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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC784

Takes of Marine Mammals Incidental to Specified Activities; Rockaway Delivery Lateral Project off New York, June 2014 through October 2014

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

ACTION: Notice; issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Transcontinental Gas Pipe Line Company, LLC (Transco) to take marine mammals, by harassment, incidental to expanding a natural gas pipeline system off the coast of New York.

DATES: Effective June 1, 2014, through October 31, 2014.

ADDRESSES: An electronic copy of the application, authorization, and associated documents may be obtained by visiting the internet at:

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

FOR FURTHER INFORMATION CONTACT: Shane Guan, National Marine Fisheries Service, Office of Protected Resources, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request,

the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after notice of a proposed authorization to the public for review and public comment: (1) we make certain findings; and (2) the taking is limited to harassment.

NMFS shall grant authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat (i.e., mitigation); and requirements pertaining to the monitoring and reporting of such taking. NMFS have 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."

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

Summary of Request

On March 21, 2013, NMFS received an application from Transco for the taking of marine mammals incidental to the Rockaway delivery lateral project (Project) off the coast of New York

over a 1-year period beginning in April 2014. We received a revised application from Transco on May 13, 2013, which reflected updates to the proposed mitigation measures, proposed monitoring measures, and incidental take requests for marine mammals. Further revisions were made to the request in October 2013 due to a change in the project schedule and the application was considered complete and adequate on November 9, 2013. On April 14, Transco amended their take request based on a shift in the offshore construction schedule.

Transco plans to expand its pipeline system to meet immediate and future demand for natural gas in the New York City market area. This project will provide an additional delivery point to National Grid's (an international electricity and gas company) local distribution companies, giving National Grid the flexibility to redirect supplies during peak demand periods. The in-water portion of the project, which will require pile driving, may result in the incidental taking of seven species of marine mammals by behavioral harassment.

Description of the Specified Activities

The specific Project activity will be to install a sub-sea natural gas pipeline extending from the existing Lower New York Bay Lateral in the Atlantic Ocean to an onshore delivery point on the Rockaway Peninsula. The work will include the following:

- Horizontal directional drilling
 - Beginning onshore and exiting offshore
 - Includes excavation of the horizontal directional drilling exit pit and pile driving activities
- Offshore construction and support vessels
 - Various vessels would be used throughout the in-water work
- Sub-sea dual hot-tap installation of the existing Lower New York Bay Lateral

- Includes use of diver-controlled hand-jetting to clear sediment around the existing pipeline
- Offshore pipeline construction
 - Includes offshore pipe laying and subsea jet-sled trenching
- Anode bed installation and cable crossing
 - Includes use of divers and hand-jetting to clear sediment around the locations of the anode bed and existing power cable crossing
- Hydrostatic test water withdrawal and discharge
 - Would occur four times during the course of in-water construction.
- Post-installation and final (as-built) hydrographic survey
 - Includes the use of a multibeam echo sounder and high resolution side scan sonar
- Subsea trench and HDD exit pit backfill
 - Includes the use of a small-scale crane-supported suction dredge for the trench
 - Includes the use of diver-controlled hand jetting and/or clamshell dredge for the HDD exit pit
- Operation and maintenance

Only the pile driving activities associated with horizontal directional drilling offshore construction are expected to result in the take of marine mammals by Level B harassment. Other aspects of the project are discussed in more detail in Transco's IHA application

(<http://www.nmfs.noaa.gov/pr/permits/incidental.htm/#applications>). No vessels will use dynamic positioning (a system to maintain position and heading), and only two vessels - a crew boat and picket boat - will make weekly trips to the Project area from shore. Elevated sound levels that may result in harassment are not expected from the clamshell dredge because the

dredge will be anchored and dynamic positioning will not be used. Dredging and trenching may result in a temporary, localized increase in turbidity, but are not expected to rise to the level of harassment. A complete description of all in-water Project activities is provided in Transco's application (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm/#applications>).

