

requirements pertaining to the mitigation, monitoring, and reporting of such taking 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.”

The NDAA of 2004 (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated earlier and amended the definition of harassment as it applies to a “military readiness activity” to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). 86 FWS has identified LRS WSEP missions as military readiness activities.

On September 27, 2016, NMFS issued an incidental harassment authorization (IHA), similar to this request, for takes of marine mammals incidental to Long Range Strike Weapons System Evaluation Program (LRS WSEP) activities in the BSURE area of the PMRF off Kauai, Hawaii. 86 FWS complied with all conditions of the IHA issued, including submission of final reports. Based on these reports, NMFS has determined that impacts to marine mammals were not beyond those anticipated.

Summary of Request

On December 21, 2016, NMFS received an adequate and complete application from the 86 FWS requesting authorization for the take of marine mammals incidental to LRS WSEP activities in the Barking Sands Underwater Range Expansion (BSURE) area of the Pacific Missile Range Facility (PMRF) off Kauai, Hawaii for a period of five years. LRS WSEP activities have the potential to result in take of marine mammals in the waters of the PMRF. Therefore, 86 FWS requests authorization to take 16 species of marine mammals that may occur in this area.

Specified Activities

86 FWS proposes actions that include LRS WSEP test missions that involve

the use of multiple types of live and inert munitions (bombs and missiles) detonated above, at, or slightly below the water surface. The ordnance may be delivered by multiple types of aircraft, including bombers and fighter aircraft. The actions include air-to-surface test missions of the Joint Air-to-Surface Stand-off Missile/Joint Air-to-Surface Stand-off Missile-Extended Range (JASSM/JASSM-ER), Small Diameter Bomb-I/II (SDB-I/II), High-speed Anti-Radiation Missile (HARM), Joint Direct Attack Munition/Laser Joint Direct Attack Munition (JDAM/LJDAM), and Miniature Air-Launched Decoy (MALD). Net explosive weight of the live munitions ranges from 23 to 300 pounds. 86 FWS anticipates the ability to test approximately 110 munitions per year.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning 86 FWS’s request (see **ADDRESSES**). Comments should be supported by data or literature citations as appropriate. We will consider all relevant information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by 86 FWS, if appropriate.

Dated: December 27, 2016.

Donna S. Wieting,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[0648–XE753]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Operation, Maintenance, and Repair of the Northeast Gateway Liquefied Natural Gas Port and the Algonquin Pipeline Lateral Facilities in Massachusetts Bay

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 regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental

harassment authorization (IHA) to Northeast Gateway® Energy Bridge™, L.P. (Northeast Gateway or NEG) and Algonquin Gas Transmission, LLC (Algonquin) to take small numbers of 14 species of marine mammals, by Level B harassment, incidental to operating, maintaining, and repairing a liquefied natural gas (LNG) port and the Algonquin Pipeline Lateral (Pipeline Lateral) facilities by NEG and Algonquin, in Massachusetts Bay.

DATES: This authorization is effective from December 22, 2016 through December 21, 2017.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

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 (Secretary) 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 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 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 a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. 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.

Summary of Request

On June 9, 2015, NMFS received an application from Excelerate Energy, L.P. (Excelerate) and Tetra Tech, Inc. (Tetra Tech), on behalf of NEG and Algonquin, for an annual IHA and a subsequent five-year letter of authorization (LOA) pursuant to a rulemaking under section 101(a)(5)(A), to take 14 species of marine mammals by Level B harassment incidental to operations, maintenance, and repair of the NEG Port and the Pipeline Lateral facilities in Massachusetts Bay. They are: North Atlantic right whale, humpback whale, fin whale, sei whale, minke whale, long-finned pilot whale, Atlantic white-sided dolphin, bottlenose dolphin, short-beaked common dolphin, killer whale, Risso's dolphin, harbor porpoise, harbor seal, and gray seal. Since the NEG Port and Pipeline Lateral operation, maintenance, and repair activities have the potential to take marine mammals, a marine mammal take authorization under the MMPA is warranted. NMFS issued an IHA to NEG and Algonquin on December 22, 2015 (81 FR 744; January 7, 2016). The IHA is valid until December 22, 2016. In June 2016 NMFS learned that NEG and Algonquin are considering decommissioning the NEG Port in the foreseeable future. Upon discussion with Excelerate and Tetra Tech, it was agreed that instead of conducting a rulemaking for five years of incidental take authorization that may not be needed, NMFS would process another one-year IHA to NEG and Algonquin to cover marine mammal takes from its operations, maintenance, and repair work from December 23, 2016 through December 22, 2017.

NMFS first issued an IHA to NEG and Algonquin to allow for the incidental harassment of small numbers of marine mammals resulting from the construction and operation of the NEG Port and the Pipeline Lateral (72 FR 27077; May 14, 2007). Subsequently, NMFS issued five one-year IHAs for the take of marine mammals incidental to the operation of the NEG Port activity pursuant to section 101(a)(5)(D) of the MMPA (73 FR 29485; May 21, 2008, 74 FR 45613; September 3, 2009, 75 FR 53672; September 1, 2010, and 76 FR 62778; October 11, 2011). After that, NMFS issued two one-year IHAs to NEG and Algonquin to take marine mammals incidental to the operations of the NEG Port as well as maintenance and repair (79 FR 78806; December 31, 2014, 81 FR 744; January 7, 2016).

Description of the Specified Activity

The NEG and Algonquin activities include the following:

NEG Port Operations: The NEG Port operations involve docking of NEG vessels and regasification of NEG for delivery to shore. Noises generated during these activities, especially from the NEG vessel's dynamic positioning (DP) thrusters during docking, could result in takes of marine mammals in the port vicinity by level B behavioral harassment.

NEG Port Maintenance and Repair: Regular maintenance and occasional repair of the NEG Port are expected to occur throughout the NEG Port operation period. Machinery used during these activities generate noises that could result in takes of marine mammals in the port vicinity by Level B behavioral harassment.

Algonquin Pipeline Lateral Routine Operations and Maintenance: The Algonquin Pipeline Lateral that is used for gas delivery would be inspected regularly to ensure proper operations. The work would be done using support vessels operating in dynamic positioning mode. Noises generated from these activities could result in takes of marine mammals in the vicinity of Pipeline Lateral by Level B behavioral harassment.

Unplanned Pipeline Repair Activities: Unplanned repair activities may be required occasionally at a location along the Pipeline Lateral in west Massachusetts Bay, as shown in Figure 2.1 of the application. The repair would involve the use of a dive vessel operating in dynamic positioning mode. Noise generated from this activity could result in takes of marine mammals in the vicinity of repair work by Level B behavioral harassment.

An IHA was previously issued to NEG and Algonquin for this activity on December 22, 2015 (81 FR 744; January 7, 2016), based on activities described on Excelerate and Tetra Tech's marine mammal incidental take request submitted in June 2014 and on the **Federal Register** notice for the proposed IHA (78 FR 69049; November 18, 2013). The latest application submitted by Excelerate and Tetra Tech on June 9, 2015, contains the same information on project descriptions as described in the June 2014 IHA application. There is no change on the NEG and Algonquin's proposed NEG Port and Pipeline Lateral operations and maintenance and repair. Please refer to these documents for a detailed description of NEG and Algonquin's proposed NEG Port and Pipeline Lateral operations and maintenance and repair activities.

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on November 15, 2016 (81 FR 80016). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). Specific comments and responses are provided below.

Comment 1: The Commission states that the method used to estimate the numbers of takes, which sums fractions of takes for each species across days, does not account for NMFS's 24-hour reset policy. The Commission states that instead of summing fractions of takes across days and then rounding to estimate total takes, NMFS should have calculated a daily take estimate (determined by multiplying the estimated density of marine mammals in the area by the daily ensonified area) and then rounding that to a whole number before multiplying it by the number of days that activities would occur. Thus, the Commission recommends that NMFS (1) follow its policy of a 24-hour reset for enumerating the number of each species that could be taken, (2) apply standard rounding rules before summing the numbers of estimated takes across days, and (3) for species that have the potential to be taken but model-estimated or calculated takes round to zero, use group size to inform the take estimates—these methods should be used consistently for all future incidental take authorizations.

Response: While for certain projects NMFS has rounded to the whole number for daily takes, the circumstance for projects like this one when the objective of take estimation is to provide more accurate assessments for potential impacts to marine mammals for the entire project, the rounding on a daily basis will introduce large errors into the process. In addition, while NMFS uses a 24-hour reset for its take calculation to ensure that individual animals are not counted as a take more than once per day, that fact does not make the calculation of take across the entire activity period inherently incorrect. There is no need for daily (24-hour) rounding in this case because there is no daily limit of takes, so long as total authorized takes of marine mammal are not exceeded. In short, the calculation of predicted take is not an exact science and there are arguments for taking different mathematical approaches in different situations, and for making qualitative adjustments in other situations. We

believe, however, that the prediction for this action remains appropriate.

Description of Marine Mammals in the Area of the Specified Activities

Marine mammal species that potentially occur in the vicinity of the Northeast Gateway facility include the North Atlantic right whale, humpback whale, fin whale, sei whale, minke whale, long-finned pilot whale, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, killer whale, Risso's dolphin, harbor porpoise, harbor seal, and gray seal. General information on the distribution of these marine mammal species can be found in NMFS Stock Assessment Reports (Waring *et al.*, 2016). This latter document is available at: http://www.nmfs.noaa.gov/pr/sars/pdf/atlantic2015_final.pdf. Additional information regarding these species within the NEG's action area is provided below, with a summary in Table 1.

