

Manufacturer/exporter	Weighted average margin (percentage)
Kolon Industries, Inc. ...	0.15% ( <i>de minimis</i> )

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit case briefs not later than 30 days after the publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculated importer-specific *ad valorem* assessment rates for PET film from Korea based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. See 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on

entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Kolon will be the rate established in the final results of review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for Kolon); (2) if the exporter is not a firm covered in this review or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the all-others rate of 4.82 percent from the LTFV investigation. See *Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea*, 56 FR 25669 (June 5, 1991).

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. These preliminary results of administrative review are issued and this notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XO84

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

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Neptune LNG, L.L.C. (Neptune) to take, by harassment, small numbers of several species of marine mammals incidental to construction and operations of an offshore liquefied natural gas (LNG) facility in Massachusetts Bay for a period of 1 year.

**DATES:** Effective July 1, 2009, through June 30, 2010.

**ADDRESSES:** A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225 or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

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

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

**SUPPLEMENTARY INFORMATION:****Background**

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

Authorization for incidental takings may 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, and if the permissible methods of taking and 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.

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

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

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers 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 December 27, 2007, NMFS received an application from Neptune requesting an MMPA authorization to take small numbers of several species of marine mammals, by Level B (behavioral) harassment, incidental to

construction and operation of an offshore LNG facility. NMFS has already issued a 1-year IHA to Neptune for construction activities pursuant to section 101(a)(5)(D) of the MMPA (73 FR 33400, June 12, 2008), which is effective through June 30, 2009. This IHA will cover the completion of construction activities and operations for a 1-year period.

**Description of the Project**

On March 23, 2007, Neptune received a license to own, construct, and operate a deepwater port (Port or Neptune Port) from MARAD. The Port, which will be located in Massachusetts Bay, will consist of a submerged buoy system to dock specifically designed LNG carriers approximately 22 mi (35 km) northeast of Boston, Massachusetts, in Federal waters approximately 260 ft (79 m) in depth. The two buoys will be separated by a distance of approximately 2.1 mi (3.4 km).

Neptune will be capable of mooring LNG shuttle and regasification vessels (SRVs) with a capacity of approximately 140,000 cubic meters (m<sup>3</sup>). Up to two SRVs will temporarily moor at the proposed deepwater port by means of a submerged unloading buoy system. Two separate buoys will allow natural gas to be delivered in a continuous flow, without interruption, by having a brief overlap between arriving and departing SRVs. The annual average throughput capacity will be around 500 million standard cubic feet per day (mmscfd) with an initial throughput of 400 mmscfd, and a peak capacity of approximately 750 mmscfd.

The SRVs will be equipped to store, transport, and vaporize LNG, and to odorize, meter and send out natural gas by means of two 16-in (40.6-cm) flexible risers and one 24-in (61-cm) subsea flowline. These risers and flowline will lead to a proposed 24-in (61-cm) gas transmission pipeline connecting the deepwater port to the existing 30-in (76.2-cm) Algonquin Hubline<sup>SM</sup> (Hubline<sup>SM</sup>) located approximately 9 mi (14.5 km) west of the proposed deepwater port location. The Port will have an expected operating life of approximately 20 years. Figure 1-1 of Neptune's application shows an isometric view of the Port.

On February 15, 2005, Neptune submitted an application to the USCG and MARAD under the Deepwater Port Act for all Federal authorizations required for a license to own, construct, and operate a deepwater port for the import and regasification of LNG off the coast of Massachusetts. Because, as described later in this document, there is a potential for marine mammals to be taken by harassment, incidental to

construction of the facility and its pipeline and by the transport and regasification of LNG, Neptune has applied for an MMPA authorization. Detailed information on these activities can be found in the MARAD/USCG Final EIS on the Neptune Project (see **ADDRESSES** for availability). Detailed information on the LNG facility's construction and operations and noise generated from these activities was included in NMFS' Notice of Proposed IHA, which published in the **Federal Register** on May 8, 2009 (74 FR 21648). No changes have been made to the proposed activities.

**Comments and Responses**

A notice of receipt of Neptune's application and NMFS' proposal to issue an IHA to Neptune was published in the **Federal Register** on May 8, 2009 (74 FR 21648). During the 30-day public comment period, NMFS received a letter from the Marine Mammal Commission, which recommended that NMFS issue the requested IHA, subject to the mitigation, monitoring, and reporting measures identified in the proposed IHA **Federal Register** notice (74 FR 21648, May 8, 2009). All measures proposed in the initial **Federal Register** notice are included in the authorization. No other comment letters were received for this action.

