



# MARINE MAMMAL COMMISSION

6 August 2010

Mr. P. Michael Payne, Chief  
Permits, Conservation and Education Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway, Room 13635  
Silver Spring, Maryland 20910

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the revised application from Excelerate Energy, L.P., and Tetra Tech EC, Inc., on behalf of Northeast Gateway Energy Bridge, L.L.C., and Algonquin Gas Transmission, L.L.C. The applicants are seeking renewal of an incidental harassment authorization issued under section 101(a)(5)(D) of the Marine Mammal Protection Act to take by harassment 12 species of seals, toothed whales, and baleen whales, including North Atlantic right whales. Taking would be incidental to operating and maintaining the Northeast Gateway liquid natural gas port facility and the associated pipeline in Massachusetts Bay. The Service previously issued incidental harassment authorizations for these activities on 21 May 2008 and 3 September 2009. The most recent authorization will expire on 31 August 2010. The Commission commented on the previous incidental harassment authorization requests and the Service's notice inviting comment regarding the structure and content of regulations to govern incidental taking on a longer-term basis after the one-year incidental harassment authorization expired (see enclosures). The Commission understands that the Service plans to issue regulations to govern incidental taking after the proposed authorization would expire (i.e., after August 2011).

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested authorization, provided that the Service—

- include in the authorization and in any proposed regulations issued by the Service to govern the activities during the subsequent five-year period all marine mammal mitigation, monitoring, and reporting measures identified in the Service's *Federal Register* notice (75 Fed. Reg. 42071) and
- require the applicants to halt activities and consult with the Service regarding any seriously injured or dead marine mammal when the injury or death may have resulted from those activities and allow resumption of those activities only after steps to avoid additional serious injuries or deaths have been implemented or such takings have been authorized under section 101(a)(5)(A) of the Marine Mammal Protection Act.

## RATIONALE

The Service preliminarily has concluded that, at most, the activities described in the renewal application would result in temporary behavioral modifications of small numbers of marine

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mammals that may be in close proximity to the Northeast Gateway liquid natural gas facility and associated pipeline during its operation, maintenance, and repair. The Service anticipates that, although these activities could cause local, short-term displacement of some marine mammals, they would result in no more than a negligible impact to individual animals and would have no biologically significant effects (i.e., on survival or reproduction) on the affected marine mammal species or stocks. Mitigation measures include vessel speed restrictions and passive acoustic and visual monitoring programs. The Service has based its preliminary determination on the proposed mitigation, monitoring, and reporting measures and the conclusion of a biological opinion completed under section 7 of the Endangered Species Act assessing the impact of the proposed action on listed species. The Service does not anticipate any taking by injury or death and is not proposing to authorize any such taking.

The Commission believes that the mitigation, monitoring, and reporting measures proposed by the applicants and the Service, as described in the application and in the Service's *Federal Register* notice, are appropriate and prudent. Therefore, the Marine Mammal Commission recommends that the measures identified in the Service's *Federal Register* notice be included in the authorization and retained in any proposed regulations issued by the Service to govern the activities during the subsequent five-year period. The Marine Mammal Commission further recommends that the authorization require the applicants to halt activities and consult with the Service regarding any seriously injured or dead marine mammal when the injury or death may have resulted from those activities. After the Service determines whether the injury or death likely resulted from the applicants' activities, it can determine whether their activities can be modified to avoid additional injuries or deaths or whether a letter of authorization under section 101(a)(5)(A) is needed to authorize taking other than by harassment.

Please contact me if you have questions concerning the Commission's comments or recommendations.

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director

Enclosures