



MARINE MAMMAL COMMISSION

27 January 2014

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 Transcontinental Gas Pipe Line Company LLC (Transco), 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 pile driving and removal operations associated with the expansion of a sub-sea natural gas pipeline system, to be conducted from April through August 2014, from the existing Lower New York Bay Lateral to an onshore delivery point on the Rockaway peninsula. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 27 December 2013 notice (78 Fed. Reg. 78824) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission provides the following recommendations and rationale.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service require Transco to—

- in addition to pile driving and removal, (1) provide estimated source levels associated with other pipeline construction activities (i.e., horizontal directional drilling, pipe laying, and pipe burial) and (2) estimate the number of takes associated with those activities based on the Level B harassment threshold of 120 dB re 1 μ Pa for Level B harassment;
- estimate the numbers of takes by accounting for the number of days (i.e., seven days) that the proposed activities would occur in spring (for pile driving) and summer (for pile removal); and
- increase its estimated numbers of takes for North Atlantic right whales and short-beaked common dolphins to the mean group size for each season in which takes are expected to occur.

BACKGROUND

Transco proposes to install temporarily about 70 steel pipe piles as part of the expansion of a natural gas pipeline system in nearshore waters of the Atlantic Ocean (within 4.6 km of shore) southeast of the Rockaway Peninsula, in Queens County, New York. Transco would use a vibratory

hammer to drive each of the 36- to 41-cm piles to a depth of about 8 to 9 m. Each pile would require approximately 60 seconds to install and all piles would be installed over several days during a one-week period in April 2014. Piles would be installed in water depths between 8 and 15 m. The piles would remain in place while the pipeline is constructed (three to four months) and then would be removed in August 2014. Transco would conduct horizontal directional drilling, dredging, and trenching to excavate the seafloor and lay the pipeline and would use 240-kHz multi-beam echosounder and high-resolution 445- and 900-kHz side scan sonar to conduct a survey of the pipeline and excavated areas after final construction. Removal of the piles post-construction is expected to take approximately as long as installation (i.e., several days during a one-week period).

NMFS preliminarily has determined that the proposed activities could result in a temporary modification in the behavior of small numbers of up to seven 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) installing and extracting the piles only during daylight hours or when lighting and weather conditions allow for visual monitoring of the entire Level B harassment zone;
- (2) using “soft-start” procedures at the beginning of each pile driving session and after activities cease for more than 30 minutes;
- (3) shutting down pile driving and removal activities if the Level B harassment zone is obscured by fog or poor lighting conditions or if an observer sees any abnormal marine mammal behavior within the Level B harassment zone;
- (4) controlling discharge of operational waste generated from vessels associated with the project;
- (5) using two vessel-based NMFS-approved observers to monitor marine mammals for 30 minutes before, during, and for 30 minutes after all vibratory pile driving and removal;
- (6) reporting injured and dead marine mammals to the NMFS Office of Protected Resources and the Northeast Regional Stranding Coordinators using NMFS’s phased reporting approach and suspending activities, if appropriate; and
- (7) submitting a final report to NMFS.

RATIONALE

Including takes associated with other construction activities

Transco has estimated Level B harassment takes associated only with pile driving and removal activities. Transco stated in its application that no vessels would use dynamic positioning, and that sound levels associated with other construction activities (drilling, pipe laying, and pipe burial) would not be of concern. Therefore, Transco did not request and NMFS did not propose incidental harassment authorization associated with construction activities other than pile driving and removal. However, it is unclear what information Transco and NMFS used as the basis for determining that takes from other construction activities would not occur, as Transco did not provide estimates of sound levels associated with those activities. For other similar pipeline construction projects, applicants have included estimated sound levels for all construction and pipe laying activities in their incidental harassment authorization applications. For example, Port Dolphin Energy LLC estimated that horizontal directional drilling, pipe laying, and pipe burial would have

sound levels that exceeded the threshold for Level B harassment of 120 dB re 1 μ Pa (Table 6 in 77 Fed. Reg. 55646). Consequently, takes associated with each of those activities were estimated and included as part of the proposed incidental harassment authorization.

Without information from Transco on the estimated sound levels for other pipeline construction activities, and given information from other projects indicating sound levels associated with similar pipeline construction activities may exceed the threshold for Level B harassment, it would be premature for NMFS to determine that no takes would result from Transco's other construction activities and that no additional mitigation measures are necessary. Therefore, the Commission recommends that, in addition to pile driving and removal, NMFS require Transco to (1) provide estimated source levels associated with other pipeline construction activities (i.e., horizontal directional drilling, pipe laying, and pipe burial) and (2) estimate the number of takes associated with those activities based on the Level B harassment threshold of 120 dB re 1 μ Pa for Level B harassment.

Estimation of takes based on duration and timing of activities

Transco estimated the numbers of marine mammal takes by multiplying the area of the Level B harassment zone by species-specific densities. However, Transco calculated those numbers based on what appears to be only one day of sound exposure per season, even though pile driving or removal of piles would occur over several days within a one-week period during each season. Each day of pile driving and removal has the potential to expose either the same animals repeatedly or different animals; therefore, take estimates should account for the multiple days of exposure. As such, Transco should estimate numbers of takes for each day in which exposure would occur and multiply those takes by the number of days in which pile driving and removal would occur to determine the total numbers of estimated takes that are expected to occur during the proposed activities.

In addition, Transco calculated takes based on three seasons of operation—winter, spring, and summer—rather than just the two seasons in which activities are expected to occur—spring and summer. The numbers of takes should therefore be estimated based only on the exposures that would occur during the seasons in which pile driving and removal would take place. For these reasons, the Commission recommends that NMFS require Transco to estimate the numbers of takes by accounting for the number of days (i.e., seven days) that the proposed activities would occur in spring (for pile driving) and summer (for pile removal).

Estimation of takes based on group size

At least two of the species (i.e., North Atlantic right whale and short-beaked common dolphin) for which incidental harassment authorization is requested typically occur in groups that may exceed the requested numbers of takes. Although the estimated densities for those species are relatively low, if those animals were to be observed in the vicinity of the project area they likely would occur in numbers that exceed the requested numbers of takes. This could result in actual takes exceeding authorized takes and/or a premature shutdown of the proposed activities. In other similar situations, NMFS has increased the requested numbers of takes of a particular species to reflect the mean group size of that species (e.g., Table 4 in 78 Fed. Reg. 33811). Therefore, to ensure that the requested numbers of takes reflect numbers of individuals of each species that may be

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observed in the project area, the Commission recommends that NMFS require that Transco increase its estimated numbers of takes for North Atlantic right whales and short-beaked common dolphins to the mean group size for each season in which takes are expected to occur.

The Commission appreciates the opportunity to provide comments on Transco's application. Please contact me if you have questions concerning the Commission's recommendations.

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".

Rebecca J. Lent, Ph.D.
Executive Director