dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public. For more information, call Yvette Springer at (202) 482–2813.

Dated: July 13, 2010.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2010–17398 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW09

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Operation and Maintenance of a Liquefied Natural Gas Facility off Massachusetts

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Neptune LNG LLC (Neptune) to take marine mammals, by harassment, incidental to port commissioning and operations, including maintenance and repair activities, at its Neptune Deepwater Port.

DATES: Effective July 12, 2010, through July 11, 2011.

ADDRESSES: A copy of the authorization and application may be obtained by writing 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, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Neptune LNG Deepwater Port License Application is available for viewing at *http://www.regulations.gov* by entering the search words "Neptune LNG."

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713 2289, ext 156.

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 small numbers 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.

Authorization for incidental takings 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 subsistence uses (where relevant), and if 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 U.S. can apply for an authorization to incidentally take small numbers of marine mammals by 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 the authorization.

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"].

Summary of Request

NMFS received an application on December 14, 2009, from Neptune for the taking, by harassment, of marine mammals incidental to port commissioning and operations, including maintenance and repair activities, at its Neptune Deepwater Port (Port) facility in Massachusetts Bay. NMFS reviewed Neptune's application and identified a number of issues requiring further clarification. After addressing comments from NMFS, Neptune modified its application and submitted a revised application on March 11, 2010.

NMFS issued a 1–year IHA to Neptune in June 2008 for the construction of the Port (73 FR 33400, June 12, 2008), which expired on June 30, 2009. NMFS issued a second 1–year IHA to Neptune for the completion of construction and beginning of Port operations on June 26, 2009 (74 FR 31926, July 6, 2009). This IHA expired on June 30, 2010.

During the period of this third IHA, Neptune intends to commission its second shuttle and regasification vessel (SRV) and conduct limited port operations. There is also a chance that some maintenance and repairs may need to be conducted on the Port facility. The Neptune Port is located approximately 22 mi (35 km) northeast of Boston, Massachusetts, in Federal waters approximately 260 ft (79 m) in depth. The purpose of the Port is the importation of liquefied natural gas (LNG) into the New England region. Take of marine mammals may occur during port operations from thruster use during maneuvering of the SRVs while docking and undocking, occasional weathervaning (turning of a vessel at anchor from one direction to another under the influence of wind or currents) at the Port, and during thruster use of dynamic positioning (DP) maintenance vessels should a major repair be necessary. Neptune has requested an authorization to take 12 marine mammal species by Level B harassment. They are: North Atlantic right whale; humpback whale; fin whale; sei whale; minke whale; long-finned pilot whale; Atlantic white-sided dolphin; harbor porpoise; common dolphin; Risso's dolphin; bottlenose dolphin; and harbor seal. In the 2009 IHA, NMFS also authorized take of killer whales and gray seals. NMFS has determined that it would be appropriate to authorize take, by Level B harassment only, of these

two species as well for port operations and maintenance.

Description of the Specified Activity

On March 23, 2007, Neptune received a license to own, construct, and operate a deepwater port from MARAD. The Port, which is located in Massachusetts Bay, consists of a submerged buoy system to dock specifically designed LNG carriers approximately 22 mi (35 km) northeast of Boston, Massachusetts, in Federal waters approximately 260 ft (79 m) in depth. The two buoys are separated by a distance of approximately 2.1 mi (3.4 km). The locations of the Neptune Port and the associated pipeline are shown in Figure 2–1 in Neptune's application (see **ADDRESSES**). During the time period of this IHA, Neptune plans to commission its second SRV and begin limited operations of the Port.

Neptune will be capable of mooring LNG SRVs with a capacity of approximately 140,000 cubic meters (m3). Up to two SRVs will temporarily moor at the Port by means of a submerged unloading buoy system. Two separate buoys will allow natural gas to be delivered in a continuous flow, without interruption, by having a brief overlap between arriving and departing SRVs. The annual average throughput capacity will be around 500 million standard cubic feet per day (mmscfd) with an initial throughput of 400 mmscfd, and a peak capacity of approximately 750 mmscfd.

The SRVs will be equipped to store, transport, and vaporize LNG and to odorize, meter and send out natural gas by means of two 16–in (40.6–cm) flexible risers and one 24–in (61–cm) subsea flowline. These risers and flowline will lead to a 24–in (61–cm) gas transmission pipeline connecting the deepwater port to the existing 30–in (76.2–cm) Algonquin Hubline™ (Hubline™) located approximately 9 mi (14.5 km) west of the Neptune deepwater port location. The Port will have an expected operating life of approximately 25 years. Figure 1–1 of Neptune's application shows an isometric view of the Port (see **ADDRESSES**). A detailed overview of Port operations and maintenance and repair activities, as well as the types of sounds those activities produce, was provided in the Notice of Proposed IHA (75 FR 24906, May 6, 2010). No changes have been made to the proposed operations or maintenance and repair activities.

Comments and Responses

A notice of receipt of Neptune's application and NMFS' proposal to issue an IHA to Neptune published in the **Federal Register** on May 6, 2010 (75 FR 24906). During the 30–day public comment period, NMFS did not receive any comment letters. The Marine Mammal Commission (MMC) submitted comments after the close of the 30–day comment period. Those comments and responses are addressed here.

Comment 1: The MMC concurs with the need for the monitoring and mitigation measures proposed by NMFS and the applicant and recommends that NMFS include all of them in any IHA, especially to mitigate the risk of ship collisions with North Atlantic right whales and other cetacean species.

Response: All measures proposed in the Notice of Proposed IHA are included in the IHA.

