

Received  
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UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
55 Great Republic Drive  
Gloucester, MA 01930-2276

FEB 24 2009

David J. Wrona, Branch Chief  
Projects Branch 2  
Division of License Renewal  
Office of Nuclear Reactor Program  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

RE: Biological Assessment for License Renewal of the Indian Point Nuclear Generating Unit Nos. 2 and 3

Dear Mr. Wrona:

This correspondence responds to a letter dated December 22, 2008 (received January 2, 2009) regarding the initiation of formal consultation for the proposed renewal by the US Nuclear Regulatory Commission (NRC) of the Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and IP3) operating licenses for a period of an additional 20 years pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended. The current operating licenses for these units expire on September 28, 2013 (IP2) and December 12, 2015 (IP3). Consultation with NOAA's National Marine Fisheries Service (NMFS) regarding the proposed license renewal is appropriate as the action may adversely affect the federally endangered shortnose sturgeon (*Acipenser brevirostrum*). Accompanying your letter was a Biological Assessment (BA) evaluating the impact of the proposed renewal on federally endangered shortnose sturgeon (*Acipenser brevirostrum*), as well as a copy of the *Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 39 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3 Draft Report*. NMFS has completed an initial review of the BA and draft EIS and has determined that we have not received all of the information necessary to initiate consultation. To complete the initiation package, we will require the information outlined below.

Section 4 of the BA contains life history and status information for shortnose sturgeon. Several corrections are necessary in this section. In the Hudson River, shortnose sturgeon spawn when water temperatures are between 8 and 15°C, which typically occurs in April. Recent information suggests that the population estimate calculated by Bain, and included in the BA, likely overestimates the number of shortnose sturgeon in the Hudson River. Dr. Katherine Hattala, a



biologist with the State of New York, has examined the data used by Bain and determined that a more appropriate estimate is approximately 30,000 adult shortnose sturgeon.

Section 4.3.2 of the BA assesses the impact of impingement on shortnose sturgeon. The BA contains a summary of the available information on impingement of shortnose sturgeon (Table 2). NMFS requests that NRC staff provide the following information in regards to Table 2: (a) for each year, indicate the level of monitoring effort (e.g. weekly for six months, etc.); (b) for each year when there is no number recorded, indicate whether that was due to a lack of monitoring, or due to a lack of capture; (c) indicate the date of impingement; and, (d) indicate the size and condition (i.e., alive, injured or dead) of the impinged fish. It is our understanding that no impingement monitoring has been conducted since traveling Ristroph-type screens were installed at the facility in 1991. As noted in the BA, the lack of information makes it difficult to predict the effects of relicensing and an additional 20 years of operation on shortnose sturgeon. If the NRC is not able to require the applicant to conduct monitoring in support of relicensing, NMFS requests that the NRC provide an estimate, based on the best available scientific information, of the likely number of shortnose sturgeon impinged at the facility with the traveling Ristroph-type screens in use. NMFS expects that the NRC could use the existing impingement data in conjunction with data on the effectiveness of Ristroph-type screens to calculate this estimate. As noted in the BA, another important factor is the mortality rate of impinged sturgeons. NMFS requests that NRC provide an estimate of the mortality rate for impinged shortnose sturgeon. NMFS expects this rate could be calculated based on available mortality rate data for other similar species and/or other facilities where similar screen types have been installed.

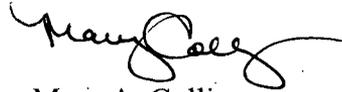
Section 4.3.3 of the BA discusses thermal impacts. As noted in the BA, without a model of the thermal plume it is extremely difficult to predict what the level of exposure to elevated water temperatures is for shortnose sturgeon. If NRC is unable to require that the applicant conduct modeling of the thermal plume in support of relicensing, NMFS requests that the NRC use the best available scientific information to estimate the likely temporal and spatial extent to which shortnose sturgeon will be exposed to water temperatures where adverse effects are likely (i.e., greater than 28°C).

It is NMFS understanding that the proposed action is the relicensing of the facility with no modification to the existing intakes. However, in the DEIS, the NRC discusses alternatives including cooling towers. NMFS seeks clarification as to the process by which the NRC will determine whether the installation of cooling towers, or other measures, will be required of the applicant. NMFS also seeks clarification regarding the current requirements of the National Pollutant Discharge Elimination System (NPDES) Permit issued by the State of New York and the potential outcome of the adjudication process currently ongoing regarding this permit, as well as the potential for the State NPDES permit to require cooling towers.

The formal consultation process for the proposed action will not begin until we receive all of the requested information or a statement explaining why that information cannot be made available. We will notify you when we receive this additional information; our notification letter will also outline the dates within which formal consultation should be complete and the biological opinion

delivered. My staff is available to discuss these information needs with NRC staff. I look forward to continuing to work with you and your staff during the consultation process. If you have any questions or concerns about this letter or about the consultation process in general, please contact Julie Crocker at (978) 282-8480.

Sincerely,



Mary A. Colligan  
Assistant Regional Administrator  
for Protected Resources

cc: Crocker, F/NER3 (hardcopy)  
Damon-Randall, Hartley – F/NER3 (pdf)  
Rusanowsky– F/NER4 (pdf)  
Logan – NRC (pdf)

File Code: Sec 7 NRC Indian Point Nuclear Plant Relicensing

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