquin), seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA) to take small numbers of marine mammals by harassment. The taking would be incidental to operation, maintenance, and repair of the Northeast Gateway liquefied natural gas (LNG) port and the Algonquin Pipeline Lateral facilities in Massachusetts Bay from January 2014 through January 2015. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 18 November 2013 notice (78 Fed. Reg. 69049) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission previously has commented on similar incidental harassment authorizations for the Northeast Gateway LNG project.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested incidental harassment authorization, subject to inclusion of the proposed mitigation and monitoring measures.

BACKGROUND

The Northeast Gateway Port, located in Massachusetts Bay, consists of two submerged buoys used for delivery of re-gasified natural gas to onshore markets. The buoys are located 21 km offshore of Massachusetts in federal waters 82 to 88 m in depth. Northeast Gateway would use specially designed energy bridge re-gasification vessels that would dock at the submerged buoys to deliver natural gas via the Algonquin Pipeline Lateral. The vessels would use a dynamic positioning system to dock but would "weathervane" on the buoy mooring system during re-gasification.

Routine and emergency maintenance of the Northeast Gateway Port could involve various support vessels, divers, a remotely operated vehicle, tugs/barges, and a re-gasification vessel equipped with a dynamic positioning system. In addition, routine and unplanned operation and maintenance of the Algonquin Pipeline Lateral could involve various support vessels, a remotely operated vehicle, divers, and a dive vessel that also would be equipped with a dynamic positioning system.

NMFS preliminarily has determined that the proposed activities could result in a temporary modification in the behavior of small numbers of up to 14 species of marine mammals, but that any impact on the affected species would be negligible. It does not anticipate any take of marine mammals by death or serious injury. NMFS believes that the potential for temporary or permanent hearing impairment will be at the least practicable level because of the proposed mitigation and monitoring measures. Those measures include—

- (1) requiring all re-gasification, acoustic monitoring, and support vessels approaching or departing from the port to:
 - a. use the Boston Transportation Scheme (TSS) on their approach to and departure from the port and maintain a maximum transit speed of 22 km/hr (12 knots) or less;
 - b. alert the Port manager before arrival for the Port manager to relay vessel approach information to Cornell University;
 - c. obtain current North Atlantic right whale sighting information; and
 - d. comply with the Mandatory Ship Reporting System;
- (2) requiring trained lookouts to monitor visually for marine mammals while the vessel is navigating the TSS, the Area to be Avoided (ATBA), the Great South Channel Seasonal Management Area, or the Stellwagen Bank National Marine Sanctuary (NMS) and whenever the vessel is using its dynamic positioning system;
- (3) requiring a NMFS-approved protected species observer to monitor visually for marine mammals during all maintenance and repair work conducted during daylight hours;
- (4) requiring any lookout or observer that detects a marine mammal within a 3.3-km (2-mi) radius of the vessel to notify immediately the Officer-of-the-Watch onboard the vessel or other designated official and to record the sighting in the sighting log;
- (5) requiring all re-gasification, acoustic monitoring, and support vessels to reduce vessel speed to 18.5 km/hr (10 knots) or less:
 - a. when a lookout detects a marine mammal within a 3.3-km (2-mi) radius of a maneuvering vessel;
 - b. within a 14.8-km (8-nmi) radius of a right whale sighting;
 - c. within a 9.3-km (5-nmi) radius of an auto-detecting buoy that has detected a right whale;
 - d. within the Off Race Point Seasonal Management Area (SMA) from 1 March through 30 April;
 - e. within the Great South Channel SMA from 1 April through 31 July;
 - f. within the Cape Cod Bay SMA from 1 January through 15 May;
 - g. within the boundaries of a Dynamic Management Area (DMA);
 - h. when vessels are greater than or equal to 300 gross tons or when vessels less 300 gross tons traveling between shore and the port are within 8 km (5 mi) of any sighting location or are within an SMA or DMA ; and
 - i. when transiting to and from the TSS and the port;
- (6) reducing vessel speed to 5.5 km/hr (3 knots) at 3 km (1.9 mi) from the Port and less than 1.9 km/hr (1 knot) at 500 m (0.3 mi) from the buoy;
- (7) refraining from approaching a right whale closer than 460 m (500 yd) and any other whale closer than 91 m (100 yd), and when approaching or departing the port and within the

- ATBA surrounding the port, maintaining a minimum distance of 1 km (0.6 mi) from any visually detected right whale and 91 m (100 yd) from all other visually detected whales;
- (8) delaying departure from the port when a whale is visually observed within 1 km (0.6 mi) of the port or a confirmed acoustic detection is reported on either of the two auto-detecting buoys closest to the port, until the whale is either more than 1 km away or 30 minutes have passed without an acoustic detection;
 - (9) minimizing use of the dynamic positioning system when a whale is observed within a 3.3km (2-mi) radius of the vessel until the whale has moved away;
 - (10) ceasing all repair and maintenance activities that emit sounds with a source level equal to or greater than 139 dB re 1 μ Pa at 1 m when a right whale is sighted within or approaching 460 m (500 yd) of the vessel or any other marine mammal is sighted within 91 m (100 yd) of the vessel, until the whale is either outside the restricted zone or 30 minutes have passed without a re-detection;
 - (11) using ramp-up procedures for equipment with source levels equal to or greater than 139 dB re 1 μ Pa at 1 m and minimizing use of that equipment;
 - (12) restricting planned maintenance and repair activities to the period between 1 May and 30 November;
 - (13) shutting down operations if visibility is less than 0.8 km (0.5 mi) between 1 December and 30 April;
 - (14) minimizing the use of entangling material (e.g., anchor lines, cables, rope) and removing it from the water immediately after use;
 - (15) conducting in-situ sound measurements of all sound-emitting construction equipment and all vessels involved in maintenance and repair activities;
 - (16) notifying the NMFS Office of Protected Resources, NMFS Northeast Ship Strike Coordinator, and Stellwagen Bank NMS 30 days prior to any planned port repair or maintenance activity or as soon as possible before any unplanned or emergency port repair or maintenance activities;
 - (17) maintaining an array of 19 marine autonomous recording units to (a) document the seasonal occurrence and overall distribution of whales within approximately 18.5 km (10 nmi) of the Port and (b) measure and document the sound “budget” of Massachusetts Bay;
 - (18) using 10 auto-detection buoys located within the Boston TSS to monitor vocalizations of North Atlantic right whales within approximately 9.3 km (5 nmi) of each buoy;
 - (19) reporting injured and dead marine mammals to NMFS and the local stranding network using NMFS’s phased approach and suspending activities, if appropriate; and
 - (20) submitting monthly monitoring reports, weekly status reports during repair and maintenance activities, and a final report to NMFS.

RATIONALE

The Commission understands that NMFS planned to issue regulations to govern the incidental taking of marine mammals during a five-year period after the previous authorization expired (i.e., after October 2012). Unfortunately, issuance of those regulations has been delayed because of regulatory constraints and other issues unrelated to the MMPA authorization process. To eliminate the need for annual incidental harassment authorizations, the Commission encourages NMFS to continue to work with Northeast Gateway and Algonquin to promulgate regulations to authorize the taking of marine mammals incidental to the proposed LNG activities.

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The Commission believes that the mitigation and monitoring measures are appropriate and prudent. The Commission also concurs with NMFS's preliminary finding and therefore recommends that NMFS issue the incidental harassment authorization, subject to inclusion of the proposed mitigation and monitoring measures.

The Commission appreciates the opportunity to provide comments on the application submitted on behalf of Northeast Gateway and Algonquin. Please contact me if you have questions concerning the Commission's recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial "R" and a distinct "Lent" at the end.

Rebecca J. Lent, Ph.D.
Executive Director