Vibratory Hammer Installation and Removal

Vibratory hammers are commonly used in steel pile installation and removal when the sediment conditions allow for this method. Transco will likely use the MKT V 52 model of vibratory hammer for the Project. The vibratory hammer is considered a continuous sound source because it continuously drives the pile into the substrate until the desired depth is reached. Transco will use a vibratory hammer to install about 70 piles (5 sets of temporary goal posts and up to 60 temporary fender piles). All piles will be 14- to 16-inch diameter steel pipe piles. Two vibratory hammers will be on site, but only one hammer will be used at a time. Each pile should take about 1 to 2 seconds to install per foot of depth driven, with each pile driven to a depth of about 25 to 30 feet below the seafloor. Therefore, each pile will take up to 60 seconds of continuous pile driving to install. All piles should be installed during a 1-week period, with less than 12 hours of pile driving operation. The goal posts and fenders would remain in the offshore environment for the duration of the horizontal directional drilling portion of construction (3 to 4 months). Extraction of all piles at the end of the construction period should take about as long as installation.

Location of the Specified Activity

The Project will be located mostly in nearshore waters (within approximately 3 miles of the Atlantic Ocean), southeast of the Rockaway Peninsula in Queens County, New York. A linear segment of underwater land measuring approximately 2.15 miles will be required for

offshore pipe lay and trenching activities from the interconnect with Transco's pipeline to the proposed horizontal directional drilling exit point in the nearshore area, seaward of Jacob Riis Park (see Figure 1 of Transco's application). The Project area is located within the greater New York Bight region, with construction occurring within approximately 2.86 miles from the Jacob Riis Park shoreline. Vessels associated with the Project will travel between the pipe yard in Elizabeth, New Jersey, to the offshore construction site. The greater Project area, therefore, is described as the waters between the pipe yard and construction site and the waters offshore of Jacob Riis Park where construction will occur. However, pile driving activities will only take place around the horizontal directional drilling exit point in the nearshore area. All work will occur in water depths between 25 and 50 feet.

Duration of the Specified Activity

Pile driving activities were originally proposed to begin in April 2014 and expected to be complete in August 2014. However, Transco adjusted their construction schedule so that pile installation will begin in June 2014 and pile removal will occur in September 2014. The IHA is valid through October 2014 to allow for construction delays. Total installation time for all piles is expected to total less than 1 day of operation and would occur during a 1-week period. Total operating time for the extraction of all piles at the end of the construction period is expected to take a similar amount of time (1 day total over a 1-week period).

Metrics Used in This Document

This section was included in the notice of proposed IHA (78 FR 78824, December 27, 2013) as a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document and that information has not changed.

Predicted Sound Levels from Vibratory Pile Driving

No source levels were available for 14- to 16-inch diameter steel pipe piles at water depths of approximately 33 feet. The most applicable source levels available are for 12-inch diameter steel pipe piles in water depths of approximately 16 feet. In-water measurements for the Mad River Slough Project in Arcata, California, indicate that installation of a 12-inch steel pipe pile in about 16 feet of water measured 10 meters from the source generated 155 dB re 1 uPa RMS. To account for the increased diameter of the piles planned for use during the Project, a change in water depth, and a different location than where the reference levels were recorded, Transco increased the source levels from the Mad River Slough Project by 5 dB. The 5 dB increase was chosen due to an overall lack of current information available for reference levels of steel pipe piles of a similar size being driven with a vibratory hammer in similar water depths. Transco expects that this increase overestimates the actual source level from the vibratory hammer.

Description of Marine Mammals in the Area of the Specified Activity

Thirteen marine mammal species under our jurisdiction may occur in the proposed Project area, including four mysticetes (baleen whales), six odontocetes (toothed cetaceans), and three pinnipeds (seals). Three of these species are listed as endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.), including: the humpback (Megaptera novaeangliae), fin (Balaenoptera physalus), and North Atlantic right (Eubalaena glacialis) whales.

