

doses) is located at 1101 C Avenue West, Seymour, Indiana. The facility is used to manufacture, test, package and warehouse pharmaceutical products. Components and materials sourced from abroad (representing 75% of the value of the finished product) include:

alprostadil, edex applicators, lacosamide, moexipril, kremozin, vanlafaxim, and esomeprazole magnesium (duty rate ranges from duty free to 5.3%). The application also requests authority to include a broad range of inputs and finished pharmaceutical products that Schwarz Pharma may produce under FTZ procedures in the future. New major activity involving these inputs/products would require review by the FTZ Board.

FTZ procedures could exempt Schwarz Pharma from customs duty payments on the foreign components used in export production. The company anticipates that less than 5 percent of the plant's shipments will be exported. On its domestic sales, Schwarz Pharma would be able to choose the duty rates during customs entry procedures that apply to Edex kits, Vimpat, Moexipril, Kremozin, Vanlafaxim and an acid reflux pharmaceutical (all duty free) for the foreign inputs noted above. FTZ designation would further allow Schwarz Pharma to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 2, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 17, 2009.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site,

which is accessible via <http://www.trade.gov/ftz>.

For further information, contact Diane Finver at diane_finver@ita.doc.gov or (202) 482-1367.

Dated: August 26, 2009.

Andrew McGilvray,

Executive Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XN24

Taking and Importing Marine Mammals; Operations of a Liquefied Natural Gas Port Facility in Massachusetts Bay

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to operation of an offshore liquefied natural gas (LNG) facility in the Massachusetts Bay, has been issued to Northeast Gateway Energy Bridge™ LLC (Northeast Gateway or NEG) for a period of 1 year.

DATES: This authorization is effective from August 31, 2009, until August 30, 2010. NMFS has also made the required findings to support future modification of the IHA to include take of marine mammals by Northeast Gateway's partner, Algonquin Gas Transmission, LLC, incidental to operations and maintenance of the Algonquin Pipeline Lateral upon completion of consultation under section 7 of the Endangered Species Act.

ADDRESSES: A copy of the application, IHA, and a list of references used in this document may be obtained 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. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here and is also available at:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

FOR FURTHER INFORMATION CONTACT:

Shane Guan, Office of Protected Resources, NMFS, (301) 713-2289, ext 137.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(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.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for 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 established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

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

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On August 15, 2008, NMFS received an application from Tetra Tech EC, Inc., on behalf of Northeast Gateway and Algonquin Gas Transmission, LLC (Algonquin) for an authorization to take 12 species of marine mammals by Level B harassment incidental to operation and maintenance of an LNG port facility in Massachusetts Bay. Since LNG Port operation and maintenance activities have the potential to take marine mammals, a marine mammal take authorization under the MMPA is warranted. NMFS has previously issued one-year incidental harassment authorizations for the LNG Port pursuant to section 101(a)(5)(D) of the MMPA, the most recent of which expired on May 14, 2009 (see 73 FR 29485, May 21, 2008). On January 26, 2009, Northeast Gateway and Algonquin submitted a revised MMPA permit application that added certain Algonquin Pipeline Lateral operation and maintenance (O&M) activities for a limited time. NMFS' notice of proposed IHA included analysis of these additional activities (see 74 FR 9801, March 6, 2009), and reinitiation of consultation under section 7 of the Endangered Species Act (ESA) began to analyze the effects of the O&M activities on ESA-listed species, which had not been analyzed in the existing biological opinion.

As of August 14, 2009, ESA consultation was not complete; therefore, NMFS could not issue an IHA for the Deepwater Port operations/maintenance and Pipeline Lateral O&M activities. On August 14, 2009, Northeast Gateway requested NMFS to issue an IHA just covering the operational portion of the Deepwater Port (for which there is a biological opinion). Northeast Gateway further requested that a modified IHA be issued to both Northeast Gateway and Algonquin adding operations and maintenance (including repair) of the Pipeline Lateral once the section 7 consultation is concluded and a non-jeopardy determination for listed species is made. Because the LNG Port facility and Algonquin Pipeline Lateral operation and maintenance activities will be ongoing in the foreseeable future, NMFS will propose regulations pursuant to section 101(a)(5)(A) of the MMPA, which would govern these incidental takes under a Letter of Authorization for up to five years. Under section 101(a)(5)(A), NMFS also must prescribe mitigation, monitoring, and reporting requirements in its regulations.

Description of the Activity

The Northeast Gateway Port is located in Massachusetts Bay and consists of a submerged buoy system to dock specially designed LNG carriers approximately 13 mi (21 km) offshore of Massachusetts in federal waters approximately 270 to 290 ft (82 to 88 m) in depth. This facility delivers regasified LNG to onshore markets via a 16.06-mi (25.8-km) long, 24-in (61-cm) outside diameter natural gas pipeline lateral (Pipeline Lateral) owned and operated by Algonquin and interconnected to Algonquin's existing offshore natural gas pipeline system in Massachusetts Bay (HubLine).

The Northeast Gateway Port consists of two subsea Submerged Turret Loading™ (STL) buoys, each with a flexible riser assembly and a manifold connecting the riser assembly, via a steel flowline, to the subsea Pipeline Lateral. Northeast Gateway utilizes vessels from its current fleet of specially designed Liquefied Natural Gas Regasification Vessels (LNGRVs), each capable of transporting approximately 2.9 billion ft³ (82 million m³) of natural gas condensed to 4.9 million ft³ (138,000 m³) of LNG. Northeast Gateway would also be adding vessels to its fleet that will have a cargo capacity of approximately 151,000 cubic m³. The mooring system installed at the Northeast Gateway Port is designed to handle both the existing vessels and any of the larger capacity vessels that may come into service in the future. The LNGRVs would dock to the STL buoys, which would serve as both the single-point mooring system for the vessels and the delivery conduit for natural gas. Each of the STL buoys is secured to the seafloor using a series of suction anchors and a combination of chain/cable anchor lines.

