

September 17, 2010

Mr. Peter D. Colosi, Jr.
Assistant Regional Administrator for
Habitat Conservation
National Marine Fisheries Service
Northeast Region
55 Great Republic Drive
Gloucester, MA 09130-2276

SUBJECT: RESPONSE TO ESSENTIAL FISH HABITAT CONSERVATION
RECOMMENDATION REGARDING THE PROPOSED CALVERT CLIFFS
NUCLEAR POWER PLANT UNIT 3

Dear Mr. Colosi:

The U.S. Nuclear Regulatory Commission (NRC) received your letter, dated August 17, 2010, providing the National Marine Fisheries Service's (NMFS) comments and conservation recommendation in response to the environmental impact statement (EIS) and essential fish habitat (EFH) assessment, respectively, for the construction and operation of the proposed Calvert Cliffs Nuclear Power Plant (CCNPP), Unit 3 at the Calvert Cliffs site in Lusby, Maryland. As cooperating agencies, the NRC and the U.S. Army Corps of Engineers (the Corps) are cooperating agencies and are conducting a joint EFH consultation with NMFS in association with reviews of the applications submitted by UniStar Nuclear Operating Services, LLC and Calvert Cliffs 3 Nuclear Project, LLC (collectively referred to as Unistar) for a combined license from the NRC and a Department of the Army permit from the Corps. The joint EFH consultation was initiated pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (Public Law 94-265, December 1996) (the "Act"), and the EFH assessment was included in Appendix F of the draft EIS, which was issued in April 2010. The NMFS comments on the draft EIS will be responded to in Appendix E of the final EIS; therefore, this letter focuses solely on responding to the EFH conservation recommendation for the purpose of concluding the EFH consultation, as required by Section 305(b)(4)(B) of the Act.

In the EFH assessment, the NRC and the Corps determined that construction and operation of the proposed Unit 3 at the CCNPP site would have more than minimal, although not substantial, adverse effects on EFH within the Chesapeake Bay by loss of spawning, nursery, forage, and/or shelter habitat for the nine species evaluated. NMFS's EFH conservation recommendation focuses on compensatory mitigation for adverse effects to the coarse-substrate benthic community and forage habitat for managed species. The conservation recommendation is for UniStar, the applicant, to enhance the substrate on 9 acres of public oyster bar, as specified in detail in the NMFS letter to NRC, and to monitor the site(s) for 5 years to determine success. If the effort fails, UniStar may need to provide additional tidal compensatory mitigation.

Due to NRC's limited statutory authority as stated in the EFH assessment on page F-113 of the DEIS, NRC cannot require mitigation measures that would minimize the adverse effects on EFH. Although the NRC considered mitigative measures in the EFH assessment, the NRC's statutory authority under the Atomic Energy Act of 1954, as amended, is not expanded by the Act to require mitigative measures for EFH in an NRC license. Instead, the Maryland Department of Natural Resources (Maryland DNR) as delegated by the Environmental Protection Agency and the Corps have such authority under the Clean Water Act. The NRC encourages NMFS to collaborate with the Maryland DNR and the Corps to implement the recommended oyster bar substrate enhancement and monitoring as compensatory mitigation of adverse effects on EFH.

This response letter concludes the NRC's portion of the joint EFH consultation regarding construction and operation of the proposed Unit 3 at the CCNPP site. If you have any questions concerning the NRC's response to NMFS's EFH conservation recommendation, please contact Laura Quinn of my staff at 301-415-2220, or via e-mail to Laura.Quinn@nrc.gov.

Sincerely,

***/RA/ By Nilesh Chokshi Acting
For/***

Scott C. Flanders, Director
Division of Site and Environmental Reviews
Office of New Reactors
U.S. Nuclear Regulatory Commission

Docket No.: 52-016

cc: See next page

Due to NRC's limited statutory authority as stated in the EFH assessment on page F-113 of the DEIS, NRC cannot require mitigation measures that would minimize the adverse effects on EFH. Although the NRC considered mitigative measures in the EFH assessment, the NRC's statutory authority under the Atomic Energy Act of 1954, as amended, is not expanded by the Act to require mitigative measures for EFH in an NRC license. Instead, the Maryland Department of Natural Resources (Maryland DNR) as delegated by the Environmental Protection Agency and the Corps have such authority under the Clean Water Act. The NRC encourages NMFS to collaborate with the Maryland DNR and the Corps to implement the recommended oyster bar substrate enhancement and monitoring as compensatory mitigation of adverse effects on EFH.