However, based on occurrence information, stranding records, and seasonal distribution, it is unlikely that humpback whales, fin whales, minke whales, Atlantic white-sided dolphins, short-finned pilot whales, or long-finned pilot whales will be present in the Project area during the winter in-water construction period. Each of these species is discussed in detail in section 3

of Transco's IHA application

(<http://www.nmfs.noaa.gov/pr/permits/incidental.htm/#applications>). In summary, humpback whales are typically found in other regions of the east coast and there have been no reported observations within the vicinity of the Project area in recent years; fin whales prefer deeper offshore waters and there have been no reported observations within the vicinity of the Project area in recent years; minke whales are prevalent in other regions there have been no reported observations within the vicinity of the Project area in recent years; Atlantic white-sided dolphins generally occur in areas east and north of the Project area; and short-finned and long-finned pilot whales prefer deeper pelagic waters. Accordingly, we did not consider these species in greater detail and only authorized take for the seven species requested. After the proposed IHA was published (78 FR 78824, December 27, 2013), Transco amended their application due to a change in construction schedule. Their new schedule, which has pile installation occurring in June 2014 and pile removal occurring in September 2014, does not overlap with North Atlantic right whale season (November to April). Therefore, after consultation with NMFS, Transco amended their marine mammal take request and eliminated the request for incidental take of North Atlantic right whales. NMFS further determined that incidental take of harp seals from June through September is also highly unlikely because of its distribution.

Table 2 presents information on the abundance, distribution, and conservation status of the marine mammals that may occur in the area from June through September. While harbor porpoise are most likely in the project area during winter months, they are dispersed as far south as New Jersey during the spring and fall. Similarly, short-beaked common dolphins are most likely in the area from January to May, but may still be passing through the area during the summer and fall.

Table 2. Abundance estimates, mean density, and ESA status of marine mammals that may occur in the proposed Project area during June through September.

Common Name	Scientific Name	Stock	ESA ^a	Time of Year Most Likely Expected in Region	Abundance Estimate
Odontocetes Harbor porpoise	<u>Phocoena phocoena</u>	Gulf of Maine/Bay of Fundy	-	Jan-March	89,054
Bottlenose dolphin	<u>Tursiops truncatus</u>	Western North Atlantic Northern Migratory	-	July-Sept	7,147
Short-beaked common dolphin	<u>Delphinus delphis</u>	Western North Atlantic	-	Jan-May	52,893
Pinnipeds Gray seal	<u>Halichoerus grypus</u>	Western North Atlantic	-	Sept-May	348,900
Harbor seal	<u>Phoca vitulina</u>	Western North Atlantic	-	Sept-May	99,340

Further information on the biology and local distribution of these species can be found in section 3 of Transco’s application (see ADDRESSES), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: <http://www.nmfs.noaa.gov/pr/sars/>.

Potential Effects of the Specified Activity on Marine Mammals

This section of the proposed IHA (78 FR 78824, December 27, 2013) included a summary and discussion of the ways that the types of stressors associated with the specified activity (pile driving activities) have been observed to impact marine mammals. That information has not changed and is not repeated here. In summary, the potential effects of sound from the proposed activities may include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and temporary or permanent hearing impairment (Richardson et al., 1995). However, it is unlikely that there would be any cases of temporary or permanent hearing impairment resulting from these activities.

Anticipated Effects on Marine Mammal Habitat

This section of the proposed IHA (78 FR 78824, December 27, 2013) described the anticipated effects of pile driving activities on marine mammal habitat; that information has not changed and is not repeated here. In summary, because of the short duration of the activity, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Comments and Responses

NMFS published a proposed authorization and request for public comments in the Federal Register on December 27, 2013 (78 FR 78824). During the 30-day public comment period, NMFS only received comments from the Marine Mammal Commission (Commission). All comments are addressed below and have been compiled and posted online at:

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

Comment 1: The Commission recommended that NMFS require Transco to (1) provide estimated source levels associated with other pipeline construction activities (i.e., horizontal directional drilling, pipe laying, and pipe burial); and (2) estimate the number of takes associated with those activities based on the Level B harassment threshold of 120 dB.

Response: Only two construction elements involve noise as a concern for marine mammals: vibratory pile driving and vessel operations. Both of these activities were discussed in detail in Transco's application (see ADDRESSES) and were addressed in the proposed IHA (78 FR 78824, December 27, 2013). Noise levels generated by activities such as pipe laying and pipe burial are generally very low (Richardson et al., 1995) and do not reach the level set forth in NMFS' noise exposure criteria that would result in take. There is no underwater construction involved with these activities and any noise generation would be conducted on a vessel. Horizontal directional drilling will begin onshore and exit offshore, and include excavation of the

exit pit via clamshell dredge and vibratory installation and removal of piles. The clamshell dredge will be anchored in place and dynamic positioning will not be used. Excavation does not involve a sound source that has the potential to result in incidental take of marine mammals. No drilling will occur from the offshore HDD location. Further information on each project activity is also provided in Transco's application (see ADDRESSES).