The proposed activity includes Northeast Gateway LNG Port operation and maintenance.

NEG Port Operations

During NEG Port operations, LNGRVs servicing the Northeast Gateway Port will utilize the newly configured and International Maritime Organization-approved Boston Traffic Separation Scheme (TSS) on their approach to and departure from the Northeast Gateway Port at the earliest practicable point of transit. LNGRVs will maintain speeds of 12 knots or less while in the TSS, unless transiting the Off Race Point Seasonal Management Area between the dates of March 1 and April 30, or the Great South Channel Seasonal Management Area between the dates of April 1 and July 31, when they will not exceed 10-

knots or when there have been active right whale sightings, active acoustic detections, or both, in the vicinity of the transiting LNGRV in the TSS or at the Northeast Gateway Port, in which case the vessels also will slow their speeds to 10 knots or less.

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

It is estimated that the NEG Port could receive approximately 65 cargo deliveries a year. During this time period thrusters would be engaged in use for docking at the NEG Port approximately 10 to 30 minutes for each vessel arrival and departure.

NEG Port Maintenance

The specified design life of the NEG Port is about 40 years, with the exception of the anchors, mooring chain/rope, and riser/umbilical assemblies, which are based on a maintenance-free design life of 20 years. The buoy pick-up system components are considered consumable and would be inspected following each buoy connection, and replaced (from inside the STL compartment during the normal cargo discharge period) as deemed necessary. The underwater components of the NEG Port would be inspected once yearly in accordance with Classification Society Rules (American Bureau of Shipping) using either divers or remotely operated vehicles (ROVs) to

inspect and record the condition of the various STL system components. These activities would be conducted using the NEG Port's normal support vessel (125-foot, 99 gross ton, 2,700 horsepower, aluminum mono-hull vessel), and to the extent possible would coincide with planned weekly visits to the NEG Port. Helicopters would not be used for marker line maintenance inspections.

Detailed information on the LNG facility's operation and maintenance activities, and noise generated from operations was also published in the **Federal Register** for the proposed IHA for Northeast Gateway's LNG Port construction and operations on March 13, 2007 (72 FR 11328).

Based on the description of maintenance, we don't anticipate take from maintenance and do not further analyze/discuss facility maintenance in this **Federal Register** notice.

Algonquin Pipeline Lateral Operation and Maintenance (O&M)

The O&M activities associated with the Algonquin Pipeline Lateral can be subdivided into two categories, Routine O&M Activities and Unplanned Repair Work.

A. Routine O&M Activities

The planned activities required for the O&M of the Algonquin Pipeline Lateral and Flowlines over a one year period are limited. Similar to the inspection of the NEG Port underwater components, the only planned O&M activity is the annual inspection of the cathodic protection monitors by a ROV. The monitors are located at the ends of the Algonquin Pipeline Lateral and the adjacent Flowlines. Each inspection activity will take approximately three days and will utilize a ROV launched from a vessel of opportunity. The most likely vessel will be similar to the NEG Port's normal support vessel referenced in NEG Port Maintenance section. This vessel is self-positioning and requires no anchors or use of thrusters. It will mobilize from Salem, Massachusetts, and will inspect the monitors in the vicinity of the NEG Port and at the point where the Algonquin Pipeline Lateral interconnects with Algonquin's HubLine. These activities will be performed during daylight hours and during periods of good weather.

B. Unplanned Pipeline Repair Activities

Unplanned O&M activities may be required from time to time at a location along the Algonquin Pipeline Lateral or along one of the Flowlines should the line become damaged or malfunction.

Should repair work be required, it is likely a dive vessel would be the main

vessel used to support the repair work. The type of diving spread and the corresponding vessel needed to support the spread would be dictated by the type of repair work required and the water depth at the work location. In addition, the type of vessel used may vary depending upon availability. The duration of an unplanned activity would also vary depending upon the repair work involved (e.g., repairing or replacing a section of the pipeline, connection, or valve) but can generally be assumed to take less than 40 work days to complete based on industry experience with underwater pipeline repairs.

A diving spread required to execute an unplanned activity might necessitate several vessels. Most likely the dive vessel would support a saturation diving spread and be moored at the work location using four anchors. This vessel would likely be accompanied by an attendant tug to assist with anchor placement. Once secured at the work location, the dive vessel would remain on site through the completion of the work, weather permitting. A crew/supply boat would be utilized to intermittently provide labor and supply transfers. Once or twice during the work, a tug may be required to bring a material barge to and from the location. While unlikely, there is a small possibility that a second dive vessel would be required to support the main dive vessel, depending upon the work activity. The second dive vessel would be on-site for a shorter work duration. These vessels would be supported from an onshore base located between Quincy, Massachusetts and Gloucester, Massachusetts.

The selection of a dive vessel will be driven by the technical requirements of the work. In addition, the degree of urgency required to address the work and the availability of vessels will also enter into the decision process for securing a dive vessel. It may be that a four point moored dive vessel either is not available or doesn't meet the technical capabilities required by the work. It then becomes possible that a dynamically positioned (DP) dive vessel may have to be utilized. The use of a DP dive vessel removes the need for an attendant tug to support the vessel since no anchors will be deployed. However, potential impacts related to noise are increased when a DP dive vessel is used. The noise generated by a DP dive vessel varies, and results from the use of the thrusters at various levels to maintain the vessel's position during the work depending upon currents, winds, waves and other forces acting on the vessel at the time of the work.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on March 6, 2009 (74 FR 9801). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission).

