



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 Excelebrate 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

Mr. P. Michael Payne
6 August 2010
Page 2

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,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is fluid and cursive, with the first name "Timothy" and last name "Ragen" being the most prominent parts.

Timothy J. Ragen, Ph.D.
Executive Director

Enclosures

Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

28 April 2008

Mr. P. Michael Payne
Chief, Permits Division
National Marine Fisheries Service
Office of Protected Resources
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 application from Northeast Gateway Energy Bridge, L.L.C., and Algonquin Gas Transmission, L.L.C., seeking an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act. The Commission also has reviewed the National Marine Fisheries Service's 27 March 2008 *Federal Register* notice soliciting comments on the application and on structure and content of future regulations to govern incidental taking after the one-year incidental harassment authorization expires. 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 operation of a deepwater port and the associated pipeline. The port is located in Massachusetts Bay 13 nmi off shore in waters about 85 m deep. Tankers would offload revaporized natural gas while moored at two submerged turrets.

The Service has preliminarily concluded that, at most, operation of the port would result in the temporary modification of the behavior of small numbers of affected marine mammals as a result of noise, primarily from tankers using the facility. The Service expects that such effects would cause local, short-term displacement of some marine mammals, resulting in no more than a negligible impact on any individual animals or stocks and no biologically significant effects on the survival or reproduction of affected marine mammal species or stocks. The Service has based its preliminary determination on the proposed mitigation, monitoring, and reporting measures and on the conclusion of the Service's biological opinion on the proposed action. No taking by injury or death is anticipated or requested, and the Service does not propose to authorize any such taking.

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.

RATIONALE

Noise Impacts

The Service's *Federal Register* notice states that the continuous sound sources associated with operation of the port are not expected to exceed the 120-dB threshold used to delineate Level B harassment. However, the port could receive approximately 65 cargo deliveries annually, and intermittent noise from thrusters used in association with docking liquid natural gas (LNG) tankers will occasionally exceed this threshold. The application cites measured sound source levels of 160 to 170 dB for LNG tankers using thrusters at a port in the Gulf of Mexico. In the Massachusetts Bay situation, thrusters would operate in bursts of a few seconds in duration and only when necessary to achieve precise positioning. Modeling studies cited in the application and the *Federal Register* notice estimate that noise from thrusters may exceed the 120-dB threshold to a distance of 2.56 km around the port. The application states that the applicant will monitor the noise environment in Massachusetts Bay in the vicinity of the port and pipeline using an array of 19 passive seafloor marine autonomous recording units placed at approximately 8-km intervals within the recently modified Boston Traffic Separation Scheme. The applicant has engaged representatives from Cornell University's Bioacoustics Research Program and the Woods Hole Oceanographic Institution to consult on developing, implementing, and maintaining the acoustic monitoring system and collecting, analyzing, and reporting on the data obtained.

Vessel Strikes

Operation of the port will increase the number of vessels transiting coastal waters off Massachusetts and thereby increase the risk of ship collisions with whales. Because of their highly endangered status, North Atlantic right whales are the species most at risk from ship strikes. To minimize impacts to right whales and other species, the Service has proposed the following vessel strike avoidance measures:

- an array of auto-detection buoys will be installed in the traffic separation scheme corridors to provide near-real-time information on the presence of vocalizing whales in the shipping lanes;
- all LNG tankers approaching or departing the port will comply with the mandatory ship reporting system to keep apprised of right whale sightings in the vicinity and will receive active detections from the passive acoustic array before and during transit through the northern leg of the traffic separation corridor where buoys are installed;
- all LNG tankers servicing the port will utilize the traffic separation scheme when approaching and departing from the port. All tankers must maintain speeds of 12 knots or less while in the traffic corridor. Tankers must slow their speeds to 10 knots or less when transiting the Off Race Point Seasonal Management Area between 1 March and 30 April, the Great South Channel Seasonal Management Area between 1 April and 31 July, or when

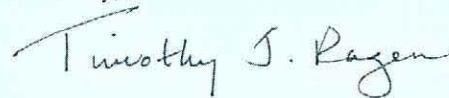
Mr. P. Michael Payne
28 April 2008
Page 3

- there have been active right whale sightings, active acoustic detections by auto-detection buoys, or both in the vicinity of the transiting tanker or at the port;
- as a tanker makes its final approach to the port, vessel speed will gradually be reduced to 3 knots when at a distance of 1.86 miles from the port to less than 1 knot at a distance of 1,640 feet;
 - in the event that transit of Cape Cod Bay is required, vessels will reduce speeds to 10 knots or less between 1 January and 15 May throughout the bay;
 - in instances where speeds in excess of 10 knots are required, the reasons will be documented in the logbook of the vessel and reported to the Service's Northeast Region ship strike coordinator; and
 - an array of archival recording units, or "pop-ups," will be installed around the port site for five years following initiation of operations 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 marine mammals or acoustic impacts greater than those predicted through modeling.

These proposed mitigation, monitoring, and reporting measures appear appropriate and prudent, and the Marine Mammal Commission recommends that they be carried out as described in the application and the Service's *Federal Register* notice. The Marine Mammal Commission further recommends that 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.

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

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

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.

Mr. P. Michael Payne
3 April 2009
Page 2

RATIONALE

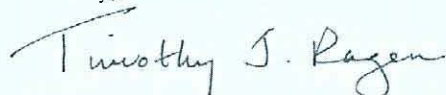
Based on the Service's 7 March 2009 *Federal Register* notice, the Commission understands that the measures for avoiding vessel strikes and for monitoring and mitigating noise impacts contained in the current incidental harassment authorization would be retained in the new incidental harassment authorization 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,



Timothy J. Ragen, Ph.D.
Executive Director

Enclosure