Comment 2: The Commission recommended that NMFS require Transco to estimate the number of takes by accounting for the number of days (i.e., seven days) that the proposed activities would occur in summer (for pile driving) and fall (for pile removal).

Response: NMFS agrees that the number of days of pile driving should be considered when estimating take. In addition, only summer and fall densities were considered to estimate take since pile driving activities will no longer take place during spring or winter months. The take estimates, summarized in Table 3 of this document, have been adjusted to account for the number of days of pile installation in the summer and removal in the fall.

Comment 3: The Commission recommended that NMFS require Transco to increase its estimated numbers of takes for North Atlantic right whales and short-beaked common dolphins to the mean group size for each season in which takes are expected to occur.

Response: As noted in the Description of Marine Mammals section of this document, Transco amended their take request after publication of the proposed IHA and NMFS believes that take of North Atlantic right whales is unlikely considering the new construction schedule. NMFS disagrees that estimated numbers of takes for short-beaked common dolphins should be increased to reflect the mean group size (which is in the hundreds) due to their seasonal presence around the construction area and the short duration of pile driving activities. Short-beaked common dolphins are most likely to be found offshore New York between January and May and

prefer oceanic waters. During summer and fall months (when pile installation and removal will occur), short-beaked common dolphins are expected to be much further north near Georges Bank. NMFS authorized take of this species based on the estimated density for summer and fall months and does not expect large aggregations of short-beaked common dolphins in the area.

Mitigation

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

To reduce the potential for disturbance from acoustic stimuli associated with the activities, Transco will implement the following mitigation measures for marine mammals:

- (1) Vibratory pile driving only;
- (2) Pile driving during daylight hours only;
- (3) Shutdown procedures;
- (4) Soft-start (ramp-up) procedures; and
- (5) Discharge control.

Separately, Transco acknowledges the vessel activity and speed restrictions that are already in place along the east coast for the north Atlantic right whale. While the Seasonal Management Area is in effect (November-April), vessel operators will comply with the established regulations. The change in construction schedule (prompted by the seasonal distribution of ESA-listed Atlantic sturgeon) also reduces the overlap of pile driving activities

with the North Atlantic right whale season (November-April) and the likelihood of harp seals in the area.

Vibratory Pile Driving Only

Transco will use a vibratory hammer instead of an impact hammer for all pile driving activities in order to reduce in-water sound levels while installing and removing up to 70 temporary steel pipe piles. The sound source level for the vibratory hammer is less than the source level for an impact hammer, and by avoiding use of an impact hammer Transco removes the potential for Level A harassment of marine mammals.

Pile Driving During Daylight Hours Only

Pile driving installation and removal will only be conducted when lighting and weather conditions allow the protected species observers to visually monitor the entire Level B harassment area through the use of binoculars or other devices.

Soft-start (Ramp-up) Procedures

Transco will implement soft-start procedures at the beginning of each pile driving session (i.e., at the beginning of each day and after a lapse of activity for at least 30 minutes). Contractors will initiate the vibratory hammer for 15 seconds at 40 to 60 percent reduced energy, followed by a 1-minute waiting period. This procedure will be repeated two additional times before reach full energy.

Shutdown Procedures

Protected species observers will monitor the entire Level B harassment area for marine mammals displaying abnormal behavior. Such behavior may include aggressive signals related to noise exposure (e.g., tail/flipper slapping or abrupt directed movement), avoidance of the sound source, or an obvious startle response (e.g., rapid change in swimming speed, erratic

surface movements, or sudden diving associated with the onset of a sound source). At NMFS' recommendation, if a protected species observer sees any abnormal behavior, this information will be related to the construction manager and the vibratory hammer will be shutdown until the animal has moved outside of the Level B harassment area.

Control of Discharge

All in-water construction activities will comply with federal regulations to control the discharge of operational waste such as bilge and ballast waters, trash and debris, and sanitary and domestic waste that could be generated from all vessels associated with the Project. All Project vessels will also comply with the U.S. Coast Guard requirements for the prevention and control of oil and fuel spills (see Transco's application for more detail).