Humpback Whale

The highest abundance for humpback whales is distributed primarily along a relatively narrow corridor following the 100-meter (m) (328-foot (ft)) isobath across the southern Gulf of Maine from the northwestern slope of Georges Bank, south to the Great South Channel, and northward alongside Cape Cod to Stellwagen Bank and Jeffreys Ledge. The relative abundance of whales increases in the spring with the highest occurrence along the slope waters (between the 40- and 140-m, or 131- and 459-ft, isobaths) off Cape Cod and Davis Bank, Stellwagen Basin and Tillies Basin and between the 50- and 200-m (164- and 656-ft) isobaths along the inner slope of Georges Bank. High abundance is also estimated for the waters around Platts Bank. In the summer months, abundance increases markedly over the shallow waters (<50 m, or <164 ft) of Stellwagen Bank, the waters (100–200 m or 328–656 ft) between Platts Bank and Jeffreys Ledge, the steep slopes (between the 30- and 160-m isobaths) of Phelps and Davis Bank north of the Great South Channel towards Cape Cod, and between the 50- and 100-m (164- and 328-ft) isobath for almost the entire length of the steeply sloping northern edge of Georges Bank. This general distribution pattern persists in all seasons except winter, when humpbacks remain at high abundance in only a few locations including Porpoise and Neddick Basins adjacent to Jeffreys Ledge, northern Stellwagen Bank and Tillies Basin, and the Great South Channel. The best estimate of abundance for Gulf of Maine, formerly western North Atlantic,

humpback whales is 823 animals (Waring *et al.*, 2016).

Fin Whale

Spatial patterns of habitat utilization by fin whales are very similar to those of humpback whales. Spring and summer high-use areas follow the 100-m (328 ft) isobath along the northern edge of Georges Bank (between the 50- and 200-m (164- and 656-ft) isobaths), and northward from the Great South Channel (between the 50- and 160-m, or 164- and 525-ft, isobaths). Waters around Cashes Ledge, Platts Bank, and Jeffreys Ledge are all high-use areas in the summer months. Stellwagen Bank is a high-use area for fin whales in all seasons, with highest abundance occurring over the southern Stellwagen Bank in the summer months. In fact, the southern portion of the Stellwagen Bank National Marine Sanctuary (SBNMS) is used more frequently than the northern portion in all months except winter, when high abundance is recorded over the northern tip of Stellwagen Bank. In addition to Stellwagen Bank, high abundance in winter is estimated for Jeffreys Ledge and the adjacent Porpoise Basin (100- to 160-m, 328- to 656-ft, isobaths), as well as Georges Basin and northern Georges Bank. The best estimate of abundance for the western North Atlantic stock of fin whales is 1,618 (Waring *et al.*, 2016). Currently, there are insufficient data to determine population trends for this species.

Minke Whale

Like other piscivorous baleen whales, highest abundance for minke whale is strongly associated with regions between the 50- and 100-m (164- and 328-ft) isobaths, but with a slightly stronger preference for the shallower waters along the slopes of Davis Bank, Phelps Bank, Great South Channel and Georges Shoals on Georges Bank. Minke whales are sighted in the SBNMS in all seasons, with highest abundance estimated for the shallow waters (approximately 40 m, or 131 ft) over southern Stellwagen Bank in the summer and fall months. Platts Bank, Cashes Ledge, Jeffreys Ledge, and the adjacent basins (Neddick, Porpoise and Scantium) also support high relative abundance. Very low densities of minke whales remain throughout most of the southern Gulf of Maine in winter. The best estimate of abundance for the Canadian East Coast stock, which occurs from the western half of the Davis Strait to the Gulf of Mexico, of minke whales is 20,741 animals (Waring *et al.*, 2016). Currently, there are insufficient data to determine population trends for this species.

North Atlantic Right Whale

North Atlantic right whales are generally distributed widely across the southern Gulf of Maine in spring with highest abundance located over the deeper waters (100- to 160-m (328- to 525-ft) isobaths) on the northern edge of the Great South Channel and deep waters (100–300 m, 328–984 ft) parallel to the 100-m (328-ft) isobath of northern Georges Bank and Georges Basin. High abundance is also found in the shallowest waters (<30 m, or <98 ft) of Cape Cod Bay, over Platts Bank and around Cashes Ledge. Lower relative abundance is estimated over deep-water basins including Wilkinson Basin, Rodgers Basin and Franklin Basin. In the summer months, right whales move almost entirely away from the coast to deep waters over basins in the central Gulf of Maine (Wilkinson Basin, Cashes Basin between the 160- and 200-m (525- and 656-ft) isobaths) and north of Georges Bank (Rogers, Crowell and Georges Basins). Highest abundance is found north of the 100-m (328-ft) isobath at the Great South Channel and over the deep slope waters and basins along the northern edge of Georges Bank. The waters between Fippennies Ledge and Cashes Ledge are also estimated as high-use areas. In the fall months, right whales are sighted infrequently in the Gulf of Maine, with highest densities over Jeffreys Ledge and over deeper waters near Cashes Ledge and Wilkinson Basin. In winter, Cape Cod Bay, Scantium Basin, Jeffreys Ledge, and Cashes Ledge were the main high-use areas. Although SBNMS does not appear to support the highest abundance of right whales, sightings within SBNMS are reported for all four seasons, albeit at low relative abundance. Highest sighting within SBNMS occurred along the southern edge of the Bank.

The western North Atlantic minimum stock size is based on a census of individual whales identified using photo-identification techniques. A review of the photo-ID recapture database as it existed on 20 October 2014 indicated that 476 individually recognized whales in the catalog were known to be alive during 2011. This number represents a minimum population size. This is a direct count and has no associated coefficient of variation (Waring *et al.*, 2016). Examination of the minimum number alive population index calculated from the individual sightings database, as it existed on 20 October 2014, for the years 1990–2011 suggests a positive and slowly accelerating trend in population size. These data reveal a significant

increase in the number of catalogued whales with a geometric mean growth rate for the period of 2.8 percent (Waring *et al.*, 2016).

Long-Finned Pilot Whale

The long-finned pilot whale is more generally found along the edge of the continental shelf (a depth of 330 to 3,300 ft or 100 to 1,000 m), choosing areas of high relief or submerged banks in cold or temperate shoreline waters. This species is split between two subspecies: The Northern and Southern subspecies. The Southern subspecies is circumpolar with northern limits of Brazil and South Africa. The Northern subspecies, which could be encountered during operation of the NEG Port, ranges from North Carolina to Greenland (Reeves *et al.*, 2002; Wilson and Ruff 1999). In the western North Atlantic, long-finned pilot whales are pelagic, occurring in especially high densities in winter and spring over the continental slope, then moving inshore and onto the shelf in summer and autumn following squid and mackerel populations (Reeves *et al.*, 2002). They frequently travel into the central and northern Georges Bank, Great South Channel, and Gulf of Maine areas during the summer and early fall (May and October) (NOAA 1993). According to the species stock report, the population estimate for the Western North Atlantic long-finned pilot whale is 5,636 individuals (Waring *et al.*, 2010). Currently, there are insufficient data to determine population trends for the long-finned pilot whale.

Atlantic White-Sided Dolphin

In spring, summer and fall, Atlantic white-sided dolphins are widespread throughout the southern Gulf of Maine, with the high-use areas widely located either side of the 100-m (328-ft) isobath along the northern edge of Georges Bank, and north from the Great South Channel to Stellwagen Bank, Jeffreys Ledge, Platts Bank and Cashes Ledge. In spring, high-use areas exist in the Great South Channel, northern Georges Bank, the steeply sloping edge of Davis Bank and Cape Cod, southern Stellwagen Bank and the waters between Jeffreys Ledge and Platts Bank. In summer, there is a shift and expansion of habitat toward the east and northeast. High-use areas are identified along most of the northern edge of Georges Bank between the 50- and 200-m (164- and 656-ft) isobaths and northward from the Great South Channel along the slopes of Davis Bank and Cape Cod. High numbers of sightings are also recorded over Truxton Swell, Wilkinson Basin, Cashes Ledge and the bathymetrically complex area northeast of Platts Bank. High numbers

of sightings of white-sided dolphin are recorded within SBNMS in all seasons, with highest density in summer and most widespread distributions in spring located mainly over the southern end of Stellwagen Bank. In winter, high numbers of sightings are recorded at the northern tip of Stellwagen Bank and Tillies Basin.

A comparison of spatial distribution patterns for all baleen whales (Mysticeti) and all porpoises and dolphins combined show that both groups have very similar spatial patterns of high- and low-use areas. The baleen whales, whether piscivorous or planktivorous, are more concentrated than the dolphins and porpoises. They utilize a corridor that extended broadly along the most linear and steeply sloping edges in the southern Gulf of Maine indicated broadly by the 100-m (328-ft) isobath. Stellwagen Bank and Jeffreys Ledge support a high abundance of baleen whales throughout the year. Species richness maps indicate that high-use areas for individual whales and dolphin species co-occur, resulting in similar patterns of species richness primarily along the southern portion of the 100-m (328-ft) isobath extending northeast and northwest from the Great South Channel. The southern edge of Stellwagen Bank and the waters around the northern tip of Cape Cod are also highlighted as supporting high cetacean species richness. Intermediate to high numbers of species are also calculated for the waters surrounding Jeffreys Ledge, the entire Stellwagen Bank, Platts Bank, Fippennies Ledge and Cashes Ledge. The best estimate of abundance for the western North Atlantic stock of white-sided dolphins is 48,819 (Waring *et al.*, 2016). A trend analysis has not been conducted for this species.