Comment 2: The MMC concurs with the need to reinitiate section 7 consultation and recommends that NMFS complete the consultation and issue the IHA only if the resulting Biological Opinion concludes that the cumulative effects of the proposed action, in combination with other activities in the action area, are not likely to jeopardize the continued existence of the North Atlantic right, humpback, fin, sperm, sei, or blue whales.

Response: Section 7 consultation under the Endangered Species Act (ESA) was reinitiated in March 2010. That consultation is now complete and makes the following conclusion. After reviewing the best available information on the status of endangered and threatened species under NMFS jurisdiction, the environmental baseline for the action area, the effects of the action, and the cumulative effects in the action area, it is NMFS' biological opinion that the operation of the Neptune LNG deepwater port, including required maintenance and repair work, is likely to adversely affect, but is not likely to jeopardize the continued existence of the North Atlantic right, humpback, fin, and sei whale.

NMFS' January 2007 Biological Opinion considered impacts from port and pipeline construction and operation on sperm and blue whales in addition to the other cetacean species cited in the MMC's comment. The 2007 opinion concluded that those activities were not likely to adversely affect sperm and blue whales. Because no additional effects to these two species are anticipated from the repair and maintenance activities and no effects beyond those analyzed in 2007 for operations are likely, sperm and blue whales were not further analyzed in the 2010 Biological Opinion.

Description of Marine Mammals in the Area of the Specified Activity

Massachusetts Bay (as well as the entire Atlantic Ocean) hosts a diverse assemblage of marine mammals, including: North Atlantic right whale; blue whale; fin whale; sei whale; minke whale; humpback whale; killer whale; long-finned pilot whale; sperm whale; Atlantic white-beaked dolphin; Atlantic white-sided dolphin; bottlenose dolphin; common dolphin; harbor porpoise; Risso's dolphin; striped dolphin; gray seal; harbor seal; harp seal; and hooded seal. Table 3–1 in Neptune's application outlines the marine mammal species that occur in Massachusetts Bay and the likelihood of occurrence of each species. Of the species listed here, the North Atlantic right, blue, fin, sei, humpback, and sperm whales are all listed as endangered under the ESA and as depleted under the MMPA. The northern coastal stock of bottlenose dolphins is considered depleted under the MMPA. Certain stocks or populations of killer whales are listed as endangered under the ESA or depleted under the MMPA; however, none of those stocks or populations occurs in the proposed activity area.

Of these species, 14 are expected to occur in the area of Neptune's proposed operations. These species include: the North Atlantic right, humpback, fin, sei, minke, killer, and long-finned pilot whale; Atlantic white-sided, common, Risso's, and bottlenose dolphins; harbor porpoise; and harbor and gray seals. The Notice of Proposed IHA (75 FR 24906, May 6, 2010) provided a description of certain marine mammal species that are considered rare in the project area.

Information on those species that may be impacted by this activity is provided in Neptune's application and sections 3.2.3 and 3.2.5 in the MARAD/USCG Final EIS on the Neptune LNG proposal (see **ADDRESSES**). Please refer to those documents for more information on these species. In addition, general information on these marine mammal species can also be found in the NMFS U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Report (Waring *et al.*, 2009), which is available at: *http://www.nefsc.noaa.gov/publications/tm/tm213/*. A brief summary on several commonly sighted marine mammal species distribution and abundance in the vicinity of the action area was provided in the Notice of Proposed IHA (75 FR 24906, May 6, 2010).

Brief Background on Marine Mammal Hearing

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate "functional hearing groups" for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low-frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, 14 marine mammal species (12 cetacean and two pinniped species) are likely to occur in the Neptune Port area. Of the 12 cetacean species likely to occur in Neptune's project area, five are classified as low-frequency cetaceans (i.e., North Atlantic right, humpback, fin, minke, and sei whales), six are classified as mid-frequency cetaceans (i.e., killer and pilot whales and bottlenose, common, Risso's, and Atlantic white-sided dolphins), and one is classified as a high-frequency cetacean (i.e., harbor porpoise) (Southall *et al.*, 2007).

Potential Effects of the Specified Activity on Marine Mammals

Potential effects of Neptune's proposed port operations and maintenance/repair activities would most likely be acoustic in nature. LNG port operations and maintenance/repair activities introduce sound into the marine environment. Potential acoustic effects on marine mammals relate to sound produced by thrusters during maneuvering of the SRVs while docking and undocking, occasional weathervaning at the port, and during thruster use of DP maintenance vessels should a major repair be necessary. The potential effects of sound from the proposed activities associated with the Neptune Port might include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.*, 1995). However, for reasons discussed in the Notice of Proposed IHA (75 FR 24906, May 6, 2010) and later in this document, it is unlikely that there would be any cases of temporary, or especially permanent, hearing impairment resulting from these activities. As outlined in previous NMFS documents, 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 but potentially for longer periods of time;

(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 a 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.

The Notice of Proposed IHA (75 FR 24906, May 6, 2010) included a discussion of the effects of anthropogenic sound on mysticetes, odontocetes, and pinnipeds, including tolerance, masking, disturbance, and hearing impairment and other physiological effects. That discussion did not take into consideration the monitoring and mitigation measures proposed by Neptune and NMFS. Based on the discussion contained in the proposed IHA notice, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient duration) to cause permanent threshold shift (or even TTS) during port operations and maintenance/repair activities. The modeled broadband source level for 100 percent thruster use during port operations is 180 dB re 1 µPa at 1 m (rms). This does not reach the threshold of 190 dB currently used for pinnipeds. The threshold for cetaceans is 180 dB; therefore, cetaceans would have to be immediately adjacent to the vessel for even the possibility of hearing impairment to occur. Based on this and mitigation measures included in the IHA (described later in this document in the "Mitigation" section), only Level B behavioral harassment is anticipated occur, and it is highly unlikely that any type of hearing impairment would occur as a result of Neptune's activities.