This response letter concludes the NRC's portion of the joint EFH consultation regarding construction and operation of the proposed Unit 3 at the CCNPP site. If you have any questions concerning the NRC's response to NMFS's EFH conservation recommendation, please contact Laura Quinn of my staff at 301-415-2220, or via e-mail to Laura.Quinn@nrc.gov.

Sincerely,

**/RA/ By Nilesh Chokshi Acting
For/**

Scott C. Flanders, Director
Division of Site and Environmental Reviews
Office of New Reactors
U.S. Nuclear Regulatory Commission

Docket No.: 52-016

cc: See next page

DISTRIBUTION:

LQuinn, NRO
JBiggins, OGC
MMasnik, NRO
SImboden, NRO
RSchaaf, NRO
SArora, NRO
MBrown, NRO
HNash, NRO
JColaccino, NRO

MParkhurst, PNNL (Maryann.Parkhurst@pnl.gov)
EChapman, PNNL (Elaine.Chapman@pnl.gov)
RKropp, PNNL (Roy.Kropp@pnl.gov)

ADAMS Accession No.: ML102530102 *via e-mail

NRO-002

OFFICE	NRO/DSER/RAP3:LA	NRO/DSER/RENV:AB	NRO/DSER/RAP2:PM
NAME	MBrown	Harriet Nash*	LQuinn
DATE	09/ 14 /10	09/ 14 /10	9/ 14 /10
OFFICE	OGC	NRO/DSER/RAP3:BC	NRO/DSER:DD
NAME	JBiggins	RSchaaf	SFlanders (NChokshi for)
DATE	09/ 16 /10	09/ 16 /10	09/ 17 /10

OFFICIAL RECORD COPY

Calvert Cliffs Nuclear Power Plant (Environmental)

cc:

Mr. Danny Adams
MD Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21250

Ms. Felicia Alexander
Maryland State Highway Administration
707 No. Calvert St., M.S. C-301
Baltimore, MD 21202

Mr. Vance T. Ayres
Executive Secretary Treasurer
Washington DC Building Trades Council
5829 Allentown Rd.
Camp Springs, MD 20746

Mr. Phillip Benavides
North American Young
Generation in Nuclear
3591 St. Leonard Rd.
Port Republic, MD 20676

Ms. Dantia Boonchaisri
Calvert County Dept. of Economic
Development
Courthouse, 175 Main St.
Prince Fredrick, MD 20678

Mr. Steven G. Bowman, Commissioner
Virginia Marine Resources Commission
2600 Washington Ave., 3rd Floor
Newport News, VA 23607

Mr. Donald Brown
United Association
26205 Yowaiski Mill Rd.
Mechanicsville, MD 20659

Mr. Bill Burch
MACTEC
21740 Beaumeade Cir., #150
Ashburn, VA 20147

Mr. Timothy Butler
12407 Red Rock Trail
Lusby, MD 20657

Ms. Lori Byrne
Wildlife and Heritage Division
Maryland Dept. of Natural Resources
580 Taylor Ave., E-1
Annapolis, MD 21401

Ms. Delores Caniglia
13400 Lore Pines Lane
Solomons, MD 20688

Mr. Milo Chaffee
Sheet Metal Workers Local 100
4725 Silver Hill Rd.
Suitland, MD 20746

Mr. Mark Coles
Business Legislative Rep.
Building and Construction Trades Council
5829 Allentown Rd.
Camp Springs, MD 20746

Ms. Amy Cordner
Calvert Cliffs Nuclear Power Plant
1955 Parkers Creek Spur
Port Republic, MD 20676

Mr. Keith Crissman
Constellation
23380 Tara Ln.
Hollywood, MD 20636

Dr. Gwen DeBois
Physicians for Social Responsibility
1817 Sulgnwe Ave.
Baltimore, MD 21209

Mr. Mike Dorsey
BCTD
1601 16th St. NW
Washington, DC 20006

Mr. Robert W. Duncan, Director
Virginia Department of Game and Inland
Fisheries
4010 West Broad St.
Richmond, VA 23230

Calvert Cliffs Nuclear Power Plant (Environmental)

cc:

