

July 30, 2002

Dr. Joseph E. Powers, Acting Regional Administrator
National Marine Fisheries Service
Southeast Regional Office (SERO)
9721 Executive Center Drive North
St. Petersburg, FL 33702

SUBJECT: RESPONSE TO YOUR LETTER OF MAY 24, 2002, CONCERNING LICENSE
RENEWAL AT THE EDWIN I. HATCH NUCLEAR PLANT, UNIT NOS. 1 AND 2
(TAC MB5373 AND MB5374)

Dear Dr. Powers:

I have been asked to respond to your letter to Mr. S. Collins of the Nuclear Regulatory Commission (NRC), dated May 24, 2002. The stated purpose of your letter was to clarify the Section 7 consultation responsibilities regarding the endangered shortnose sturgeon (*Acipenser brevirostrum*) at the Edwin I. Hatch Nuclear Plant (HNP), Unit Nos. 1 and 2, owned and operated by the Southern Nuclear Operating Company (SNC) on the Altamaha River in Georgia. Your letter of May 24, 2002, identified two SNC initiated actions, license renewal and dredging, with which you have expressed concern regarding the shortnose sturgeon population in the Altamaha River. In response to a February 2000 application by SNC, the NRC issued renewed operating licenses for the HNP units on January 15, 2002. The renewed licenses allow an additional 20 years of operation for each of the two units located on the HNP site. SNC has also requested a revision to their dredging permit from the Army Corps of Engineers (COE), Savannah District, to conduct dredging in the Altamaha River in the vicinity of the HNP intake structure. I will respond to the concern over dredging in the vicinity of the intake first.

The dredging that the licensee has proposed in the vicinity of the intake is not related to the renewal of the operating licenses for HNP. In fact, the NRC became aware of the licensee's plans for dredging after the license renewal review was completed. The dredging is an activity that the licensee has determined that it needs to conduct now, some 12 years prior to the previous expiration date for the of HNP Unit 1 license, in order to support continued operations. As such, the dredging is considered an operational issue and is not part of the license renewal application. Therefore, even if the renewed licenses had not been issued, it would not be considered part of the license renewal review. The planned dredging in the vicinity of the intake structure requires a change to the SNC Section 404 permit issued by the COE. Associated with the permit, the COE also has the responsibility to comply with the requirements of Section 7 of the Endangered Species Act (ESA). The NRC has not been involved in Section 7 consultations for permits issued by the COE for any of the 104 operating nuclear power plants in the U.S. Although the NRC will not be taking the lead in the consultation associated with the COE-issued dredging permit, we would be willing to serve as a cooperating agency in the Section 7 review.

The other concern expressed in your May 24, 2002, letter involved the renewal of the HNP licenses and the potential for impact of continued plant operation on the shortnose sturgeon. As part of our environmental review, during the preparation of an Environmental Impact Statement (EIS) for license renewal, the NRC staff works closely with both the Fish and Wildlife Service (FWS) and, if appropriate, the National Marine Fisheries Service (NMFS) to properly evaluate the impact of the licensee's license renewal application. In almost every application for license renewal, the NRC prepares a Biological Assessment (BA) and forwards it to the appropriate resource agency.

By letter dated February 29, 2000, SNC submitted an application to the NRC to renew the operating licenses for HNP, Units 1 and 2, for an additional 20-year period. On April 12, 2000, the NRC published, in the *Federal Register* (66 FR 19797), a notice of intent to prepare an EIS on SNC's application to renew the operating licenses for HNP. After issuing the notice of intent to publish an EIS, the NRC staff had a number of conversations with members of your staff concerning the endangered shortnose sturgeon in the Altamaha River. Our efforts were culminated in the transmission of a BA to Mr. Charles Oravetz, of your staff, on August 31, 2000. The BA was prepared using the Endangered Species Consultation Handbook (Handbook) prepared by the FWS and NMFS, dated March 1998. The BA was also published in the November 2000 draft EIS and the May 2001 Final EIS for HNP. In its BA, the staff concluded that the proposed federal action was not a major construction activity, and the NRC staff biologist concluded that the proposed action (license renewal) "may effect," but is "not likely to adversely affect" the shortnose sturgeon. Our conclusion, and the basis for our conclusion, was documented in the BA consistent with the procedures in the Handbook. The NRC staff transmitted the BA to NMFS along with a request for concurrence with our finding of "not likely to adversely affect." Our expectation was that you would provide a response within 30 days.

