Members of the public are invited to attend the forum, and are required to RSVP to *Brooke.Stewart@noaa.gov* by 5 p.m. EDT, Tuesday, October 25, 2011 if they wish to attend. The forum is to be held in a Federal facility; building security restrictions preclude attendance by members of the public who do not RSVP by the deadline. Space is also limited and public attendees will be admitted based on the order in which RSVPs are received.

Members of the public will be invited to offer their comments during a 30-minute period to be held from 9:30 to 10 a.m. on Tuesday, November 8, 2011. Each individual or group making a verbal presentation will be limited to a total time of five minutes. Please indicate your intention to participate in the public comment period when submitting the RSVP. Time for public comments will be allotted based on the order in which RSVPs are received. Written comments may be submitted via email or in hardcopy and must be received by October 25, 2011. Please see addresses below.

DATES: *Forum Date and Time:* The forum will be held on November 8–10, 2011 at the following times: November 8, 2011 from 8:15 a.m. to 5 p.m. EST; November 9, 2011 from 8:15 a.m. to 5:45 p.m. EST; and November 10, 2011 from 8:15 a.m. to 2 p.m. EST.

RSVP Deadline: Any member of the public wishing to attend the forum must RSVP no later than 5 p.m. EDT, Tuesday, October 25, 2011.

Deadline for Written Comments: Written comments must be received by October 25, 2011.

ADDRESSES: The forum will be held at the Veach-Baley Federal Complex, located at 151 Patton Avenue, Asheville, North Carolina 28801.

Written comments may be submitted to *Brooke.Stewart@noaa.gov* or in hard copy to Brooke Stewart, 151 Patton Avenue, Room 563, Asheville, North Carolina 28801.

For changes in the schedule, agenda, and updated information, please check the forum website at *https://sites.google.com/a/noaa.gov/heatwaves-coldwaves-floods-drought/.*

FOR FURTHER INFORMATION CONTACT: Brooke Stewart, National Climatic Data Center, 151 Patton Avenue, Room 563, Asheville, North Carolina 28801. (Phone: 828–257–3020, E-mail: *brooke.stewart@noaa.gov*).

SUPPLEMENTARY INFORMATION: This forum will provide an update to the climate science surrounding extreme events. The intent is to make key input available to the National Climate Assessment (NCA) for consideration. Further information regarding the NCA is available at *http://www.globalchange.gov/what-we-do/assessment.* NOAA is sponsoring this forum in support of the National Climate Assessment process.

As materials for this forum become available, they may be found at *https://sites.google.com/a/noaa.gov/heatwaves-coldwaves-floods-drought/.*

Topics To Be Addressed

This forum will address observed changes and their causes with regard to specific types of extreme weather and climate events, including heat waves, cold waves, floods, and drought.

Participants Will Consider

- Observed changes and degree of confidence in those changes for heat waves, cold waves, floods, and drought
- Current state of mechanistic understanding of the above-mentioned extreme events
- Potential causes of observed changes in extreme events

The forum will feature invited speakers and discussions. The forum is designed to produce a detailed draft outline of an article for submission to a peer-reviewed scientific journal.

Mary E. Kicza.

Assistant Administrator for Satellite and Information Services.

[FR Doc. 2011–26230 Filed 10–7–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA480

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Operation of the Northeast Gateway 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 the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Northeast Gateway® Energy Bridge™ L.P. (Northeast Gateway or NEG) to incidentally harass, by Level B harassment only, small numbers of marine mammals during operation of an offshore liquefied natural gas (LNG) facility in the Massachusetts Bay for a period of 1 year.

DATES: This authorization is effective from October 6, 2011, until October 5, 2012.

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. 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) 247–8401.

