

Coast closed areas. The area requested for experimental fishing includes the waters approximately 40 nautical miles north of Fort Pierce, FL, beginning at 28° N. latitude and seaward of the Gulf Stream then continuing north and east seaward of the 100-fathom contour to the northern and eastern boundaries of the Charleston Bump closed area. In the Florida East Coast closed area, specific fishing areas would include waters between 28° and 30° N. latitude, seaward of the axis of the Gulf Stream, out to the boundary of the U.S. Exclusive Economic Zone (EEZ). In the Charleston Bump Closed Area, fishing activities would take place seaward of the 100-fathom contour to the northern and eastern boundaries of that closure.

Under this application, target species would include swordfish, yellowfin tuna, albacore tuna, bigeye tuna, dolphin fish, pelagic and coastal sharks, and wahoo. All targeted catch (tunas, swordfish, and sharks) that can be legally landed would be harvested and sold by the vessel owners. Incidental catch of bluefin tuna would be landed consistent with existing regulations. Any mortalities of Atlantic Tunas Convention Act (ATCA) regulated species (i.e., tuna, and swordfish) and sharks would be counted against the appropriate quotas. Non-target species and protected resources (e.g., billfish and sea turtles) would be tagged and released alive, if possible.

NMFS is aware of interactions with leatherback and loggerhead sea turtles that have occurred with PLL gear in these closed areas due to the natural distribution of sea turtles. Sea turtles can be entangled and/or hooked by PLL gear. If the EFP is issued, all mortality and interactions with protected resources would be counted against the Incidental Take Statement (ITS) established by the 2004 Biological Opinion for the PLL fishery.

The applicant specifies that all participating vessels would comply with the following standards: (1) Leaded swivels on every leader placed 2–3 fathoms above the hook, (2) use of 18/0 circle hooks (up to 10 degree offset) and squid or mackerel baits when targeting swordfish, (3) use of 16/0 non-offset circle hooks with squid or whole finfish bait when targeting tunas, and (4) possession of all mandatory equipment for safe handling and release of sea turtles and other non-target catch. The applicant would adhere to all existing regulations concerning deployment of PLL gear.

The applicant is proposing that all fishing activities be monitored by Federal fisheries observers to provide data on longline gear configuration,

target and incidental catch, and sea turtle interactions. NMFS currently collects this information on selected PLL vessels by the PLL Observer Program (POP). The applicant is also proposing that observers record all of the animals caught on each set and the location and water temperature corresponding to where each section of gear is set and hauled. Individual length measurements for all catch would be recorded in addition to weight for those animals landed. If the EFP is issued, NMFS would require that all data be submitted via the POP, as well as interim and annual reports to the Highly Migratory Species (HMS) Management Division, as required under the EFP program. The applicant states that this data would allow for comparisons of catch rates for target and bycatch species with historical catch data from this area and time of year to assess the effectiveness of recent changes in the PLL fishery (e.g., bait and hook requirements and safe handling and release gear).

The applicant states that these activities may provide additional information on the efficacy of bycatch reduction measures and resultant catch composition in closed areas. It would also provide the U.S. PLL fleet with additional opportunities to catch more of its swordfish quota.

NMFS closed the East Florida Coast and Charleston Bump time/area closures to PLL gear to reduce bycatch of juvenile swordfish, billfish, and other HMS (e.g., sharks during closed seasons)(65 FR 47214, August 1, 2000). The Charleston Bump Closed Area is a seasonal closure from February through April every year, whereas the East Florida Coast Closed Area is closed year-round to PLL gear.

The regulations that would prohibit the proposed activities include requirements for vessel reporting (50 CFR 635.4) and fishing in a closed area (50 CFR 635.21(c)(2)). All other relevant regulations concerning HMS at 50 part 635 would apply.

NMFS is requesting public comment on this application for an EFP because the fishing activities are proposed to occur in closed areas, specifically the East Florida Coast and Charleston Bump. NMFS requested public comment on its intent to issue HMS exempted fishing, scientific research, public display and chartering permits (71 FR 68557, November 27, 2006). The Notice stated that if NMFS were to receive an application to conduct fishing activities in a closed area, the public would have the opportunity to comment on the issuance of an EFP for such activities prior to NMFS making a

determination on whether or not to issue the EFP.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: March 8, 2007.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121406C]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction and Operation of an LNG Facility Off Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from Northeast Gateway Energy Bridge™ L.L.C. (Northeast Gateway) and Algonquin Gas Transmission, L.L.C. (Algonquin) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to construction and operation of an offshore liquefied natural gas (LNG) facility. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to Northeast Gateway/Algonquin to incidentally take, by harassment, small numbers of several species of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than April 12, 2007.

ADDRESSES: Written comments on the application should be addressed to: 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. The mailbox address for providing email comments is PR1.121406C@noaa.gov. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here and is also available at: <http://>

www.nmfs.noaa.gov/pr/permits/incidental.htm#iha.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Northeast Gateway Energy Bridge LNG Deepwater Port license application is available for viewing at <http://dms.dot.gov> under the docket number 22219.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713-2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an

application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 30, 2006, NMFS received an application from Northeast Gateway and Algonquin for an IHA to take small numbers of several species of marine mammals, by Level B (behavioral) harassment, for a period of 1 year, incidental to construction and operation of an offshore LNG facility.