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse 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.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of in-water pile driving activities, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of in-water pile driving activities, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of in-water pile driving activity, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation – an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the aforementioned mitigation measures

provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth “requirements pertaining to the monitoring and reporting of such taking.” The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the proposed action area.

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

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;
2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of in-water pile driving activity that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;
3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock

(specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
 - Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
 - Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;
4. An increased knowledge of the affected species; and
 5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Visual Monitoring

Two NMFS-approved protected species observers will survey the Level B harassment area (~3 miles) for marine mammals 30 minutes before, during, and 30 minutes after all vibratory pile driving activities. The observers will be stationed on a picket boat, located about 1.5 miles from the pile hammer. The picket boat will circle the pile hammer at a 1.5-mile distance so that the entire Level B harassment area could be surveyed. Information recorded during each observation within the Level B harassment area will be used to estimate numbers of animals potentially taken and will include the following:

- Numbers of individuals observed;
- Frequency of observation;

- Location within the Level B harassment area (i.e., distance from the sound source);
- Vibratory pile driving status (i.e., soft-start, active, post pile driving, etc.); and
- Reaction of the animal(s) to pile driving (if any) and observed behavior within the Level B harassment area, including bearing and direction of travel.

If the Level B harassment area is obscured by fog or poor lighting conditions, vibratory pile driving will be delayed until the area is visible. If the Level B harassment area becomes obscured by fog or poor lighting conditions while pile driving activities are occurring, pile driving will be shut down until the area is visible again.

Reporting

Transco will provide NMFS with a draft monitoring report within 90 days of the conclusion of monitoring. This report will include the following:

- A summary of the activity and monitoring plan (i.e., dates, times, locations);
- A summary of mitigation implementation;
- Monitoring results and a summary that addresses the goals of the monitoring plan, including the following:
 - Environmental conditions when observations were made;
 - Water conditions (i.e., Beaufort sea-state, tidal state)
 - Weather conditions (i.e., percent cloud cover, visibility, percent glare)
 - Survey-specific data:
 - Date and time survey initiated and terminated;
 - Date, time, number, species, and any other relevant data regarding marine mammals observed (for pre-activity, during activity, and post-activity surveys);

- Description of the observed behaviors (in both the presence and absence of activities):
- If possible, the correlation to underwater sound level occurring at the time of any observable behavior
- Estimated exposure/take numbers during activities
- An assessment of the implementation and effectiveness of prescribed mitigation and monitoring measures.

Transco will submit a final report within 30 days after receiving NMFS' comments on the draft report. If NMFS has no comments, the draft report will be considered final.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), Transco shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and the Northeast Regional Stranding Coordinator at 978-281-9300 (Mendy.Garron@noaa.gov). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;

- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Transco shall not resume its activities until we are able to review the circumstances of the prohibited take. We will work with Transco to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Transco may not resume their activities until notified by us via letter, email, or telephone.

In the event that Transco discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), Transco shall immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and the Northeast Regional Stranding Coordinator at 978-281-9300 (Mendy.Garron@noaa.gov). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We would work with Transco to determine whether modifications in the activities are appropriate.

In the event that Transco discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the

authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Transco would report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and the Northeast Regional Stranding Coordinator at 978-281-9300 (Mendy.Garron@noaa.gov), within 24 hours of the discovery. Transco would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

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].

This section of the proposed IHA (78 FR 78824, December 27, 2013) described the methods used to estimate marine mammal density; that information has not changed except for the fact that pile driving activities will no longer take place during spring or winter months. Therefore, the marine mammal densities for the winter and spring seasons are no longer applicable and only summer and fall densities were considered. Transco estimated potential take by multiplying the area of the zone of influence (the Level B harassment area) by the local animal density. This provides an estimate of the number of animals that might occupy the Level B harassment area at any given moment during vibratory pile driving activities. Further information on these calculations and how they were applied to each species is also provided in

section 6.3 of Transco’s application (see ADDRESSES). Based on a comment from the Marine Mammal Commission, the number of days of pile driving was also considered when estimating take.