Comment 1: The Commission recommends that NMFS issue the IHA provided that (a) all marine mammal mitigation, monitoring, and reporting measures identified in the **Federal Register** notice are included in the authorization; and (b) operations be suspended immediately if a dead or seriously injured right whale or other marine mammal is found in the vicinity of the operations and the death or injury could be attributable to the applicant's activities. Any suspension should remain in place until NMFS (1) has reviewed the situation and determined that further deaths or serious injuries are unlikely or (2) has issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: NMFS concurs with the Commission's recommendation raised in the above comment, and extends the suspension requirement to any type of injury, not just serious injury, if it could be attributable to LNG activities.

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 several species of cetaceans and pinnipeds: North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), minke whale (*B. acutorostrata*), long-finned pilot whale (*Globicephala melas*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), and gray seal (*Halichoerus grypus*).

General information on these marine mammal species can also be found in Wursig *et al.* (2000) and in the NMFS Stock Assessment Reports (Waring *et al.*, 2008). This latter document is available at: <http://www.nefsc.noaa.gov/nefsc/publications/tm/tm205/>. An updated summary on several commonly sighted marine mammal species distribution and abundance in the vicinity of the proposed action area is provided below. Additional information on those species that may be affected by this activity is provided in detail in the

Federal Register published on March 6, 2009 (74 FR 9801).

Potential Effects of Noise on Marine Mammals

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

trauma may include minor to severe hemorrhage.

There are three general categories of sounds recognized by NMFS: continuous (such as shipping sounds), intermittent (such as vibratory pile driving sounds), and impulse. No impulse noise activities, such as blasting or standard pile driving, are associated with this project. The noise sources of potential concern are regasification/offloading (which is a continuous sound) and dynamic positioning of vessels using thrusters (an intermittent sound) from LNGRVs during docking at the NEG port facility and from repair vessels during Algonquin Pipeline Lateral repair and maintenance for diving support. Based on research by Malme *et al.* (1983; 1984), for both continuous and intermittent sound sources, Level B harassment is presumed to begin at received levels of 120-dB. The detailed description of the noise that would result from the proposed LNG Port operations and Pipeline Lateral O&M activities is provided in the **Federal Register** for the initial construction and operations of the NEG LNG Port facility and Pipeline Lateral in 2007 (72 FR 27077; May 14, 2007).

NEG Port Activities

Underwater noise generated at the NEG Port has the potential to result from two distinct actions, including closed-loop regasification of LNG and/or LNGRV maneuvering during coupling and decoupling with STL buoys. To evaluate the potential for these activities to result in underwater noise that could harass marine mammals, Excelerate Energy, LLC (Excelerate) conducted field sound survey studies during periods of March 21 to 25, 2005 and August 6 to 9, 2006 while the LNGRV *Excelsior* was both maneuvering and moored at the operational Gulf Gateway Port located 116 mi (187 km) offshore in the Gulf of Mexico (the Gulf) (see Appendices B and C of the NEG and Algonquin application). LNGRV maneuvering conditions included the use of both stern and bow thrusters required for dynamic positioning during coupling. These data were used to model underwater sound propagation at the NEG Port. The pertinent results of the field survey are provided as underwater sound source pressure levels as follows:

- Sound levels during closed-loop regasification ranged from 104 to 110 decibel linear (dBL). Maximum levels during steady state operations were 108 dBL.
- Sound levels during coupling operations were dominated by the

periodic use of the bow and stern thrusters and ranged from 160 to 170 dBL.

Figures 1–1 and 1–2 of the NEG and Algonquin's revised MMPA permit application present the net acoustic impact of one LNGRV operating at the NEG Port. Thrusters are operated intermittently and only for relatively short durations of time. The resulting area within the 120 dB isopleth is less than 1 km² with the linear distance to the isopleths extending 430 m (1,411 ft). The area within the 180 dB isopleth is very localized and will not extend beyond the immediate area where LNGRV coupling operations are occurring.

The potential impacts to marine mammals associated with sound propagation from vessel movements, anchors, chains and LNG regasification/offloading could be the temporary and short-term displacement of seals and whales from within the 120-dB zones ensounded by these noise sources. Animals would be expected to re-occupy the area once the noise ceases.

Unplanned Pipeline Lateral Repair Activities

As discussed previously, pipeline repairs may be required from time to time should the pipeline become damaged or malfunction. While the need for repairs to underwater pipelines is typically infrequent, in the event that a pipeline repair is required, it is most likely that anchor-moored vessels will be used. If so, underwater noise will not be generated at the level of concern for marine mammals.

However, there is the potential that underwater noise will be generated within the 120 dB threshold for level B harassment for marine mammals if DP vessels are used to perform the work. Given the limited availability of DP dive support vessels, it is most likely that an anchor-moored dive vessel will be used, though the possibility that a DP vessel would be used cannot be ruled out. Depending on the nature of the repair, the work could last for up to 40 work days. The possibility that a DP vessel would be used to perform a pipeline repair is the only instance in which underwater noise will be generated that rises to or exceeds the 120-dB threshold for level B harassment in connection with Algonquin's ownership or operation of the Algonquin Pipeline Lateral.