Description of the Project

Northeast Gateway is proposing to construct, own, and operate the Northeast Gateway Deepwater Port (Port or Northeast Port) to import LNG into the New England region. The Port, which will be located in Massachusetts Bay, will consist of a submerged buoy system to dock specifically designed LNG carriers approximately 13 mi (21 km) offshore of Massachusetts in federal waters approximately 270 to 290 ft (82 to 88 m) in depth.

This facility will deliver regasified LNG to onshore markets via new and existing pipeline facilities owned and operated by Algonquin. Algonquin will build and operate a new, 16.06-mile (25.8 km) long, 24-in (61-cm) diameter natural gas pipeline (called the Northeast Gateway Pipeline Lateral or Pipeline Lateral) to connect the Port to Algonquin's existing offshore natural gas pipeline system in Massachusetts Bay, called the HubLine.

The Port will consist of two subsea Submerged Turret Loading (STL™) buoys, each with a flexible riser assembly and a manifold connecting the riser assembly, via a steel flowline, to the subsea Pipeline Lateral. Northeast Gateway will utilize vessels from its current fleet of specially designed Energy-Bridge Regasification Vessels (EBRVs), each capable of transporting approximately 2.9 billion ft³ (Bcf; 82 million m³) of natural gas condensed to 4.9 million ft³ (138,000 m³) of LNG. Northeast Gateway will add vessels to its fleet that will have a cargo capacity of approximately 151,000 m³. The proposed mooring system to be installed at the Port is designed to handle both the existing vessels and any of the larger capacity vessels that may come into service in the future. The EBRVs will dock to the STL™ buoys which will serve as both the single-point mooring system for the vessels and the delivery conduit for natural gas. Each of the

STL™ buoys will be secured to the seafloor using a series of suction anchors and a combination of chain/cable anchor lines.

The Pipeline Lateral joins the existing HubLine pipeline in waters approximately 3 mi (4.8 km) to the east of Marblehead Neck in Marblehead, Massachusetts. From the HubLine connection, the Pipeline Lateral route extends towards the northeast, crossing the outer reaches of territorial waters of the Town of Marblehead, the City of Salem, the City of Beverly, and the Town of Manchester-by-the-Sea for approximately 6.3 mi (10.1 km). The Pipeline Lateral route curves to the east and southeast, exiting Manchester-by-the-Sea territorial waters and entering waters regulated by the Commonwealth of Massachusetts. The Pipeline Lateral route continues to the south/southeast for approximately 6.2 mi (10 km), where it exits state waters and enters federal waters. The Pipeline Lateral route then extends to the south for another approximately 3.5 mi (5.7 km), terminating at the Port.

On June 13, 2005, Northeast Gateway submitted an application to the USCG and MARAD seeking a federal license under the Deep-Water Port Act to own, construct, and operate a deepwater port for the import and regasification of LNG in Massachusetts Bay, off of the coast of Massachusetts. Simultaneous with this filing, Algonquin filed a Natural Gas Act Section 7(c) application with the Federal Energy Regulatory Commission for a Certificate of Public Convenience and Necessity for the Pipeline Lateral that would connect the Northeast Gateway Port with the existing HubLine natural gas pipeline for transmission throughout New England. Because, as described later in this document, there is a potential for marine mammals to be taken, by harassment, incidental to construction of the facility and its pipeline and by the transport of LNG, Northeast Gateway/Algonquin have applied for a 1-year IHA for activities commencing around May, 2007. The following sections briefly describe the activities that might harass marine mammals. Detailed information on these activities can be found in the MARAD/USCG Final EIS on the Northeast Gateway Project (see **ADDRESSES** for availability).

Construction Activities

Construction of the Pipeline Lateral and Northeast Gateway Port includes the installation of the "hot tap" on the existing HubLine pipeline; the lay, burial, and commissioning of the Pipeline Lateral commencing at the hot tap and extending to a location near the

Northeast Port; and the installation of the Northeast Port buoys, risers, pipeline end manifolds (PLEMs), and flowlines. The Port and Pipeline Lateral will be constructed during the May to November, 2007 timeframe.

Pipeline Construction

In general, traditional marine pipeline construction vessels and equipment will be utilized to construct the Pipeline Lateral. The pipeline will be buried such that the top of the pipeline is a minimum of 1.5 ft (0.46 m) below the seabed with a target burial depth of 3 ft (.92 m). In limited areas and at any sites not feasible to plow due to unforeseen subsurface conditions, the pipeline will be laid on the surface and armored with rock or concrete mats. Pipeline trenching operations in the marine environment will cause a temporary re-suspension of some bottom sediments off the seafloor and into the water column. The resulting sediment plumes are exposed to currents that have the potential to carry the plume short distances into the surrounding environment. Impacts to the water column, resulting from the presence of the sediment plume, are temporary and localized due to the nature of the plowing and backfill plowing activities, which are the least sediment-disturbing means of creating a trench for the pipeline and returning cover over the pipe in the trench. The spatial extent is also limited due to the short time period that material stays in the water column and rapid dilution in an open ocean setting. Jetting will only occur in short, discrete sections and will therefore only create localized and temporary plumes; however, these plumes would be more concentrated and larger than for plowing and backfill plowing.