**Description of Marine Mammals Affected by the Activity**

Marine mammal species that potentially occur within the Neptune facility impact area include several species of cetaceans and pinnipeds: North Atlantic right whale, blue whale, fin whale, sei whale, minke whale, humpback whale, killer whale, long-finned pilot whale, sperm whale, Atlantic white-beaked dolphin, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, harbor porpoise, Risso's dolphin, striped dolphin, gray seal, harbor seal, harp seal, and hooded seal. Table 3-1 in the IHA application outlines the marine mammal species that occur in Massachusetts Bay and the likelihood of occurrence of each species. Information on those species that may be impacted by this activity are discussed in detail in the MARAD/USCG Final EIS on the Neptune LNG proposal. Please refer to that document for more information on these species and potential impacts from construction and operation of this LNG facility. In addition, general information on these marine mammal species can also be found in the NMFS U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Waring *et*

al., 2009), which are available at: <http://www.nefsc.noaa.gov/publications/tm/tm210/>. A summary on several commonly sighted marine mammal species distribution and abundance in the vicinity of the action area was provided in the notice of a proposed IHA (74 FR 21648, May 8, 2009).

### Potential Effects of Noise on Marine Mammals

The effects of sound on marine mammals are highly variable and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The sound may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) The sound may be audible but not strong enough to elicit any overt behavioral response; (3) The sound may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions, such as vacating an area at least until the sound ceases; (4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation) or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent, and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat; (5) Any anthropogenic sound that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise; (6) If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to sound, it is possible that there could be sound-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and (7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing

impairment. In addition, intense acoustic (or explosive events) may cause trauma to tissue associated with organs vital for hearing, sound production, respiration, and other functions. This trauma may include minor to severe hemorrhage.

There are three general types of sounds recognized by NMFS: continuous, intermittent (or transient), and pulsive. Sounds of short duration that are produced intermittently or at regular intervals, such as sounds from pile driving, are classified as "pulsed." Sounds produced for extended periods, such as sound from generators, are classified as "continuous." Sounds from moving sources, such as ships, can be continuous, but for an animal at a given location, these sounds are "transient" (i.e., increasing in level as the ship approaches and then diminishing as it moves away).

The only anticipated impact to marine mammals during construction and operation would be the short-term displacement of marine mammals from areas ensounded by sound generated by equipment operation and vessel movement (thruster use). The sound sources of potential concern are continuous and intermittent sound sources, including underwater noise generated during pipeline/flowline construction and operational underwater sound generated by regasification/offloading (continuous) and dynamic positioning of vessels using thrusters (intermittent). Neither the construction nor operation of the Port will cause pulsive sound activities, including pile driving, seismic activities, or blasting. Both continuous and intermittent sound sources are subject to NMFS' 120 dB re 1  $\mu$ Pa threshold for determining Level B harassment take levels from continuous underwater noise that may result in the disturbance of marine mammals.

### Potential Impacts of Construction Activities

Construction and operation of the Neptune Port will occur consecutively, with no overlap in activities. Sound from Port and pipeline construction will cause some possible disturbance to small numbers of both baleen and toothed whales. Additionally, harbor and gray seals may occur in the area and may experience some disturbance.

The installation of the suction piles will produce only low levels of sound during the construction period and will not increase the numbers of animals affected. Modeling results indicate that noise levels would be below 90 dB re 1  $\mu$ Pa within 0.2 mi (0.3 km) of the source. Pipe-laying activities will generate

continuous but transient sound and will likely result in variable sound levels during the construction period. Modeling conducted by JASCO Research Limited indicates that, depending on water depth, the 120-dB contour during pipe-laying activities would extend 3.9 km (2.1 nm) from the source and cover an area of 52 km<sup>2</sup> (15 nm<sup>2</sup>). Additionally, the use of thrusters during maneuvering or under certain wind and tidal conditions will generate sound levels above the 120-dB threshold. The temporary elevation in the underwater sound levels may cause some species to temporarily disperse from or avoid construction areas, but they are expected to return shortly after construction is completed. The underwater sound generated by the use of the thrusters during maneuvering or under certain wind and tidal conditions is expected to have only minimal effects to individual marine mammals and is not expected to have a population-level effect to local marine mammal species or stocks because of the short-term and temporary nature of the activity.

The likelihood of a vessel strike of a marine mammal during construction is low since construction vessels travel at very slow speeds. Any whales foraging near the bottom would be able to avoid collision or interaction with the equipment, and displacement would be temporary for the duration of the plow pass. No injury or mortality of marine mammals is expected as a result of construction of the Neptune Port facility.

### Potential Impacts of Operational Activities

During the operational life of the project, marine mammals will be exposed to intermittent sound from the use of thrusters positioning the carriers at the unloading buoys and the sounds associated with the regasification process. Under certain wind and tidal conditions, the two aft thrusters will be continuously operated to maintain the heading of the vessel into the wind when competing tides operate to push the vessel broadside to the wind. These activities will occur at each of the two fixed-location unloading buoys. The sound from the regasification process is low and will not reach levels of 120 dB re 1  $\mu$ Pa. However, the brief bursts (10–30 min) of sound associated with the use of four thrusters to position the ships would have the potential to disturb marine mammals near the Port. The underwater sound generated by the use of the thrusters during maneuvering or under certain wind and tidal conditions is expected to have only minimal effects to individual marine

mammals and is not expected to have a population-level effect to local marine mammal species or stocks. One reason is the relatively short duration and infrequency of the use of thrusters (every 4–8 days and 10–30 min each episode for maneuvering or intermittently to maintain heading during certain weather conditions when operations reach their peak. However, between July 2009 and June 2010, the period for this IHA, it is expected that only one to two shipments would occur, and they may be spaced even farther apart than every 4–8 days).