Killer Whale, Common Dolphin, Bottlenose Dolphin, Risso's Dolphin, and Harbor Porpoise

Although these five species are some of the most widely distributed small cetacean species in the world (Jefferson *et al.*, 1993), they are not commonly seen in the vicinity of the project area in Massachusetts Bay (Wiley *et al.*, 1994; Northeast Gateway Marine Mammal Monitoring Weekly Reports 2007). The total number of killer whales off the eastern U.S. coast is unknown, and present data are insufficient to calculate a minimum population estimate or to determine the population trends for this stock (Blaylock *et al.*, 1995). The best estimate of abundance for the western North Atlantic stock of common dolphins is 173,486 animals, and a trend analysis has not been

conducted for this species (Waring *et al.*, 2016). There are several stocks of bottlenose dolphins found along the eastern United States from Maine to Florida. The stock that may occur in the area of the Neptune Port is the western North Atlantic coastal northern migratory stock of bottlenose dolphins. The best estimate of abundance for this stock is 11,548 animals (Waring *et al.*, 2016). There are insufficient data to determine the population trend for this stock. The best estimate of abundance for the western North Atlantic stock of Risso's dolphins is 18,250 animals (Waring *et al.*, 2016). There are insufficient data to determine the population trend for this stock. The best estimate of abundance for the Gulf of Maine/Bay of Fundy stock of harbor porpoise is 79,833 animals (Waring *et al.*, 2016). A trend analysis has not been conducted for this species.

Harbor Seal and Gray Seal

In the U.S. waters of the western North Atlantic, both harbor and gray seals are usually found from the coast of Maine south to southern New England and New York (Waring *et al.*, 2010).

Along the southern New England and New York coasts, harbor seals occur seasonally from September through late May (Schneider and Payne 1983). In recent years, their seasonal interval along the southern New England to New Jersey coasts has increased (deHart 2002). In U.S. waters, harbor seal breeding and pupping normally occur in waters north of the New Hampshire/Maine border, although breeding has occurred as far south as Cape Cod in the early part of the 20th century (Temte *et al.*, 1991; Katona *et al.*, 1993). The best estimate of abundance for the western North Atlantic stock of harbor seals is 75,834 animals (Waring *et al.*, 2016). Although gray seals are often seen off the coast from New England to Labrador, within the U.S. waters, only small numbers of gray seals have been observed pupping on several isolated islands along the Maine coast and in Nantucket-Vineyard Sound, Massachusetts (Katona *et al.*, 1993; Rough, 1995). In the late 1990s, a year-round breeding population of approximately 400 gray seals was documented on outer Cape Cod and Muskeget Island (Waring *et al.*, 2007). Depending on the model used, the minimum estimate for the Canadian gray seal population was estimated to range between 125,541 and 169,064 animals (Trzcinski *et al.*, 2005, cited in Waring *et al.*, 2009); however, present data are insufficient to calculate the minimum population estimate for U.S. waters. Waring *et al.* (2016) note that

gray seal abundance in the U.S. Atlantic is likely increasing, but the rate of increase is unknown.

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY

Species	ESA status	MMPA status	Abundance	Range	Occurrence
North Atlantic right whale	Endangered	Depleted	476	N. Atlantic	Occasional.
Humpback whale	Endangered	Depleted	823	N. Atlantic	Occasional.
Fin whale	Endangered	Depleted	1618	N. Atlantic	Occasional.
Sei whale	Endangered	Depleted	357	N. Atlantic	Occasional.
Minke whale	Not listed	Non-depleted	20741	N. Atlantic	Occasional.
Long-finned pilot whale	Not listed	Non-depleted	5636	N. Atlantic	Occasional.
Atlantic white-sided dolphin	Not listed	Non-depleted	48819	N. Atlantic	Occasional.
Bottlenose dolphin	Not listed	Non-depleted	11548	N. Atlantic	Uncommon.
Common dolphin	Not listed	Non-depleted	173486	N. Atlantic	Uncommon.
Killer whale	Not listed	Non-depleted	Unknown	N. Atlantic	Uncommon.
Risso's dolphin	Not listed	Non-depleted	18250	N. Atlantic	Uncommon.
Harbor porpoise	Not listed	Non-depleted	79833	N. Atlantic	Uncommon.
Harbor Seal	Not listed	Non-depleted	75834	N. Atlantic	Occasional.
Gray seal	Not listed	Non-depleted	Unknown	N. Atlantic	Occasional.

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., pile removal and pile driving) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented and how either of those will shape the anticipated impacts from this specific activity. The “Estimated Take by Incidental Harassment” section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The “Negligible Impact Analysis” section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the “Estimated Take by Incidental Harassment” section, the “Mitigation” section, and the “Anticipated Effects on Marine Mammal Habitat” section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

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 have been derived using auditory evoked potentials, anatomical modeling, and other data. NMFS (2016) designate “marine mammal hearing groups” for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The marine mammal hearing groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hertz (Hz) and 35 kilo Hertz (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 275 Hz and 160 kHz;
- Phocid pinnipeds (true seals): Functional hearing is estimated between 50 Hz to 86 kHz; and
- Otariid pinnipeds (sea lions and fur seals): Functional hearing is estimated between 60 Hz to 39 kHz.

Species found in the vicinity of the NEG Port and Pipeline Lateral operations and maintenance and repair area include five low-frequency cetacean species (North Atlantic right whale, humpback whale, fin whale, sei whale, and minke whale), six mid-

frequency cetacean species (long-finned pilot whale, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, Risso's dolphin, and killer whale), one high-frequency cetacean species (harbor porpoise), and two pinniped species (harbor seal and gray seal) (Table 1).

The NEG Port operations and maintenance and repair activities could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.*, 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.*, 2009). Acoustic masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under

certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water vibratory pile driving and removal is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.*, 2009) and cause increased stress levels (e.g., Foote *et al.*, 2004; Holt *et al.*, 2009).

Unlike TS, masking can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 decibel (dB) (more than 3 times in terms of sound pressure level (SPL)) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic, vessel docking, and stationing while operating DP thrusters, dredging and pipe laying associated with NEG Port and Pipeline Lateral maintenance and repair, and NEG regasification activities, contribute to the elevated ambient noise levels, thus increasing potential for or severity of masking.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.*, 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected

disturbances appear minor. However, the consequences of behavioral modification are expected to be biologically significant if the change affects growth, survival, and/or reproduction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.*, 2007). Currently NMFS uses 160 dB re 1 microPascal (root-mean-square) (μPa (rms)) at received level for impulse noises (such as impact pile driving) as the onset of marine mammal behavioral harassment, and 120=dB re 1 μPa (rms) for non-impulse noises (such as operating DP thrusters, dredging, pipe laying, and NEG regasification). No impulse noise is expected from the NEG and Algonquin's NEG Port and Pipeline Lateral operation, maintenance, and repair activities. For the NEG Port and Pipeline Lateral operations and maintenance and repair activities, only the 120=dB re 1 μPa (rms) threshold is considered because only non-impulse noise sources would be generated.

Potential Effects on Marine Mammal Habitat

The action area is considered biologically important habitat for the North Atlantic right, fin, humpback, and minke whales during part of the seasons, and it is adjacent to the SBNMS. There is no critical habitat in the vicinity of the action area.

NEG Port Operations

Operation of the NEG Port will not result in short-term effects, however, long-term effects on the marine environment, including alteration of the seafloor conditions, continued disturbance of the seafloor, regular withdrawal of sea water, and regular generation of underwater noise, will result from NEG Port operations. Specifically, a small area (0.14 acre) along the Pipeline Lateral has been permanently altered (armored) at two cable crossings. In addition, the structures associated with the NEG Port (flowlines, mooring wire rope and chain, suction anchors, and pipeline end manifolds) occupy 4.8 acres of seafloor. An additional area of the seafloor of up to 43 acres (worst case scenario based on severe 100-year storm with Energy Bridge Regasification Vehicle (EBRV) occupying both submerged turret loading (STL) buoys will be subject to disturbance due to chain sweep while the buoys are occupied. Given the relatively small size

of the NEG Port area that will be directly affected by Port operations, NMFS does not anticipate that habitat loss will be significant.

EBRVs are currently authorized to withdraw an average of 4.97 million gallons per day (mgd) and 2.6 billion gallons per year of sea water for general ship operations during cargo delivery activities at the NEG Port. However, as we explained in the **Federal Register** notice for the 2015 IHA (78 FR 69049; November 18, 2013), during the operations of the NEG Port facility, it was revealed that significantly more water usage is needed than what was originally evaluated in the final USCG Environmental Impact Statement/ Environmental Impact Report (EIS/EIR). The updates for the needed water intake and discharge temperature are:

- 11 billion gallons of total annual water use at the Port;
- Maximum daily intake volume of up to 56 mgd at a rate of 0.45 ft per second when an EBRV is not able to achieve the heat recovery system (HRS) it is the capability of reducing water use during the regasification process) mode of operation; and
- Maximum daily change in discharge temperature of 12°C (53.6°F) from ambient from the vessel's main condenser cooling system.

Under the requested water-use scenario, Tetra Tech (2011) conducted an environmental analysis on the potential impacts to marine mammals and their prey. To evaluate impacts to phytoplankton under the increased water usage, the biomass of phytoplankton lost from the Massachusetts Bay ecosystem was estimated based on the method presented in the final EIS/EIR. Phytoplankton densities of 65,000 to 390,000 cells/gallon were multiplied by the annual planned activities of withdrawal rate of 11 billion gallons to estimate a loss of 7.15×10^{14} to 4.29×10^{15} cells per year. Assuming a dry-weight biomass of 10^{-10} to 10^{-11} gram per cell (g/cell), an estimated 7.2 kilograms (kg) to 429 kg of biomass would be lost from Massachusetts Bay under the activity, up to approximately 4.2 times that estimated in the final EIS/EIR for the permitted operational scenario. An order of magnitude estimate of the effect of this annual biomass loss on the regional food web can be calculated assuming a 10 percent transfer of biomass from one trophic level to the next (Sumich 1988) following the method used in the final EIS/EIR. This suggests that the loss of 7.2 kg to 429 kg of phytoplankton will result in the loss of about 0.7 kg to 42.9 kg of zooplankton, less than 0.1 kg to 4.3

kg of small planktivorous fish, and up to 0.4 kg of large piscivorous fish (approximately equivalent to a single 1-pound striped bass). Relative to the biomass of these trophic levels in the project area, this biomass loss is minor and consistent with the findings in the final EIS/EIR.