Mr. John M. Fowler
Office of Federal Agency Programs
Advisory Council
on Historic Preservation
Old Post Office Building
1100 Pennsylvania Ave., NW, Ste. 809
Washington, DC 20004

Mr. Frank Fox
Sierra Club
27290 Woodburn Hill Rd.
Mechanicsville, MD 20659

Mr. Woody Francis
U.S. Army Corps of Engineers
Baltimore District
P.O. Box 1715
Baltimore, MD 21209-1715

Prof. Paul Friesema
Environmental Policy and Culture Program
Northwestern University
304 Scott Hall
601 University Pl.
Evanston, IL 60208-1006

Mr. Jay Gaines
12947 Huron Dr.
Lusby, MD 20657

Mr. Nick Garrett
Calvert Tourism Commission
378 Cambridge Pl.
Prince Frederick, MD 20678

Mr. Joseph Green
29 Francis St.
Annapolis, MD 21401

Mr. Mic Gribben
Tetra Tech Inc.
20251 Century Blvd.
Germantown, MD 20874

Mr. John R. Griffin, Secretary
Maryland Department of Natural Resources
580 Taylor Ave.
Tawes State Office Building
Annapolis, MD 21401

Mr. Bud Hanbury
I.U.O.E.
4546 Britannia Way
Suitland, MD 20746

Ms. Tonya Hardy
Executive Director
Commission on African History and Culture
Banneker-Douglas Museum
84 Franklin St.
Annapolis, MD 21401

Mr. Randy Holter
P.O. Box 76
Newburg, MD 20664

Ms. Theresa Hunter
42566 Anne Court
Hollywood, MD 20636

Mr. Brad Kanbowsky
P.O. Box 1276
Huntington, PA 20637

Ms. Patricia Kurkul
Regional Administrator
National Marine Fisheries Service
Northeast Regional Office
One Blackburn Dr.
Gloucester, MA 01930

Mr. Ryan Leonard
Iron Workers Local 201
4665 Port Tobacco Rd.
Nanjemoy, MD 20662

Mr. J. Rodney Little
Director and State Historic Preservation
Officer
Maryland Historical Trust
100 Community Pl.
Crownsville, MD 21032

Calvert Cliffs Nuclear Power Plant (Environmental)

cc:

Mr. Richard Lloyd
Attorney
135 W. Dares Beach Rd., Ste. 209A
Prince Fredrick, MD 20678

Mr. Michael Lukey
MACTEC
21740 Beaumeade Cir., #150
Ashburn, VA 20147

Mr. Charles E. MacDonald
P.O. Box 38
Chesapeake Beach, MD 20732

Ms. Brenda MacNair
11010 Mill Bridge Rd.
Lusby, MD 20657

Mr. Jim McAllister
Director, Regional Planning
Tri-County Council for Southern Maryland
P.O. Box 745
Hughesville, MD 20637

Ms. Deborah McClure
Chamber of Commerce
1165 Beacon Way
Lusby, MD 20657

Mr. Norman Meadow
MD Conservation Council
2304 South Rd.
Baltimore, MD 21209

Mr. Bob Migliaccio
Iron Workers Local 201
1507 Rhode Island Ave., NE
Washington, DC 20008

Mr. Joe Mihalcik
UniStar Nuclear Energy
2264 Birch Road
Port Republic, MD 20676

Lee and April Minin
P.O. Box 998
Solomons, MD 20688

Mr. Leopoldo Miranda
Field Supervisor
Chesapeake Bay Field Office
U.S. Fish & Wildlife Service
177 Admiral Cochrane Dr.
Annapolis, MD 21401

Mr. Kenneth Moore
8258 Cooperleaf Ct.
Owens, MD 20736-3615

Mr. David Murphy
UniStar Nuclear Energy
750 Pratt St., 14th Floor
Baltimore, MD 21202

Mr. Bob Nelson
Health Physicist
Maryland Dept. of the Environment
1800 Washington Blvd.
Baltimore, MD 21230

Mr. Michael Pritchard
Iron Workers Local Union No. 5
24380 Mervell Dean Rd., Apt. B
Hollywood, MD 20636

The Honorable Natalie Proctor, Chief
Cedarville Band of Piscataway Indians, Inc.
16816 County Ln.
Waldorf, MD 20601-3335

