



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

MAY 5 2010

Andrew Imboden, Chief
Environmental Review Branch
Division of License Renewal
Office of Nuclear Reactor Program
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Reinitiation of Formal Consultation for Oyster Creek Nuclear Generating Station

Dear Mr. Imboden,

This is in response to your letter dated April 14, 2010 regarding a request for reinitiation of formal consultation pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended, regarding the continued operation of the Oyster Creek Nuclear Generating Station (OCNGS) pursuant to a license issued by the US Nuclear Regulatory Commission's (NRC) on April 9, 2009.

The OCNGS is operated by Exelon Generation Company, LLC and is located in Lacey Township, New Jersey. The OCNGS began commercial operation in 1969. A Biological Opinion on the effects of the operation of the facility on listed species under NMFS jurisdiction was issued on September 21, 1995. Consultation was reinitiated in 2000 with an Opinion being issued by NMFS on July 18, 2001. In 2004, the number of Kemp's ridleys impinged at the facility's intake exceeded the number exempted by the Incidental Take Statement issued with the 2001 Opinion. Consultation was reinitiated in early 2005 with an Opinion issued by NMFS on September 22, 2005. Most recently, consultation was completed between NMFS and the NRC on the effects of the NRC's renewal of the Operating License for the OCNGS for an additional twenty years with the issuance of a Biological Opinion dated November 21, 2006; this Opinion became effective upon the effective date of the facility's new license (i.e., April 8, 2009). The Incidental Take Statement accompanying the November 21, 2006 Opinion exempts the annual take of up to 8 sea turtles at the facility each year. NMFS anticipated that of these 8 sea turtles, no more than 3 of these turtles were likely to be loggerheads and no more than 1 of these sea turtles were likely to be a green sea turtle. NMFS further anticipated that up to 3 of the 8 sea turtles may be dead; of the dead sea turtles, no more than 1 was likely to be a green sea turtle and no more than 1 was likely to be a loggerhead.

During 2009, a total of 11 sea turtles were taken incidental to operations of the Oyster Creek facility. Of the 11 turtles, 10 were Kemp's ridleys and 1 was a green sea turtle. Of the 10 Kemp's ridleys, 4 were dead upon retrieval from the water or died shortly after retrieval.



Reinitiation of consultation is required where discretionary federal involvement or control over the action has been retained or is authorized by law, and if: (1) the amount or extent of taking specified in the ITS is exceeded; (2) new information reveals effects of these actions that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) project activities are subsequently modified in a manner that causes an effect to the listed species that was not considered in this Biological Opinion; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. As explained in a letter to NRC transmitting the November 21, 2006 Opinion, NMFS will consider the take level to be exceeded, and reinitiation of consultation necessary, when *any* of the following situations occur in one calendar year:

- Capture of more than 1 green sea turtle (dead or alive); or,
- Capture of more than 3 live loggerhead sea turtles; or,
- Capture of more than 1 dead loggerhead sea turtle; or,
- Capture of more than 3 dead Kemp's ridley sea turtles; or,
- Capture of more than 8 total sea turtles.

As explained above, 11 sea turtles were captured at the facility in 2009. As such, NMFS considers the exempted take level to be exceeded. The purpose of this letter, therefore, is to concur with the need for the reinitiation of formal consultation on the effects of the continued operation of the OCNCS. All of the information required to initiate a formal consultation has been received. The correspondence with your office, the EIS dated June 2006, the 2005 biological assessment, past Opinions, and available commercial and scientific data will be used to prepare the Opinion.

The date your April 14, 2010 letter was received (April 19, 2010) will serve as the commencement of the formal consultation process. The ESA and the Section 7 regulations (50 CFR 402.14) require that formal consultation be concluded within 90 calendar days of initiation, and the biological opinion be delivered to the action agency within 45 days after the conclusion of formal consultation (i.e., September 1, 2010), unless extended. In the meantime, pursuant to Section 7d of the ESA, the NRC must not make any irreversible or irretrievable commitment of resources that would foreclose the formulation or implementation of any reasonable and prudent alternatives to avoid jeopardizing endangered or threatened species. We look forward to working with your office during the formal consultation process. If you have any questions or concerns about the consultation, please contact Julie Crocker at (978) 282-8480 or by e-mail (Julie.Crocker@noaa.gov).

Sincerely,



Patricia A. Kurkul
Regional Administrator

EC: Crocker, F/NER3
Browne, Exelon
Logan, NRC