In general, DP vessels are fitted with six thrusters of three main types: main propellers, tunnel thrusters and azimuth thrusters. Two or three tunnel thrusters are usually fitted in the bow. Stern tunnel thrusters are also common,

operating together but controlled individually, as are azimuth or compass thrusters placed in the rear. Azimuth thrusters are located beneath the bottom of the vessel and can be rotated to provide thrust in any direction. During vessel operation, the thrusters engage in varying numbers and at varying intensity levels, as needed to control and maintain vessel location based on sea and weather conditions. While at least one thruster is always engaged in at least partial capacity, higher noise levels are generated periodically when greater numbers of thrusters need to engage, and when thrusters are at closer to their full capacity. Thruster underwater noise levels are principally caused by cavitation, which is a combination of broadband noise and tonal sounds at discrete frequencies.

In August 2007, during construction of the NEG Port and Algonquin Pipeline Lateral, Northeast Gateway collected sound measurements of vessels used to support construction including crew boats, support tugs, and diver support vessels which required the steady use of thrusters as well as unassociated boat movements routinely occurring outside the immediate construction zone. These vessels are similar to those which may be employed during pipeline repair.

Based upon the measurement data collected, results showed no exceedance of the 180-dB level for potential Level A harassment during any of the monitoring periods in the acoustic far field ranging from 605 to 1,050 m (1,985 to 3,445 ft) (see Figure 1–3 of the NEG and Algonquin MMPA permit application). However, construction activities involving the use of DP vessels did exceed the 120-dB Level B behavioral harassment threshold for this sound type, principally at low and mid-range frequencies.

It is important to note, however, that even though measurements showed construction activities periodically resulted in the exceedances of the Level B behavioral harassment threshold, such received sound pressure levels may not in every instance be perceptible to marine life, as hearing thresholds are largely frequency-dependent and vary considerably from species to species. In addition, though ambient noise in shallow waters such as the Gulf of Maine tends to be highly variable in both time and location, existing elevated ambient conditions inherent within the Massachusetts Bay environment may effectively mask noise generated by future offshore repair work at short to moderate distances from where the work is occurring. This is particularly true during elevated wind and sea state conditions when the use of thrusters is

more predominant. At the same time, the ambient underwater noise intensity levels will be higher during these periods as well.

Estimates of Take by Harassment

Northeast Gateway stated that the size of the ensonified 120-dB isopleth by LNGRV's decoupling would be less than 1 km² as measured in the Gulf of Mexico in 2005. However, due to the lack of more recent sound source verification and source measurement in Massachusetts Bay, NMFS used a more conservative spreading model to calculate the 120-dB isopleth. (This model was also used to establish 120-dB zone of influence (ZOI) for the previous IHAs issued to Northeast Gateway.) In the vicinity of the LNG Port, where the water depth is about 80 m (262 ft), the 120-dB radius is estimated to be 2.56 km (1.6 mi) maximum from the sound source during dynamic positioning for the container ship, making a maximum ZOI of 21 km² (8.1 mi²). For shallow water depth (40 m or 131 ft) representative of the northern segment of the Algonquin Pipeline Lateral, the 120-dB radius is estimated to be 3.31 km (2.06 mi), and the associated ZOI is 34 km² (13.1 mi²).

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. For the NEG port facility operations, the take estimates are determined by multiplying the area of the LNGRV's ZOI (21 km²) by local marine mammal density estimates, corrected to account for 50 percent more marine mammals that may be underwater, and then multiplying by the estimated LNG container ship visits per year. For the Algonquin Pipeline Lateral O&M activities, the take estimates are determined by multiplying the area of ZOI (34 km²) resulting from the DP vessel used in repair by local marine mammal density estimates, corrected to account for 50 percent more marine mammals that may be underwater, and then multiplying by the number of dates O&M activities are conducted per year. In the case of data gaps, a conservative approach was used to ensure 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 uses the data on cetacean distribution within

Massachusetts Bay, such as those published by the National Centers for Coastal Ocean Science (NCCOS, 2006), to estimate potential takes of marine mammals species in the vicinity of 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 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: Cetacean and Turtles Assessment Program (CETAP), Canadian Department of Fisheries and Oceans, PCCS, International Fund for Animal Welfare, NOAA's NEFSC, New England Aquarium, Woods Hole Oceanographic Institution, and the University of Rhode Island. A total of 653,725 km (406,293 mi) 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 NMFS NEFSC to provide an assessment of the relative abundance and distribution of cetaceans, seabirds, and marine turtles in the shelf waters of the northeastern United States (MBO, 1987). The CSAP program was designed to be completely compatible with NMFS 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 5,210 km (8,383 mi) 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 567,955 km (913,840 mi) of survey track for small cetaceans (dolphins and porpoises) and 658,935 km (1,060,226 mi) 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.

Owing to 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 is provided in the **Federal Register** notice for the proposed IHA (74 FR 9801; March 6, 2009), in the Marine Mammals Affected by the Activity section. For a detailed description and calculation of the cetacean abundance data and sighting per unit effort (SPUE), please refer to the NCCOS study (NCCOS, 2006). These data show that the relative abundance of North Atlantic right, fin, humpback, minke, and pilot whales, and Atlantic white-sided dolphins for all seasons, 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 Proposed Monitoring, Mitigation, and Reporting section below), 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:

$$D = \text{SPUE}/2W.$$

Based on this calculation method, the estimated take numbers per year for North Atlantic right, fin, humpback, minke, and pilot whales, and Atlantic white-sided dolphins by the NEG Port facility operations, which is an average of 65 visits by LNG container ships to the project area per year (or approximately 1.25 visits per week), operating the vessels' thrusters for dynamic positioning before offloading natural gas, corrected for 50 percent underwater, are 21, 25, 68, 15, 104, and 336, respectively.

The estimated take number per year for North Atlantic right, fin, humpback, minke, and pilot whales, and Atlantic white-side dolphin by the Algonquin Pipeline Lateral O&M activities, based on a maximum of 40 days by the operation of DP vessels for diver support, corrected for 50 percent underwater, are 21, 25, 68, 15, 104, and 335, respectively.