SUPPLEMENTARY INFORMATION:

Background

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

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 (where relevant), 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 U.S. 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 April 8, 2011, NMFS received an application from Excelerate Energy, L.P. (Excelerate) and Tetra Tech EC, Inc., on behalf of Northeast Gateway for an authorization to take 13 species of marine mammals by Level B harassment incidental to operations of an LNG port facility in Massachusetts Bay. They are: North Atlantic right whale, humpback whale, fin whale, minke whale, long-finned pilot whale, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, killer whale, Risso's dolphin, harbor porpoise, harbor seal, and gray seal. Since LNG Port operation activities have the potential to take marine mammals, a marine mammal take authorization under the MMPA is warranted. On May 7, 2007, NMFS issued an IHA to Northeast Gateway and Algonquin Gas Transmission, L.L.C. (Algonquin) to allow for the incidental harassment of small numbers of marine mammals resulting from the construction and operation of the NEG Port and the Algonquin Pipeline Lateral (72 FR 27077; May 14, 2007). Subsequently, NMFS issued three one-year IHAs for the take of marine mammals incidental to the operation of the NEG Port activity pursuant to section 101(a)(5)(D) of the MMPA (73 FR 29485; May 21, 2008; 74 FR 45613; September 3, 2009, and 75 FR 53672; September 1, 2010). The company is seeking new IHA for the upcoming year, because it is believed that marine mammals could be affected by noise generated by operating the dynamic positioning system during the docking of LNG vessels at the NEG Port.

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 the Algonquin Pipeline Lateral (Pipeline Lateral). The Pipeline Lateral consists of a 16.1-mile (25.8-kilometer) long, 24-inch (61-centimeter) outside diameter natural gas pipeline which interconnects the Port to an offshore natural gas pipeline known as the 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 Energy Bridge™ Regasification Vessels (EBRVs), each capable of transporting approximately 2.9 billion ft^3 (82 million m^3) of natural gas condensed to 4.9 million ft^3 (138,000 m^3) of LNG. Northeast Gateway has recently added two vessels to its fleet that have a cargo capacity of approximately 151,000 m^3 (5.3 million ft^3). The mooring system installed at the Northeast Gateway Port is designed to handle each class of vessel. The EBRVs 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 operations. A detailed description of these activities is provided in the **Federal Register** notice for the proposed IHA (76 FR 43639; July 21, 2011), and is not repeated here.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on July 21, 2011 (76 FR 43639). 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 requested authorization, subject to inclusion of the proposed mitigation and monitoring measures, including a condition that requires suspension of the proposed activities if an injury or death of a marine mammal occurs that may have resulted from those activities, pending authorization from NMFS to proceed.

Response: NMFS concurs with the Commission's recommendation. A condition that requires suspension of the proposed activities if an injury or death of a marine mammal occurs that may have resulted from the LNG Port operations, pending authorization from NMFS to proceed, is included in the mitigation and monitoring measures in the IHA issued to Northeast Gateway.

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*),
Risso's dolphin (*Grampus griseus*),
harbor porpoise (*Phocoena phocoena*),
harbor seal (*Phoca vitulina*), and
gray seal (*Halichoerus grypus*).

Information on those species that may be affected by this activity is discussed in detail in the USCG Final EIS on the Northeast Gateway LNG proposal. Please refer to that document for more information on these species and potential impacts from operation of this LNG facility. In addition, general information on these marine mammal species can also be found in Würsig *et al.* (2000) and in the NMFS Stock Assessment Reports (Waring *et al.,* 2011). This latter document is available at: *http://www.nefsc.noaa.gov/publications/tm/tm219/.* Additional information on those species that may be affected by this activity is provided in detail in the **Federal Register** published on July 21, 2011 (76 FR 43639).

Brief Background on Marine Mammal Hearing

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the

lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

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

As mentioned previously in this document, 13 marine mammal species (11 cetacean and two pinniped species) are likely to occur in the NEG Port area. Of the 11 cetacean species likely to occur in NEG's project area, four are classified as low frequency cetaceans (*i.e.,* North Atlantic right, humpback, fin, and minke whales), six are classified as mid-frequency cetaceans (*i.e.,* killer and pilot whales and bottlenose, common, Risso's, and Atlantic white-sided dolphins), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007).

Potential Effects of the Specified Activity on Marine Mammals

Potential effects of NEG's port operations would most likely be acoustic in nature. LNG port operations introduce sound into the marine environment. 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 EBRVs during docking at the NEG port facility. Noise generated from regasification/offloading is modeled to be under 120 dB, therefore, no take is expected from this activity. 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 LNG Port operations is provided in the **Federal Register** notice 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 EBRV 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 conducted field sound survey studies during periods of March 21 to 25, 2005, and August 6 to 9, 2006, while the EBRV *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 application). EBRV 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 dB. Maximum levels during steady state operations were 108 dB.
- 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 NEG's IHA application present the net acoustic impact of one EBRV 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 km^2 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 EBRV 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 ensonified by these noise sources. Animals would be expected to re-occupy the area once the noise ceases.