Mr. John Rayner
Iron Workers Local Union No. 5
9100 Old Marlboro Pike
Upper Marlboro, MD 20772-3627
Mr. Juan Carlos Recinos
Local Union 201
1507 Rhode Island Ave., NE
Washington, DC 20018

Mr. Carl Roe, Executive Director
Pennsylvania Game Commission
2001 Elmerton Ave.
Harrisburg, PA 17106-9797

Calvert Cliffs Nuclear Power Plant (Environmental)
cc:

The Honorable Mervin Savory, Chairman
Piscataway Conoy Confederacy
and Subtribes, Inc.
P.O. Box 1484
LaPlata, MD 20646

Mr. Bill Scarafia
St. Mary's County Chamber of Commerce
44220 Airport Rd.
California, MD 20619

Ms. June Sevilla
P.O. Box 354
Solomons, MD 20688

Mr. Harold Sharlin
3401 38th St., NW, #318
Washington, DC 20016

Mr. James Sinclair
2120 Tamarac Trail
Lusby, MD 20657

Ms. Jacqui Steele-McCall
GS Proctor
9912 Sudan Place
Upper Marlboro, MD 20772

Mr. Alan Summerville
ICF International
9300 Lee Hwy.
Fairfax, VA 22031-1207

Mr. Paul Swartz
Executive Director
Susquehanna River Basin Commission
1721 N. Front St.
Harrisburg, PA 17102

The Honorable William "Red Wing" Tayac,
Chief
The Piscataway Indians Nation
P.O. Box 131
Accokeek, MD 20607

Ms. Dawn Tuckor
Calvert County Minority Business Alliance
4140 Holbrook Rd.
Huntington, MD 20639

Mr. Robert Tufts
Maryland Green Party
1308 Fairfax Ave.
Churchton, MD 20733

Mr. David Turner
Constellation
24672 Apple Sauce Ln.
Hollywood, MD 20636

Mr. Tyrone Washington
Iron Workers Local 201
3917 29th St., Apt. 214
Washington, DC 20008

Ms. Shari Wilson, Secretary
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230

Mr. David Zonderman
252 Driftwood
Solomons, MD 20688

Calvert Cliffs Nuclear Power Plant (Environmental)
cc:

kathy.anderson@usace.army.mil (Kathy Anderson)
woody.francis@usace.army.mil (Woody Francis)
phillip.benavides@comcast.net (Phillip Benavides)
trondelle2002@yahoo.com (Trondelle Brooks)
whbiv@nc.rr.com (William Buchanan)
kcrissman@md.metrocast.net (Brenice Crissman)
afisher@citizen.org (Allison Fisher)
pfree@northwestern.edu (Paul Friesema)
paul@beyondnuclear.org (Paul Gunter)
kevin@beyondnuclear.org (Kevin Kamps)
dimitri.lutchenkov@unistarnuclear.com (Dimitri Lutchenkov)
norrismcdonald@msn.com (Norris McDonald)
smcgarvey@bctd.org (Sean McGarvey)
meadownd@jhu.edu (Norm Meadow)
csavoy@smwlocal100.com (Clifton Savoy)
RCCouncil@aol.com

COL - Calvert Cliffs Mailing List
cc:

(Revised 08/25/2010)

Mr. Richard L. Baker
Bechtel Power Corporation
5275 Westview Drive
Frederick, MD 21703-8306

Ms. Patricia T. Birnie, Esquire
Co-Director
Maryland Safe Energy Coalition
P. O. Box 33111
Baltimore, MD 21218

Ms. Michele Boyd
Legislative Director
Energy Program
Public Citizens Critical Mass Energy
and Environmental Program
215 Pennsylvania Avenue, SE
Washington, DC 20003

Ms. Kristen A. Burger
Maryland People's Counsel
6 St. Paul Centre
Suite 2102
Baltimore, MD 21202-1631

Mr. Carey Fleming, Esquire
Senior Counsel - Nuclear Generation
Constellation Generation Group, LLC
750 East Pratt Street, 17th Floor
Baltimore, MD 21202

Mr. Jay S. Gaines
Director, Licensing
Calvert Cliffs Nuclear Power Plant
1650 Calvert Cliffs Parkway
Lusby, MD 20657-4702