The total estimated take numbers of these species per year are: 42 North Atlantic right, 50 fin, 136 humpback, 30 minke, 208 pilot whales, and 671

Atlantic white-sided dolphins. These numbers represent a maximum of 12.9, 2.2, 15.0, 0.9, 0.7, and 1.1 percent of the affected species/stocks, respectively. Since it is very likely that individual animals could be "taken" by harassment multiple times, these percentages are the upper boundary because the actual number of individual animals being exposed or taken would be far less. There is no danger of injury, death, or hearing impairment from the exposure to these noise levels.

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 deepwater LNG port operations and Pipeline Lateral O&M activities. 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 stock in the west North Atlantic basin are 81,588; 120,743; 89,054; 99,340; and 195,000 for bottlenose dolphins, common dolphins, harbor porpoises, harbor seals, and gray seals, respectively (Waring *et al.*, 2008). No population estimate is available for the North Atlantic stock of killer whales, however, their occurrence within the proposed project area is rare. Since the Massachusetts Bay represents only a small fraction of the west North Atlantic basin where these animals occur, and these animals do not 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 Northeast Gateway LNG deepwater project. From the most conservative estimates of both marine mammal densities in the project area and the size of the 120-dB zone of (noise) influence, the calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the overall population size.

Potential Impact on Habitat

Operation of the NEG Port and Algonquin Pipeline Lateral will result in long-term effects on the marine environment, including alteration of seafloor conditions, continued disturbance of the seafloor, regular withdrawal of sea water, and regular generation of underwater noise. A small area (0.14 acre) along the Pipeline Lateral will be permanently altered (armored) at two cable crossings. In addition, the structures associated with the Port will occupy 4.8 acres of seafloor. An additional area of the seafloor of up to 38 acres will be subject

to disturbance due to chain sweep while the buoys are occupied. The benthic community in the up-to 38 acres of soft bottom that may be swept by the anchor chains while EBRVs are docked will have limited opportunity to recover, so this area will experience a long-term reduction in benthic productivity.

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

Monitoring and Mitigation Measures

For the proposed NEG LNG port operations and Algonquin Pipeline Lateral O&M activities, NMFS requires the following monitoring and mitigation measures.

Marine Mammal Observers and Training

For activities related to the NEG LNG port operations, all individuals onboard the LNGRVs responsible for the navigation and lookout duties on the vessel must receive training prior to assuming navigation and lookout duties, a component of which will be training on marine mammal sighting/reporting and vessel strike avoidance measures. Crew training of LNGRV personnel will stress individual responsibility for marine mammal awareness and reporting.

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

For activities related to the Algonquin Pipeline Lateral O&M, two qualified Maine Mammal Observers (MMOs) will be assigned to each DP vessel (each operating individually in designated shifts to accommodate adequate rest

schedules). Their responsibility is to watch for marine mammals and to alert the construction crew supervisor if marine mammals are visually detected within the most conservatively estimated ZOI, within 2 mi (3.31 km) of the DP vessel, to allow for mitigating responses. MMOs will maintain logs at all times while on watch. All personnel will have experience in marine mammal detection and observation during marine construction. MMOs will maintain *in situ* records while on watch and therefore visual observation will not be affected. Additional MMOs may be assigned to additional vessels if auto-detection buoy (AB) data show sound levels from additional vessels in excess of 120 dB re 1 microPa, further than 100 m (328 ft) from the vessel.

Each MMO will scan the area surrounding the construction vessels for visual signs of non-vocalizing whales that may enter the construction area. Observations will take place from the highest available vantage point on the vessels. General 360° scanning will occur during the monitoring periods, and target scanning by the observer will occur when alerted of a whale presence.

Searching will take place at all hours of the day. Night-time observations will be conducted with the aid of a night-vision scope where practical. Observers, using binoculars, will estimate distances to marine mammals either visually or by using reticled binoculars. If higher vantage points (> 25 ft or 7.6 m) are available, distances can be measured using inclinometers. Position data will be recorded using hand-held or vessel global positioning system (GPS) units for each sighting, vessel position change, and any environmental change.

Environmental data to be collected will include Beaufort sea state, wind speed, wind direction, ambient temperature, precipitation, glare, and percent cloud cover. Wind and temperature data will be extracted from onboard meteorological stations (when available). Animal data to be collected include numbers of individuals, species, position, distance, behavior, direction of movement, and apparent reaction to construction activity. All data will be entered at the time of observation. Notes of activities will be kept and a daily report will be prepared and attached to the daily field form.

In addition, Northeast Gateway and Algonquin must ensure that vessel captains understand that noise generated from thrusters during DP is the most likely source of a "take" to North Atlantic right whale, therefore, DP vessel captains shall focus on reducing thruster power to the maximum extent practicable, taking into

account diver safety. Likewise, vessel captains shall shut down thrusters whenever they are not needed.

In addition to visual monitoring, the Northeast Gateway and Algonquin shall work with NMFS, the Stellwagen Bank National Marine Sanctuary (SBNMS), and other scientists to install a passive acoustic detection system for detecting marine mammals within the project area, and provide early warnings for potential occurrence of right whales and other marine mammals in the vicinity of the project area. The number of passive acoustic detection buoys installed around the activity site will 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. The holder of this authorization shall provide empirically measured source level data from the acoustic recording units deployed in the LNG Port maintenance and repair area in a reasonable time to NMFS.