The use of thrusters during dynamic positioning and the sounds produced during the regasification process may cause some behavioral harassment to marine mammals present in the project area. However, this harassment is expected to be short-term and minimal in nature. Any displacement from the Port location and surrounding areas is expected to be temporary. Additionally, the distribution of odontocetes in the area is patchy, the presence of baleen whales, especially North Atlantic right whales, is seasonal, and harbor and gray seals have been observed to habituate to human activities, including sound. No injury or mortality is expected as a result of operations at the Port.

Using conservative estimates of both marine mammal densities in the Project area and the size of the 120-dB zone of influence (ZOI), the calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the affected population sizes. Please see the “Estimates of Take by Harassment” section for the calculation of these numbers.

#### Estimates of Take by Harassment

Pipe-laying activities will generate continuous but transient sound and will likely result in variable sound levels during the construction period. Depending on water depth, the 120-dB contour during pipe-laying activities will extend from the source (the Port) out to 3.9 km (2.1 nm) and cover an area of 52 km<sup>2</sup> (15 nm<sup>2</sup>), and, for the flowline at the Port, the 120-dB contour will extend from the pipeline route out to 4.2 km (2.3 nm) and cover an area of 49 km<sup>2</sup> (14.3 nm<sup>2</sup>). (This information is different from what is contained in the March 23, 2007, application submitted by Neptune to NMFS. Neptune conducted its acoustic modeling in the very early planning stages of the project, when little information was available on the types of vessels that could potentially be used during construction. Since that time, a contractor was hired to construct the Port. The vessels to be

used during Neptune Port construction are now estimated to generate broadband underwater source levels in the range of 180 dB re 1 Pa at 1m, similar to several of the vessels modeled by JASCO for Neptune and not in the range of 200 dB re 1  $\mu$ Pa at 1m, which was also included in the original modeling as a worst case scenario. For more information on the modeling conducted by JASCO, please refer to Appendix B of Neptune’s application.) Installation of the suction pile anchors at the Port will produce only low levels of underwater sound, with no source levels above 120-dB for continuous sound.

In order to estimate the level of takes for the operation phase of this activity, NMFS has used the same ensonified zone as that described above for construction activities (i.e., 52 km<sup>2</sup> [15 nm<sup>2</sup>]).

The basis for Neptune’s “take” estimate is the number of marine mammals that potentially could be exposed to sound levels in excess of 120 dB. Typically, this is determined by applying the modeled ZOI (e.g., the area ensonified by the 120-dB contour) to the seasonal use (density) of the area by marine mammals and correcting for seasonal duration of sound-generating activities and estimated duration of individual activities when the maximum sound-generating activities are intermittent to occasional. Nearly all of the required information is readily available in the MARAD/USCG Final EIS, with the exception of marine mammal density estimates for the project area. In the case of data gaps, a conservative approach was used to ensure that the potential number of takes is not underestimated, as described next.

NMFS recognizes that baleen whale species other than North Atlantic right whales have been sighted in the project area from May to November. However, the occurrence and abundance of fin, humpback, and minke whales is not well documented within the project area. Nonetheless, NMFS used the data on cetacean distribution within Massachusetts Bay, such as those published by the NCCOS (2006), to determine potential takes of marine mammals in the vicinity of the project area.

The NCCOS study used cetacean sightings from two sources: (1) the North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney, 2001); and (2) the Manomet Bird Observatory (MBO) database, held at the NMFS Northeast Fisheries Science Center (NEFSC). The NARWC data

contained survey efforts and sightings data from ship and aerial surveys and opportunistic sources between 1970 and 2005. The main data contributors included: the Cetacean and Turtles Assessment Program, the Canadian Department of Fisheries and Oceans, the Provincetown Center for Coastal Studies, International Fund for Animal Welfare, NEFSC, New England Aquarium, Woods Hole Oceanographic Institution, and the University of Rhode Island. A total of 406,293 mi (653,725 km) of survey track and 34,589 cetacean observations were provisionally selected for the NCCOS study in order to minimize bias from uneven allocation of survey effort in both time and space. The sightings-per-unit-effort (SPUE) was calculated for all cetacean species by month covering the southern Gulf of Maine study area, which also includes the project area (NCCOS, 2006).