Anticipated Effects on Habitat

The primary potential impacts to marine mammals and other marine

species are associated with elevated sound levels produced by the Port operations and maintenance/repair activities. However, other potential impacts from physical disturbance are also possible. Major repairs to the Neptune port and pipeline may affect marine mammal habitat in several ways: cause disturbance of the seafloor; increase turbidity slightly; and generate additional underwater sound in the area. These underwater sound levels will cause some species to temporarily disperse from or avoid repair areas, but they are expected to return shortly after the repair is completed. Operation of the Port will result in long-term, continued disturbance of the seafloor, regular withdrawal of seawater, and generation of underwater sound. The Notice of Proposed IHA (75 FR 24906, May 6, 2010) contained a full discussion of the potential impacts to marine mammal habitat and prey species in the project area.

NMFS determined that repair activities would not create long-term habitat changes, and marine mammals displaced by the disturbance to the seafloor are expected to return soon after repair activities cease. Marine mammals also could be indirectly affected if benthic prey species were displaced or destroyed by repair activities. However, affected species are expected to recover soon after the completion of repairs and will represent only a small portion of food available to marine mammals in the area. In conclusion, NMFS has determined that Neptune's port operations and maintenance/repair activities are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Mitigation

In order to issue an incidental take authorization (ITA) under Sections 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Mitigation Measures in Neptune's IHA Application

Neptune submitted a "Marine Mammal Detection, Monitoring, and Response Plan for the Operations Phase" (the Plan) as part of its MMPA application (Appendix D of the application; see **ADDRESSES**). The measures, which include safety zones and vessel speed reductions, are fully described in the Plan and summarized here. Any maintenance and/or repairs needed will be scheduled in advance during the May 1 to November 30 seasonal window, whenever possible, so that disturbance to North Atlantic right whales will be largely avoided. If the repair cannot be scheduled during this time frame, additional mitigation measures are required.

(1) Mitigation Measures for Major Repairs (May 1 to November 30)

(A) During repairs, if a marine mammal is detected within 0.5 mi (0.8 km) of the repair 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 repair area.

(B) Repair vessels will cease any movement in the area if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) from the operating repair vessel. Repair vessels will cease any movement in the construction area if a right whale is sighted within or approaching to a distance of 500 yd (457 m) from the operating vessel. Vessels transiting the repair area, such as pipe haul barge tugs, will also be required to maintain these separation distances.

(C) Repair vessels will cease all sound emitting activities if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) or if a right whale is sighted within or approaching to a distance of 500 yd (457 m), from the operating repair vessel. The back-calculated source level, based on the most conservative cylindrical model of acoustic energy spreading, is estimated to be 139 dB re 1 µPa.

(D) Repair activities may resume after the marine mammal is positively reconfirmed outside the established zones (either 500 yd (457 m) or 100 yd (91 m), depending upon species).

(E) While under way, all repair vessels will remain 500 yd (457 m) away from right whales and 100 yd (91 m) away from all other marine mammals to the extent physically feasible given navigational constraints.

(F) All repair vessels 300 gross tons or greater will maintain a speed of 10 knots (18.5 km/hr) or less. Vessels less than 300 gross tons carrying supplies or crew between the shore and the repair site will contact the Mandatory Ship Reporting System (MSRS), the USCG, or the marine mammal observers (MMOs) at the repair site before leaving shore for reports of recent right whale sightings or active Dynamic Management Areas (DMAs) and, consistent with navigation safety, restrict speeds to 10 knots (18.5 km/hr) or less within 5 mi (8 km) of any recent sighting location and within any existing DMA.

(G) Vessels transiting through the Cape Cod Canal and Cape Cod Bay (CCB) between January 1 and May 15 will reduce speeds to 10 knots (18.5 km/hr) or less, follow the recommended routes charted by NOAA to reduce interactions between right whales and shipping traffic, and avoid aggregations of right whales in the eastern portion of CCB.

(2) Additional Port and Pipeline Major Repair Measures (December 1 to April 30)

If unplanned/emergency repair activities cannot be conducted between May 1 and November 30, Neptune is required to implement the following additional mitigation measures:

(A) If on-board MMOs do not have at least 0.5–mi (0.8–km) visibility, they shall call for a shutdown of repair activities. If dive operations are in progress, then they shall be halted and brought on board until visibility is adequate to see a 0.5–mi (0.8–km) range. At the time of shutdown, the use of thrusters must be minimized. If there are potential safety problems due to the shutdown, the captain will decide what operations can safely be shut down and will document such activities.

(B) Prior to leaving the dock to begin transit, the barge will contact one of the MMOs on watch to receive an update of sightings within the visual observation area. If the MMO has observed a North Atlantic right whale within 30 minutes of the transit start, the vessel will hold for 30 minutes and again get a clearance to leave from the MMOs on board. MMOs will assess whale activity and visual observation ability at the time of the transit request to clear the barge for release.

(C) A half-day training course will be provided to designated crew members assigned to the transit barges and other support vessels. These designated crew members will be required to keep watch on the bridge and immediately notify the navigator of any whale sightings. All watch crew will sign into a bridge log book upon start and end of watch. Transit route, destination, sea conditions, and any protected species sightings/mitigation actions during

watch will be recorded in the log book. Any whale sightings within 3,281 ft (1,000 m) of the vessel will result in a high alert and slow speed of 4 knots (7.4 km/hr) or less. A sighting within 2,461 ft (750 m) will result in idle speed and/or ceasing all movement.