NMFS’ current acoustic exposure criteria are provided in Table 2 below. Based on these thresholds, Transco estimated the number of marine mammals that may be exposed to noise that rises to the level of take. Table 3 shows the authorized take for Transco’s specified activity, based on the estimated seasonal densities for pile installation and removal and the number of days of activity (up to seven for installation and seven for removal). Table 3 was adjusted from the proposed IHA to account for the new construction schedule and the Marine Mammal Commission’s comment.

Non-explosive Sound		
Criterion	Criterion Definition	Threshold
Level A Harassment (injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS)	180 dB re 1 microPa-m (cetaceans) / 190 dB re 1 microPa-m (pinnipeds) root mean square (rms)
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms)
Level B Harassment	Behavioral Disruption (for continuous noises)	120 dB re 1 microPa-m (rms)

Table 3. Estimated densities and authorized marine mammal take for the specified activity.

Common Species Name	Est. Summer Density (per 100 km ²) ¹	Est. Fall Density (per 100 km ²) ¹	Est. Daily Summer Take by Level B Harassment	Est. Daily Fall Take by Level B Harassment	Total Take Authorized	Abundance of Stock	% of Stock Potentially Affected	Pop. Trend
Gray seal	N/A	N/A	14	14	196	348,900	0.06%	increasing
Harbor seal	156.41	156.41	69	69	966	99,340	0.97%	N/A
Bottlenose dolphin	26.91	3.70	12	2	98	7,147	1.37%	N/A
Short-beaked common dolphin	3.59	5.28	2	3	35	52,893	0.06%	N/A
Harbor porpoise	0.00	3.20	0	2	14	99,340	0.01%	N/A

¹ Source: Navy OPAREA Density Estimates (NODE) for the Northeast OPAREAS: Boston, Narragansett Bay, and Atlantic City (2007)
N/A = Not available

Analysis and Preliminary Determinations

Negligible Impact

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

We do not anticipate that any injuries, serious injuries, or mortalities will occur as a result of Transco’s Project, and we are not authorizing injury, serious injury, or mortality for this Project. We have determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting pile driving activities off Rockaway Peninsula, from June 2014 through September 2014, may result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals. There are no known important feeding areas or haul-outs within the project area. While these species may make behavioral modifications, including temporarily vacating

the area during the operation of the pile hammer to avoid the resultant acoustic disturbance, the availability of similar habitat surrounding the project area and the short and sporadic duration of the specified activities, have led us to determine that this action will not adversely affect annual rates of recruitment or survival.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour 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). While vibratory pile driving will occur over 2 consecutive days, this is still considered a short overall duration and it will only occur during daylight hours.

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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take from Transco's specified activity will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The take numbers for each marine mammal species we are authorizing are small (all estimates are less than two percent) relative to the affected stock sizes. Accordingly, NMFS finds that small numbers of marine mammals will be taken.

Impact on Availability of Affected Species 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 will not have

an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Transco originally requested, and NMFS proposed, the incidental take of North Atlantic right whale, which is listed as endangered under the Endangered Species Act. Under section 7 of the Act, the Federal Energy Regulatory Commission (FERC; the federal agency responsible for permitting Transco's construction) initiated formal consultation with our Northeast Regional Office on the Project. We (i.e., National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division), also initiated formal consultation under section 7 of the Act with the Northeast Regional Office to obtain a Biological Opinion (Opinion) evaluating the effects of issuing an incidental harassment authorization for threatened and endangered marine mammals and, if appropriate, authorizing incidental take. However, following Transco's amendment to their request, the Permits and Conservation Division and the Northeast Regional Office concluded that take of North Atlantic right whale is unlikely. Therefore, the Project is not expected to result in the take of any threatened or endangered marine mammal species.

National Environmental Policy Act (NEPA)

NMFS participated as a cooperating agency on the FERC's Rockaway Delivery Lateral Project Environmental Impact Statement (EIS), which was published on March 10, 2014 (79 FR 13295) and is available here: <https://www.ferc.gov/industries/gas/enviro/eis/2014/02-28-14-eis.asp>. NMFS determined that the EIS is adequate and appropriate to meet our responsibilities under NEPA for the issuance of an IHA. NMFS adopted FERC's FEIS on May 27, 2014.

Dated: June 18, 2014.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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