Distance and Noise Level for Cut-Off

For all whales near DP vessels, the MMO observation will be the principal detection tool available. If a North Atlantic right whale or other marine mammal is seen within the 2 mi (3.31 km) ZOI of a DP vessel or other construction vessel that has been shown to emit noises in excess of 120 dB re 1 microPa, then the MMO will alert the 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.

During Algonquin Pipeline Lateral O&M, the following procedures would be followed upon detection of a marine mammal within 0.5 mi (0.8 km) of the repair vessels:

(1) 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 Pipeline Lateral repair area. The observer is required to report all North Atlantic right whale sightings to NMFS, as soon as possible.

(2) If a marine mammal other than a right whale is sighted within or approaching at a distance of 100 yd (91 m), or if a right whale is sighted within or approaching to a distance of 500 yd (457 m) from the operating construction vessel and the nature of the repair activity at the time would not compromise either the health and safety of divers on the bottom or the integrity of the pipeline, construction vessel(s) will cease any movement and cease all activities that emit sounds reaching a

received level of 120 dB re 1 microPa or higher as soon as practicable. The back-calculated source level, based on the most conservative cylindrical model of acoustic energy spreading, is estimated to be 139 dB re 1 microPa. Vessels transiting the repair area will also be required to maintain these separation distances.

(3) Repair work 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).

Vessel Strike Avoidance

(1) All LNGRVs approaching or departing the port will comply with the Mandatory Ship Reporting (MSR) system to keep apprised of Dynamic Management Areas (DMAs) in the vicinity. Vessel operators will also receive active detections from an existing passive acoustic array prior to and during transit through the northern portion of the Boston TSS where the buoys are installed.

(2) In response to active right whale sightings or DMAs (detected acoustically or reported through other means such as the MSR or Sighting Advisory System (SAS)), and taking into account safety and weather conditions, LNGRVs will take appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots or less and alerting personnel responsible for navigation and lookout duties to concentrate their efforts.

(3) LNGRVs will maintain speeds of 12 knots or less while in the TSS until reaching the vicinity of the buoys (except during the seasons and areas defined below, when speed will be limited to 10 knots or less). 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 buoy.

(4) LNGRVs will reduce transit speed to 10 knots or less over ground year-round in all waters bounded by straight lines connecting the following points in the order stated below. This area is known as the Off Race Point Seasonal Management Area (SMA) and tracks NMFS regulations at 50 CFR 224.105:

42°30'00.0" N–069°45'00.0" W; thence to 42°30'00.0" N–070°30'00.0" W; thence to 42°12'00.0" N–070°30'00.0" W; thence to 42°12'00.0" N–070°12'00.0" W; thence to 42°04'56.5" N–070°12'00.0" W; thence along charted mean high water line and inshore limits of COLREGS limit to a latitude of 41°40'00.0" N; thence due east to 41°41'00.0" N–069°45'00.0" W; thence back to starting point.

(5) LNGRVs will reduce transit speed to 10 knots or less over ground from April 1–July 31 in all waters bounded

by straight lines connecting the following points in the order stated below. This area is also known as the Great South Channel SMA and tracks NMFS regulations at 50 CFR 224.105:

42°30'00.0" N–69°45'00.0" W
 41°40'00.0" N– 69°45'00.0" W
 41°00'00.0" N– 69°05'00.0" W
 42°09'00.0" N– 67°08'24.0" W
 42°30'00.0" N– 67°27'00.0" W
 42°30'00.0" N– 69°45'00.0" W

(6) LNGRVs are not expected to transit Cape Cod Bay. However, in the event transit through Cape Cod Bay is required, LNGRVs will reduce transit speed to 10 knots or less over ground from January 1–May 15 in all waters in Cape Cod Bay, extending to all shorelines of Cape Cod Bay, with a northern boundary of 42°12'00.0" N latitude.

(7) While under way, all repair/maintenance vessels must remain 500 yd (457 m) away from right whales and 100 yd (91 m) away from all other whales to the extent physically feasible, given navigational constraints as required by NMFS.

(8) All repair/maintenance vessels greater than or equal to 300 gross tons must maintain a speed of 10 knots or less. Vessels of less than 300 gross tons carrying supplies or crew between the shore and the construction site shall contact the Mandatory Ship Reporting (MSR) system, the USCG, or the construction site before leaving shore for reports of recent right whale sightings or active DMAs and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 mi (8 km) of any sighting location and within any existing DMA.

(9) Vessels transiting through the Cape Cod Canal and Cape Cod Bay between January 1 and May 15 must reduce speed to 10 knots or less, follow the recommended routes charted by NMFS to reduce interactions between right whales and shipping traffic, and avoid identified aggregations of right whales in the eastern portion of Cape Cod Bay.

Research Passive Acoustic Monitoring (PAM) Program

Northeast Gateway shall monitor the noise environment in Massachusetts Bay in the vicinity of the NEG Port and Algonquin Pipeline Lateral using an array of 19 Marine Autonomous Recording Units (MARUs) that were deployed initially in April 2007 to collect data during the preconstruction and active construction phases of the NEG Port and Algonquin Pipeline Lateral. A description of the MARUs can be found in Appendix A of the NEG

