



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 26, 2013

Mr. Fred R. Dacimo
Vice President, License Renewal
Entergy Nuclear Northeast
Indian Point Energy Center
450 Broadway, GSB
P.O. Box 249
Buchanan, NY 10511-0249

SUBJECT: TRANSMITTAL OF NATIONAL MARINE FISHERIES SERVICE'S
BIOLOGICAL OPINION FOR ATLANTIC STURGEON AT INDIAN POINT
NUCLEAR GENERATING, UNITS 2 AND 3

Dear Mr. Dacimo:

The U.S. Nuclear Regulatory Commission (NRC) and National Marine Fisheries Service (NMFS) concluded consultation under section 7 of the Endangered Species Act of 1973, as amended (ESA) on January 30, 2013, with NMFS's issuance of a final biological opinion for Indian Point Nuclear Generating, Units 2 and 3 (IP2 and IP3). The final biological opinion (enclosed) considers the effects to shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic sturgeon (*A. oxyrinchus oxyrinchus*) from IP2 and IP3 operation for the remainder of the current operating license terms as well as the proposed renewed license terms. This letter follows the NRC's transmittal of an electronic copy of the biological opinion to Entergy by e-mail on January 30, 2013.

On February 6, 2012, the NMFS listed five distinct population segments (DPSs) of the Atlantic sturgeon under the ESA. In the Hudson River near IP2 and IP3, Atlantic sturgeon belong to the New York Bight DPS, which NMFS listed as endangered in February 2012. On May 16, 2012, in response to the listing, the NRC staff prepared and submitted a biological assessment to NMFS, along with a request to reinstate section 7 consultation for the newly listed Atlantic sturgeon.

The reinstated consultation began the next day, May 17, 2012, when NMFS received NRC's biological assessment. On October 26, 2012, NMFS transmitted the draft biological opinion to the NRC for review, and the NRC transmitted it to Entergy. NMFS submitted the final biological opinion to the NRC on January 30, 2013, which concluded the formal consultation in accordance with 50 CFR 402.14(l). The NRC received the final biological opinion on the following day, January 31, 2013, and the NRC sent an electronic copy of it to Entergy.

After reviewing the proposed action, the status of the species, the environmental baseline, the effects of the action, and the cumulative effects including climate change, NMFS concludes in its biological opinion that

... the continued operation of Indian Point Unit 2 is likely to adversely affect but is not likely to jeopardize the continued existence of shortnose sturgeon or the New

York Bight, Gulf of Maine or Chesapeake Bay DPS [distinct population segments] of Atlantic sturgeon. It is also NMFS' biological opinion that the continued operation of Indian Point Unit 3 is likely to adversely affect but is not likely to jeopardize the continued existence of shortnose sturgeon or the New York Bight, Gulf of Maine or Chesapeake Bay DPS of Atlantic sturgeon.

The biological opinion finds that the "Hudson River population of shortnose sturgeon has experienced an increasing trend and is stable at high levels" and that renewal of the operating licenses would "not change the status or trend of the Hudson River population of shortnose sturgeon or the species as a whole." It also finds that license renewal would "not change the status or trend of the Hudson River population of Atlantic sturgeon or the status and trend of the New York Bight Distinct Population Segment (NYB DPS) as a whole."

The biological opinion includes an Incidental Take Statement (ITS) that applies to both shortnose and Atlantic sturgeon impinged at IP2 and IP3 for both the remainder of the present license terms and the possible renewed license terms. The ITS exempts the following take (injure, kill, capture or collect) as described below:

- A total of 2 dead or alive shortnose sturgeon (injure, kill, capture or collect) and 2 dead or alive New York Bight DPS Atlantic sturgeon (injure, kill, capture or collect) impinged at the Unit 1 intake screens from now until the IP2 proposed renewed operating license would expire on September 28, 2033.
- A total of 395 dead or alive shortnose sturgeon (injure, kill, capture or collect) and 269 New York Bight DPS Atlantic sturgeon (injure, kill, capture or collect) impinged at Unit 2 intakes (Ristroph screens) from now until the IP2 proposed renewed operating license would expire on September 28, 2033.
- A total of 167 dead or alive shortnose sturgeon (injure, kill, capture or collect) and 145 dead or alive New York Bight DPS Atlantic sturgeon (injure, kill, capture or collect) impinged at the Unit 3 intakes (Ristroph screens) from now until the IP3 proposed renewed operating license would expire on December 12, 2035.
- All shortnose sturgeon with body widths greater than 3" impinged at the IP1, IP2 and IP3 trash racks (capture or collect).
- All Atlantic sturgeon with body widths greater than 3" impinged at the IP1, IP2 and IP3 trash racks (capture or collect). These Atlantic sturgeon will originate from the New York Bight (92%), Gulf of Maine (6%) and Chesapeake Bay DPSs (2%).

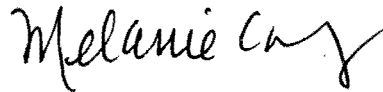
As part of the Terms and Conditions, the biological opinion states the following regarding the NRC's enforcement of the opinion:

With regard to the existing licenses for IP2 and IP3: upon issuance of this Opinion, NRC shall take prompt and effective action to require Entergy to adhere to the terms and conditions of this ITS. With regard to the proposed renewed licenses for IP2 and IP3: NRC shall ensure that each renewed license contains a condition that requires Entergy to adhere to the terms and conditions of this ITS upon issuance of the renewed license(s).

The NRC will be discussing with Entergy the requirements for Entergy to adhere to the conditions of this and any future biological opinions.

If you have any questions regarding this letter, please contact Dr. Dennis Logan, Aquatic Biologist of my staff at 301-415-0490 or by e-mail at dennis.logan@nrc.gov.

Sincerely,

A handwritten signature in black ink that reads "Melanie C. Wong". The signature is written in a cursive, flowing style.

Melanie C. Wong, Chief
Environmental Review and Guidance
Update Branch
Division of License Renewal
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosure:
As stated

cc w/encl: Listserv

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Sincerely,

/RA/

Melanie C. Wong, Chief
Environmental Review and Guidance
Update Branch
Division of License Renewal
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosure:
As stated

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