Delivery of pipe may require transiting through the Cape Cod Canal (Canal). If required, vessels will follow the westernmost route through Cape Cod Bay to avoid identified aggregations of whales in the eastern portion of Cape Cod Bay. To the extent practicable, pipe deliveries will be avoided during the January to May timeframe. In the unlikely event the Canal is closed during construction, the pipe haul barges would come around Cape Cod following the traffic separation scheme and appropriate measures agreed to for the EBRVs when transiting to the Port.

The construction barges, which are used to fabricate and lay the pipeline on the seafloor, pull the pipeline plow along the laid pipeline, and pull the backfill plow along the trenched pipeline, will be positioned and advanced along the route using a series of anchors and cables. The anchors are

positioned using anchor handling tugs, and mid-line buoys are used to help hold much of the cable off the seafloor. In addition to the barges and tugs, pipeline construction will require the use of pipe-haul barges pulled by tugs, crew and supply vessels, survey vessels, and dive support vessels (DSV). The types of vessels that are expected to be used in construction of the Pipeline Lateral are described in Table 1–1 in the IHA application.

The operation of the Dynamically Positioned (DP) DSVs differs from the operation of the pipe lay/plow construction vessels in that this vessel will primarily hold its position at a single location. The vessel will periodically relocate from one position to another, but during the process of performing diving activities, the vessel is required to maintain its position at a single location. The DSV maintains its position or stationing with the use of thrusters. The importance of maintaining the position of the vessel cannot be compromised. As a DSV, most of its time will be spent providing the surface support for a diver or divers operating on the seabed. According to Northeast Gateway, the safety of the diver is paramount to the operation of the vessel and its station-keeping capabilities.

In general, the DP vessels are fitted with three main types of thrusters: main propellers, tunnel thrusters, and azimuth thrusters. Main propellers, either single or twin screw, are provided in a similar fashion to conventional vessels. In addition to main propellers, a DP vessel must have well-positioned thrusters to control position. Typically, a conventional mono-hull type DP vessel will have six thrusters, three at the bow and three aft. Forward thrusters tend to be tunnel thrusters, operating athwart ships. Two or three tunnel thrusters are usually fitted in the bow. Stern tunnel thrusters are common, operating together but controlled individually, as are azimuth or compass thrusters aft. Azimuth thrusters project beneath the bottom of the vessel and can be rotated to provide thrust in any direction.

Sounds generated by vessel and barge movements and the thrusters of DP vessels will be the dominant source of underwater sound during pipeline construction activities. Auxiliary equipment including onboard generators and compressors, winches, tensioners, cranes, pumps, and sonar and survey equipment are considered secondary in comparison, by at least one order of magnitude (Northeast Gateway, 2006). The sound energy generated by onboard mechanical equipment is

effectively dampened by the hull of the vessel, in comparison to thruster and propeller sounds, which are occurring directly in the water. Sounds generated by construction activity occurring above water, including impact sounds, are subject to a large transmission loss when moving across the water-air interface from the in-air source to the underwater receiver due to the impedance mismatch between these two fluids.

Port Construction

For each buoy, construction of the Northeast Port will involve the installation of the steel flowline section and eight mooring anchors, followed by installation of the PLEM, the STL buoy, and related parts. Conventional marine pipeline construction and installation techniques will be employed with consideration of site-specific conditions and requirements at the mooring locations. Northeast Gateway notes that development of the Gulf Gateway Deepwater Port and several projects in the North Sea, has provided them with extensive experience with these construction techniques.

The proposed design for the STL™ buoy incorporates eight mooring anchors in a spoked wheel-shaped array to hold the buoy in place. Final anchor placement will be accomplished using a DP anchor handling vessel. The preferred installation method for each of the STL™ buoys involves transporting the buoy from an onshore mobilization site and pre-connecting all eight wire rope segments to the buoy while it is onboard the DSV. The buoy is placed in the water and temporarily secured with synthetic lines to two of the mooring chains already deployed on the seafloor during the suction anchor installation. When all eight mooring lines are connected by divers, the buoy is released to float at its submerged draft.

The PLEM will either be lowered and embedded similar to the method used to install the mooring anchors or lowered and placed on the seabed with penetration accomplished by the dead weight of the PLEM. The PLEM will be set in place by an anchor-moored derrick barge. The PLEM end of the riser will be lowered to the seafloor, where divers will attach it to the PLEM.

The types of vessels that will be used in construction of the Port are described in Table 1–2 in the IHA application.

Construction Noise

As described in Section 1.1.1 of the IHA application, for the pipeline construction scenario, sounds generated by vessel and barge movements and the thrusters of DP vessels will be the

dominant source of underwater sound during Port construction activities.