application. These 19 MARUs will remain in the same configuration during full operation of the NEG Port and Algonquin Pipeline Lateral. The MARUs collect archival noise data and are not designed to provide real-time or near-real-time information about vocalizing whales. Rather, the acoustic data collected by the MARUs shall be analyzed to document the seasonal occurrences and overall distributions of whales (primarily fin, humpback, and right whales) within approximately 10 nautical miles of the NEG Port, and shall measure and document the noise "budget" of Massachusetts Bay so as to eventually assist in determining whether an overall increase in noise in the Bay associated with the NEG Port and Algonquin Pipeline Lateral might be having a potentially negative impact on marine mammals. The overall intent of this system is to provide better information for both regulators and the general public regarding the acoustic footprint associated with long-term operation of the NEG Port and Algonquin Pipeline Lateral in Massachusetts Bay, and the distribution of vocalizing marine mammals during NEG Port and Algonquin Pipeline Lateral O&M activities (analyzed to assess impacts on marine mammals). In addition to the 19 MARUs, Northeast Gateway will deploy 10 ABs within the TSS for the operational life of the NEG Port and Algonquin Pipeline Lateral. A description of the ABs is provided in Appendix A of this NEG and Algonquin's application. The purpose of the ABs shall be to detect a calling North Atlantic right whale an average of 5 nm (9.26 km) from each AB (detection ranges will vary based on ambient underwater conditions). The AB system shall be the primary detection mechanism that alerts the LNGRV Master and/or Algonquin Pipeline support vessel captains to the occurrence of right whales, heightens LNGRV or pipeline support vessel awareness, and triggers necessary mitigation actions as described in the Marine Mammal Detection, Monitoring, and Response Plan included as Appendix A of the NEG application.

Northeast Gateway has engaged representatives from Cornell University's Bioacoustics Research Program (BRP) and the Woods Hole Oceanographic Institution (WHOI) as the consultants for developing, implementing, collecting, and analyzing the acoustic data; reporting; and maintaining the acoustic monitoring system.

Further information detailing the deployment and operation of arrays of 19 passive seafloor acoustic recording

units (MARUs) centered on the terminal site and the 10 ABs that are to be placed at approximately 5-m (8.0-km) intervals within the recently modified TSS can be found in the Marine Mammal Detection, Monitoring, and Response Plan included as Appendix A of the NEG application.

Additional Mitigation Measures for Pipeline Repair During Right Whale Season

All maintenance/repair activities will 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–November work window, in addition to the aforementioned mitigation measures, the following additional mitigation measures will be implemented. This is because the occurrence of the North Atlantic right whale in the vicinity of the proposed NEG LNG Port is expected to increase between December and April.

(1) Between December 1 and April 30, if on-board MMOs do not have at least 0.5-mile visibility, they shall call for a shutdown. If dive operations are in progress, then they shall be halted and brought on board until visibility is adequate to see a half mile range. At the time of shutdown, the use of thrusters must be minimized. If there are potential safety problems due to the shutdown, the captain will decide what operations can safely be shut down.

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

(3) A half-day training course will be provided by the current MMO provider to designated crew members assigned to the transit barges and other support vessels. These designated crew members will be required to keep watch on the bridge and immediately notify the navigator of any whale sightings. All watch crew will sign into a bridge log book upon start and end of watch. Transit route, destination, sea conditions and any protected species sightings/mitigation actions during watch will be recorded in the log book. Any whale sightings within 1,000 m of the vessel will result in a high alert and slow speed of 4 knots or less and a

sighting within 750 m will result in idle speed and/or ceasing all movement.

(4) 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 will be 5 knots.

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

Reporting

For any repair work associated with the Pipeline Lateral or other Port components, the holder of this authorization shall notify NMFS Headquarters Office of the Protected Resources, NMFS Northeast Regional Office, and SBNMS as soon as practicable after it is determined that repair work must be conducted. NEG/Algonquin shall continue to keep NOAA/NMFS apprised of repair work plans as further details (the time, location, and nature of the repair) become available.

During maintenance and repair of the Pipeline Lateral or other Port components, weekly status reports must be provided to NMFS using standardized reporting forms. The weekly reports should include data collected for each distinct marine mammal species observed in the project area in the Massachusetts Bay during the period of Port maintenance and repair activities. The weekly reports shall include the following information:

(1) Location, time, and the nature of the Pipeline Lateral maintenance and repair activities;

(2) Whether DP system is operated and, if so, the number of thrusters being used and the time and duration of DP operation;

(3) Marine mammals observed in the area (numbers of individuals, species, age group, and initial behavior);

(4) The distance of observed marine mammals from the maintenance and repair activities;

(5) Whether there are changes of marine mammal behaviors during the observation;

(6) Whether any mitigation measures (power-down, shutdown, etc.) are implemented;

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

(8) Condition of the observation; and (Visibility and glare); and

(9) Details of passive acoustic detections and any action taken in response to those detections.

In addition, the Northeast Port Project area is within the Mandatory Ship Reporting Area (MSRA), so all vessels entering and exiting the MSRA will report their activities to WHALESNORTH. During all phases of the Northeast Gateway LNG Port operations and the Algonquin Pipeline Lateral O&M activities, sightings of any injured or dead marine mammals will be reported immediately to the USCG or NMFS, regardless of whether the injury or death is caused by project activities.

An annual report on marine mammal monitoring and mitigation would be submitted to NMFS Office of Protected Resources and NMFS Northeast Regional Office within 90 days after the expiration of an LOA. The annual report shall include data collected for each distinct marine mammal species observed in the project area in the Massachusetts Bay during the period of LNG facility operation. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to operation activities shall also be included in the annual report.

ESA

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

On November 15, 2007, Northeast Gateway and Algonquin submitted a letter to NMFS requesting a modification to the IHA in effect at the time to allow LNG Port construction to extend into December 2007. Upon reviewing Northeast Gateway's weekly marine mammal monitoring reports submitted under the previous IHA, NMFS recognized that the take of some marine mammals resulting from construction of the LNG Port and Pipeline Lateral by Level B behavioral harassment likely had exceeded the original take estimates in the incidental take statement (ITS). Therefore, NMFS

Northeast Region (NER) reinitiated consultation with MARAD and USCG on the construction and operation of the Northeast Gateway LNG facility. On November 30, 2007, NMFS NER issued a revised biological opinion, reflecting the revised construction time period and including a revised ITS. This revised biological opinion concluded that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales. NMFS has concluded that issuance of an IHA for the operations of the LNG port facility would not have impacts beyond what was analyzed in the November 30, 2007, biological opinion.