(D) The material barges and tugs used for repair work shall transit from the operations dock to the work sites during daylight hours, when possible, provided the safety of the vessels is not compromised. Should transit at night be required, the maximum speed of the tug will be 5 knots (9.3 km/hr).

(E) Consistent with navigation safety, all repair vessels must maintain a speed of 10 knots (18.5 km/hr) or less during daylight hours. All vessels will operate at 5 knots or less at all times within 3.1 mi (5 km) of the repair area.

(3) Speed Restrictions in Seasonal Management Areas (SMAs)

Repair vessels and SRVs will transit at 10 knots (18.5 km/hr) or less in the following seasons and areas, which either correspond to or are more restrictive than the times and areas in NMFS' final rule (73 FR 60173, October 10, 2008) to implement speed restrictions to reduce the likelihood and severity of ship strikes of right whales:

- CCB SMA from January 1 through May 15, which includes all waters in CCB, extending to all shorelines of the Bay, with a northern boundary of 42° 12' N. latitude;
- Off Race Point SMA year round, which is bounded by straight lines connecting the following coordinates in the order stated: 42° 30' N. 69° 45' W.; thence to 42° 30' N. 70° 30' W.; thence to 42° 12' N. 70° 30' W.; thence to 42° 12' N. 70° 12' W.; thence to 42° 04' 56.5'' N. 70° 12' W.; thence along mean high water line and inshore limits of COLREGS limit to a latitude of 41° 40' N.; thence due east to 41° 41' N. 69° 45' W.; thence back to starting point; and
- Great South Channel (GSC) SMA from April 1 through July 31, which is bounded by straight lines connecting the following coordinates in the order stated:

42° 30' N. 69° 45' W.
41° 40' N. 69° 45' W.
41° 00' N. 69° 05' W.
42° 09' N. 67° 08' 24'' W.
42° 30' N. 67° 27' W.
42° 30' N. 69° 45' W.

(4) Additional Mitigation Measures

(A) In approaching and departing from the Neptune Port, SRVs shall use the Boston Traffic Separation Scheme (TSS) starting and ending at the entrance to the GSC. Upon entering the TSS, the SRV shall go into a "heightened awareness" mode of operation, which is outlined in detail in the Plan (see Neptune's application).

(B) In the event that a whale is visually observed within 0.6 mi (1 km) of the Port or a confirmed acoustic detection is reported on either of the two auto-detection buoys (ABs; more information on the acoustic devices is contained in the "Monitoring and Reporting" section later in this document) closest to the Port, departing SRVs shall delay their departure from the Port, unless extraordinary circumstances, defined in the Plan, require that the departure is not delayed. The departure delay shall continue until either the observed whale has been visually (during daylight hours) confirmed as more than 0.6 mi (1 km) from the Port or 30 minutes have passed without another confirmed detection either acoustically within the acoustic detection range of the two ABs closest to the Port or visually within 0.6 mi (1 km) from Neptune.

(C) SRVs that are approaching or departing from the Port and are within the Area to be Avoided (ATBA) surrounding Neptune shall remain at least 0.6 mi (1 km) away from any visually detected right whales and at least 100 yards (91 meters) away from all other visually detected whales unless extraordinary circumstances, as defined in Section 1.2 of the Plan in Neptune's application, require that the vessel stay its course. The ATBA is defined in 33 CFR 150.940. It is the largest area of the Port marked on nautical charts and it is enforceable by the USCG in accordance with the 150.900 regulations. The Vessel Master shall designate at least one lookout to be exclusively and continuously monitoring for the presence of marine mammals at all times while the SRV is approaching or departing Neptune.

(D) Neptune will ensure that other vessels providing support to Neptune operations during regasification activities that are approaching or departing from the Port and are within the ATBA shall be operated so as to remain at least 0.6 mi (1 km) away from any visually detected right whales and at least 100 yd (91 m) from all other visually detected whales.

Additional Mitigation Measures Required by NMFS

In addition to the mitigation measures in Neptune's IHA application, NMFS has included the following measures in the IHA in order to ensure the least practicable impact on the affected species or stocks:

(1) Neptune must immediately suspend any repair and maintenance or operations activities if a dead or injured marine mammal is found in the vicinity of the project area, and the death or injury of the animal could be attributable to the LNG facility activities. Neptune must contact NMFS and the Northeast Stranding and Disentanglement Program. Activities will not resume until review and approval has been given by NMFS.

(2) MMOs will direct a moving vessel to slow to idle if a baleen whale is seen less than 0.6 mi (1 km) from the vessel.

(3) Use of lights during repair or maintenance activities shall be limited to areas where work is actually occurring, and all other lights must be extinguished. Lights must be downshielded to illuminate the deck and shall not intentionally illuminate surrounding waters, so as not to attract whales or their prey to the area.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species

and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Neptune proposed both visual and acoustic monitoring programs in the Plan contained in the IHA application. Summaries of those plans, as well as the proposed reporting, are contained next. The monitoring and reporting programs contained in the Plan are included in the IHA.

Passive Acoustic Monitoring

Neptune LNG will deploy and maintain a passive acoustic detection network along a portion of the TSS and in the vicinity of Neptune. This network will consisting of autonomous recording units (ARUs) and near-real-time ABs. To develop, implement, collect, and analyze the acoustic data obtained from deployment of the ARUs and ABs, as well as to prepare reports and maintain the passive acoustic detection network, Neptune LNG has engaged the Cornell University Bioacoustic Research Program (BRP) in Ithaca, New York, and the Woods Hole Oceanographic Institution (WHOI) in Woods Hole, Massachusetts.