Acoustic analyses were completed for activities related to construction of the Port and Pipeline Lateral. Activities considered potential noise sources include trenching (plowing and jetting at isolated locations), lowering of materials (pipe, anchors, chains, PLEM, and spool pieces), and vessel operations (engine-driven vessel movements or maintaining station by use of thrusters). Of these potential noise sources, vessel movements and thruster use for dynamic positioning are the dominant sources by at least one order of magnitude. Simulated vessels were positioned at two discrete locations along the proposed pipeline alignment closest to the Stellwagen Bank National Marine Sanctuary (SBNMS), as well as centered on the easterly Port buoy location. (See Appendix A of the IHA application for a discussion of the acoustic modeling methodology used for this analysis.) Figure 1–1 in the IHA application presents the results of the acoustic modeling for construction vessels operating at two depth locations along the Pipeline Lateral (40 m and 80 m (131 ft and 262 ft)) with *source* levels ranging from 140 to 160 dBL re 1 microPa at 1 m for construction vessel movements to 180 dBL re 1 microPa at 1 m for vessel thrusters used for dynamic positioning (L means linear broadband levels). Because sound propagation depends on water depth, the isopleth distances will vary with construction activities occurring in shallower depths resulting in increased impact distances. Figure 1–2 in the IHA application shows a similar acoustic impact analysis of construction vessels operating simultaneously at the Port with the same estimated construction source levels. The resultant contour plots (shown in Figure 1–2) present the worst-case instantaneous received sound level, the dominant source being the use of vessel thrusters.

Thrusters used during construction activities are operated intermittently and only for short durations of time. For a water column depth of 80 m (262 ft), representative of the immediate area near the Deepwater Port, the linear distance to the 120 dBL isopleth would extend 2.56 km (1.6 mi), resulting in an area \leq 120 dBL ensonification of 20.6 km². For a water column depth of 40 m (131 ft), representative of northern sections of the Pipeline Lateral, the linear distance to the 120 dBL isopleth is 3.31 km (2.0 mi) resulting in an area of ensonification \geq 120 dB of 34.4 km². The non-continuous short-term sounds generated by construction of the Pipeline Lateral will be above 120 dB,

where there is a potential for Level B harassment from intermittent sound sources. Sound levels in excess of the 160 dB impulse criteria (defined as a brief sound with a fast rise time) will be very localized and will not extend beyond the immediate area where construction activities are occurring for both the Pipeline Lateral and Deepwater Port construction scenarios.

Operations

As an EBRV makes its final approach to the Port, vessel speed will gradually be reduced to 3 knots (5.5 km/hr) at 1.86 mi (3 km) out to less than 1 knot (1.8 km/hr) at a distance of 1,640 ft (500 m) from the Port. When an EBRV arrives at the Port, it will retrieve one of the two permanently anchored submerged STL™ buoys. It will make final connection to the buoy through a series of engine and bow and stern thruster actions. The EBRV will require the use of thrusters for dynamic positioning during docking procedure. Typically, the docking procedure is completed over a 10- to 30-min period, with the thrusters activated as necessary for short periods of time in second bursts, not a continuous sound source. Once connected to the buoy, the EBRV will begin vaporizing the LNG into its natural gaseous state using the onboard regasification system. As the LNG is regasified, natural gas will be transferred at pipeline pressures off the EBRV through the STL™ buoy and flexible riser via a steel flowline leading to the connecting Pipeline Lateral. When the LNG vessel is on the buoy, it will be allowed to “weathervane” on the single-point mooring system (i.e., move with wind and water currents); therefore, thrusters will not be used to maintain a stationary position.

Port Operation Noise

Underwater sound generated during Port operation is limited to regasification and EBRV maneuvering during coupling and decoupling with STL buoys. Sound propagation calculations (see section 1.1.3 of Northeast Gateway’s IHA application for methodology and acoustic concepts) used source data including measurements collected on August 6 to 9, 2006, from the *Excelsior* EBRV while it was moored at the operational Gulf Gateway Deepwater Port located 116 mi (187 km) offshore in the Gulf of Mexico. The overall purpose of this survey was to verify measurements completed during the first sound survey completed March 21 to 25, 2005, when the *Excelsior* first visited the Port, and to further document sound levels during additional operational and EBRV

maneuvering conditions, including the use of stern and bow thrusters required for dynamic positioning during coupling. The data were used to confirm theoretical calculations employed in supplemental submittals (for the USCG Draft EIS on this action) to assess sound energy generated during closed-loop versus open-loop regasification operations. In addition to normalizing complex sound components into source terms, data were used to confirm EBRV sound source energy generation and propagation characteristics, and the identification of near field and far sound fields under different operating and EBRV maneuvering procedures. These data were used to model underwater sound propagation at the Northeast Gateway site. The results of the field survey are provided as underwater sound source pressure levels (dB re 1 microPa at 1 m) as follows:

(1) Sound levels during closed-loop regasification ranged from 104 to 110 dBL. Maximum levels during steady state operations were 108 dBL.

(2) Sound levels during coupling operations were dominated by the periodic use of the bow and stern thrusters and ranged from 160 to 170 dBL.

