

MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

3 April 2009

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, MD 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 Tetra Tech EC, Inc., on behalf of Northeast Gateway Energy Bridge, L.L.C., and Algonquin Gas Transmission, L.L.C. The applicants seek an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act. On 28 April 2008 the Commission provided comments to the Service on the applicants' 2008 request for authorization to take by harassment small numbers of various species of seals, toothed whales, and baleen whales, including North Atlantic right whales, incidental to operating and maintaining the Northeast Gateway liquid natural gas port facility and the associated pipeline. A copy of that letter is enclosed and incorporated by reference. Also in its 28 April letter, the Commission commented on the Service's request for public input on the structure and content of regulations being contemplated to govern incidental taking after the one-year incidental harassment authorization expires. The Service issued the incidental harassment authorization on 21 May 2008, and it is valid through 20 May 2009.

Based on the Service's advice, the applicants have submitted a revised application for a new incidental harassment authorization. The revised application describes additional activities associated with the operation and maintenance of the Northeast Gateway port and the Algonquin pipeline that were not included in the initial application. The new one-year incidental harassment authorization, if issued, will authorize the taking of marine mammals incidental to the additional activities, as well as those covered by the 2008 authorization. The Commission understands that the Service still plans to issue regulations to govern incidental taking after the new authorization expires.

RECOMMENDATION

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

- all marine mammal mitigation, monitoring, and reporting measures identified in the *Federal Register* notice are included in the authorization and retained in any proposed regulations issued by the Service to govern the activities over a five-year period; and
- operations be suspended immediately if a dead or seriously injured right whale or other marine mammal is found in the vicinity of the operations and the death or injury could be attributable to the applicant's activities. Any suspension should remain in place until the Service (1) has reviewed the situation and determined that further deaths or serious injuries are unlikely or (2) has issued regulations authorizing such takes under section 101(a)(5)(A) of the Act.

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RATIONALE

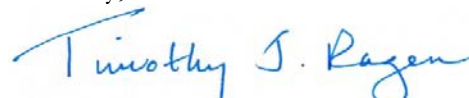
Based on the Service's 7 March 2009 *Federal Register* notice, the Commission understands that the measures for avoiding vessel strikes and for monitoring and mitigating noise impacts contained in the current incidental harassment authorization would be retained in the new incidental harassment authorization being sought. Mitigation measures related to the operation and maintenance of the Algonquin pipeline include passive acoustic and visual monitoring programs, safety zones, vessel speed restrictions, and ramp-up procedures.

The Service has preliminarily concluded that, at most, the activities described in the revised application would result in the temporary modification of the behavior of small numbers of those species of marine 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 expects that, although these activities could cause local, short-term displacement of some marine mammals, they would result in no more than a negligible impact on any individual animals or stocks and would have no biologically significant effects (i.e., on survival or reproduction) of the affected marine mammal species or stocks. The Service has based its preliminary determination on the proposed mitigation, monitoring, and reporting measures and the conclusion of its biological opinion on the proposed action. No taking by injury or death is anticipated, and the Service 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. The Marine Mammal Commission therefore recommends that the requested authorization be issued and that those measures be incorporated as described in the application and the Service's *Federal Register* notice. The Marine Mammal Commission further recommends that the authorization require operations to be suspended immediately if a dead or seriously injured right whale or other marine mammal is found in the vicinity of the operations and the death or injury could be attributable to the applicant's activities. Any suspension should remain in place until the Service (1) has reviewed the situation and determined that further deaths or serious injuries are unlikely or (2) has issued regulations authorizing such takes under section 101(a)(5)(A) of the Marine Mammal Protection Act.

Please contact me if you have questions concerning our comments or recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive, flowing style.

Timothy J. Ragen, Ph.D.
Executive Director

Enclosure