For an IHA that includes Pipeline Lateral maintenance and repair activities by Algonquin, NMFS reinitiated consultation with NMFS NER, which is still in process. NMFS plans to modify the IHA to include maintenance and repair activities once the section 7 consultation is completed, provided that a non-jeopardy determination for ESA-listed species is reached.

NEPA

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

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 has reviewed the Final EIS and has adopted it. Therefore, the preparation of another EIS or EA is not warranted.

Determinations

NMFS has determined that the operation and maintenance and repair activities of the Northeast Gateway Port facility and Pipeline Lateral may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals that may be in close proximity to the Northeast Gateway LNG facility and associated pipeline. These activities are expected to result in some local short-term displacement only of the affected species or stocks of marine mammals. Taking these two factors together, NMFS

concludes that the activity will have no more than a negligible impact on the affected species or stocks, as there will be no expected effects on annual rates of survival and reproduction of these species or stocks. This determination is further supported by the required mitigation, monitoring, and reporting measures described in this document.

As a result of implementation of the described mitigation and monitoring measures, no take by injury or death would be requested, anticipated or authorized, and the potential for temporary or permanent hearing impairment is very unlikely due to the relatively low noise levels (and consequently small zone of impact relative to the size of Massachusetts Bay).

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 LNG Port facility, the estimated numbers of marine mammals to be harassed are small relative to the affected species or stock sizes.

These determinations also apply to an IHA issued only for take incidental to operations of the Deepwater Port facility, which is a subset of the activities analyzed in this **Federal Register** Notice of Issuance of an IHA and the related Federal Register Notice of Proposed Issuance of an IHA.

Authorization

NMFS has issued an IHA to Northeast Gateway for conducting LNG Port facility operations in Massachusetts Bay, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS plans to modify the IHA to include Pipeline Lateral operations and maintenance/repair activities by Algonquin once the ESA section 7 consultation is completed, provided that a non-jeopardy determination for ESA-listed species is reached.

Dated: August 28, 2009.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. E9-21328 Filed 9-2-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On August 27, 2009, the Department of Education published a

comment period notice in the **Federal Register** (Page 43686, Column 3) for the emergency information collection, "I Am What I Learn." The number burden hours is hereby corrected to 2,667. The Director, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: August 28, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.
[FR Doc. E9-21202 Filed 9-2-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Call for Nominations for Service as a Member of the National Assessment Governing Board

AGENCY: U.S. Department of Education, National Assessment Governing Board.

SUMMARY: The Secretary of Education, the Honorable Arne Duncan, and the National Assessment Governing Board seek your assistance in identifying qualified individuals to serve as members of the Governing Board for service terms beginning October 1, 2010.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended. In 1988 Congress passed legislation creating the Board, which is responsible for setting policy for the National Assessment of Educational Progress (NAEP)—also known as The Nation's Report Card. The legislation has been amended and reauthorized several times since 1988, most recently in 2002. The statute provides that "the Secretary and the Assessment Board shall ensure at all times that the membership of the Assessment Board reflects regional, racial, gender and cultural balance and diversity—and that the Assessment Board exercises its independent judgment, free from inappropriate influences and special interests." Currently, the Board is comprised of 26 members who are widely representative of our nation and who serve four-year terms. More detailed material about the Governing Board and NAEP is available at <http://www.nagb.org>.

As Board member vacancies occur, new members are appointed by the Secretary from among candidates forwarded to the Secretary by the Board. The Board solicits nominees via broad outreach to organizations, and individuals. For each vacant position,

the Board nominates six persons who, by reason of experience or training, are qualified to serve as a Board member in a particular category.

For 2010 the Board must nominate candidates for five positions in the following five categories:

1. Chief State School Officer
2. Fourth Grade Teacher
3. Eighth Grade Teacher
4. General Public/Parent
5. Secondary School Principal

The Board invites nominations of potential candidates in one or more of the five categories listed above. For the Board to consider a candidate, it is essential to have the following information for each individual being nominated:

Nominating letter. This letter should state the category for which the individual is being nominated, and describe the candidate's qualifications as they relate to the Board's policy responsibilities for the National Assessment of Educational Progress.

Full resume or curriculum vitae. A full resume or vitae is necessary to evaluate a candidate's qualifications. Please note that a short biographical sketch is not sufficient for this purpose. To receive full consideration, all recommendations must be received by the Governing Board no later than September 30, 2009. The Board is seeking the very best nominees to recommend to the Secretary, and in doing so, to have the broadest possible representation. Current members of the Board who have not completed two full terms, and who are otherwise eligible, may be re-nominated.

Board members are considered special Federal employees. As such, they receive an honorarium while attending Board meetings; must abide by applicable laws and policies, including conflict of interest regulations; and are reimbursed for travel and other expenses in accordance with Federal Travel Regulations. The Board meets regularly four times a year, and committees of the Board meet at other times, as necessary.

Nominations may be submitted via mail, e-mail, or fax to: Dr. Mary Crovo, Deputy Executive Director, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002-4233, *Phone:* (202) 357-6938, *Fax:* (202) 357-6945, *E-mail:* Mary.Crovo@ed.gov.

FOR FURTHER INFORMATION CONTACT:

Mary Crovo, Deputy Executive Director, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC, 20002-4233, *Telephone:* (202) 357-6938.