The MBO’s Cetacean and Seabird Assessment Program (CSAP) was contracted from 1980 to 1988 by NEFSC to provide an assessment of the relative abundance and distribution of cetaceans, seabirds, and marine turtles in the shelf waters of the northeastern U.S. (MBO, 1987). The CSAP program was designed to be completely compatible with NEFSC databases so that marine mammal data could be compared directly with fisheries data throughout the time series during which both types of information were gathered. A total of 8,383 mi (5,210 km) of survey distance and 636 cetacean observations from the MBO data were included in the NCCOS analysis. Combined valid survey effort for the NCCOS studies included 913,840 mi (567,955 km) of survey track for small cetaceans (dolphins and porpoises) and 1,060,226 mi (658,935 km) for large cetaceans (whales) in the southern Gulf of Maine. The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

Based on the comprehensiveness and total coverage of the NCCOS cetacean distribution and abundance study, NMFS calculated the estimated take number of marine mammals based on the most recent NCCOS report published in December, 2006. A summary of seasonal cetacean distribution and abundance in the project area was provided in the proposed IHA **Federal Register** notice (74 FR 21648, May 8, 2009). For a detailed description and calculation of the cetacean abundance data and SPUE,

refer to the NCCOS study (NCCOS, 2006). SPUE for the spring, summer, and fall seasons were analyzed, and the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance. Based on the data, the relative abundance of North Atlantic right, fin, humpback, minke, and pilot whales and Atlantic white-sided dolphins, as calculated by SPUE in number of animals per square kilometer, is 0.0082, 0.0097, 0.0265, 0.0059, 0.0407, and 0.1314 n/km, respectively.

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

$$D = SPUE/2W.$$

Based on the calculation, the estimated take numbers by Level B harassment for the 1-year IHA period for North Atlantic right, fin, humpback, minke, and pilot whales and Atlantic white-sided dolphins, within the 120-dB ZOI of the LNG Port facility area of approximately 52 km<sup>2</sup> (15 nm<sup>2</sup>) maximum ZOI, corrected for 50 percent underwater, are 48, 57, 155, 35, 238, and 770, respectively. This estimate is based on an estimated 60 days of construction activities remaining for the period July until September, 2009, that will produce sounds of 120 dB or greater.

Based on the same calculation method described above for Port construction, the estimated take numbers by Level B harassment for North Atlantic right, fin, humpback, minke, and pilot whales and Atlantic white-sided dolphins for the 1-year IHA period incidental to Port operations (which is expected to happen no more than twice during the effectiveness of this proposed IHA), operating the vessel's thrusters for dynamic positioning before offloading natural gas, corrected for 50 percent underwater, are 2, 2, 5, 1, 8, and 26, respectively.

The total estimated take of these species as a result of both construction and operation of the Neptune Port facility from July 1, 2009, through June 30, 2010, is: 50 North Atlantic right whales, 59 fin whales, 160 humpback whales, 36 minke whales, 246 pilot whales, and 796 Atlantic white-sided dolphins. These numbers represent a maximum of 15.4, 2.6, 18.9, 1.1, 0.8, and 1.3 percent of the populations for these species in the western North Atlantic, respectively. Since it is highly likely

that individual animals will be "taken" by harassment multiple times (since certain individuals may occur in the area more than once while other individuals of the population or stock may not enter the proposed project area) and the fact that the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance, these percentages are the upper boundary of the animal population that could be affected. Therefore, the actual number of individual animals being exposed or taken are expected to be far less.

In addition, bottlenose dolphins, common dolphins, killer whales, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of the deepwater LNG port project. The numbers of estimated take of these species are not available because they are rare in the project area. The population estimates of these marine mammal species and stocks in the western North Atlantic basin are 81,588; 120,743; 89,700; 99,340; and 195,000 for bottlenose dolphins, common dolphins, harbor porpoises, harbor seals, and gray seals, respectively (Waring *et al.*, 2007). No population estimate is available for the North Atlantic stock of killer whales, however, their occurrence within the proposed project area is rare. Since Massachusetts Bay represents only a small fraction of the western North Atlantic basin where these animals occur, and these animals do not regularly congregate in the vicinity of the project area, NMFS believes that only relatively small numbers of these marine mammal species would be potentially affected by the Neptune LNG deepwater project. From the most conservative estimates of both marine mammal densities in the project area and the size of the 120-dB ZOI, the maximum calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the overall population sizes (18.9 percent for humpback whales and 15.4 percent for North Atlantic right whales and no more than 2.6 percent of any other species).

#### **Potential Impact of the Activity on Habitat**

##### *Potential Impact on Habitat from Construction*

Construction of the Neptune Port and pipeline will affect marine mammal habitat in several ways: seafloor disturbance, increased turbidity, and generation of additional underwater sound in the area. Proposed

construction activities will temporarily disturb 418 acres (1.7 km<sup>2</sup>) of seafloor (11 acres (0.04 km<sup>2</sup>) at the Port, 85 acres (0.3 km<sup>2</sup>) along the pipeline route, and an estimated 322 acres (1.3 km<sup>2</sup>) due to anchoring of construction and installation vessels). Of the proposed construction activities, pipeline installation, including trenching, plowing, jetting, and backfill, is expected to generate the most disturbance of bottom sediments. Sediment transport modeling conducted by Neptune indicates that initial turbidity from pipeline installation could reach 100 milligrams per liter (mg/L) but will subside to 20 mg/L after 4 hours. Turbidity associated with the flowline and hot-tap will be considerably less and also will settle within hours of the work being completed. Resettled sediments also will constitute to seafloor disturbance. When re-suspended sediments resettle, they reduce growth, reproduction, and survival rates of benthic organisms, and in extreme cases, smother benthic flora and fauna. Plankton will not be affected by resettled sediment. The project area is largely devoid of vegetation and consists of sand, silt, clay, or mixtures of the three.