During June 2008, an array of 19 passive seafloor ARUs was deployed by BRP for Neptune. The layout of the array centered on the terminal site and was used to monitor the noise environment in Massachusetts Bay in the vicinity of Neptune during construction of the port and associated pipeline lateral. The ARUs were not designed to provide real-time or near-real-time information about vocalizing whales. Rather archival noise data collected from the ARU array were used for the purpose of understanding the seasonal occurrences and overall distributions of whales (primarily North Atlantic right whales) within approximately 10 nm (18.5 km) of the Neptune Port. Neptune LNG will maintain these ARUs in the same configuration for a period of five years during full operation of Neptune in order to monitor the actual acoustic output of port operations and to alert NOAA to any unanticipated adverse effects of port operations, such as large scale abandonment by marine mammals of the area. To further assist in evaluations of the Neptune's acoustic output, source levels associated with DP of SRVs at the buoys will be estimated using empirical measurements collected from the passive detection network.

In addition to the ARUs, Neptune LNG has deployed 10 ABs within the Separation Zone of the TSS for the operational life of the Port. The purpose of the AB array is to detect the presence of vocalizing North Atlantic right whales. Each AB has an average detection range of 5 nm (9.3 km) of the AB, although detection ranges will vary based on ambient underwater conditions. The AB system will be the primary detection mechanism that alerts the SRV Master to the occurrence of right whales in the TSS and triggers heightened SRV awareness. The configurations of the ARU array and AB network (see Figure 3 in the Plan in Neptune's application) were based upon the configurations developed and recommended by NOAA personnel.

Each AB deployed in the TSS will continuously screen the low-frequency acoustic environment (less than 1,000 Hz) for right whale contact calls occurring within an approximately 5–nm (9.3–km) radius from each buoy (the ABs' detection range) and rank detections on a scale from 1 to 10. Each AB shall transmit all detection data for detections of rank greater than or equal to 6 via Iridium satellite link to the BRP server website every 20 minutes. This 20–minute transmission schedule was determined by consideration of a combination of factors including the tendency of right whale calls to occur in clusters (leading to a sampling logic of listening for other calls rather than transmitting immediately upon detection of a possible call) and the amount of battery power required to complete a satellite transmission. Additional details on the protocol can be found in Neptune's application.

Additionally, Neptune shall provide empirically measured source level data for all sources of noise associated with LNG port maintenance and repair activities. Measurements should be carefully coordinated with noise-producing activities and should be collected from the passive acoustic monitoring network.

Visual Monitoring

During maintenance- and repair-related activities, Neptune LNG shall employ two qualified MMOs on each vessel that has a DP system. All MMOs must receive training and be approved in advance by NOAA after a review of their qualifications. Qualifications for these MMOs shall include direct field experience on a marine mammal observation vessel and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico. The MMOs (one primary and one secondary) are responsible for visually locating marine mammals at the ocean's surface and, to the extent possible, identifying the species. The primary MMO shall act as the identification specialist, and the secondary MMO will serve as data recorder and will assist with identification. Both MMOs shall have responsibility for monitoring for the presence of marine mammals.

The MMOs shall monitor the area where maintenance and repair work is conducted beginning at daybreak using the naked eye, hand-held binoculars, and/or power binoculars (e.g, Big Eyes). The MMOs shall scan the ocean surface by eye for a minimum of 40 minutes every hour. All sightings must be recorded on marine mammal field sighting logs.

While an SRV is navigating within the designated TSS, three people have lookout duties on or near the bridge of the ship including the SRV Master, the Officer-of-the-Watch, and the Helmsman on watch. In addition to standard watch procedures, while the SRV is within the ATBA and/or while actively engaging in the use of thrusters an additional lookout shall be designated to exclusively and continuously monitor for marine mammals. Once the SRV is moored and regasification activities have begun, the vessel is no longer considered in "heightened awareness" status. However, when regasification activities conclude and the SRV prepares to depart from Neptune, the Master shall once again ensure that the responsibilities as defined in the Plan are carried out. All sightings of marine mammals by the designated lookout, individuals posted to navigational lookout duties, and/or any other crew member while the SRV is within the TSS, in transit to the ATBA, within the ATBA, and/or when actively engaging in the use of thrusters shall be immediately reported to the Officer-of-the-Watch who shall then alert the Master.

Reporting Measures

Since the Neptune Port is within the Mandatory Ship Reporting Area (MSRA), all SRVs transiting to and from Neptune shall 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 shall report their activities to WHALESNORTH. Vessel operators shall contact the USCG by standard procedures promulgated through the Notice to Mariner system.

For any repair work associated with the pipeline lateral or other port components, Neptune LNG shall notify the appropriate NOAA personnel as soon as practicable after it is determined that repair work must be conducted. During maintenance and repair of the pipeline lateral or other port components, weekly status reports must be provided to NOAA. The weekly

report must include data collected for each distinct marine mammal species observed in the project area during the period of the repair activity. The weekly reports shall include the following:

- The location, time, and nature of the pipeline lateral repair activities;
- Whether the DP system was operated and, if so, the number of thrusters used and the time and duration of DP operation;
- Marine mammals observed in the area (number, species, age group, and initial behavior);
- The distance of observed marine mammals from the repair activities;
- Observed marine mammal behaviors during the sighting;
- Whether any mitigation measures were implemented;
- Weather conditions (sea state, wind speed, wind direction, ambient temperature, precipitation, and percent cloud cover, etc.);
- Condition of the marine mammal observation (visibility and glare); and
- Details of passive acoustic detections and any action taken in response to those detections.

