



MARINE MAMMAL COMMISSION

22 August 2011

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, 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 the Northeast Gateway Energy Bridge L.P., seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take small numbers of marine mammals by harassment. The taking would be incidental to operation of a liquefied natural gas port facility in Massachusetts Bay from August 2011 through August 2012. The Commission also has reviewed the National Marine Fisheries Service's 21 July 2011 *Federal Register* notice (76 Fed. Reg. 43639) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission has previously commented on similar incidental harassment authorizations.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested authorization, subject to inclusion of the proposed mitigation and monitoring measures, including a condition that requires suspension of the proposed activities if an injury or death of a marine mammal occurs that may have resulted from those activities, pending authorization from the Service to proceed.

RATIONALE

The Northeast Gateway Port, located in Massachusetts Bay, consists of two submerged buoys used for delivery of regasified natural gas to onshore markets. The buoys are located 21 km offshore of Massachusetts in federal waters 82 to 88 m in depth. They are secured to the seafloor using a series of suction anchors and a combination of chain/cable anchor lines. Northeast Gateway would use specially designed energy bridge regasification vessels that would dock at the submerged buoys to deliver natural gas via the Algonquin Pipeline Lateral. Those vessels would use the Boston Transportation Scheme on their approach to and departure from the port.

When a regasification vessel arrives at the port, it would use its dynamic positioning system to dock at one of the buoys. Docking would require dynamic positioning typically for 10 to 30 minutes. Positioning would require intermittent use of the vessel's stern and bow thrusters, which produce sound levels of 160 to 170 dB re 1 μ Pa. Once connected to the buoy, the vessel would begin vaporizing its cargo of liquefied natural gas into its natural gas state using an onboard regasification system (a continuous sound source producing sound levels of 104 to 110 dB re 1 μ Pa).

During regasification, the vessel would be allowed to “weathervane” on the buoy mooring system; thus it would not use its thrusters to maintain position. The Northeast Gateway Port would service approximately 65 deliveries per year.

The Service preliminarily has determined that the sounds associated with vessel movements (including noise generated from movements of anchors and chains) and regasification and offloading could result in a temporary modification in the behavior of small numbers of up to 13 species of marine mammals, but that any impact on the affected species would be negligible. The Service does not anticipate any take of marine mammals by death or serious injury. It 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, which include—

- (1) requiring individual crew members onboard regasification vessels to be trained in marine mammal sighting/reporting and vessel strike avoidance measures, with an emphasis on marine mammal awareness and reporting;
- (2) requiring crew members to notify the Person-in-Charge onboard the vessel and the Northeast Port manager immediately if marine mammals are sighted, and requiring those persons to follow specified vessel strike avoidance measures;
- (3) requiring all regasification vessels approaching or departing from the port to comply with the Mandatory Ship Reporting System (including reporting their activities to WHALESNORTH) and to monitor existing passive acoustic arrays for vocalizing North Atlantic right whales in the Boston Traffic Separation Scheme;
- (4) maintaining speeds of 12 knots or less while in the Boston Traffic Separation Scheme and reducing vessel speed to 3 knots at 3 km from the Port and less than 1 knot at 500 m from the buoy;
- (5) responding to right whale sightings by reducing vessel speed to 10 knots or less and alerting personnel responsible for navigation and lookout when transiting through the Off Race Point, Great South Channel, and Cape Cod Bay Seasonal Management Areas;
- (6) documenting any deviations from the 10-knot speed limit, including vessel speed, latitude and longitude, and the time and duration of such deviation;
- (7) using an array of 19 marine autonomous recording units to document the seasonal occurrence and overall distribution of whales within approximately 18 km of the Port and the sound “footprint” of the Bay;
- (8) using 10 auto-detection buoys located within the Boston Traffic Separation Scheme to monitor vocalizations of North Atlantic right whales;
- (9) reporting immediately all injured or dead marine mammals to the National Marine Fisheries Service and the U.S. Coast Guard; and
- (10) submitting a final report to the Service.

Proposed Regulations and Mitigation and Monitoring Measures

The Commission understands that the Service planned to issue regulations to govern the incidental taking of marine mammals during a five-year period after the current authorization expired (i.e., after August 2011). Unfortunately, issuance of those regulations has been delayed

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because of regulatory constraints unrelated to the Marine Mammal Protection Act authorization process. The Commission encourages the National Marine Fisheries Service to continue to work with Northeast Gateway to promulgate regulations to authorize taking incidental to liquefied natural gas activities to eliminate the need for annual incidental harassment authorizations.

The Commission believes that the mitigation and monitoring measures proposed by Northeast Gateway and the Service, as described in the application and in the Service's *Federal Register* notice, are appropriate and prudent. For that reason, the Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested authorization, subject to inclusion of the proposed mitigation and monitoring measures, including a condition that requires suspension of the proposed activities if an injury or death of a marine mammal occurs that may have resulted from those activities, pending authorization from the Service to proceed. Such a suspension should remain in place until the Service (1) determines that the injury or death is not associated with Northeast Gateway's activities, (2) requires Northeast Gateway to modify its activities such that additional injuries or deaths are very unlikely, or (3) issues regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act to authorize such taking.

Please contact me if you have questions about the Commission's recommendation or comments.

Sincerely,



FOR

Timothy J. Ragen, Ph.D.
Executive Director