



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

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F/SER31:SN

DEC 19 2006

Ms. Harriet Nash
Environmental Scientist
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Ms. Nash:

We have enclosed a copy of the Terms and Conditions for the smalltooth sawfish contained in the draft biological opinion for the continued operation of the St. Lucie Nuclear Power Plant. We are postponing the finalization of this biological opinion based on our conversations regarding your need to request reinitiation of consultation for sea turtles in January 2007. We will provide one comprehensive biological opinion for all species listed under our jurisdiction once we receive your request and information regarding reinitiation of consultation for sea turtles.

If you have any questions regarding this consultation please contact Shelley Norton by phone (727-824-5312) or e-mail (shelley.norton@noaa.gov).

Sincerely,

Shelley Norton
Natural Resource Specialist

Ref: F/SER/2006/00832



Draft Reasonable and Prudent Measures and Terms and Conditions for Smalltooth Sawfish and the Continued Operation of the St. Lucie Nuclear Power Plant (SLNPP)

9.3 Reasonable and Prudent Measures (RPMs)

Section 7(b)(4) of the ESA requires that when an agency action is found to comply with section 7(a)(2) of the ESA and the proposed action may incidentally take individuals of listed species, NMFS will issue a statement specifying the impact of any incidental taking. It also states that RPMs necessary and appropriate to minimize impacts, and terms and conditions to implement those measures must be provided and must be followed to minimize those impacts. Only incidental taking by the federal agency or applicant that complies with the specified terms and conditions is authorized.

The RPMs and terms and conditions are specified as required by 50 CFR 402.14 (i)(1)(ii) and (iv) to document the incidental take by the proposed action and to minimize the impact of that take on smalltooth sawfish. These measures and terms and conditions are non-discretionary, and must be implemented by the NRC in order for the protection of section 7(o)(2) to apply. The NRC has a continuing duty to regulate the activity covered by this incidental take statement. If the NRC fails to adhere to the terms and conditions of the incidental take statement through enforceable terms, and/or fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of the incidental take, the NRC must report the progress of the action and its impact on the species to NMFS as specified in the incidental take statement [50 CFR 402.14(i)(3)].

NMFS has determined that the following RPMs are necessary and appropriate to minimize impacts of the incidental take of smalltooth sawfish during the continued operation of the SLNPP.

1. FPL biologists must be aware of the endangered status of the smalltooth sawfish and ensure that any smalltooth sawfish take is handled in such a way as to minimize stress to the animal and increase its potential for survival. The animal's time out of the water must be minimized. The animal's spiracles must be kept wet during transporting. Placing a wet towel over the spiracles during transporting is recommended to minimize stress on the animal.
2. A rescue and transportation plan must be developed by the SLNPP and approved by NMFS, including maintenance and operation of appropriate equipment. The rescue and transportation plan must reduce the animal's out-of-water time to less than 10 minutes.
3. Monitoring and reporting of any smalltooth sawfish encountered (1) detect any adverse effects resulting from the SLNPP; (2) assess the actual level of incidental take in comparison with the anticipated incidental take documented in that opinion; (3) detect when the level of anticipated take is exceeded; and (4) collect improved data from future encounters.
4. Survey the intake pipe in 2007 to determine if the pipe contains debris or structural obstructions which could harm animals that enter the structure.

9.4 Terms and Conditions

In order to be exempt from liability for take prohibited by section 9 of the ESA, NRC must comply with the following terms and conditions, which implement the RPMs described above. These terms and conditions are non-discretionary.

The following term and condition implements RPM No. 1.

All FPL sea turtle biologists must receive safe handling and transporting training. Once an FPL representative has received safe handling and release training by a NMFS approved trainer they are considered qualified to train any new sea turtle biologists.

The following term and condition implements RPM No. 2.

FPL shall develop an interim draft transportation plan that will be reviewed and approved by NMFS by June 2007. NMFS will provide comments on the plan no later than 60 days after receipt. FPL will finalize the plan after receiving sawfish transportation training at a NMFS approved training facility (i.e., Baltimore Aquarium) and after receiving comments from NMFS.

The following term and condition implements RPM No 3.

The following information shall be collected and reported to NMFS in the event of a take: a total length measurement or estimate, time and location (i.e., lat./long. and approximate water depth) of capture, circumstances of capture (e.g., position of sawfish in the trawl net), and status (i.e., dead, alive, injured) upon return to the water.

The following term and condition implements RPM No 4.

FPL representatives shall survey the intake pipe during a scheduled outage in 2007. FPL shall remove any debris and repair any structural obstructions, as appropriate, during the 2007 outage. If repairs and/or debris cannot be accomplished during the 2007 outage period, FPL shall provide NMFS with an appropriate repair and/or debris removal schedule.