In addition, zooplankton losses will also increase proportionally to the increase in water withdrawn. The final EIS/EIR used densities of zooplankton determined by the sampling conducted by the Massachusetts Water Resource Authority (MWRA) to characterize the area around its offshore outfall and assumed a mean zooplankton density of 34.9×10^3 organisms per m^3 . Applying this density, the water withdrawal volume under the activity would result in the entrainment of 2.2×10^{10} zooplankton individuals per trip or 1.5×10^{12} individuals per year. Assuming an average biomass of 0.63×10^{-6} g per individual, this would result in the loss of 14.1 kg of zooplankton per shipment or 916.5 kg of zooplankton per year. As discussed for phytoplankton, biomass transfers from one trophic level to the next at a rate of about 10 percent. Therefore, this entrainment of zooplankton would result in loss of about 91.6 kg of planktivorous fish and 9.2 kg of large piscivorous fish (approximately equivalent to two 9-pound striped bass). These losses are minor relative to the total biomass of these trophic levels in Massachusetts Bay.

Finally, ichthyoplankton (fish eggs and larvae) losses and equivalent age one juvenile fish estimates under the activity were made based on actual monthly ichthyoplankton data collected in the port area from October 2005 through December 2009 and the activity withdrawal volume of 11 billion gallons per year evenly distributed among months (0.92 billion gallons per month) as a worst-case scenario, representing the maximum number of NEG Port deliveries during any given month. Similarly, the lower, upper, and mean annual entrainment estimates are based on the lower and upper 95 percent confidence limits, of the monthly mean ichthyoplankton densities, and the monthly mean estimates multiplied by the monthly withdrawal rate of 0.92 billion gallons per month. At this withdrawal rate approximately 106 million eggs and 67 million larvae are estimated to be lost (see Table 4.2–2 of the IHA application). The most abundant species and life stages estimated to be entrained under the activity are cunner post yolk-sac larvae (33.3 million), yellowtail flounder/*Labridae* eggs (27.4 million) and hake

species eggs (18.7 million). Together, these species and life stages accounted for approximately 46 percent of the total entrainment estimated. Entrainment was estimated to be highest in June through July when 97.4 million eggs and larvae (approximately 57 percent of the annual total) were estimated to be entrained. However, the demand for natural gas and corresponding NEG Port activities will likely be greatest during the winter heating season (November through March) when impacts from entrainment will likely be lower.

These estimated losses are not significant given the very high natural mortality of ichthyoplankton. This comparison was done in the final EIS/EIR where ichthyoplankton losses based on historic regional ichthyoplankton densities and a withdrawal rate of approximately 2.6 billion gallons per year were represented by the equivalent number of age-one fish. Under the final EIS/EIR withdrawal scenario, equivalent age-one losses due to entrainment ranged from 1 haddock to 43,431 sand lance (Tetra Tech 2010). Equivalent age-one losses under the conditions when no NEG Port operation occurrence were recalculated using Northeast Gateway monitoring data in order to facilitate comparisons between the permitted scenario and the updated scenario. Using Northeast Gateway monitoring data, withdrawal of 2.6 billion gallons per year would result in equivalent age-one losses ranging from less than 1 haddock to 5,602 American sand lance. By comparison, equivalent age one losses under the activity withdrawal rate of 11 billion gallons per year ranged from less than 1 haddock to 23,701 sand lance and were generally similar to or less than those in the final EIS/EIR. Substantially more equivalent age-one Atlantic herring, pollock, and butterfish were estimated to be lost under the final EIS/EIR at a withdrawal rate of 2.6 billion gallons per year, while substantially more equivalent age-one Atlantic cod, silver hake and hake species, cunner, and Atlantic mackerel are estimated to be lost under the activity.

Although no reliable annual food consumption rates of baleen whales are available for comparison, based on the calculated quantities of phytoplankton, zooplankton, and ichthyoplankton removal analyzed above, it is reasonable to conclude that baleen whale predation rates would dwarf any reasonable estimates of prey removals by NEG Port operations.

NEG Port Maintenance

As stated earlier, NEG Port will require scheduled maintenance

inspections using either divers or remote operated vehicles (ROVs). The duration of these inspections are not anticipated to be more than two 8-hour working days. An EBRV will not be required to support these annual inspections. Water usage during the NEG Port maintenance would be limited to the standard requirements of NEG's normal support vessel. As with all vessels operating in Massachusetts Bay, sea water uptake and discharge is required to support engine cooling, typically using a once-through system. The rate of seawater uptake varies with the ship's horsepower and activity and therefore will differ between vessels and activity type. For example, the *Gateway Endeavor* is a 90-foot vessel powered with a 1,200-horsepower diesel engine with a four-pump seawater cooling system. This system requires seawater intake of about 68 gallons per minute (gpm) while idling and up to about 150 gpm at full power. Use of full power is required generally for transit. A conservatively high estimate of vessel activity for the *Gateway Endeavor* would be operation at idle for 75 percent of the time and full power for 25 percent of the time. During the routine activities this would equate to approximately 42,480 gallons of seawater per 8-hour work day. When compared to the engine cooling requirements of an EBRV over an 8-hour period (approximately 18 million gallons), the *Gateway Endeavour* uses about 0.2 percent of the EBRV requirement. To put this water use into context, potential effects from the water-use scenario of 56 mgd have been concluded to be orders of magnitude less than the natural fluctuations of Massachusetts Bay and Cape Cod Bay and not detectable. Water use by support vessels during routine port activities would not materially add to the overall impacts.

Certain maintenance and repair activities may also require the presence of an EBRV at the NEG Port. Such instances may include maintenance and repair on the STL Buoy, vessel commissioning, and any onboard equipment malfunction or failure occurring while a vessel is present for cargo delivery. Because the requested water-use scenario allows for daily water use of up to 56 mgd to support standard EBRV requirements when not operating in the HRS mode, vessels would be able to remain at the NEG Port as necessary to support all such maintenance and repair scenarios. Therefore, NMFS considers that NEG Port maintenance and repair would

have negligible impacts to marine mammal habitat in the activity area.

Unanticipated Algonquin Pipeline Lateral Maintenance and Repair

As stated earlier, proper care and maintenance of the Pipeline Lateral should minimize the likelihood of an unanticipated maintenance and/or repair event. However, unanticipated activities may occur from time to time if facility components become damaged or malfunction. Unanticipated repairs may range from relatively minor activities requiring minimal equipment and one or two diver/ROV support vessels to major activities requiring larger construction-type vessels similar to those used to support the construction and installation of the facility.

Major repair activities, although unlikely, may include repairing or replacement of pipeline manifolds or sections of the Pipeline Lateral. This type of work would likely require the use of large specialty construction vessels such as those used during the construction and installation of the NEG Port and Pipeline Lateral. The duration of a major unplanned activity would depend upon the type of repair work involved and would require careful planning and coordination.

Turbidity would likely be a potential effect of Pipeline Lateral maintenance and repair activities on listed species. In addition, the possible removal of benthic or planktonic species, resulting from relatively minor construction vessel water use requirements, as measured in comparison to EBRV water use, is unlikely to affect in a measurable way the food sources available to marine mammals. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation Measures

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse 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.

(a) General Marine Mammal Avoidance Measures

All vessels shall utilize the International Maritime Organization (IMO)-approved Boston Traffic

Separation Scheme (TSS) on their approach to and departure from the NEG Port and/or the repair/maintenance area at the earliest practicable point of transit in order to avoid the risk of whale strikes.

Upon entering the TSS and areas where North Atlantic right whales are known to occur, including the Great South Channel Seasonal Management Area (GSC-SMA) and the SBNMS, EBRVs shall go into "Heightened Awareness" as described below.

(1) Prior to entering and navigating the modified TSS, the Master of the vessel shall:

- Consult Navigational Telex (NAVTEX), NOAA Weather Radio, the NOAA Right Whale Sighting Advisory System (SAS) or other means to obtain current right whale sighting information as well as the most recent Cornell acoustic monitoring buoy data for the potential presence of marine mammals;

- Post a look-out to visually monitor for the presence of marine mammals;
- Provide the USCG required 96-hour notification of an arriving EBRV to allow the NEG Port manager to notify Cornell of vessel arrival.

(2) The look-out shall concentrate his/her observation efforts within the 2-mile radius ZOI from the maneuvering EBRV.

(3) If marine mammal detection was reported by NAVTEX, NOAA Weather Radio, SAS and/or an acoustic monitoring buoy, the look-out shall concentrate visual monitoring efforts towards the areas of the most recent detection.

(4) If the look-out (or any other member of the crew) visually detects a marine mammal within the 2-mile radius ZOI of a maneuvering EBRV, he/she will take the following actions:

- The Officer-of-the-Watch shall be notified immediately; who shall then relay the sighting information to the Master of the vessel to ensure action(s) can be taken to avoid physical contact with marine mammals; and
- The sighting shall be recorded in the sighting log by the designated look-out.

In accordance with 50 CFR 224.103(c), all vessels associated with NEG Port and Pipeline Lateral activities shall not approach closer than 500 yards (yd, 460 m) to a North Atlantic right whale and 100 yd (91 m) to other whales to the extent physically feasible given navigational constraints. In addition, when approaching and departing the project area, vessels shall be operated so as to remain at least 1 kilometer away from any visually-detected North Atlantic right whales.

