



MARINE MAMMAL COMMISSION

30 November 2016

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Ms. Harrison:

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, 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 during a one-year period. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 15 November 2016 notice (81 Fed. Reg. 80016) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission notes that Northeast Gateway and Algonquin are considering decommissioning the port in the near future, and therefore NMFS is no longer planning to propose five-year regulations to govern the incidental taking of marine mammals associated with the port.

The Northeast Gateway LNG port is used for delivery of re-gasified natural gas to onshore markets and is located offshore of Massachusetts. Re-gasification vessels that deliver natural gas via the Algonquin Pipeline Lateral would use dynamic positioning systems. In addition, routine and emergency maintenance and repair activities would involve various support vessels, divers, a remotely operated vehicle, and tugs/barges—some of those vessels are equipped with a dynamic positioning system as well.

NMFS preliminarily has determined that the proposed activities could temporarily modify the behavior of small numbers of up to 14 species of marine mammals, but that the total taking would have a negligible impact on the affected species or stocks. NMFS does not anticipate any take of marine mammals by death or serious injury and believes that the potential for temporary or permanent hearing impairment from the proposed activities would be at the least practicable level because of the proposed mitigation measures. The proposed mitigation, monitoring, and reporting measures include—

- restricting planned maintenance and repair activities from occurring between 1 December and 30 April;
- conducting in-situ sound measurements of LNG deliveries and maintenance and repair activities;
- using ramp-up, delay, and shut-down procedures;
- using vessel-based, trained observers/look-outs to visually monitor for the presence of marine mammals;
- requiring all vessels approaching, departing from, or docked at the LNG port to take appropriate actions to minimize the potential for a vessel strike of large whales by obtaining whale sighting information, reporting vessel activities, reducing vessel speed, and implementing other vessel strike mitigation measures as specified in the proposed incidental harassment authorization;
- minimizing the use of entangling material (e.g., anchor lines, cables, rope) and removing it from the water immediately after use;
- using 10 auto-detection buoys located within the Boston Traffic Separation Scheme to monitor vocalizations of North Atlantic right whales;
- deploying additional long-term passive acoustic monitoring devices if the anticipated LNG deliveries exceed 5 shipments in a 30-day period or 20 shipments in a 6-month period;
- notifying the NMFS Office of Protected Resources (OPR), NMFS Northeast Ship Strike Coordinator, and Stellwagen Bank National Marine Sanctuary 30 days, or as soon as possible, prior to any planned port repair or maintenance activity;
- reporting injured and dead marine mammals to NMFS OPR and the Greater Atlantic Stranding Coordinators using NMFS's phased approach and suspending activities, if appropriate; and
- submitting monthly monitoring reports, weekly status reports during repair and maintenance activities, and a final report to NMFS.

Estimation of takes

The method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across days, does not account for and negates the intent of NMFS's 24-hour reset policy. Instead of summing fractions of takes across days and then rounding to estimate total takes, NMFS should have calculated a daily take estimate (determined by multiplying the estimated density of marine mammals in the area by the daily ensonified area) and then rounded that to a whole number *before* multiplying it by the number of days that activities would occur. As stated in previous Commission letters, NMFS should use the average group size¹ as a proxy for the estimated number of takes for species in which estimated daily takes would round down to zero, as has been done for other incidental harassment authorizations (80 Fed. Reg. 75380, 81 Fed. Reg. 23144). Furthermore, if NMFS believes any of those species could be taken on multiple days, NMFS should multiply the average group size by the number of days of activities or the frequency of occurrence in the project area.

¹ After the Commission indicated to OPR that some of the take estimates proposed to be authorized in the *Federal Register* notice did not make biological sense, NMFS indicated that it would increase those numbers of takes to average group size for sei whales, killer whales, Risso's dolphins, common dolphins, and long-finned pilot whales.

As the Commission has indicated in previous letters regarding this matter², the issue at hand involves policy rather than mathematical accuracy. Summing fractions of takes³ across days nullifies the intent of the 24-hour reset, a policy decision that NMFS made many years ago and has not rescinded or changed⁴. It appears NMFS understands the implications for certain applications of its 24-hour reset but is choosing to apply the method inconsistently across the various metrics, which in this case is the sound pressure level (root-mean-square) metric. Thus, the Commission again recommends that NMFS (1) follow its policy of a 24-hour reset for enumerating the number of each species that could be taken during the proposed activities, (2) apply standard rounding rules before summing the numbers of estimated takes across days, and (3) for species that have the potential to be taken but model-estimated or calculated takes round to zero, use group size to inform the take estimates—these methods should be used consistently for all future incidental take authorizations. The Commission discussed this matter with NMFS earlier this year and is willing to have further discussions to resolve this matter if necessary.

Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style.

Rebecca J. Lent, Ph.D.
Executive Director

² See the Commission's 7 September 2016 letter detailing this issue.

³ Especially those that are much less than 1 (e.g., 0.05 takes).

⁴ See the *Federal Register* notice regarding NMFS's technical guidance for assessing the effects of anthropogenic sound on marine mammal hearing—underwater acoustic thresholds for onset of permanent and temporary threshold shifts (PTS and TTS, respectively; 81 Fed. Reg. 51694).