For minor repairs and maintenance activities, the following protocols will be followed:

- All vessel crew members will be trained in marine mammal identification and avoidance procedures;
- Repair vessels will notify designated NOAA personnel when and where the repair/maintenance work is to take place along with a tentative schedule and description of the work;
- Vessel crews will record/document any marine mammal sightings during the work period; and
- At the conclusion of the repair/maintenance work, a report will be delivered to designated NOAA personnel describing any marine mammal sightings, the type of work taking place when the sighting occurred, and any avoidance actions taken during the repair/maintenance work.

During all phases of project repair/maintenance activities and operation, sightings of any injured or dead marine mammals will be reported immediately to the USCG and NMFS, regardless of whether the injury or death is caused by project activities. Sightings of injured or dead marine mammals not associated with project activities can be reported to the USCG on VHF Channel 16 or to NMFS Stranding and Entanglement Hotline. In addition, if the injury or death was caused by a project vessel (e.g., SRV, support vessel, or construction vessel), USCG must be notified immediately, and a full report must be provided to NMFS, Northeast Regional Office. The report must include the following information: (1) the time, date, and location (latitude/longitude) of the incident; (2) the name and type of vessel involved; (3) the vessel's speed during the incident; (4) a description of the incident; (5) water depth; (6) environmental conditions (e.g., wind speed and direction, sea state, cloud cover, and visibility); (7) the species identification or description of the animal; (8) the fate of the animal; and (9) photographs or video footage of the animal (if equipment is available).

An annual report on marine mammal monitoring and mitigation will be submitted to NMFS Office of Protected Resources and NMFS Northeast Regional Office within 90 days after the expiration of the IHA. The weekly reports and the annual report should include data collected for each distinct marine mammal species observed in the project area in the Massachusetts Bay during the period of LNG facility operations and repair/maintenance activities. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to operation and repair/maintenance activities shall also be included in the annual report. Additional information that will be recorded during operations and repair/maintenance activities and contained in the reports include: date and time of marine mammal detections (visually or acoustically), weather conditions, species identification, approximate distance from the source, activity of the vessel when a marine mammal is sighted, and whether thrusters were in use and, if so, how many at the time of the sighting.

General Conclusions Drawn from Previous Monitoring Reports

Throughout the construction period, Neptune submitted weekly reports on marine mammal sightings in the area. While it is difficult to draw biological conclusions from these reports, NMFS can make some general conclusions. Data gathered by MMOs is generally useful to indicate the presence or absence of marine mammals (often to a species level) within the safety zones (and sometimes without) and to document the implementation of mitigation measures. Though it is by no means conclusory, it is worth noting that no instances of obvious behavioral disturbance as a result of Neptune's activities were observed by the MMOs. Of course, these observations only cover the animals that were at the surface and within the distance that the MMOs could see. Based on the number of sightings contained in the weekly reports, it appears that NMFS' estimated take levels are accurate. As operation of the Port has not yet commenced, there are no reports describing the results of the visual monitoring program for this phase of the project. However, it is anticipated that visual observations will be able to continue as they were during construction.

As described previously in this document, Neptune was required to maintain an acoustic array to monitor calling North Atlantic right whales (humpback and fin whale calls were also able to be detected). Cornell BRP analyzed the data and submitted a report covering the initial construction phase of the project, which occurred in 2008. While acoustic data can only be collected if the animals are actively calling, the report indicates that humpback and fin whales were heard calling on at least some of the ARUs on all construction days, and right whale calls were heard only 28 percent of the time during active construction days. The passive acoustic arrays will remain deployed during the time frame of this IHA in order to obtain information during the operational phase of the Port facility.

Estimated Take by Incidental 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]. Only take by Level B harassment is anticipated as a result of Neptune's operational and repair/maintenance activities. Anticipated take of marine mammals is associated with thruster sound during maneuvering of the SRVs while docking and undocking, occasional weathervaning at the Port, and during thruster use of DP maintenance vessels should a major repair be necessary. The regasification process itself is an activity that does not rise to the level of taking, as the modeled source level for this activity is 110 dB (rms). Certain species may have a behavioral reaction to the sound emitted during the activities. Hearing impairment is not anticipated. Additionally, vessel strikes are not anticipated, especially because of the speed restriction measures that are

proposed that were described earlier in this document.

For continuous sounds, such as those produced by Neptune's proposed activities, NMFS uses a received level of 120–dB (rms) to indicate the onset of Level B harassment. The basis for Neptune's "take" estimate is the number of marine mammals that potentially could be exposed to sound levels in excess of 120 dB. This has been determined by applying the modeled zone of influence (ZOI; e.g., the area ensonified by the 120–dB contour) to the seasonal use (density) of the area by marine mammals and correcting for seasonal duration of sound-generating activities and estimated duration of individual activities when the maximum sound-generating activities are intermittent to occasional. Nearly all of the required information is readily available in the MARAD/USCG Final EIS, with the exception of marine mammal density estimates for the project area. In the case of data gaps, a conservative approach was used to ensure that the potential number of takes is not underestimated.

The Notice of Proposed IHA (75 FR 24906, May 6, 2010) included an in-depth discussion of the methodology used by NMFS to estimate take by harassment incidental to operation and repair/maintenance activities at the Neptune Port facility. A summary is provided next.