Anticipated Effects on Habitat

Approximately 4.8 acres of seafloor has been converted from soft substrate to artificial hard substrate. The soft-bottom benthic community may be replaced with organisms associated with naturally occurring hard substrate, such as sponges, hydroids, bryozoans, and associated species. The benthic community in the up to 43 acres (worst case scenario based on severe 100-year storm with EBRVs occupying both STL buoys) 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. In addition, disturbance from anchor chain movement would result in increased turbidity levels in the vicinity of the buoys that could affect prey species for marine mammals; however, as indicated in the final EIS/EIR, these impacts are expected to be short-term, indirect, and minor.

Daily removal of sea water from EBRV intakes will reduce the food resources available for planktivorous organisms. Water usage would be limited to the standard requirements of NEG's normal support vessel. As with all vessels operating in Massachusetts Bay, sea water uptake and discharge is required to support engine cooling, typically using a once-through system. The rate of seawater uptake varies with the ship's horsepower and activity and therefore will differ between vessels and activity type. For example, the GATEWAY ENDEAVOR is a 90-ft (27 m) vessel powered with a 1,200 horsepower diesel engine with a four-pump seawater cooling system. This system requires seawater intake of about 68 gallons per minute (gpm) while idling and up to about 150 gpm at full power. Use of full power is required generally for transit. A conservatively high estimate of vessel activity for the GATEWAY ENDEAVOR would be operation at idle for 75% of the time and full power for 25% of the time. During routine activities, this would equate to approximately 42,480 gallons of seawater per 8-hour work day. When compared to the engine cooling requirements of an EBRV over an 8-hour period (approximately 17.62 million gallons), the GATEWAY ENDEAVOUR uses about 0.2% of the EBRV requirement. To put this water use into context, the final EIS/EIR for the NEG Port concluded that the impacts to fish populations and to marine mammals that feed on fish or plankton resulting from water use by an EBRV during port operations (approximately 39,780,000 gallons over each 8-day regasification period) would be minor. Water use by support vessels during routine port activities would not materially add to the overall impacts evaluated in the final EIS/EIR. Additionally, discharges associated with the GATEWAY ENDEAVOR and/or other support/maintenance vessels that are 79 feet or greater in length, are now regulated under the Clean Water Act (CWA) and must receive and comply with the United States Environmental Protection Agency (EPA) Vessel General Permit (VGP). The permit incorporates the USCG mandatory ballast water management and exchange standards, and provides technology- and water quality-based effluent limits for other types of discharges, including deck runoff, bilge water, graywater, and other pollutants. It also establishes specific corrective actions, inspection, and monitoring requirements and recordkeeping and reporting requirements for each vessel. Massachusetts Bay circulation will not be altered, so plankton will be continuously transported into the NEG Port area. The removal of these species is minor and unlikely to affect in a measurable way the food sources available to marine mammals.

In conclusion, NMFS has determined that NEG's port operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Monitoring and Mitigation Measures

In order to issue an incidental take authorization (ITA) under the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). In addition, NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

During the construction and operations of the NEG LNG Port facility in prior years, Northeast Gateway submitted reports on marine mammal sightings in the area. While it is difficult to draw biological conclusions from these reports, NMFS can make some general conclusions. Data gathered by protected species observers (PSOs) are generally useful to indicate the presence or absence of marine mammals (often to a species level) within the exclusion zones (and sometimes without) and to document the implementation of mitigation measures. Though it is by no means conclusive, it is worth noting that no instances of obvious behavioral disturbance as a result of Northeast Gateway's activities were observed by the PSOs.

In addition, Northeast Gateway was required to maintain an array of Marine Autonomous Recording Units (MARUs) to monitor calling North Atlantic right whales (humpback, fin, and minke whale calls were also able to be detected).

For the issuance of the IHA to NEG for LNG port operations, NMFS requires the following monitoring and mitigation measures.