Figures 1–3 and 1–4 in the IHA application present the net acoustic impact of one EBRV operating at the Deepwater Port. Figure 1–3 in the IHA application presents the maximum received underwater sound levels impact during closed-loop EBRV regasification with a steady-state source level of 108 dBL re 1 microPa at 1 m. As shown in those figures, there is no area of ensonification above 120-dBL, where Level B harassment could potentially occur from intermittent sound sources. Figure 1–4 in the IHA application presents maximum underwater sound levels during EBRV maneuvering and coupling using a source level of 170 dBL re 1 microPa at 1 m (thrusters used for dynamic positioning). Thrusters are operated intermittently and only for relatively short durations of time. The resultant area within the critical 120-dB isopleth is less than 1 km² with the linear distance from the sound source to the critical isopleths extending 430 m (1,411 ft). The area of the 160-dB isopleth is very localized; it will not extend beyond the immediate area surrounding the EBRV while coupling operations are occurring.

Maintenance

The specified design life of the Port is about 40 years, with the exception of the anchors, mooring chain/rope, and riser/umbilical assemblies, which are based

on a maintenance-free design life of 20 years. The buoy pick-up system components are considered consumable and will be inspected following each buoy connection, and replaced (from inside the STL compartment during the normal cargo discharge period) as deemed necessary. The underwater components of the Deepwater Port will be inspected once yearly using either divers or remotely operated vehicles to inspect and record the condition of the various STL™ system components. These activities will be conducted using the Port's normal support vessel, and to the extent possible will coincide with planned weekly visits to the Port. Helicopters will not be used for marker line maintenance inspections. Northeast Gateway concludes that no noise sources related to the Project are likely to exceed ambient conditions during routine maintenance activities.

Marine Mammals Affected by the Activity

Marine mammal species that potentially occur within the NE Gateway facility impact area include several species of cetaceans and pinnipeds: Atlantic white-sided dolphin, bottlenose dolphin, short-beaked common dolphin, harbor porpoise, killer whale, long-finned pilot whale, Risso's dolphin, striped dolphin, white-beaked dolphin, sperm whale, minke whale, blue whale, humpback whale, North Atlantic right whale, sei whale, gray seal, harbor seal, hooded seal, and harp seal. Information on those species that may be impacted by this activity are discussed in detail in the USCG Final EIS on the Northeast Gateway LNG proposal. Please refer to that document for more information on these species and potential impacts from construction and operation of this LNG facility. In addition, general information on these marine mammal species can also be found in Wursig *et al.* (2000) and in the NMFS Stock Assessment Reports (Waring, 2006). This latter document is available at: <http://www.nefsc.noaa.gov/nefsc/publications/tm/tm194/>.

Potential Effects on Marine Mammals

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) The noise may be audible but not strong enough to elicit any overt behavioral response; (3) The noise may elicit

reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases; (4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat; (5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise; (6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and (7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic (or explosive events) may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Northeast Gateway states that the potential impacts to marine mammals associated with sound propagation from vessel movements, pipe laying and installation of the Port, anchors, chains and PLEM's could be the temporary and short-term displacement of seals and whales from within the 120-dB zones ensounded by these noise sources. However, from the most precautionarily conservative estimates of both marine mammal densities in the Project area and the size of the 120-dB zone of (noise) influence (ZOI), the calculated number of individual marine mammals

for each species that could potentially be harassed annually is: one right whale (1.23), seven dolphins, and three seals. Consequently, Northeast Gateway/Algonquin do not believe construction and operation of the Northeast Gateway Deepwater Port Project would constitute a population level harassment threat to local marine mammal stocks, but could result in small numbers of individual marine mammals being harassed as enumerated in this document.

Estimates of Take by Harassment

There are three general kinds of sounds recognized by NMFS: continuous (such as shipping sounds), intermittent (such as vibratory pile driving sounds), and impulse. No impulse noise activities, such as blasting or standard pile driving, are associated with this project, thus NMFS' 160-dB threshold criterion for estimating Level B harassment from impulse sounds is not applicable for this activity. The noise sources of potential concern are regasification/offloading (which is a continuous sound) and dynamic positioning of vessels using thrusters (an intermittent sound). Based on research by Malme *et al.* (1983, 1984), for both continuous and intermittent sound sources, Level B harassment is presumed to begin at 120-dB.

None of the continuous sound sources associated with construction or operation of the Northeast Gateway Project is expected to exceed the 120-dB threshold for Level B harassment. However, the intermittent noises from thruster use associated with dynamic positioning of vessels during either construction or operation (docking) may occasionally exceed this 120-dB threshold. Consequently, thruster use has the potential for a "take" by harassment of any marine mammal occurring with a zone of ensoundification (greater than 120 dB) emanating from the sound source. This area, known as the ZOI, has a variable maximum radius dependent on water depth and associated differences in transmission loss (see Sections 1.1.3 and 1.2.1 in the IHA application for more detail):

- For shallow-water depths (40 m (131 ft)) representative of the northern segment of the Pipeline Lateral construction, the 120-dB radius is 3.31 km (2 mi) and associated ZOI is 34 km².
- For moderate depths (80 m (262 ft)) representative of the Deepwater Port location and Pipeline Lateral segment nearest SBNMS, the 120-dB radius is 2.56 km (1.6 mi) and associated ZOI is 21 km².
- For deeper depths (120 m (394 ft)) representative of the deepest waters of

the Project analysis area, the radius is 2.18 km (1.4 mi) and associated ZOI is 15 km².