Results of sound modeling tests indicate that the 120–dB radius from thruster use by the SRV is estimated to be 1.6 nm (3 km), creating a maximum ZOI of 8.5 nm^2 (29 km^2). This zone is smaller than the one that was used to estimate the level of take in the previous IHA. However, the vessels used in the 2009 tests more closely resemble the vessels that will be used by Neptune for regasification by the SRV. Other vessels would be required for use during maintenance and repair activities at the port facility. Sounds generated during those activities would be similar or less than those generated during original construction of the facility. Therefore, NMFS has used the 120–dB contour estimated for construction in the previous IHAs for repair and maintenance activities. Depending on water depth, the 120–dB contour during repair and maintenance activities will extend from the source (the Port) out to 3.9 km (2.1 nm) and cover an area of 52 km^2 (15 nm^2).

NMFS used the data on cetacean distribution within Massachusetts Bay, such as those published by the National Centers for Coastal Ocean Science (NCCOS, 2006), to determine potential takes of marine mammals in the vicinity of the project area. Sighting data for the following species are contained in the report: North Atlantic right, fin, humpback, minke, pilot, and sei whales and Atlantic white-sided dolphins. The NCCOS study used cetacean sightings from two sources: (1) the North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney, 2001); and (2) the Manomet Bird Observatory (MBO) database, held at the NMFS Northeast Fisheries Science Center (NEFSC). The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

For a detailed description and calculation of the cetacean abundance data and sightings-per-unit-effort (SPUE), refer to the NCCOS study (NCCOS, 2006). SPUE for all four seasons were analyzed, and the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance. Based on the data, the relative abundance of North Atlantic right, fin, humpback, minke, sei, and pilot whales and Atlantic white-sided dolphins, as calculated by SPUE in number of animals per square kilometer, is 0.0082, 0.0097, 0.0265, 0.0059, 0.0084, 0.0407, and 0.1314 n/km, respectively. Table 1 in this document outlines the density, abundance, take estimates, and percent of population for the 14 species for which NMFS has authorized Level B harassment.

In calculating the area density of these species from these linear density data, NMFS used 0.4 km (0.25 mi), which is a quarter the distance of the radius for visual monitoring, as a conservative hypothetical strip width (W). Thus the area density (D) of these species in the project area can be obtained by the following formula:

$D = SPUE/2W$.

Based on the calculation, the estimated take numbers by Level B harassment for the 1–year IHA period during operation of the SRV for North Atlantic right, fin, humpback, minke, sei, and pilot whales and Atlantic white-sided dolphins, within the 120–dB ZOI of the LNG Port facility area of approximately 8.5 nm^2 (29 km^2) maximum ZOI, corrected for 50 percent underwater, are 23, 27, 72, 16, 6, 110, and 357, respectively. This estimate is based on an estimated 50 SRV trips for the period July 12, 2010, through July 11, 2011, that will produce sounds of 120 dB or greater.

Based on the same calculation method described above for Port operations (but using the 120–dB ZOI of approximately 52 km^2 (15 nm^2), the estimated take numbers by Level B harassment for North Atlantic right, fin, humpback, minke, sei, and pilot whales and Atlantic white-sided dolphins for the 1–year IHA period incidental to Port maintenance and repair activities, corrected for 50 percent underwater, are 11, 13, 36, 8, 11, 56, and 179, respectively. These numbers are based on 14 days of repair and maintenance activities occurring between July 12, 2010, through July 11, 2011. It is unlikely that this much repair and maintenance work would be required this soon after completion of the construction phase of the facility.

The total estimated take of these species as a result of both operations and repair and maintenance activities of the Neptune Port facility between July 12, 2010, through July 11, 2011, is: 33 North Atlantic right whales; 40 fin whales; 108 humpback whales; 24 minke whales; 17 sei whales; 166 long-finned pilot whales; and 536 Atlantic white-sided dolphins. These numbers represent a maximum of 9.6, 1.8, 12.8, 0.7, 4.4, 0.5, and 0.8 percent of the populations for these species or stocks in the western North Atlantic, respectively. It is likely that individual animals will be "taken" by harassment multiple times (because certain individuals may occur in the area more than once while other individuals of the population or stock may not enter the proposed project area). Additionally, the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance. Moreover, it is not expected that Neptune will have 50 SRV transits and LNG deliveries in the first year of operations. Therefore, these percentages are the upper boundary of the animal population that could be affected. Thus, the actual number of individual animals being exposed or taken is expected to be far less.

In addition, bottlenose dolphins, common dolphins, Risso's dolphins, killer whales, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of the deepwater LNG port project. Because these species are less likely to occur in the area, and there are no density estimates specific to this particular area, NMFS based the take estimates on typical group size. Therefore, NMFS estimates (and has authorized) that up to approximately 10 bottlenose dolphins, 20 common dolphins, 20 Risso's dolphins, 20 killer whales, 5 harbor porpoises, 15 harbor seals, and

15 gray seals could be exposed to continuous noise at or above 120 dB re 1 µPa rms incidental to operations and repair and maintenance activities during the one year period of the IHA, respectively.

Because Massachusetts Bay represents only a small fraction of the western North Atlantic basin where these animals occur NMFS has determined that only small numbers of the affected marine mammal species or stocks would be potentially affected by the Neptune LNG deepwater project. The take estimates presented in this section of the document do not take into consideration the mitigation and monitoring measures required by the IHA.

TABLE 1. DENSITY ESTIMATES, POPULATION ABUNDANCE ESTIMATES, TOTAL AUTHORIZED TAKE (WHEN COMBINE TAKES FROM OPERATION AND MAINTENANCE/REPAIR ACTIVITIES), AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIAL AFFECTED SPECIES.