Protected Species Observers

For activities related to the NEG LNG port operations, all individuals onboard the EBRVs 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 EBRV 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.

Vessel Strike Avoidance

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

(2) In response to active right whale sightings (detected acoustically or reported through other means such as the MSR or Sighting Advisory System (SAS)), and taking into account safety and weather conditions, EBRVs 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) EBRVs 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) EBRVs will reduce transit speed to 10 knots or less over ground from March 1–April 30 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 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) EBRVs 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) A vessel may operate at a speed necessary to maintain safe maneuvering speed instead of the required 10 knots only if justified because the vessel is in an area where oceanographic, hydrographic, and/or meteorological conditions severely restrict the maneuverability of the vessel and the need to operate at such speed is confirmed by the pilot on board or, when a vessel is not carrying a pilot, the master of the vessel. If a deviation from the 10-knot speed limit is necessary, the reasons for the deviation, the speed at which the vessel is operated, the latitude and longitude of the area, and the time and duration of such deviation shall be entered into the logbook of the vessel. The master of the vessel shall attest to the accuracy of the logbook entry by signing and dating it.

Research Passive Acoustic Monitoring (PAM) Program

Northeast Gateway shall monitor the noise environment in Massachusetts Bay in the vicinity of the NEG Port using an array of 19 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 and Algonquin application. These 19 MARUs will remain in the same configuration during full operation of the NEG Port. 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 (18 km) of the NEG Port and shall measure and document the noise ''footprint'' of Massachusetts Bay so as to eventually assist in determining whether an overall increase in noise in the Bay associated with the NEG Port 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 in Massachusetts Bay and the distribution of vocalizing marine mammals during NEG Port activities.

In addition to the 19 MARUs, Northeast Gateway will deploy 10 auto-detection buoys (ABs) within the TSS for the operational life of the NEG Port. A description of the ABs is provided in Appendix A of 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 EBRV captains to the occurrence of right whales, heightens EBRV 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 and the Woods Hole Oceanographic Institution 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 and Algonquin application.

Mitigation Conclusions

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

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

Based on our evaluation, NMFS has determined that the monitoring and mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Reporting

The 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, 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.

An annual report on marine mammal monitoring and mitigation shall be submitted to NMFS Office of Protected Resources and NMFS Northeast Regional Office within 90 days after the expiration of the IHA. The annual report shall include data collected for each distinct marine mammal species observed in the project area in 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.

General Conclusions Drawn From Previous Monitoring Reports

Based on monthly activity reports submitted to NMFS for the period between August 2010 and May 2011, there were no activities at the NEG Port during the period. Therefore, no take of marine mammals occurred or were reported during this period.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) Has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B harassment is anticipated as a result of NEG's operational activities. Anticipated take of marine mammals is associated with operation of dynamic positioning during the docking of the LNG vessels. The regasification process itself is an activity that does not rise to the level of taking, as the modeled source level for this activity is 108 dB. Certain species may have a behavioral reaction to the sound emitted during the activities. Hearing impairment is not anticipated. Additionally, vessel strikes are not anticipated, especially because of the speed restriction measures that were described earlier in this document.

Although Northeast Gateway stated that the ensonified area of 120-dB isopleths by EBRV's decoupling would be less than 1 km^2 as measured in the Gulf of Mexico in 2005, due to the lack of more recent sound source verification and the lack of source measurement in Massachusetts Bay, NMFS uses a more conservative spreading model to calculate the 120 dB isopleth received sound level. This model was also used to establish the 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 km^2 (8.1 mi^2). 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), the associated ZOI is 34 km^2 (13.1 mi^2).