The basis for Northeast Gateway's "take" estimate is the number of marine mammals that would be exposed to sound levels in excess of 120 dB. Typically this is determined by multiplying the ZOI by local marine mammal density estimates, and then correcting for seasonal use by marine mammals, seasonal duration of noise-generating activities, and estimated duration of individual activities when the maximum noise-generating activities are intermittent or occasional. In the case of data gaps, a conservative approach was taken by Northeast Gateway to ensure the potential number of takes is not underestimated, as described next.

There are no valid marine mammal density estimates for the actual Northeast Gateway Project area. Studies in the nearest area (approximately 20 to 30 km (12 to 19 mi) south) where intensive marine mammal surveys have occurred (Cape Cod Bay) focused on individual right whales; no density estimates were calculated for other marine mammals. However, these Cape Cod Bay surveys, conducted by the Provincetown Center for Coastal Studies, involved a 100 percent survey coverage of the 1,500 km² Bay (flying 1.5 km-wide strip transects) every 2 weeks from January to May for the years 2002 to 2005 (Brown *et al.* 2002, 2003; Mayo *et al.* 2004; Jaquet *et al.* 2005). Consequently, density estimates can be calculated by dividing the number of animals of each species recorded by the total trackline surveyed from 2002 through 2005 (57,500 km (35,729 mi)), then correcting for animals not at the surface (roughly 30 percent for species potentially subject to harassment by this activity).

Table 6-1 in the IHA application provides corrected density estimates from the Cape Cod Bay studies. Because of the intensity of these studies, the near location of these studies to the Deepwater Port Project, and bathymetric similarity of the Project area and Cape Cod Bay, animal density data from Cape Cod Bay provide an adequate and conservative surrogate for marine mammals expected to inhabit the Project area. The Cape Cod Bay studies did not record gray seals during their aerial surveys, but they did record 352 unidentified seals, some of which may be gray seals. Also, many of the 969 harbor seals recorded during the surveys were presumably hauled out in large groups. Similarly, while 343 Atlantic white-sided dolphins and 83 common dolphins were recorded, 2,875

unidentified dolphins were also recorded; these were presumably either white-sided or common dolphins (because no other delphinid species were recorded), but the exact identity of these individuals was not determined. Thus, in a conservative attempt to ensure any given species is not underestimated, the unidentified seal numbers were added to both the harbor seal and gray seal numbers, and the unidentified dolphin numbers were added to both white-sided dolphins and common dolphin numbers in the density calculations.

Although sound transmission loss, and therefore the ZOI, varies with water depth, Northeast Gateway provided the most conservative estimate of "take" by using the largest ZOI (34 km²) in their calculations. Table 6-1 in the IHA application provides their estimate of the number of marine mammals that could be harassed over the 1-year period for the proposed project's IHA.

Potential Impact on Habitat

Construction

Construction of the Port and Pipeline Lateral will alter marine mammal habitat in several ways: disturbance of the seafloor, removal of sea water for hydrostatic testing, and generation of additional underwater noise. Although approximately 1,042 acres of seafloor (43 acres for the Port; 999 acres for the Pipeline Lateral) will be disturbed during construction, the majority of this impact will be temporary. Seafloor disturbance will include plowing to construct a trench for the pipeline. The pipelay and plow vessels will be maneuvered using a multi-point anchor system. Although the anchor system will include mid-line buoys to minimize cable sweep of the seafloor, approximately 814 acres may be temporarily affected. Crossing of two existing cables will require armoring, a change in substrate conditions in an area about 0.14 acres in size.

Once the lateral and flowlines are installed, about 3,100,000 gallons of sea water will be withdrawn to be used for hydrostatic testing. This volume is small compared to the volume of Massachusetts Bay. Although the sea water will be returned to the environment, the associated plankton will be unlikely to survive. As circulation patterns in the Bay ensure that plankton will be transported into the Project area continuously, this hydrostatic test will not affect the sustainability of the plankton communities in the Bay.

Construction of the Port and Pipeline Lateral will result in a reduction of

benthic productivity in the Project footprint. Once the disturbance ceases, the substrate will be available for recruitment of benthic organisms. As some of the substrate will be converted from soft to artificial hard substrate, the soft-bottom benthic community may be replaced with organisms associated with naturally occurring hard substrate, such as sponges, hydroids, bryozoans, and associated species. In other areas, re-establishment of a benthic community similar to that in adjacent areas is expected to take a period of weeks to several years.

Operations

Operation of the Port and Pipeline Lateral will result in long-term effects on the marine environment, including alteration of seafloor conditions, continued disturbance of the seafloor, regular withdrawal of sea water, and regular generation of underwater noise. A small area (0.14 acre) along the Pipeline Lateral will be permanently altered (armored) at two cable crossings. In addition, the structures associated with the Port (flowlines, mooring wire rope and chain, suction anchors, and PLEMs) will occupy 4.8 acres of seafloor. An additional area of the seafloor of up to 38 acres will be subject to disturbance due to chain sweep while the buoys are occupied. The benthic community in the up-to 38 acres of soft bottom that may be swept by the anchor chains while EBRVs are docked will have limited opportunity to recover, so this area will experience a long-term reduction in benthic productivity.