Species	Density (n/km^2)	Abundance[1]	Total Authorized Take (operation & maintenance)	Percentage of Stock or Population
North Atlantic right whale	0.0082	345	33	9.6
Fin whale	0.0097	2,269	40	1.8
Humpback whale	0.0265	847	108	12.8
Minke whale	0.0059	3,312	24	0.7
Sei whale	0.0084	386	17	4.4
Long-finned pilot whale	0.0407	31,139	166	0.5
Atlantic white-sided dolphin	0.1314	63,368	536	0.8
Bottlenose dolphin	NA	7,489	10	0.1
Common dolphin	NA	120,743	20	0.02
Risso's dolphin	NA	20,479	20	0.1
Killer whale	NA	NA	20	NA
Harbor porpoise	NA	89,054	5	0.01
Harbor seal	NA	99,340	15	0.02
Gray seal	NA	125,541-169,064	15	0.01

[1] Abundance estimates taken from NMFS Atlantic and Gulf of Mexico SAR; NA=Not Available

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." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) the number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of Neptune's port operation and maintenance and repair activities, and none have been authorized by NMFS. Additionally, animals in the area are not anticipated to incur any hearing impairment (i.e., TTS or PTS), as the modeling results for the SRV indicate a source level of 180 dB (rms).

While some of the species occur in the project area year-round, some species only occur in the area during certain seasons. Sei whales are only anticipated in the area during the spring. Therefore, if shipments and/or maintenance/repair activities occur in other seasons, the likelihood of sei whales being affected is quite low. Additionally, any repairs that can be scheduled in advance will be scheduled to avoid the peak time that North Atlantic right whales occur in the area, which usually is during the early spring. North Atlantic right, humpback, and minke whales are not expected in the project area in the winter. During the winter, a large portion of the North Atlantic right whale population occurs in the southeastern U.S. calving grounds (i.e., South Carolina, Georgia, and northern Florida). The fact that certain activities will occur during times when certain species are not commonly found in the area will help reduce the amount of Level B harassment for these species.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24–hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Operational activities are not anticipated to occur at the Port on consecutive days. Once Neptune is at full operations, SRV shipments would occur every 4–8 days, with thruster use needed for a couple of hours. Therefore, Neptune will not be creating increased sound levels in the marine environment for several days at a time.

Of the 14 marine mammal species likely to occur in the area, four are listed as endangered under the ESA: North Atlantic right, humpback, fin, and sei whales. All of these species, as well as the northern coastal stock of bottlenose dolphin, are also considered depleted under the MMPA. The affected humpback and North Atlantic right whale populations have been increasing in recent years. However, there is insufficient data to determine population trends for the other depleted species in the project area. There is currently no designated critical habitat or known reproductive areas for any of these species in or near the project area. However, there are several well known North Atlantic right whale feeding grounds in the CCB and GSC. As mentioned previously, to the greatest extent practicable, all maintenance/repair work will be scheduled during the May 1 to November 30 time frame to avoid peak right whale feeding in these areas, which occur close to the Neptune Port. No mortality or injury is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

The population estimates for the species that may be taken by harassment from the most recent U.S. Atlantic SAR were provided earlier in this document (see Table 1). From the most conservative estimates of both marine mammal densities in the project area and the size of the 120–dB ZOI, the maximum calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the overall population sizes (12.8 percent for humpback whales and 9.6 percent for North Atlantic right whales and no more than 4.4 percent of any other species).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that operation, including repair and maintenance activities, of the Neptune Port will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from Neptune's activities will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

On January 12, 2007, NMFS concluded consultation with MARAD and USCG under section 7 of the ESA on the proposed construction and operation of the Neptune LNG facility and issued a Biological Opinion. The finding of that consultation was that the construction and operation of the Neptune LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of North Atlantic 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.

On March 2, 2010, MARAD and USCG sent a letter to NMFS requesting reinitiation of the section 7 consultation. MARAD and USCG determined that certain routine planned operations and maintenance activities, inspections, surveys, and unplanned repair work on the Neptune Deepwater Port pipelines and flowlines, as well as any other Neptune Deepwater Port component (including buoys, risers/umbilicals, mooring systems, and subsea manifolds), may constitute a modification not previously considered in the 2007 Biological Opinion. Construction of the Port facility has been completed, and, therefore, is no longer part of the proposed action. Consultation with NMFS' Northeast Regional Office is now complete. The 2010 Biological Opinion contains the following conclusion. After reviewing the best available information on the status of endangered and threatened species under NMFS jurisdiction, the environmental baseline for the action area, the effects of the action, and the cumulative effects in the action area, it is NMFS' biological opinion that the operation of the Neptune LNG deepwater port, including required maintenance and repair work, is likely to adversely affect, but is not likely to jeopardize the continued existence of the North Atlantic right, humpback, fin, and sei whale.

National Environmental Policy Act (NEPA)

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Neptune LNG Deepwater Port (see **ADDRESSES**). A notice of availability was published by MARAD on November 2, 2006 (71 FR 64606). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods, and analysis of potential impacts on marine mammals.

NMFS was a cooperating agency in the preparation of the Draft and Final EISs based on a Memorandum of Understanding related to the Licensing of Deepwater Ports entered into by the U.S. Department of Commerce along with 10 other government agencies. On June 3, 2008, NMFS adopted the USCG and MARAD FEIS and issued a separate Record of Decision for issuance of authorizations pursuant to sections 101(a)(5)(A) and (D) of the MMPA for the construction and operation of the Neptune LNG Port facility.

Authorization

As a result of these determinations, NMFS has issued an IHA to Neptune for the take of marine mammals incidental to port commissioning and operations, including repair and maintenance activities at the Neptune Deepwater Port, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 12, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–17434 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes a service from the Procurement List previously furnished by such agency.

DATES: *Effective Date:* 8/16/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703)