The basis for Northeast Gateway and Algonquin's ''take'' estimate is the number of marine mammals that would be exposed to sound levels in excess of 120 dB, which is the threshold used by NMFS for continuous sounds. For the NEG port facility operations, the take estimates are determined by multiplying the area of the EBRV's ZOI (34 km^2) 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. 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. For a detailed description and calculation of the cetacean abundance data and 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 1.15 mi (1.85 km) as the strip width (W). This strip width is based on the distance of visibility used in the NARWC data that was part of the NCCOS (2006) study. However, those surveys used a strip transect instead of a line transect methodology. Therefore, in order to obtain a strip width, one must divide the visibility or transect value in half. Since the visibility value used in the NARWC data was 2.3 mi (3.7 km), it thus gives a strip width of 1.15 mi (1.85 km). Based on this information, the area density (D) of these species in the project area can be obtained by the following formula:

D = 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, based on 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 5, 5, 15, 3, 23, and 73, respectively. These numbers represent maximum of 1.32, 0.24, 1.73, 0.10, 0.08, and 0.11 percent of the populations for these species, respectively. Since it is very likely that individual animals could be ''taken'' by harassment multiple times, 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 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, Risso's dolphins, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of deepwater LNG port operations. Since these species are less likely to occur in the area, and there are no density estimates specific to this particular area, NMFS based the take estimates on typical group size. Therefore, NMFS estimates that up to approximately 10 bottlenose dolphins, 20 common dolphins, 20 Risso's dolphins, 20 killer whales, 5 harbor porpoises, 15 harbor seals, and 15 gray seals could be exposed to continuous noise at or above 120 dB re 1 μPa rms incidental to operations during the one year period of the IHA, respectively.

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

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of Northeast Gateway's proposed port operation activities, and none are authorized by NMFS. Additionally, animals in the area are not anticipated to incur any hearing impairment (*i.e.,* TTS or PTS), as the modeling of source levels indicates that none of the source received levels exceed 180 dB (rms).

While some of the species occur in the proposed project area year-round, some species only occur in the area during certain seasons. Humpback and minke whales are not expected in the project area in the winter. During the winter, a large portion of the North Atlantic right whale population occurs in the southeastern U.S. calving grounds (*i.e.,* South Carolina, Georgia, and northern Florida). The fact that certain activities will occur during times when certain species are not commonly found in the area will help reduce the amount of Level B harassment for these species.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Operational activities are not anticipated to occur at the Port on consecutive days. In addition, Northeast Gateway EBRVs are expected to make 65 port calls throughout the year, with thruster use needed for a couple of hours. Therefore, Northeast Gateway will not be creating increased sound levels in the marine environment for prolonged periods of time.

Of the 13 marine mammal species likely to occur in the area, four are listed as endangered under the ESA: North Atlantic right, humpback, and fin whales. All of these species, as well as the northern coastal stock of bottlenose dolphin, are also considered depleted under the MMPA. There is currently no designated critical habitat or known reproductive areas for any of these species in or near the proposed project area. However, there are several well known North Atlantic right whale feeding grounds in the Cape Cod Bay and Great South Channel. No mortality or injury is expected to occur, and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

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 (1.73 percent for humpback whales and 1.32 percent for North Atlantic right whales and no more than 1 percent of any other species).

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

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

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

action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

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. The finding of that consultation was that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green or leatherback sea turtles. An incidental take statement (ITS) was issued following NMFS' issuance of the 2007 IHA.

On November 15, 2007, Northeast Gateway and Algonquin submitted a letter to NMFS requesting an extension for the LNG Port construction into December 2007. Upon reviewing Northeast Gateway's weekly marine mammal monitoring reports submitted under the previous IHA, NMFS recognized that the potential take of some marine mammals resulting from the LNG Port and Pipeline Lateral by Level B behavioral harassment likely had exceeded the original take estimates. 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' Permits, Conservation and Education division has determined that the activities described in here are the same as those analyzed in the revised 2007 biological opinion. Therefore, a new consultation is not required for issuance of this IHA.

National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed 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 mammals.

NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the Draft and Final EISs. NMFS reviewed the Final EIS and adopted it on May 4, 2007. NMFS issued a separate Record of Decision for issuance of authorizations pursuant to section 101(a)(5) of the MMPA for the construction and operation of the Northeast Gateway's LNG Port Facility in Massachusetts Bay.

Determinations

NMFS has determined that the operation and maintenance activities of the Northeast Gateway Port facility 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. 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.

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.

Dated: October 4, 2011.

James H. Lecky,

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

[FR Doc. 2011–26200 Filed 10–7–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 12–C0001]

Nordica USA, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Nordica USA, containing a civil penalty of $214,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 26, 2011.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 12–C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, General Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 4, 2011.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Nordica USA (''Nordica'') and staff of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement