



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
One Blackburn Drive  
Gloucester, MA 01930-2298

MAR 19 2007

James A. Thomas  
Enercon Services, Inc.  
5100 E. Skelly Drive, Suite 450  
Tulsa, Oklahoma 74135

Dear Mr. Thomas,

This in response to a conference call held on February 20, 2007 between my staff and staff from Enercon Services and Entergy's Indian Point facility. The purpose of the call was to discuss the Nuclear Regulatory Commission's (NRC) relicensing process and a letter sent by NMFS to Enercon in January 2007 regarding potential effects of the continued operation of the facility on Atlantic and shortnose sturgeon in the Hudson River. The purpose of this letter is to summarize that call.

One of the main concerns raised by NMFS in our January 2007 letter was the lack of recent information on the impingement and entrainment of sturgeon species at the facility. In that letter NMFS had requested that Enercon and/or Entergy provide us with all available information on the effects of the facility on these species. On the February 20 call, Enercon and Entergy indicated that no studies have been conducted since 1998. As such, no newer information is available for Entergy to provide to NMFS.

During the call, Entergy and Enercon staff discussed the measures that are currently employed at the facility to reduce levels of impingement and entrainment of aquatic life. It is NMFS understanding that the screening and fish return system were designed to minimize entrainment and reduce the levels of injury and mortality associated with impingement. However, no studies have been conducted to demonstrate the effectiveness of these systems for sturgeon.

Based on the available information, NMFS remains concerned that some level of impingement and/or entrainment of sturgeon may continue to occur at the facility. As was explained on the call, section 9 of the ESA defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." As such, even if listed sturgeon are returned to the Hudson River following an interaction with the facility's intakes without being handled by a person, a take has occurred. Any take of a listed species that occurs without special exemption (e.g., an Incidental Take Statement) is illegal pursuant to the prohibitions on take contained in section 9 of the Endangered Species Act (ESA) of 1973, as amended. Therefore, NMFS recommends that Entergy pursue an exemption for the incidental take of listed species that may occur as a result of the continued operation of the Indian Point facility.



Section 7(a)(2) of the ESA states that each Federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Any discretionary federal action that may affect a listed species must undergo section 7 consultation. The relicensing of Indian Point by the NRC is a federal action that will require section 7 consultation. If it is determined through consultation between the NRC and NMFS that the action is likely to adversely affect any listed species (i.e., if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effects are not: discountable, insignificant, or beneficial) then a formal consultation, resulting in the issuance of a Biological Opinion and accompanying Incidental Take Statement would be required.

Additionally, Section 10(a)(1)(B) provides a means for permits to be issued exempting the take of species incidental to an otherwise lawful activity. Such a permit must be accompanied by a Conservation Plan, also referred to as a Habitat Conservation Plan. This type of permit has been obtained for the operation of Dynegy's Danskammer and Roseton Plants on the Hudson River. More information on the Section 10 permitting process can be found at [http://www.nmfs.noaa.gov/pr/permits/esa\\_permits.htm#listed](http://www.nmfs.noaa.gov/pr/permits/esa_permits.htm#listed).

NMFS looks forward to working cooperatively with Entergy, the NY DEC and the NRC during the relicensing process to minimize the effects of Indian Point on sturgeon in the Hudson River. Thank you for the opportunity to discuss our concerns on the February 20 conference call. Should you have any questions regarding this correspondence, please contact Julie Crocker of my staff at (978)281-9300 x6530.

Sincerely,



Mary A. Colligan  
Assistant Regional Administrator  
for Protected Resources

Cc: Rusanowsky - F/NER4  
Knutson - EPA NY  
Jacobson, Wilson - NY DEC  
Kuo - NRC  
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