Mr. Greg Gibson
Vice President, Regulatory Affairs
UniStar Nuclear Energy
750 E. Pratt Street
16th Floor Room 1635
Baltimore, MD 21202-3106

Mr. Brian Hastings
Public Utility Commission
William B. Travis Building
P.O. Box 13326
1701 North Congress Avenue
Austin, TX 78701-3326

Mr. Roy Hickok
NRC Technical Training Center
5700 Brainerd Road
Chattanooga, TN 37411-4017

Mr. Norris McDonald
President
AAEA
9903 Caltor Lane
Ft. Washington, MD 20744

Mr. R. I. McLean
Nuclear Programs
Power Plant Research Program
Maryland Department of Natural Resources
580 Taylor Avenue (B wing, 3rd floor)
Tawes State Office Building
Annapolis, MD 21401

President
Calvert County Board of Commissioners
175 Main Street
Prince Frederick, MD 20678

Regional Administrator
Region I
U. S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Resident Inspector
U.S. Nuclear Regulatory Commission
P. O. Box 287
St. Leonard, MD 20685

COL - Calvert Cliffs Mailing List

Mr. Tom Sliva
7207 IBM Drive
Charlotte, NC 28262

Mr. David W. Sutherland
Chesapeake Bay Field Office
U.S. Fish and Wildlife Service
177 Admiral Cochrane Drive
Annapolis, MD 21401

Mr. George Wrobel
UniStar Nuclear Energy
100 Constellation Way, 1400P
Baltimore, MD 21202-3106

COL - Calvert Cliffs Mailing List

Email

APH@NEI.org (Adrian Heymer)
awc@nei.org (Anne W. Cottingham)
BrinkmCB@westinghouse.com (Charles Brinkman)
chris.maslak@ge.com (Chris Maslak)
cwaltman@roe.com (C. Waltman)
david.lewis@pillsburylaw.com (David Lewis)
Derlinda.Bailey@chguernsey.com (Derinda Bailey)
ed.burns@earthlink.net (Ed Burns)
eddie.grant@excelservices.com (Eddie Grant)
FAlexander@sha.state.md.us (Felicia Alexander)
george.wrobel@unistarnuclear.com (George Wrobel)
greg.gibson@unistarnuclear.com (Greg Gibson)
gzinke@entergy.com (George Alan Zinke)
jason.parker@pillsburylaw.com (Jason Parker)
jerald.head@ge.com (Jerald G. Head)
jgutierrez@morganlewis.com (Jay M. Gutierrez)
jim.riccio@wdc.greenpeace.org (James Riccio)
Joseph_Hegner@dom.com (Joseph Hegner)
KSutton@morganlewis.com (Kathryn M. Sutton)
kwaugh@impact-net.org (Kenneth O. Waugh)
Ichandler@morganlewis.com (Lawrence J. Chandler)
lois@ieer.org (Lois Chalmers)
Marc.Brooks@dhs.gov (Marc Brooks)
maria.webb@pillsburylaw.com (Maria Webb)
mark.beaumont@wsms.com (Mark Beaumont)
Mark.Crisp@chguernsey.com (Mark Crisp)
matias.travieso-diaz@pillsburylaw.com (Matias Travieso-Diaz)
media@nei.org (Scott Peterson)
mike_moran@fpl.com (Mike Moran)
MSF@nei.org (Marvin Fertel)
nirsnet@nirs.org (Michael Mariotte)
Nuclaw@mindspring.com (Robert Temple)
patriciaL.campbell@ge.com (Patricia L. Campbell)
Paul@beyondnuclear.org (Paul Gunter)
pfree@northwestern.edu (Professor Paul Friesema)
pshastings@duke-energy.com (Peter Hastings)
RJB@NEI.org (Russell Bell)
sabinski@suddenlink.net (Steve A. Bennett)
sandra.sloan@areva.com (Sandra Sloan)
sfrantz@morganlewis.com (Stephen P. Frantz)
sgray@dnr.state.md.us (Susan Gray)
stephan.moen@ge.com (Stephan Moen)
tkkibler@scana.com (Tria Kibler)
trsmith@winston.com (Tyson Smith)
Vanessa.quinn@dhs.gov (Vanessa Quinn)
Wanda.K.Marshall@dom.com (Wanda K. Marshall)
wj3@comcast.net (William Johnston)