Recovery of soft-bottom benthic communities impacted by project installation is expected to be similar to the recovery of the soft habitat associated with the construction of the Hubline<sup>SM</sup> (Algonquin Gas Transmission L.L.C., 2004). Post-construction monitoring of the Hubline<sup>SM</sup> indicates that areas that were bucket-dredged showed the least disturbance. Displaced organisms will return shortly after construction ceases, and disrupted communities will easily re-colonize from surrounding communities of similar organisms. Similarly, disturbance to hard-bottom pebble/cobble and piled boulder habitat is not expected to be significant. Some organisms could be temporarily displaced from existing shelter, thereby exposing them to increased predation, but the overall structural integrity of these areas will not be reduced (Auster and Langton, 1998).

Short-term impacts on phytoplankton, zooplankton (holoplankton), and planktonic fish and shellfish eggs and larvae (meroplankton) will occur as a result of the project. Turbidity associated with Port and pipeline installation will result in temporary direct impacts on productivity, growth, and development. Phytoplankton and zooplankton abundance will be greatest during the summer construction schedule. Fish eggs and larvae are present in the project area throughout

the year. Different species of fish and invertebrate eggs and larvae will be affected by the different construction schedules.

The temporary disturbance of benthic habitat from trenching for and burial of the transmission pipeline will result in direct, minor, adverse impacts from the dispersion of fish from the area and the burying or crushing of shellfish. In the short-term, there will be a temporary, indirect, and beneficial impact from exposing benthic food sources. Seafloor disturbance could also occur as a result of resettling of suspended sediments during installation and construction of the proposed Port and pipeline. Redeposited sediments will potentially reduce viability of demersal fish eggs and growth, reproduction, and survival rates of benthic shellfish. In extreme cases, resettled sediments could smother benthic shellfish, although many will be able to burrow vertically through resettled sediments.

Based on the foregoing, construction activities will not create long-term habitat changes, and marine mammals displaced by the disturbance to the seafloor are expected to return soon after construction ceases. Marine mammals also could be indirectly affected if benthic prey species were displaced or destroyed by construction activities. However, affected species are expected to recover soon after construction ceases and will represent only a small portion of food available to marine mammals in the area.

#### *Potential Impact on Habitat from Operation*

Operation of the Port will result in long-term, continued disturbance of the seafloor, regular withdrawal of seawater, and generation of underwater sound.

**Seafloor Disturbance:** The structures associated with the Port (flowline and pipeline, unloading buoys and chains, suction anchors) will be permanent modifications to the seafloor. Up to 63.7 acres (0.25 km<sup>2</sup>) of additional seafloor will be subject to disturbance due to chain and flexible riser sweep while the buoys are occupied by SRVs.

#### *Ballast and Cooling Water*

**Withdrawal:** Withdrawal of ballast and cooling water at the Port as the SRV unloads cargo (approximately 2.39 million gallons per day) could potentially entrain zooplankton and ichthyoplankton that serve as prey for whale species. This estimate includes the combined seawater intake while two SRVs are moored at the Port (approximately 9 hr every 6 days). The estimated zooplankton abundance in the vicinity of the seawater intake ranges from 25.6–105 individuals per gallon

(Libby *et al.*, 2004). This means that the daily intake will remove approximately 61.2–251 million individual zooplankton per day, the equivalent of approximately 7.65–31.4 lbs (3.47–14.2 kg). Since zooplankton are short-lived species (e.g., most copepods live from 1 wk to several months), these amounts will be indistinguishable from natural variability.

**Underwater Sound:** During operation of the Port, underwater sound will principally be generated by use of thrusters when SRVs are mooring at the unloading buoy and at other times for maintaining position under certain wind and tidal conditions. Thruster use will be intermittent, equating to about 20 hr/yr when the Port is fully operational and should equate to less than 1 hr during the period of effectiveness for this proposed IHA.

In the long-term, approximately 64.6 acres (0.26 km<sup>2</sup>) of seafloor will be permanently disturbed to accommodate the Port (including the associated pipeline). The area disturbed because of long-term chain and riser sweep includes 63.7 acres (0.25 km<sup>2</sup>) of soft sediment. This area will be similar in calm seas and in hurricane conditions. The chain weight will restrict the movement of the buoy or the vessel moored on the buoy. An additional 0.9 acre (0.004 km<sup>2</sup>) of soft sediments will be converted to hard substrate. The total affected area will be small compared to the soft sediments available in the proposed project area. Long-term disturbance from installation of the Port will comprise approximately 0.3 percent of the estimated 24,000 acres (97 km<sup>2</sup>) of similar bottom habitat surrounding the project area (northeast sector of Massachusetts Bay).

