

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

8 June 2009

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 from Neptune LNG, LLC, seeking an incidental harassment authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act. The applicant is requesting a one-year authorization to harass small numbers of various species of seals, toothed whales, and baleen whales, including North Atlantic right whales, incidental to the construction and operation of an offshore liquefied natural gas (LNG) port in Massachusetts Bay. The Commission also has reviewed the National Marine Fisheries Service's 8 May 2009 *Federal Register* notice (74 Fed. Reg. 21648) soliciting comments on the application. On 20 March 2008 the Commission provided comments (copy enclosed) on the initial application and on the Service's notice of intent to promulgate regulations under section 101(a)(5)(A) of the Act to authorize the take of marine mammals incidental to operation and maintenance of the port over a five-year period. The Service issued an incidental harassment authorization for construction of the port in June 2008, which is effective through June 2009. The proposed authorization, if issued, would cover activities for an additional year, through completion of construction and, possibly, initial operation of the port. The Commission offers the following recommendations and rationale regarding the current application.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested incidental harassment authorization, subject to the mitigation, monitoring, and reporting measures identified in the *Federal Register* notice.

RATIONALE

The *Federal Register* notice states that port and pipeline construction will generate noise exceeding 120 dB re 1 μ Pa (rms), with the loudest source being vessel thrusters used for dynamic positioning. During construction activities in 2008 and 2009, the supply vessel will have made approximately 51 round trips, and the crew and survey vessel will have made approximately 360 round trips for a combined total of 411 round trips or 822 transits. The applicant expects construction to be completed in September 2009, but port operations likely would not begin until the spring of 2010 at the earliest. The proposed incidental authorization, if issued, would cover construction activities in 2009–2010 and initial operation of the port in 2010. Once the port is operational, additional vessels will be employed, thereby generating additional noise during

regasification of liquefied natural gas and positioning with vessel thrusters. These vessels would make relatively few trips in the early stages of operation but are expected to increase to 50 round trips annually to provide a continuous supply of natural gas to the pipeline when in full operation. This means 100 transits annually or an average of one transit every 3.65 days.

The Service expects that, at most, the noise from these vessels and port operations would cause local, short-term displacements of some marine mammals, with no more than a negligible impact on any individual animal or stock. The Service also concludes that the implementation of the proposed mitigation measures (i.e., visual observations and passive acoustic monitoring) would ensure that no marine mammals would be injured or killed by vessel traffic or other activities. Based on that conclusion, the Service is not planning to authorize any such injury or mortality.

The Marine Mammal Commission concurs with the Service's preliminary assessment, in large part because of the measures that the Service and the applicant intend to implement to mitigate the risk of ships colliding with North Atlantic right whales and other cetacean species. As described in the *Federal Register* notice, such measures include the following:

- all construction vessels of 300 gross tons or greater will operate at speeds of 10 knots or less and vessels of less than 300 gross tons carrying supplies or crew between shore and the construction site must contact the appropriate authority or the construction site before leaving shore to check for reports of recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within five miles of the location of any recent right whale sighting;
- vessels transiting through the Cape Cod Canal and Cape Cod Bay between 1 January and 15 May will reduce speeds to 10 knots or less, follow the recommended routes charted by the National Oceanic and Atmospheric Administration to reduce risks to right whales from shipping traffic, and avoid aggregations of right whales in the eastern portion of Cape Cod Bay; and
- construction and support vessels will transit at speeds of 10 knots or less in the following areas and seasons; the southeast U.S. seasonal management area from 15 November through 15 April; the mid-Atlantic seasonal management area from 1 November through 30 April; the Cape Cod Bay seasonal management area from 1 January through 15 May; the Off Race Point seasonal management area year-round; and the Great South Channel seasonal management area from 1 April through 31 July.

In addition, the *Federal Register* notice states that two National Marine Fisheries Service-approved observers would be onboard all onsite construction vessels to detect marine mammals and sea turtles present within 0.8 km (one-half mile) of work sites during daylight hours. If a right whale were to approach within 457 m (500 yd) of the construction vessel, or if any other cetacean or sea turtle were to approach within 91 m (100 yd) of the vessel, all activities emitting noise with a source level greater than 120 dB would be suspended until visual sightings confirmed that the animals had moved beyond those distances. The *Federal Register* notice also states that an autonomous, near-real-time passive acoustic monitoring system with six buoys would be operated at all times during

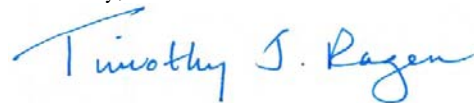
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construction to supplement visual monitoring efforts. The passive acoustic monitoring system would remain in place for five years to monitor the actual acoustic output of port operations and to alert the Service to any unanticipated adverse effects of port operations, such as large-scale abandonment of the area by right whales or other marine mammals or greater acoustic impacts than has been predicted through modeling. Finally, the notice indicates that weekly reports on marine mammal mitigation efforts would be provided to the Service throughout the construction phase.

In light of these measures, the Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested incidental harassment authorization, subject to the mitigation, monitoring, and reporting measures identified in the *Federal Register* notice.

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

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a prominent initial "T".

Timothy J. Ragen, Ph.D.
Executive Director

Enclosure