

Dated: May 4, 2009.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XO92

#### Notice of Availability of the Marine Mammal Health and Stranding Response Program Record of Decision

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

**ACTION:** Notice of Availability (NOA) of Record of Decision.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces the availability of the Record of Decision (ROD) for the Marine Mammal Health and Stranding Response Program (MMHSRP). This ROD announces NMFS' decisions for implementing the MMHSRP. Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations, NMFS prepared a Programmatic Environmental Impact Statement (PEIS) that evaluated the potential environmental and socioeconomic effects associated with alternatives for the MMHSRP's activities.

**ADDRESSES:** Comments or questions regarding the ROD can be sent to David Cottingham, Chief, Marine Mammal and Sea Turtle Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13635, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Sarah Howlett, Fishery Biologist, NMFS, at (301) 713-2322; facsimile at (301) 427-2522.

**SUPPLEMENTARY INFORMATION:** A copy of the ROD and the Final PEIS are available at: <http://www.nmfs.noaa.gov/pr/health/eis.htm>.

Dated: May 1, 2009.

**Katy M. Vincent,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. E9-10676 Filed 5-7-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XO84

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

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments and information.

**SUMMARY:** NMFS received an application from Neptune LNG, L.L.C. (Neptune) for take of marine mammals, by Level B harassment, incidental to construction and operation of an offshore liquefied natural gas (LNG) facility in Massachusetts Bay. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to Neptune to incidentally take, by harassment, small numbers of several species of marine mammals during construction and operations of the LNG facility for a period of 1 year.

**DATES:** Comments and information must be received no later than June 8, 2009.

**ADDRESSES:** Written comments on the application should be addressed to: P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is [PR1.0648-XO84@noaa.gov](mailto:PR1.0648-XO84@noaa.gov). Comments sent via email, including all attachments, must not exceed a 10-megabyte file size. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**) or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications> without change. All Personal Identifying

Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

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

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