In response to active right whale sightings and active acoustic detections,

and taking into account exceptional circumstances, EBRVs as well as repair and maintenance vessels shall take appropriate actions to minimize the risk of striking whales. Specifically vessels shall:

(1) Respond to active right whale sightings and/or Dynamic Management Areas (DMAs) reported on the Mandatory Ship Reporting (MSR) or SAS by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less if the vessel is within the boundaries of a DMA or within the circular area centered on an area 8 nautical miles (nmi) in radius from a sighting location;

(2) Respond to active acoustic detections by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less within an area 5 nm in radius centered on the detecting auto-detection buoy (AB); and

(3) Respond to additional sightings made by the designated look-outs within a 2-mile radius of the vessel by slowing the vessel to 10 knots or less and concentrating monitoring efforts towards the area of most recent sighting.

All vessels operated under NEG and Algonquin must follow the established specific speed restrictions when calling at the NEG Port. The specific speed restrictions required for all vessels (*i.e.*, EBRVs and vessels associated with maintenance and repair) consist of the following:

(1) Vessels shall reduce their maximum transit speed while in the TSS from 12 knots or less to 10 knots or less from March 1 to April 30 in all waters bounded by straight lines connecting the following points in the order stated below unless an emergency situation dictates for an alternate speed. This area shall hereafter be referred to as the Off Race Point Seasonal Management Area (ORP-SMA) and tracks NMFS regulations at 50 CFR 224.105:

42°30' N. 70°30' W. 41°40' N. 69°57' W.
42°30' N. 69°45' W. 42°12' N. 70°15' W.
41°40' N. 69°45' W. 42°12' N. 70°30' W.
42°04.8' N. 70°10' W. 42°30' N. 70°30' W.;

(2) Vessels shall reduce their maximum transit speed while in the TSS to 10 knots or less unless an emergency situation dictates for an alternate speed from April 1 to July 31 in all waters bounded by straight lines connecting the following points in the order stated below. This area shall hereafter be referred to as the GSC-SMA and tracks NMFS regulations at 50 CFR 224.105:

42°30' N. 69°45' W. 41°40' N. 69°45' W.

42°30' N. 67°27' W. 42°30' N. 69°45' W.
42°09' N. 67°08.4' W. 41°00' N. 69°05' W.;

(3) Vessels are not expected to transit the Cape Cod Bay or the Cape Cod Canal; however, in the event that transit through the Cape Cod Bay or the Cape Cod Canal is required, vessels shall reduce maximum transit speed to 10 knots or less from January 1 to May 15 in all waters in Cape Cod Bay, extending to all shorelines of Cape Cod Bay, with a northern boundary of 42°12' N. latitude and the Cape Cod Canal. This area shall hereafter be referred to as the Cape Cod Bay Seasonal Management Area (CCB-SMA);

(4) All Vessels transiting to and from the project area 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;

(5) All Vessels greater than or equal to 300 gross tons (GT) shall maintain a speed of 10 knots or less, unless an emergency situation requires speeds greater than 10 knots; and

(6) All Vessels less than 300 GT traveling between the shore and the project area that are not generally restricted to 10 knots will contact the Mandatory Ship Reporting (MSR) system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 miles (mi) (8 km) of any sighting location, when traveling in any of the seasonal management areas (SMAs) or when traveling in any active DMA.

(b) NEG Port-Specific Operations

In addition to the general marine mammal avoidance requirements identified above, vessels calling on the NEG Port must comply with the following additional requirements:

(1) EBRVs shall travel at 10 knots maximum speed when transiting to/from the TSS or to/from the NEG Port/ Pipeline Lateral area. For EBRVs, at 1.86 mi (3 km) from the NEG Port, speed will be reduced to 3 knots and to less than 1 knot at 1,640 ft (500 m) from the NEG buoys, unless an emergency situation dictates the need for an alternate speed;

(2) EBRVs that are approaching or departing from the NEG Port and are within the Area to be Avoided (ATBA) surrounding the NEG Port, shall remain at least 1 km away from any visually-

detected North Atlantic right whale and at least 100 yd (91 m) away from all other visually-detected whales unless an emergency situation requires that the vessel stay its course. During EBRV maneuvering, the Vessel Master shall designate at least one look-out to be exclusively and continuously monitoring for the presence of marine mammals at all times while the EBRV is approaching or departing from the NEG Port;

(3) During NEG Port operations, in the event that a whale is visually observed within 1 km of the NEG Port or a confirmed acoustic detection is reported on either of the two ABs closest to the NEG Port (western-most in the TSS array), departing EBRVs shall delay their departure from the NEG Port, unless an emergency situation requires that departure is not delayed. This departure delay shall continue until either the observed whale has been visually (during daylight hours) confirmed as more than 1 km from the NEG Port or 30 minutes have passed without another confirmed detection either acoustically within the acoustic detection range of the two ABs closest to the NEG Port, or visually within 1 km from the NEG Port.

Vessel captains shall focus on reducing DP thruster power to the maximum extent practicable, taking into account vessel and Port safety, during the operation activities. Vessel captains will shut down thrusters whenever they are not needed.

(c) Planned and Unplanned Maintenance and Repair Activities

NEG Port

(1) The Northeast Gateway shall conduct empirical source level measurements on all noise emitting from construction equipment and all vessels that are involved in maintenance/repair work.

(2) If DP systems are to be employed and/or activities will emit noise with a source level of 139 dB re 1 μ Pa at 1 m, activities shall be conducted in accordance with the requirements for DP systems listed above.

(3) Northeast Gateway shall provide the NMFS Headquarters Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and SBNMS with a minimum of 30-days notice prior to any planned repair and/or maintenance activity. For any unplanned/emergency repair/maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work must be conducted. Northeast Gateway shall continue to keep the agencies

apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

Pipeline Lateral

(1) Pipeline maintenance/repair vessels less than 300 GT traveling between the shore and the maintenance/repair area that are not generally restricted to 10 knots shall contact the MSR system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 mi (8 km) of any sighting location, when travelling in any of the seasonal management areas (SMAs) as defined above.

(2) Maintenance/repair vessels greater than 300 GT shall not exceed 10 knots, unless an emergency situation that requires speeds greater than 10 knots.

(3) Planned maintenance and repair activities shall be restricted to the period between May 1 and November 30 when most of the majority of North Atlantic right whales are absent in the area.

(4) Unplanned/emergency maintenance and repair activities shall be conducted utilizing anchor-moored dive vessel whenever operationally possible.

(5) Algonquin shall also provide the NMFS Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and SBNMS with a minimum of 30-day notice prior to any planned repair and/or maintenance activity. For any unplanned/emergency repair/maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work must be conducted. Algonquin shall continue to keep the agencies apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

(6) If DP systems are to be employed and/or activities will emit noise with a source level of 139 dB re 1 μ Pa at 1 m, activities shall be conducted in accordance with the requirements for DP systems listed in (5)(b)(ii).

(7) In the event that a whale is visually observed within 0.5 mi (0.8 km) of a repair or maintenance vessel, the vessel superintendent or on-deck supervisor shall be notified immediately. The vessel's crew shall be put on a heightened state of alert and the marine mammal shall be monitored

constantly to determine if it is moving toward the repair or maintenance area.

(8) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1 μ Pa @ 1 m or higher when a right whale is sighted within or approaching at 500 yd (457 meters) from the vessel. The source level of 139 dB corresponds to 120 dB received level at 500 yd (457 meters). Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (500 yd (457 meters)) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(9) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1 μ Pa @ 1 m or higher when a marine mammal other than a right whale is sighted within or approaching at 100 yd (91 m) from the vessel. Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (100 yd (91 meters)) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(10) Algonquin and associated contractors shall also comply with the following:

- Operations involving excessively noisy equipment (source level exceeding 139 dB re 1 μ Pa @ 1 m) shall “ramp-up” sound sources, allowing whales a chance to leave the area before sounds reach maximum levels. In addition, Northeast Gateway, Algonquin, and other associated contractors shall maintain equipment to manufacturers’ specifications, including any sound-muffling devices or engine covers in order to minimize noise effects. Noisy construction equipment shall only be used as needed and equipment shall be turned off when not in operation;

- Any material that has the potential to entangle marine mammals (*e.g.*, anchor lines, cables, rope or other construction debris) shall only be deployed as needed and measures shall be taken to minimize the chance of entanglement;

- For any material that has the potential to entangle marine mammals, such material shall be removed from the water immediately unless such action jeopardizes the safety of the vessel and crew as determined by the Captain of the vessel; and

- In the event that a marine mammal becomes entangled, the marine mammal coordinator and/or protected species observer (PSO) will notify NMFS (if outside the SBNMS), and SBNMS staff (if inside the SBNMS) immediately so that a rescue effort may be initiated.

(11) All maintenance/repair activities shall be scheduled to occur between May 1 and November 30. However, in the event of unplanned/emergency repair work that cannot be scheduled during the preferred May through November work window, the following additional measures shall be followed for Pipeline Lateral maintenance and repair related activities between December and April:

- Between December 1 and April 30, if on-board PSOs do not have at least 0.5-mile visibility, they shall call for a shutdown. 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;

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

- Transit route, destination, sea conditions and any marine mammal sightings/mitigation actions during watch shall be recorded in the log book. Any whale sightings within 1,000 meters of the vessel shall result in a high alert and slow speed of 4 knots or less and a sighting within 750 m shall result in idle speed and/or ceasing all movement;

- The material barges and tugs used in repair and maintenance 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 shall be 5 knots; and

- All repair vessels must maintain a speed of 10 knots or less during daylight hours. All vessels shall operate at 5 knots or less at all times within 5 km of the repair area.

Acoustic Monitoring Related Activities

Vessels associated with maintaining the AB network operating as part of the mitigation/monitoring protocols shall

adhere to the following speed restrictions and marine mammal monitoring requirements.

(1) In accordance with 50 CFR 224.103 (c), all vessels associated with NEG Port activities shall not approach closer than 500 yd (460 meters) to a North Atlantic right whale.

(2) All vessels shall obtain the latest DMA or right whale sighting information via the NAVTEX, MSR, SAS, NOAA Weather Radio, or other available means prior to operations.

Mitigation Conclusions

NMFS has carefully evaluated the 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.

- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant’s mitigation measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable adverse 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 incidental take authorization (ITA) for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must 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 action area. NE Gateway has provided marine mammal monitoring measures as part of the IHA application. It can be found at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information); and
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

(a) Vessel-Based Visual Monitoring

Vessel-based monitoring for marine mammals shall be done by trained look-outs during NEG Port and Pipeline Lateral operations and maintenance and repair activities. The observers shall monitor the occurrence of marine mammals near the vessels during NEG Port and Pipeline Lateral related activities. Lookout duties include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the activities; and documenting "take by harassment." The vessel look-outs assigned to visually monitor for the presence of marine mammals shall be provided with the following:

(1) Recent NAVTEX, NOAA Weather Radio, SAS and/or acoustic monitoring buoy detection data;

(2) Binoculars to support observations;

(3) Marine mammal detection guide sheets; and

(4) Sighting log.

(b) NEG Port Operations

All individuals onboard the EBRVs responsible for the navigation duties and any other personnel that could be assigned to monitor for marine mammals shall receive training on marine mammal sighting/reporting and vessel strike avoidance measures.

While an EBRV is navigating within the designated TSS, there shall be three people with look-out duties on or near the bridge of the ship including the Master, the Officer-of-the-Watch and the Helmsman-on-watch. In addition to the standard watch procedures, while the EBRV is transiting within the designated TSS, maneuvering within the ATBA, and/or while actively engaging in the use of thrusters, an additional look-out shall be designated to exclusively and continuously monitor for marine mammals.

All sightings of marine mammals by the designated look-out, individuals posted to navigational look-out duties, and/or any other crew member while the EBRV is transiting within the TSS, maneuvering 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. The Master or Officer-of-the-Watch shall ensure the required reporting procedures are followed and the designated marine mammal look-out records all pertinent information relevant to the sighting.

Visual sightings made by look-outs from the EBRVs shall be recorded using a standard sighting log form. Estimated locations shall be reported for each individual and/or group of individuals categorized by species when known. This data shall be entered into a database and a summary of monthly sighting activity shall be provided to NMFS. Estimates of take and copies of these log sheets shall also be included in the reports to NMFS.

(c) Planned and Unplanned Maintenance and Repair

Two qualified and NMFS-approved PSOs shall be assigned to each vessel that will use DP systems during maintenance and repair related activities. PSOs shall operate individually in designated shifts to accommodate adequate rest schedules. Additional PSOs shall be assigned to

additional vessels if AB data indicates that sound levels exceed 120 dB re 1 μ Pa, further then 100 m (328 ft) from these vessels.

All PSOs shall receive NMFS-approved marine mammal observer training and be approved in advance by NMFS after review of their resume. All PSOs shall have direct field experience on marine mammal vessels and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico.

PSOs (one primary and one secondary) shall be responsible for visually locating marine mammals at the ocean's surface and, to the extent possible, identifying the species. The primary PSO shall act as the identification specialist and the secondary PSO will serve as data recorder and also assist with identification. Both PSOs shall have responsibility for monitoring for the presence of marine mammals and sea turtles. Specifically PSO's shall:

(1) Monitor at all hours of the day, scanning the ocean surface by eye for a minimum of 40 minutes every hour;

(2) Monitor the area where maintenance and repair work is conducted beginning at daybreak using 25x power binoculars and/or hand-held binoculars. Night vision devices must be provided as standard equipment for monitoring during low-light hours and at night;

(3) Conduct general 360° visual monitoring during any given watch period and target scanning by the observer shall occur when alerted of a whale presence;

(4) Alert the vessel superintendent or construction crew supervisor of visual detections within 2 mi (3.31 km) immediately; and

(5) Record all sightings on marine mammal field sighting logs. Specifically, all data shall be entered at the time of observation, notes of activities will be kept, and a daily report prepared and attached to the daily field sighting log form. The basic reporting requirements include the following:

- Beaufort sea state;
- Wind speed;
- Wind direction;
- Temperature;
- Precipitation;
- Glare;
- Percent cloud cover;
- Number of animals;
- Species;
- Position;
- Distance;
- Behavior;
- Direction of movement; and
- Apparent reaction to construction activity.

In the event that a whale is visually observed within the 2-mi (3.31-km) ZOI

of a DP vessel or other construction vessel that has shown to emit noise with source level in excess of 139 dB re 1 μ Pa @1 m, the PSO will notify the repair/maintenance construction crew to minimize the use of thrusters until the animal has moved away, unless there are divers in the water or an ROV is deployed.

(d) Acoustic Monitoring

Northeast Gateway shall deploy 10 ABs within the Separation Zone of the TSS for the operational life of the Project. The ABs shall be used to detect a calling North Atlantic right whale an average of 5 nmi from each AB. The AB system shall be the primary detection mechanism that alerts the EBRV Master to the occurrence of right whales, heightens EBRV awareness, and triggers necessary mitigation actions as described above. Northeast Gateway shall conduct short-term passive acoustic monitoring to document sound levels during:

(1) The initial operational events in the 2015–2016 winter heating season;

(2) Regular deliveries outside the winter heating season should such deliveries occur; and

(3) Scheduled and unscheduled maintenance and repair activities.

Northeast Gateway shall conduct long-term monitoring of the noise environment in Massachusetts Bay in the vicinity of the NEG Port and Pipeline Lateral using marine autonomous recording units (MARUs) when there is anticipated to be more than 5 NEG shipments in a 30-day period or over 20 shipments in a 6-month period.

The acoustic data collected shall be analyzed to document the seasonal occurrences and overall distributions of whales (primarily fin, humpback and right whales) within approximately 10 nmi of the NEG Port and shall measure and document the noise “budget” of Massachusetts Bay so as to eventually assist in determining whether or not an overall increase in noise in the Bay associated with the Project might be having a potentially negative impact on marine mammals.

Northeast Gateway shall make all acoustic data, including data previously collected by the MARUs during prior construction, operations, and maintenance and repair activities, available to NOAA. Data storage will be the responsibility of NOAA.

(e) Acoustic Whale Detection and Response Plan

NEG Port Operations

(1) Ten ABs that have been deployed since 2007 shall be used to continuously

screen the low-frequency acoustic environment (less than 1,000 Hertz) for right whale contact calls occurring within an approximately 5-nm radius from each buoy (the AB’s detection range).

(2) Once a confirmed detection is made, the Master of any EBRVs operating in the area will be alerted immediately.

NEG Port and Pipeline Lateral Planned and Unplanned/Emergency Repair and Maintenance Activities

(1) If the repair/maintenance work is located outside of the detectable range of the 10 project area ABs, Northeast Gateway and Algonquin shall consult with NOAA (NMFS and SBNMS) to determine if the work to be conducted warrants the temporary installation of an additional AB(s) to help detect and provide early warnings for potential occurrence of right whales in the vicinity of the repair area.

(2) The number of ABs installed around the activity site shall be commensurate with the type and spatial extent of maintenance/repair work required, but must be sufficient to detect vocalizing right whales within the 120-dB impact zone.

(3) Should acoustic monitoring be deemed necessary during a planned or unplanned/emergency repair and/or maintenance event, active monitoring for right whale calls shall begin 24 hours prior to the start of activities.

(4) Source level data from the acoustic recording units deployed in the NEG Port and/or Pipeline Lateral maintenance and repair area shall be provided to NMFS.

Reporting Measures

(a) Throughout NEG Port and Pipeline Lateral operations, Northeast Gateway and Algonquin shall provide a monthly Monitoring Report. The Monitoring Report shall include:

- Both copies of the raw visual EBRV lookout sighting information of marine mammals that occurred within 2 miles of the EBRV while the vessel transits within the TSS, maneuvers within the ATBA, and/or when actively engaging in the use of thrusters, and a summary of the data collected by the look-outs over each reporting period;

- Copies of the raw PSO sightings information on marine mammals gathered during pipeline repair or maintenance activities. This visual sighting data shall then be correlated to periods of thruster activity to provide estimates of marine mammal takes (per species/species class) that took place during each reporting period; and

- Conclusion of any planned or unplanned/emergency repair and/or

maintenance period, a report shall be submitted to NMFS summarizing the repair/maintenance activities, marine mammal sightings (both visual and acoustic), empirical source-level measurements taken during the repair work, and any mitigation measures taken.

(b) During the maintenance and repair of NEG Port and Pipeline Lateral components, weekly status reports shall be provided to NOAA (both NMFS and SBNMS) using standardized reporting forms. The weekly reports shall include data collected for each distinct marine mammal species observed in the repair/maintenance area during the period that maintenance and repair activities were taking place. The weekly reports shall include the following information:

- Location (in longitude and latitude coordinates), time, and the nature of the maintenance and repair activities;

- Indication of whether a DP system was operated, and if so, the number of thrusters being 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 maintenance and repair activities;

- Changes, if any, in marine mammal behaviors during the observation;

- A description of any mitigation measures (power-down, shutdown, etc.) implemented;

- Weather condition (Beaufort sea state, wind speed, wind direction, ambient temperature, precipitation, and percent cloud cover etc.);

- Condition of the observation (visibility and glare); and

- Details of passive acoustic detections and any action taken in response to those detections.

(d) Injured/Dead Protected Species Reporting

In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by the issued IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), NEG and/or Algonquin shall immediately cease activities and immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS and the Northeast Regional Stranding Coordinators. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;

- The name and type of vessel involved;
- The vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- The fate of the animal(s); and
- Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with NEG and/or Algonquin to determine what is necessary to minimize the likelihood of further prohibited take and ensure Marine Mammal Protection Act (MMPA) compliance. NEG and/or Algonquin may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that NEG and/or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as described in the next paragraph), NEG and/or Algonquin will immediately (*i.e.*, within 24 hours of the discovery) report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Northeast Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with NEG and/or Algonquin to determine whether modifications in the activities are appropriate.

In the event that NEG or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (if the IHA is issued) (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), NEG and/or Algonquin shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Northeast Stranding

Coordinators, within 24 hours of the discovery. NEG and/or Algonquin shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. NEG and/or Algonquin can continue its operations under such a case.

Marine Mammal Monitoring Report From Previous IHA

Prior marine mammal monitoring during NEG Port and Pipeline Lateral operation, maintenance and repair activities and monthly marine mammal observation memorandums (NEG 2010; 2015; 2016) indicate that only a small number of marine mammals were observed during these activities. Only one NEG Port operation occurred within the dates of the current IHA (starting December 23, 2015) and only one unidentified small whale was observed at a distance of 2 nmi from the NEG vessel on January 17, 2016. No other NEG Port and Pipeline Lateral related activity occurred during this period.

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 NEG's operation and maintenance and repair activities. Anticipated take of marine mammals is associated with operation of dynamic positioning during the docking of the NEG vessels and positioning of maintenance and dive vessels, and by operations of certain machinery during maintenance and repair activities. 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 108 dB. 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 were described earlier in this document.

The full suite of potential impacts to marine mammals was described in detail in the "Potential Effects of the Specified Activity on Marine Mammals"

section found earlier in this document. The potential effects of sound from the NEG Port and Pipeline Lateral operations, maintenance and repair activities might include one or more of the following: masking of natural sounds and behavioral disturbance (Richardson *et al.*, 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. Hearing impairment (TTS and PTS) is highly unlikely to occur based on low noise source levels from the activities that would preclude marine mammals from being exposed to noise levels high enough to cause hearing impairment.

For non-pulse sounds, such as those produced by operating DP thruster during vessel docking and supporting underwater construction and repair activities and the operations of various machineries that produces non-pulse noises, NMFS uses the 120 dB (rms) re 1 μ Pa isopleth to indicate the onset of Level B harassment.

The basis for Northeast Gateway and Algonquin's "take" estimate is the number of marine mammals that would be exposed to sound levels in excess of 120 dB, which is the threshold used by NMFS for non-pulse sounds. For the NEG Port and Pipeline Lateral operations and maintenance and repair activities, the take estimates are determined by multiplying the 120-dB ensonified area by local marine mammal density estimates, and then multiplying by the estimated number of days such activities would occur during a year-long period. For the NEG Port operations, the 120-dB ensonified area is 56.8 km² for a single visit during docking when running DP system. Although two EBRV docking with simultaneous DP system running was modeled, this situation would not occur in reality. For NEG Port and Pipeline Lateral maintenance and repair activities, modeling based on the empirical measurements showed that the distance of the 120-dB radius is expected to be 3.5 km, making a maximum 120-dB ZOI of approximately 40.7 km².

NEG Port and Algonquin Pipeline Lateral Activities Acoustic Footprints

I. NEG Port Operations

For the purposes of understanding the noise footprint of operations at the NEG Port, measurements taken to capture operational noise (docking, undocking, regasification, and EBRV thruster use) during the 2006 Gulf of Mexico field

event were taken at the source. Measurements taken during EBRV transit were normalized to a distance of 328 ft (100 m) to serve as a basis for modeling sound propagation at the NEG Port site in Massachusetts Bay.

Sound propagation calculations for operational activities were then completed at two positions in Massachusetts Bay to determine site-specific distances to the 120/160/180 dB isopleths:

- Operations Position 1—Port (EBRV Operations): 70°36.261' W and 42°23.790' N; and
- Operations Position 2—Boston TSS (EBRV Transit): 70°17.621' W and 42°17.539' N

At each of these locations sound propagation calculations were performed to determine the noise footprint of the operation activity at

each of the specified locations. Updated acoustic modeling was completed using Tetra Tech's underwater sound propagation program which utilizes a version of the publicly available Range Dependent Acoustic Model (RAM). Based on the U.S. Navy's Standard Split-Step Fourier Parabolic Equation, this modeling methodology considers range and depth along with a geo-referenced dataset to automatically retrieve the time of year information, bathymetry, and seafloor geoacoustic properties along the given propagation transects radiating from the sound source. The calculation methodology assumes that outgoing energy dominates over scattered energy, and computes the solution for the outgoing wave equation. An approximation is used to provide two-dimensional transmission loss

values in range and depth, *i.e.*, computation of the transmission loss as a function of range and depth within a given radial plane is carried out independently of neighboring radials, reflecting the assumption that sound propagation is predominantly away from the source. Transects were run along compass points at angular directions ranging from 0 to 360° in 5 degree increments. The received underwater sound levels at any location within the region of interest are computed from the 1/3-octave band source levels by subtracting the numerically modelled transmission loss at each 1/3-octave band center frequency and summing across all frequencies to obtain a broadband value. The resultant underwater sound pressure levels to the 120 dB isopleth is presented in Table 2.

TABLE 2—RADII OF 120 DB SPL ISOPLETHS FROM NEG PORT AND ALGONQUIN PIPELINE LATERAL OPERATIONS, MAINTENANCE, AND REPAIR ACTIVITIES

Activities	Radius to 120 dB zone (m)	120-dB ensonified area (km ²)
One EBRV docking procedure with support vessel	4,250	56.8
Barge/tug (pulling & pushing)/construction vessel/barge @ mid-pipeline	3,500	40.7

II. NEG Port Maintenance and Repair

Modeling analysis conducted for the construction of the NEG Port concluded that the only underwater noise of critical concern during NEG Port construction would be from vessel noises such as turning screws, engine noise, noise of operating machinery, and thruster use. To confirm these modeled results and better understand the noise footprint associated with construction activities at the NEG Port, field measurements were taken of various construction activities during the 2007 NEG Port and Pipeline Lateral Construction period. Measurements were taken and normalized as described to establish the "loudest" potential construction measurement event. One position within Massachusetts Bay was then used to determine site-specific distances to the 120/180 dB isopleths for NEG Port maintenance and repair activities:

Construction Position 1. Port: 70°36.261' W and 42°23.790' N

Sound propagation calculations were performed to determine the noise footprint of the construction activity. The results showed that the estimated distance from the loudest source involved in construction activities fell to 120 dB re 1 µPa at a distance of 3,500 m.

III. Algonquin Pipeline Lateral Operation and Maintenance Activities

Modeling analysis conducted during the NEG Port and Pipeline Lateral construction concluded that the only underwater noise of critical concern during such activities would be from vessel noises such as turning screws, engine noise, noise of operating machinery, and thruster use. As with construction noise at the NEG Port, to confirm modeled results and better understand the noise footprint associated with construction activities along the Pipeline Lateral, field measurements were taken of various construction activities during the 2007 NEG Port and Algonquin Pipeline Lateral construction period. Measurements were taken and normalized to establish the "loudest" potential construction measurement event. Two positions within Massachusetts Bay were then used to determine site-specific distances to the 120/160/180 dB isopleths:

- Construction Position 2. PLEM: 70°46.755' W and 42°28.764' N; and
- Construction Position 3. Mid-Pipeline: 70°40.842' W and 42°31.328' N

Sound propagation calculations were performed to determine the noise footprint of the construction activity. The results of the distances to the 120-dB are shown in Table 2.

Since the issuance of an IHA to NEG on December 22, 2015, there was only one NEG delivery at the NEG Port in January 2015. NEG expects that when the Port is under full operation, it will receive up to 65 NEG shipments per year, and would require 14 days for NEG Port maintenance and up to 40 days for planned and unplanned Algonquin Pipeline Lateral maintenance and repair.

Marine Mammal Densities

The density calculation methodology applied to take estimates for this application is derived from the model results produced by Roberts *et al.* (2016) for the east coast region. These files are available Duke University's Habitat-based Cetacean Density Models Web site: <http://http://seamap.env.duke.edu/models/Duke-EC-GOM-2015/>. The estimated mean monthly abundance for each species for each month was an average of each month. Monthly values were not modeled for some species (*e.g.* killer whale), therefore, only the single value was reported. Estimates provided by the models are based on a grid cell size of 100 km², therefore, model grid cell values were divided by 100 to determine animals per km². Gray seal and harbor seal densities are not provided in the Roberts *et al.* (2016) models. Seal densities were derived from the Strategic Environmental

Research and Development Program (SERDP) using the Navy Oparea Density Estimate (NODE) model for the Northeast Opareas. (Best *et al.*, 2012). A summary of the each species density is provided in Table 3 below.

TABLE 3—ESTIMATED SPECIES DENSITIES
[animals per km²]

Species	Mean monthly densities
North Atlantic right whale	0.000838
Fin whale	0.00225
Humpback whale	0.00502
Minke whale	0.00354
Sei whale	0.000025
Long-finned Pilot whale	0.00135
Killer whale	0.0000089
Atlantic white-sided dolphin ..	0.0219
Bottlenose dolphin	0.0113
Common dolphin	0.0025
Risso's dolphin	0.00025
Harbor porpoise	0.0804
Gray seal	0.027
Harbor seal	0.097

Marine Mammal Take Calculation

Based on NEG Gateway's expectations of up to 65 NEG shipments per year, and up to 14 days for NEG Port maintenance and up to 40 days for planned and unplanned Algonquin Pipeline Lateral repair, the total estimated takes in a given year is calculated based on the following equation.

$$N = A_{NEG} * D * 65 + A_{Port} * D * 14 + A_{Pipeline} * D * 40$$

Where N is the take number for a given species with average density of D. A_{NEG}, A_{Port}, and A_{Pipeline} are the 120-dB ZOI during EMRV vessel docking for regasification, NEG Port maintenance, and Algonquin Pipeline Lateral repair, respectively. In addition, numbers of some species that usually occur in groups were adjusted to reflect the average number of animals in a typical group. A summary of expected takes is provided in Table 4. Since it is very likely that individual animals could be "taken" by harassment multiple times, the percentages are the upper boundary

of the animal population that could be affected. The actual number of individual animals being exposed or taken would likely be less. Since no population/stock estimates for killer whale and gray seal is available, the percentage of estimated takes for these species is unknown. Nevertheless, since Massachusetts Bay represents only a small fraction of the western North Atlantic basin where these animals occur, NMFS has determined that the takes of 7 killer whales and 159 gray seals represent a small fraction of the population and stocks of these species (Table 4). There is no danger of injury, death, or hearing impairment from the exposure to these noise levels.