It is likely that displaced organisms will not return to the area of continual chain and riser sweep. A shift in benthic faunal community is expected in areas where soft sediment is converted to hard substrate (Algonquin Gas Transmission LLC, 2005). This impact will be beneficial for species that prefer hard-bottom structure and adverse for species that prefer soft sediment. Overall, because of the relatively small areas that will be affected, impacts on soft-bottom communities are expected to be minimal.

Daily removal of seawater will reduce the food resources available for planktivorous organisms. The marine mammal species in the area have fairly broad diets and are not dependent on any single species for survival. Because of the relatively low biomass that will be entrained by the Port, the broad diet, and broad availability of organisms in the proposed project area, indirect

impacts on the food web that result from entrainment of planktonic fish and shellfish eggs and larvae are expected to be minor and therefore should have minimal impact on affected marine mammal species or stocks.

#### **Mitigation and Monitoring Measures**

For the Neptune LNG Port construction and operation activities, NMFS is requiring the following monitoring and mitigation measures.

#### *Port Construction Minimization Measures*

##### (1) General

Construction activities will be limited to a May through November time frame so that acoustic disturbance to the endangered North Atlantic right whale can largely be avoided.

##### (2) Visual Monitoring Program

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

The MMOs will be on duty at all times when each vessel is moving and at selected periods when construction vessels are idle, including when other vessels move around the construction lay barge. The MMOs will monitor the construction area beginning at daybreak using 25x power binoculars and/or hand-held binoculars, resulting in a conservative effective search range of 0.5 mi (0.8 km) during clear weather conditions for the shipboard observers. The MMO will scan the ocean surface by eye for a minimum of 40 min/hr. All sightings will be recorded in marine mammal field sighting logs. Observations of marine mammals will be identified to species or the lowest taxonomic level and their relative position will be recorded. Night vision

devices will be standard equipment for monitoring during low-light hours and at night.

During all phases of construction, MMOs will be required to scan for and report all marine mammal sightings to the vessel captain. The captain will then alert the environmental coordinator that a marine mammal is near the construction area. The MMO will have the authority to bring the vessel to idle or to temporarily suspend operations if a baleen whale is seen within 0.6 mi (1 km) of the moving pipelay vessel or construction area. The MMO or environmental coordinator will determine whether there is a potential for harm to an individual animal and will be charged with responsibility for determining when it is safe to resume activity. A vessel will not increase power again until the marine mammal(s) leave(s) the area or has/have not been sighted for 30 min. The vessel will then power up slowly.

Construction and support vessels are required to display lights when operating at night, and deck lights are required to illuminate work areas. However, use of lights shall be limited to areas where work is actually occurring, and all other lights must be extinguished. Lights must be downshielded to illuminate the deck and shall not intentionally illuminate surrounding waters, so as not to attract whales or their prey to the area.

### (3) Distance and Noise Level for Cut-Off

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

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

(c) Construction vessels will cease all activities that emit sounds reaching a

received level of 120 dB re 1  $\mu$ Pa or higher at 100 yd (91 m) if a marine mammal other than a right whale is sighted within or approaching to this distance, or if a right whale is sighted within or approaching to a distance of 500 yd (457 m), from the operating construction vessel. The back-calculated source level, based on the most conservative cylindrical model of acoustic energy spreading, is estimated to be 139 dB re 1  $\mu$ Pa.

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

### (4) Vessel Strike Avoidance

(a) While under way, all construction vessels will remain 0.6 mi (1 km) away from right whales and all other whales to the extent possible and 100 yd (91 m) away from all other marine mammals to the extent physically feasible given navigational constraints.

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

(c) All construction vessels 300 gross tons or greater will maintain a speed of 10 knots (18.5 km/hr) or less. Vessels less than 300 gross tons carrying supplies or crew between the shore and the construction site must contact the appropriate authority or the construction site before leaving shore for reports of recent right whale sighting and, consistent with navigation safety, restrict speeds to 10 knots (18.5 km/hr) or less within 5 mi (8 km) of any recent sighting location.

(d) Vessels transiting through the Cape Cod Canal and Cape Cod Bay (CCB) between January 1 and May 15 will reduce speeds to 10 knots (18.5 km/hr) or less, follow the recommended routes charted by NOAA to reduce interactions between right whales and shipping traffic, and avoid aggregations of right whales in the eastern portion of CCB. To the extent practicable, pipe deliveries will be avoided during the January to May time frame. In the unlikely event the Canal is closed during construction, the pipe haul barges will transit around Cape Cod following the Boston Traffic Separation Scheme (TSS) and all measures for the SRVs when transiting to the Port.

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

- Southeast U.S. Seasonal Management Area (SMA) from November 15 through April 15, which is bounded by the shoreline, 31° 27' N. (i.e., the northern edge of the Mandatory Ship Reporting System (MSRS) boundary) to the north, 29° 45' N. to the south, and 80° 51.6' W. (i.e., the eastern edge of the MSRS boundary);

- Mid-Atlantic SMAs from November 1 through April 30, which encompass the waters within a 30 nm (55.6 km) area with an epicenter at the midpoint of the COLREG demarcation line crossing the entry into the following designated ports or bays: (a) Ports of New York/New Jersey; (b) Delaware Bay (Ports of Philadelphia and Wilmington); (c) Entrance to the Chesapeake Bay (Ports of Hampton Roads and Baltimore); (d) Ports of Morehead City and Beaufort, North Carolina; (e) Port of Wilmington, North Carolina; (f) Port of Georgetown, South Carolina; (g) Port of Charleston, South Carolina; and (h) Port of Savannah, Georgia;

- CCB SMA from January 1 through May 15, which includes all waters in CCB, extending to all shorelines of the Bay, with a northern boundary of 42° 12' N. latitude;

- Off Race Point SMA year round, which is bounded by straight lines connecting the following coordinates in the order stated: 42° 30' N. 69° 45' W.; thence to 42° 30' N. 70° 30' W.; thence to 42° 12' N. 70° 30' W.; thence to 42° 12' N. 70° 12' W.; thence to 42° 04' 56.5'' N. 70° 12' W.; thence along mean high water line and inshore limits of COLREGS limit to a latitude of 41° 40' N.; thence due east to 41° 41' N. 69° 45' W.; thence back to starting point; and

- Great South Channel (GSC) SMA from April 1 through July 31, which is bounded by straight lines connecting the following coordinates in the order stated:

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

### (5) Passive Acoustic Monitoring (PAM) Program

In addition to visual monitoring, Neptune will utilize a PAM system to aid in the monitoring and detection of North Atlantic right whales in the project construction area. The PAM system will be capable of detecting and localizing (range and bearing) North Atlantic right whales in real-time with the use of six strategically placed acoustic bouys. When combined with the action and communication plan, Neptune has the capability to make

timely decisions and undertake steps to minimize the potential for collisions between these marine mammals and construction vessels. An array of auto-detection monitoring buoys moored at regular intervals in a circle surrounding the site of the terminal and associated pipeline construction were installed in 2008 and will be redeployed for the 2009 construction season. Passive acoustic devices are actively monitored for detections by a NMFS-approved bioacoustic technician.

Nineteen permanent archival acoustic recording units (ARUs) or pop-ups have been arranged around the Port and pipeline to maximize auto detection and to provide localization capability. The buoys are designed to monitor the sound output from construction activities to assess construction impacts on marine mammals and to aid in the estimation of takes during the construction period.

#### (6) Other Measures

Operations involving excessively noisy equipment must “ramp-up” sound sources, as long as this does not jeopardize the safety of vessels or construction workers, allowing whales a chance to leave the area before sounds reach maximum levels. Contractors are required to utilize vessel-quieting technologies that minimize sound. Contractors are required to maintain individual Spill Prevention, Control, and Containment Plans in place for construction vessels during construction.

An environmental coordinator with experience coordinating projects to monitor and minimize impacts to marine mammals will be onsite to coordinate all issues concerning marine protected species, following all of the latest real-time marine mammal movements. The coordinator will work to ensure that environmental standards are adhered to and adverse interactions between project equipment and marine mammals do not occur.

#### *Port Operation Minimization Measures*

##### (1) Visual Monitoring and Vessel Strike Avoidance

Prior to entering areas where right whales are known to occur, including the GSC and the Stellwagen Bank National Marine Sanctuary, SRV operators will consult NAVTEX, NOAA Weather Radio, NOAA’s Right Whale Sighting Advisory System (SAS), or other means to obtain the latest Dynamic Management Area (DMA) information. Vessel operators will also receive active detections from the passive acoustic array prior to and

during transit through the northern leg of the Boston Harbor TSS where the buoys are installed.

In response to active DMAs or acoustic detections, SRVs will take appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots (18.5 km/hr) maximum and posting additional observers. Designated crew members will undergo NMFS-approved training regarding marine mammal presence and collision avoidance procedures.

Vessels approaching and departing the port from LNG supply locations will enter the Boston Harbor TSS as soon as practicable and remain in the TSS until the Boston Harbor Precautionary Area. SRVs and support vessels will travel at 10 knots (18.5 km/hr) maximum when transiting to/from the port outside of the TSS. SRVs will abide by the same restrictions as required in the “Vessel Strike Avoidance” subsection for “Port Construction Minimization Measures” in the Off Race Point and GSC<sup>SMAs</sup> for operations unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety and maneuverability of the vessel. In such cases where speeds in excess of the 10-knot (18.5 km/hr) speed maximums are required, the reasons for the deviation, the speed at which the vessel is operated, the area, and the time and duration of such deviation will be documented in the logbook of the vessel and reported to NMFS’ Northeast Region Ship Strike Coordinator.

All vessels will comply with the year-round MSRS. If whales are seen within 0.6 mi (1 km) of the buoy, then the SRVs will wait until the whale(s) leave(s) the area before departing.

##### (2) PAM Program

The array of auto-detection monitoring buoys described previously in the “Passive Acoustic Monitoring (PAM) Program” subsection of this document will be monitored during the LNG Port operations and will provide near real-time information on the presence of vocalizing whales in the shipping lanes. Additionally, the ARUs, discussed in that subsection, will be in place for 5 years following initiation of operations to monitor the actual acoustic output of port operations and to alert NOAA to any unanticipated adverse effects of port operations, such as large-scale abandonment of the area or greater acoustic impacts than predicted through modeling.

##### **Reporting Requirements**

During construction, weekly status reports will be provided to NMFS

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

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

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

activity of the vessel or at the construction site when a marine mammal is sighted, and whether thrusters were in use and, if so, how many at the time of the sighting.

#### Endangered Species Act (ESA)

On January 12, 2007, NMFS concluded consultation with MARAD and USCG under section 7 of the ESA on the proposed construction and operation of the Neptune LNG facility and issued a Biological Opinion. The finding of that consultation was that the construction and operation of the Neptune LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green, or leatherback sea turtles. Issuance of this IHA will not have any impacts beyond those analyzed in that consultation.

#### National Environmental Policy Act

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

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

#### Determinations

NMFS has determined that the impact of construction and operation of the Neptune Port Project may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals that may be in close proximity to the Neptune LNG facility and associated pipeline during its construction and operation. These activities are expected to result in some local short-term displacement, resulting in no more than a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the

affected species or stock for subsistence use does not apply for this action as there is no such uses of these species or stocks in the project area.

This determination is supported by measures described earlier in this document under "Mitigation and Monitoring Measures," "Reporting Requirements," and MARAD's ROD (and NMFS' Biological Opinion on this action). As a result of the described mitigation measures, no take by injury or death is requested, anticipated, or authorized, and the potential for temporary or permanent hearing impairment is very unlikely due to the relatively low sound source levels (and consequently small zone of impact for hearing-related effects). The likelihood of such effects will be avoided through the incorporation of the shut-down mitigation measures mentioned in this document. While the number of marine mammals that may be harassed will depend on the distribution and abundance of marine mammals in the vicinity of the Port facility during construction and operation, the estimated number of marine mammals to be harassed is small.

#### Authorization

As a result of these determinations, NMFS has issued an IHA to Neptune for the taking (by Level B harassment only) incidental to construction and operation of the Neptune Port provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 26, 2009.

**James H. Lecky,**

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

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**BILLING CODE 3510-22-S**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Intent To Prepare an Environmental Impact Statement for Whittier Harbor Navigation Improvements Feasibility Study

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) announces its intention to prepare an Environmental Impact Statement (EIS) to study the feasibility of expanding the existing moorage capacity for vessels at Whittier, AK. This study will be performed

through partnership of USACE and the City of Whittier. The existing moorage at Whittier is at maximum capacity, resulting in overcrowded and unsafe conditions for harbor users. Additionally, the City will be unable to meet the growing moorage demands of commercial, charter, recreation, and subsistence vessels in the near future. The EIS will address potential environmental impacts of the construction, operation, and maintenance of the new and existing harbor. USACE has held scoping meetings in Whittier and Anchorage, AK, in an effort to better define the issues associated with Whittier Harbor. Scoping will be ongoing throughout the feasibility study process.

**DATES:** Letters to interested parties will be mailed in July 2009, to solicit public comment on the feasibility study. Accompanying the letter will be a summary of comments received as a result of scoping meetings held on February 19, 2009 in Whittier, AK and May 7, 2009 in Anchorage, AK. Subsequent meetings will be held as necessary and advertised in local newspapers.

**ADDRESSES:** Please direct comments or suggestions on the scope of the EIS to: Mr. Michael Salyer, NEPA Coordinator, U.S. Army Corps of Engineers, Alaska District, EN-CW-ER, P.O. Box 6898, Elmendorf AFB, AK 99506-0898; Phone: 907-753-2690; Fax: (907) 753-2625, e-mail [michael.g.salyer@usace.army.mil](mailto:michael.g.salyer@usace.army.mil) (please use "NOI Comments on Whittier Harbor" for the subject).

**FOR FURTHER INFORMATION CONTACT:** For information or questions concerning the proposed project, contact: Mr. Bruce Sexauer, Plan Formulator, U.S. Army Corps of Engineers, Alaska District, EN-CW-PF, P.O. Box 6898, Elmendorf AFB, AK 99506-0898; Phone: 907-753-5619; Fax: (907) 753-2625; e-mail: [Bruce.R.Sexauer@usace.army.mil](mailto:Bruce.R.Sexauer@usace.army.mil).

#### SUPPLEMENTARY INFORMATION:

**Background:** The City of Whittier was incorporated in 1969. Whittier Harbor was constructed in 1970 and was expanded to its existing configuration in 1980. The harbor accommodates a large array of commercial, charter, government, recreation, and subsistence vessels.

This project was authorized by general language in section 5007 of Public Law 119-114, the Water Resources Development Act of 2007.

**Purpose and Need for Agency Action:** The existing Whittier Harbor is utilized beyond its capacity. The town of Whittier needs to expand the existing