Each EBRV will require the withdrawal of an average of 4.97 million gallons per day of sea water for general ship operations during its 8-day stay at the Port. As with hydrostatic testing, plankton associated with the sea water will not likely survive this activity. Based on densities of plankton in Massachusetts Bay, it is estimated that sea water use during operations will consume, on a daily basis, about 3-200 x 1,010 phytoplankton cells (about several hundred grams of biomass), 6.5 x 10⁸ zooplankters (equivalent to about 1.2 kg of copepods), and on the order of 30,000 fish eggs and 5,000 fish larvae. Also, the daily removal of sea water will reduce the food resources available for planktivorous organisms. However, the removal of these species is minor and unlikely to affect in a measurable way, the food sources available to marine mammals.

Marine Mammal Mitigation, Monitoring and Reporting

Port Construction Measures

Proposed Visual Program

The Northeast Gateway Project will employ two qualified marine mammal/sea turtle observers on each lay barge, bury barge, and DSV for visual shipboard surveys during construction activities. Qualifications for these individuals will include direct field experience on a marine mammal/sea turtle observation vessel and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico. The observers (one primary and one secondary) are responsible for visually locating marine mammals and sea turtles at the ocean's surface and, to the extent possible, identifying the species. The primary observer will act as the identification specialist and the secondary observer will serve as data recorder and also assist with identification. Both observers will have responsibility for monitoring for the presence of marine mammals and sea turtles. All observers will receive NMFS-approved marine mammal observer training and be approved in advance by NMFS after a review of their resume.

The shipboard observers will monitor the construction area beginning at daybreak using 25x power binoculars and/or hand-held binoculars, resulting in a conservative effective search range of 0.5 mile during clear weather conditions for the shipboard observers. The observer will scan the ocean surface by eye for a minimum of 40 minutes every hour. All sightings will be recorded on marine mammal field sighting logs. Observations of marine mammals and sea turtles will be identified to species or the lowest taxonomic level and their relative position will be recorded.

During construction, the following procedures will be followed upon detection of a marine mammal or sea turtle within 0.5 mi (0.8 km) of the construction vessels:

(1) If any marine mammals or sea turtles are visually detected within 0.5 mi (0.8 km) of the construction vessel, the vessel superintendent or on-deck supervisor will be notified immediately. The vessel's crew will be put on a heightened state of alert. The marine mammal will be monitored constantly to determine if it is moving toward the construction area. The observer is required to report all North Atlantic right whale sightings to NMFS, as soon as possible.

(2) Construction vessel(s) in the vicinity of the sighting will be directed

to cease any movement and/or stop noise emitting activities that exceed a source level of 120 dB in the event that a right whale comes to within 500 yds (457 m) of any operating construction vessel. For other cetaceans and sea turtles this distance will be established at 100 yds (91 m). Vessels transiting the construction area such as pipe haul barge tugs will also be required to maintain these separation distances.

(3) Construction will resume after the marine mammal/sea turtle is positively reconfirmed outside the established zones (either 500 yds (457 m) or 100 yds (91 m), depending upon species).

Passive Acoustic Monitoring (PAM) Program

In their IHA application, Northeast Gateway and Algonquin noted that they had engaged personnel from NMFS regarding available passive acoustic technology that could be utilized to enhance their monitoring Program. Northeast Gateway plans to continue its discussions and consultations with NMFS personnel to develop the appropriate level of inclusion of this technology. At the suggestion of NMFS, Northeast Gateway has engaged personnel from the Cornell University Bioacoustics Laboratory and the Woods Hole Oceanographic Institute as consulting partners to assist with the development of a passive acoustic system.

More recently, a PAM program has been proposed to be implemented at the Northeast Gateway facility. A discussion on that program is provided later in this document (see MARAD Record of Decision).

Reporting

During construction, weekly status reports will be provided to NMFS utilizing standardized reporting forms. In addition, the Northeast Port Project area is within the Mandatory Ship Reporting Area (MSRA), so all construction and support vessels will report their activities to the mandatory reporting section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA will report their activities to WHALESNORTH.

Port Operation Measures

All individuals onboard the EBRVs responsible for the navigation and lookout duties on the vessel will receive training, a component of which will be training on marine mammal sighting/reporting and vessel strike avoidance measures. Crew training of EBRV personnel will stress individual

responsibility for marine mammal awareness and reporting.

If a marine mammal or sea turtle is sighted by a crew member, an immediate notification will be made to the Person-in-Charge on board the vessel and the Northeast Port Manager, who will ensure that the required reporting procedures are followed.

The Northeast Gateway Port Project area is within the MSRA, so, similar to construction vessels, all EBRVs transiting to and from the MSRA will report their activities to the mandatory reporting section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA will report their activities to WHALESNORTH. Vessel operators will contact the USCG by standard procedures. As part of the Deepwater Port docking process, EBRV speed will gradually be reduced to approximately 3 knots (5.5 km/hr) at 1.86 mi (2.99 km) out from the Northeast Port and to less than 1 knot (1.8 km/hr) at a distance of 1,640 ft (500 m) from the Northeast Port.