TABLE 4—ESTIMATED ANNUAL TAKES OF MARINE MAMMALS FROM THE NEG PORT AND ALGONQUIN PIPELINE LATERAL OPERATIONS AND MAINTENANCE AND REPAIR ACTIVITIES IN MASSACHUSETTS BAY

Species	Population/stock	Number of exposure based on density	Estimated take	Population (%)
Right whale	Western Atlantic	5	5	1.36.
Fin whale	Western North Atlantic	13	13	0.82.
Humpback whale	Gulf of Maine	30	30	3.59.
Sei whale	Nova Scotia	1	3	0.04.
Minke whale	Canadian East Coast	21	21	0.10.
Long-finned pilot whale	Western North Atlantic	8	15	0.14.
Killer whale	Western North Atlantic	1	7	Unknown.*
Atlantic white-sided dolphin	Western North Atlantic	129	129	0.26
Bottlenose dolphin	Western North Atlantic Southern Migratory ...	67	67	0.58.
Short-beaked common dolphin	Western North Atlantic	15	40	0.01.
Risso's dolphin	Western North Atlantic	2	18	0.01.
Harbor porpoise	Gulf of Maine/Bay of Fundy	474	474	0.59.
Harbor seal	Western North Atlantic	571	571	0.75.
Gray seal	Western North Atlantic	159	159	Unknown.*

* Killer whale and gray seal abundance information is not available.

Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing

On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance). This new guidance established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. In the **Federal Register** notice (81 FR 51694), NMFS explained the approach it would take during a transition period, wherein we balance the need to consider this new best available science with the fact that some applicants have already

committed time and resources to the development of analyses based on our previous guidance and have constraints that preclude the recalculation of take estimates, as well as where the action is in the agency's decision-making pipeline. In that Notice, we included a non-exhaustive list of factors that would inform the most appropriate approach for considering the new Guidance, including: the scope of effects; how far in the process the applicant has progressed; when the authorization is needed; the cost and complexity of the analysis; and the degree to which the guidance is expected to affect our analysis.

In this case, we performed an analysis using the new Guidance to calculate potential takes of marine mammal by Level A harassment. The results show that given the brief duration of the NEG operations, NEG Port maintenance, and Algonquin Pipeline Lateral repair activities, no marine mammals would be exposed to received noise levels that would cause auditory injury.

Analysis and Determinations

Negligible Impact

Negligible impact is "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” (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 4, given that the anticipated effects of NEG Port and Pipeline Lateral operations, maintenance, and repair activities on marine mammals (taking into account the prescribed mitigation) are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described separately in the analysis below.

No injuries or mortalities are anticipated to occur as a result of NEG Port and Pipeline Lateral operations, maintenance, and repair activities, and none are authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.*, TTS or PTS) or non-auditory physiological effects. The takes that are anticipated and authorized are expected to be limited to short-term Level B behavioral harassment. While NEG expects that when the Port is under full operation, it will receive up to 65 NEG shipments per year, and would require 14 days for NEG Port maintenance and up to 40 days for planned and unplanned Pipeline Lateral maintenance and repair, schedules of NEG delivery would occur throughout the year, which include seasons certain marine mammals may not be present in the area.

Effects on marine mammals are generally expected to be restricted to avoidance of a limited area around NEG’s activities and short-term changes in behavior, falling within the MMPA definition of “Level B harassment.”

Mitigation measures, such as controlled vessel speed, dedicated marine mammal observers, and passive acoustic monitoring, will ensure that takes are limited to Level B harassment and that these takes are minimized. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Of the 14 marine mammal species likely to occur in the action area, North Atlantic right, humpback, fin, and sei whales are listed as endangered under the ESA. These species are also designated as “depleted” under the MMPA. None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

The project area of the NEG and Algonquin’s activities is a biologically important area (BIA) for feeding for the North Atlantic right whale in February to April, humpback whale in March to December, fin whale year-round, and minke whale in March to November (LaBrecque *et al.*, 2015). However, as stated earlier, the NEG and Algonquin’s action would only involve short duration of elevated noise levels. In addition, based on prior monitoring reports, on average NEG only had one NEG delivery event per year, and this trend is likely to continue. Of note, although we have analyzed the impact of the authorized take on the stocks, the actual impacts to these species from the Northeast Gateway’s operations would likely be less than what are analyzed here. There are no known important areas for other species within the action area.

Regarding adverse effects to marine mammal habitat, the major potential impact would be the loss of prey due to water intake for cooling during the NEG regasification process. Under the requested water-use scenario, it is estimated that a dry-weight biomass of 916.5 kg of zooplankton per year (including 9.2 kg of large piscivorous fish) would be lost per year. The amount of loss is minor relative to the total biomass of the trophic level in Massachusetts Bay.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammal species and stocks and their habitat, and taking into consideration the implementation of the prescribed monitoring and mitigation measures, NMFS finds that the total marine mammal take from NEG and Algonquin’s NEG Port and Pipeline Lateral operation, maintenance, and repair activities in Massachusetts Bay is not expected to adversely affect the annual rates of recruitment or survival, and

therefore will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The requested takes represent less than 3.6 percent of all populations or stocks potentially impacted (see Table 4 in this document). These authorized take represent the maximum percentage of each species or stock that could be taken by behavioral harassment or TTS (Level B harassment). The numbers of marine mammals authorized to be taken are small proportions of the total populations of the affected species or stocks.

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 small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the project area and, thus, no subsistence uses impacted by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Our November 18, 2013, **Federal Register** notice of the proposed IHA described the history and status of Endangered Species Act (ESA) compliance for the NEG facility (78 FR 69049). As explained in that notice, the biological opinions for construction and operation of the facility only analyzed impacts on ESA-listed species from activities under the initial construction period and during operations, and did not take into consideration potential impacts to marine mammals that could result from the subsequent NEG Port and Pipeline Lateral maintenance and repair activities. In addition, NEG also revealed that significantly more water usage and vessel operating air emissions are needed from what was originally evaluated for the NEG Port operation. NMFS PR1 initiated consultation with NMFS Greater Atlantic Region Fisheries Office under section 7 of the ESA on the proposed issuance of an IHA to NEG under section 101(a)(5)(D) of the MMPA for the activities that include increased NEG Port and Pipeline Lateral maintenance and repair and water usage

for the NEG Port operations this activity. A Biological Opinion was issued on November 21, 2014, and concluded that the action may adversely affect but is not likely to jeopardize the continued existence of ESA-listed right, humpback, fin, and sei whales.

NMFS' Permits and Conservation Division has determined that the activities described in here are the same as those analyzed in the November 21, 2014, Biological Opinion. Therefore, a new consultation is not required for issuance of this IHA.

National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed NEG Port and Pipeline Lateral. 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 reviewed the Final EIS and adopted it on May 4, 2007. NMFS issued a separate Record of Decision for issuance of authorizations pursuant to section 101(a)(5) of the MMPA for the construction and operation of the NEG Port Facility in Massachusetts Bay.

We have reviewed the NEG's application for a renewed IHA for ongoing activities for 2015–16 and the 2014–15 monitoring report. Based on that review, we have determined that the action is very similar to that considered in the previous IHA. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined that the preparation of a new or supplemental NEPA document is not necessary.

Authorization

As a result of these determinations, NMFS has issued an IHA to Northeast Gateway and Algonquin for activities associated with Northeast Gateway's NEG Port and Algonquin's Pipeline Lateral operations and maintenance and repair activities in the Massachusetts Bay, which also includes the mitigation, monitoring, and reporting requirements described in this Notice.

Dated: December 28, 2016.

Donna Wieting,

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

[FR Doc. 2016–31948 Filed 1–5–17; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF134

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Recreational Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 18, 2017, from 1:30 p.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5 Park Street, Freeport, ME 04032; telephone: (207) 865–1433.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Recreational Advisory Panel plans to discuss Fishing Year (FY) 2017 Recreational Measures for Gulf of Maine cod and haddock. They will also receive an overview of recent recreational catch and effort data. The Panel will also discuss results from the bioeconomic model to evaluate options for management measures. They will make recommendations to the Groundfish Committee on FY 2017 recreational measures for Gulf of Maine cod and haddock. The Panel also plans to receive an overview and discuss the Council's 2017 Groundfish Priorities and make recommendations to the Groundfish Committee, as appropriate. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice

that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: January 3, 2017.

Jeffrey N. Lonergan,

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

[FR Doc. 2017–00048 Filed 1–5–17; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF125

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC's) Summer Flounder, Scup, and Black Sea Bass Monitoring Committee (MC) will hold a public meeting.

DATES: The meeting will be held on Thursday, January 26, 2017, from 10 a.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Royal Sonesta Harbor Court, 550 Light St, Baltimore, MD 21202; telephone: (410) 234–0550.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet to develop recommendations for commercial and recreational Annual Catch Limits (ACLs) and Annual Catch Targets (ACTs) for black sea bass for