

From: Andrew.Herndon [Andrew.Herndon@noaa.gov]
Sent: Wednesday, April 20, 2011 2:55 PM
To: Cushing, Jack
Subject: NRC's DETERMINATION RE: THE GENERAL ELECTRIC-HITACHI LASER-BASED URANIUM ENRICHMENT

Hi Jack,

Thanks for passing along this email stating the NRC's determination that the subject project would have "no effect" on shortnose sturgeon.

If an activity will not affect listed species or designated critical habitat, then a "no effect" determination is the appropriate conclusion and ESA consultation is not needed. No-effect determinations made by a federal action agency **do not** require ESA consultation with NMFS. Importantly, no-effect determinations also require no NMFS concurrence with the determination nor require notification to NMFS. This streamlines the consultation process and eliminates needless consultation between federal agencies. This may be why you never received a response regarding your June 2010 letter. In cases where "no effect" determinations are made the action agency should prepare documentation for their own internal files elaborating the reasoning for their determinations.

If you have any questions, please don't hesitate to call or email.

Thank you,
Andy

On 4/20/2011 2:31 PM, Cushing, Jack wrote:
Dear Mr. Herndon

By letter dated June 18, 2009, the NRC requested information on Federally listed threatened or endangered species or critical habitat that may be in the vicinity of the Wilmington Site from the National Oceanic and Atmospheric Administration (NOAA). By e-mail dated August 3, 2009 you responded, noting the potential presence of and including additional information about the shortnose sturgeon (*Acipenser brevirostrum*). The DEIS describes the NRC staff's evaluation of the potential impact of constructing, operating, and decommissioning the proposed uranium enrichment facility on Federally listed species and critical habitat. Based on this evaluation, and consideration of the information provided by NOAA Fisheries, the NRC staff's conclusion is that the construction, operation, and decommissioning of the proposed facility is expected to have no effect on the shortnose sturgeon. The DEIS is available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1938/>

In our phone call today, you mentioned that you did not receive our June 17, 2010 letter, I apologize and I am forwarding it to you. The letter forwarded the DEIS to NOAA for comments. We have not received any comments from NOAA regarding our determination of effects. We would like to document in our final EIS comments, if any, from NOAA Fisheries. Could you reply by letter or email with NOAA Fisheries response. Please call Jack Cushing at 301-415-1424 to discuss the response.

Thank You

Jack Cushing
Senior Project Manger
US Nuclear Regulatory Commission

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