A letter from Mr. A. Mager, of the Southeast Regional Office (SERO) to the NRC dated January 29, 2001, expressed concern over future increases in impingement and entrainment losses should populations of diadromous species increase over time. However, the statement was made in the January 29, 2001, letter that "Based on our review of the SEIS and supporting information, we concur with your staff's determination that the project's effects on diadromous fishery resources are not significant at this time." The letter specifically lists the shortnose sturgeon as a diadromous fish population in the Altamaha River. This statement led the NRC staff to believe that NMFS would concur with the conclusion of "not likely to adversely affect". In a letter dated February 20, 2001, to Mr. C. Oravetz, SERO, the NRC staff requested the status of our informal consultation and informed Mr. Oravetz of our intent to issue the final EIS by June 2001. This request preceded the May 2001 issuance of the Final EIS for the HNP renewal review. We have not been provided with a reply to our letters of August 31, 2000 and February 20, 2001.

On March 22, 2001, two staff biologists from the NRC, Dr. M. Masnik and Mr. J. Wilson, and Ms. J. Lee of your staff toured the HNP facility and met with the licensee and representatives from the FWS and the State of Georgia Department of Natural Resources. The purpose of the meeting was to discuss any outstanding issues related to the impact of the facility on the Altamaha River fishery, and specifically, the impact of the facility on the shortnose sturgeon. Although all agreed that additional data on the Altamaha River population of shortnose sturgeon would be desirable, there was general agreement that the continued operation of HNP was not having an adverse affect on the species.

There were several telephone conversations during the first half of calendar year 2001, culminating in a May 3, 2001, phone call to Ms. J. Lee. Ms. J. Lee, at that time, indicated that NMFS would be concurring in the NRC staff's conclusions reached in the August 31, 2000, BA. Based on our analysis in the BA; the conclusion presented in your January 29, 2001, letter; discussions at HNP with your staff in March 2001; the absence of any formal communication on our BA; and our informal discussions with your staff, the NRC staff concluded that issuance of the renewed operating licenses are not likely to adversely affect the shortnose sturgeon in the Altamaha River. Subsequent to issuance of the final EIS in a June 27, 2001, telephone conversation with Ms. J. Lee, the NRC staff was informed that Ms. J. Lee planned to talk to the FWS before concurring with the NRC staff's BA. The NRC staff has had no formal or informal discussions with any member of your staff on the HNP informal consultation from June 27, 2001, until Mr. A. Kugler of the NRC was contacted in March 2002.

The NRC staff still considers the August 31, 2000, BA (enclosed) its assessment of record for the HNP. The staff has been in frequent contact with several members of your staff concerning BAs and license renewal reviews on a number of other facilities in your region. We believe that the NRC is following both the letter and the spirit of the ESA Section 7 consultation process. The protection of threatened and endangered species is an ongoing NRC responsibility, and we will continue to pursue site-specific consultations with the appropriate resource agency when the need arises. I suggest that the cognizant individuals meet in the near future to discuss the next step in the consultation process for this facility. Life history and distribution information on the Altamaha River population segment of the shortnose sturgeon exists and the NRC staff has a thorough understanding of the impacts of plant operation on fisheries. A meeting between the NRC staff and SERO representatives to discuss this information along with a review of the August 31, 2000, BA would be beneficial in advance of any decision on further consultation.

Please contact Dr. Michael Masnik, Senior Project Manager, if you have any questions. Dr. Masnik can be reached at 301-415-1191, or at mtm2@nrc.gov.

Sincerely,

/RA/

Pao-Tsin Kuo, Program Director
License Renewal and Environmental Impacts Program
Division of Regulatory Improvements Program
Office of Nuclear Reactor Regulation

Docket Nos. 50-321 and 50-366

Enclosure: As stated

cc w/enclosure: See next page

There were several telephone conversations during the first half of calendar year 2001, culminating in a May 3, 2001, phone call to Ms. J. Lee. Ms. J. Lee, at that time, indicated that NMFS would be concurring in the NRC staff's conclusions reached in the August 31, 2000, BA. Based on our analysis in the BA; the conclusion presented in your January 29, 2001, letter;

discussions at HNP with your staff in March 2001; the absence of any formal communication on our BA; and our informal discussions with your staff, the NRC staff concluded that issuance of the renewed operating licenses are not likely to adversely affect the shortnose sturgeon in the Altamaha River. Subsequent to issuance of the final EIS in a June 27, 2001, telephone conversation with Ms. J. Lee, the NRC staff was informed that Ms. J. Lee planned to talk to the FWS before concurring with the NRC staff's BA. The NRC staff has had no formal or informal discussions with any member of your staff on the HNP informal consultation from June 27, 2001, until Mr. A. Kugler of the NRC was contacted in March 2002.

The NRC staff still considers the August 31, 2000, BA (enclosed) its assessment of record for the HNP. The staff has been in frequent contact with several members of your staff concerning BAs and license renewal reviews on a number of other facilities in your region. We believe that the NRC is following both the letter and the spirit of the ESA Section 7 consultation process. The protection of threatened and endangered species is an ongoing NRC responsibility, and we will continue to pursue site-specific consultations with the appropriate resource agency when the need arises. I suggest that the cognizant individuals meet in the near future to discuss the next step in the consultation process for this facility. Life history and distribution information on the Altamaha River population segment of the shortnose sturgeon exists and the NRC staff has a thorough understanding of the impacts of plant operation on fisheries. A meeting between the NRC staff and SERO representatives to discuss this information along with a review of the August 31, 2000, BA would be beneficial in advance of any decision on further consultation.

Please contact Dr. Michael Masnik, Senior Project Manager, if you have any questions. Dr. Masnik can be reached at 301-415-1191, or at mtm2@nrc.gov.

Sincerely,
/RA/
 Pao-Tsin Kuo, Program Director
 License Renewal and Environmental Impacts Program
 Division of Regulatory Improvements Program
 Office of Nuclear Reactor Regulation

Docket Nos. 50-321 and 50-366

Enclosure: As stated

cc w/enclosure: See next page

DISTRIBUTION:

Environmental r/f M. Masnik J. Davis H. Berilla J. Tappert
 D. Matthews/F. Gillespie P. T. Kuo

Accession No.: **Package ML022130399**

Document name: C:\ORPCheckout\FileNET\ML022130425.wpd

OFFICE	RLEP:DRIP	RLEP:DRIP	LPD2/DLPM	LA:RLEP	SC:RLEP	PD:RLEP
NAME	JDavis	MMasnik	LOlshan	HBerilla	JTappert	PTKuo
DATE	07/23/02	07/23/02	07/24/02	07/19/02	07/30/02	07/30 /02

OFFICIAL RECORD COPY

Edwin I. Hatch Nuclear Plant

cc:

Mr. Ernest L. Blake, Jr.
Shaw, Pittman, Potts
and Trowbridge
2300 N Street, NW.
Washington, DC 20037

Mr. D. M. Crowe
Manager, Licensing
Southern Nuclear Operating
Company, Inc.
P. O. Box 1295
Birmingham, Alabama 35201-1295

Resident Inspector
Plant Hatch
11030 Hatch Parkway N.
Baxley, Georgia 31531

Mr. Charles H. Badger
Office of Planning and Budget
Room 610
270 Washington Street, SW.
Atlanta, Georgia 30334

Harold Reheis, Director
Department of Natural Resources
205 Butler Street, SE., Suite 1252
Atlanta, Georgia 30334

Steven M. Jackson
Senior Engineer - Power Supply
Municipal Electric Authority
of Georgia
1470 Riveredge Parkway, NW
Atlanta, Georgia 30328-4684

Charles A. Patrizia, Esquire
Paul, Hastings, Janofsky & Walker
10th Floor
1299 Pennsylvania Avenue
Washington, DC 20004-9500

Chairman
Appling County Commissioners
County Courthouse
Baxley, Georgia 31513

Mr. J. D. Woodard
Executive Vice President
Southern Nuclear Operating
Company, Inc.
P. O. Box 1295
Birmingham, Alabama 35201-1295

Mr. P. W. Wells
General Manager, Edwin I. Hatch
Nuclear Plant
Southern Nuclear Operating
Company, Inc.
U.S. Highway 1 North
P. O. Box 2010
Baxley, Georgia 31515

Mr. L. M. Bergen
Resident Manager
Oglethorpe Power Corporation
Edwin I. Hatch Nuclear Plant
P. O. Box 2010
Baxley, Georgia 31515