MARAD Record of Decision

On February 7, 2007, MARAD issued its Record of Decision on the Deepwater Port License Application of Northeast Gateway Energy Bridge LLC. In that document, MARAD listed additional measures designed to reduce impacts on North Atlantic right whales. These measures, which are also described in NMFS' Biological Opinion on this action, include:

Detection Buoys in Boston Traffic Separation Scheme (TSS): Ten near-real-time acoustic detection buoys are to be located in the Boston TSS and should remain there at the expense of the licensee (or licensees) for the life of the deepwater port (subject to alternative technologies that would be approved by NOAA). A cost/benefit analysis that evaluates the effectiveness of these mitigation measures will be conducted at periodic intervals. Specific speed, visual awareness, and reporting provisions will be included in the Operations Manual.

Use of Boston TSS: Northeast Gateway has voluntarily committed to using the Boston TSS on its approach to and departure from the deepwater port at the earliest practicable point of transit (subject to appropriate discretion of the ship's captain to respond to safety concerns or for safety reasons or exigent circumstances) to lower the risk of whale strikes.

Speed Restrictions: Northeast Gateway has voluntarily agreed to follow any speed restrictions that may become mandatory for all vessel traffic

and to follow the proposed seasonal restrictions that may be adopted by regulation. EBRVs and support vessels will reduce travel speeds to 10 knots (18.5 km/hr) maximum when transiting to/from the deepwater port outside the TSS; vessels will travel at speeds of 10 to 12 knots (18.5–22 km/hr)(or less) in the vicinity of the deepwater port. EBRVs will reduce their transit speeds to 10 to 14 knots (18.5–26 km/hr)(10 knots between March 1 and April 30) or if required by NMFS, throughout the entire year in the proposed Off Race Point North Atlantic Right Whale Ship Strike Management Zone.

Detection Buoys for Construction: Northeast Gateway will install and operate an array of six near-real-time acoustic detection buoys to localize vocally active marine mammals relative to construction-related sound sources.

Noise Monitoring: Northeast Gateway will install and operate an array of autonomous recording units to monitor and evaluate underwater sound output from the project before construction and for at least five years of port operation.

Protected Species: Avoidance Measures: Northeast Gateway will consult with NOAA (NMFS and the SBNMS) on harm avoidance for protected marine species and resources to include operating restrictions, equipment noise reduction, minimizing risk of entanglement, monitoring, training, and reporting requirements.

Construction Restrictions: Northeast Gateway will restrict construction activities to the period between May 1 and November 30 so that acoustic sound disturbance to the endangered North Atlantic right whale can largely be avoided. Wherever practicable, Northeast Gateway should integrate studies, research, or surveys into construction or operations that maximize detection of whales and sea turtles and better determine direct effects of port operations.

Endangered Species Act (ESA)

On February 5, 2007, NMFS concluded consultation with MARAD and the USCG, under section 7 of the ESA, on the proposed construction and operation of the Northeast Gateway LNG facility. The finding of that consultation was that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green or leatherback sea turtles. Because the issuance of an IHA to Northeast Gateway under section 101(a)(5) of the

MMPA is a Federal action, NMFS has section 7 responsibilities for its action. Consultation on the NMFS action will be concluded prior to its determination on the issuance of an IHA to Northeast Gateway.

National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Northeast Gateway Port and Pipeline Lateral. A notice of availability was published by MARAD on October 26, 2006 (71 FR 62657). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods and analysis of potential impacts on marine mammal. The Final EIS/EIR is incorporated as part of the MMPA record of decision on this action.

NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the Draft and Final EISs. NMFS is currently reviewing the Final EIS and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA for the Northeast Gateway Project.

Preliminary Determinations

NMFS has preliminarily determined that the impact of construction and operation of the Northeast Gateway Port Project may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals that may be in close proximity to the Northeast Gateway LNG facility and associated pipeline during its construction and subsequent operation. These activities are expected to result in some local short-term displacement resulting in no more than a negligible impact on the affected species or stocks of marine mammals.

This preliminary determination is supported by measures described in this document under "Marine Mammal Mitigation, Monitoring and Reporting," and MARAD's Record of Decision (and NMFS' Biological Opinion on this action).

As a result of the described mitigation measures, no take by injury or death is requested, anticipated or proposed to be authorized, and the potential for temporary or permanent hearing impairment is very unlikely due to the relatively low noise levels (and consequently small zone of impact) and would be avoided through the incorporation of the proposed shut-down mitigation measures mentioned in this document.

While the number of marine mammals that may be harassed will

depend on the distribution and abundance of marine mammals in the vicinity of the Port construction and operations, the estimated number of marine mammals to be harassed is small.

Proposed Authorization

NMFS proposes to issue an IHA to Northeast Gateway and Algonquin for the taking (by Level B harassment) during construction and operation of the Northeast Gateway Port, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; and would have no more than a negligible impact on the affected marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit written comments and information concerning this proposed IHA and the IHA application from Northeast Gateway (see **DATES** and **ADDRESSES**).

Dated: March 7, 2007.

Angela Somma,

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National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030507D]

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshops

SUMMARY: NMFS announces Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops to be held in April, May, and June of 2007. These workshops provide certification opportunities and are required for fishermen and shark dealers to meet new regulatory requirements and maintain valid permits. The Atlantic Shark Identification Workshops are mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling,