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Craver, Patti

From: Balsam, Briana *MBK*
Sent: Wednesday, March 21, 2012 4:04 PM
To: Smith, Maxwell; Woodall, Lauren; Spencer, Mary; Logan, Dennis; Susco, Jeremy; Imboden, Andy
Subject: Pilgrim - NMFS letter replying to JRWA
Attachments: NMFS reply to JRWA letter dated 3-8-11.pdf

All,

Attached is an electronic copy of the letter from NMFS to Jones River Watershed Association that we received today. I have submitted the paper copy to the file center, so it should show up on the Pilgrim docket in ADAMS by the end of the week.

Briana

Briana A. Balsam
Biologist

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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 01930-2278

MAR 8 2012

Margaret E. Sheehan
Anne Bingham
Jones River Watershed Association
PO Box 73
Kingston, MA 02364

REC'D MAR 8 1 2012

RE: Ongoing Endangered Species Act Consultation, Pilgrim Nuclear Power Station

Dear Ms. Sheehan and Ms. Bingham,

Your February 6, 2012, letter inquires about the status of the Endangered Species Act (ESA) Section 7 consultation being carried out by NOAA's National Marine Fisheries Service (NMFS) and the U.S. Nuclear Regulatory Commission (NRC) regarding the NRC's proposed issuance of a renewed Operating License for Entergy's Pilgrim Nuclear Power Station, Plymouth, Massachusetts. We appreciate your concern regarding potential impacts of Pilgrim on aquatic species.

In a letter dated December 8, 2006, the NRC requested ESA Section 7 consultation with NMFS to consider the effects on species listed under our jurisdiction of the continued operation of Pilgrim under the terms of an extended Operating License. As described in their letter and accompanying Biological Assessment (BA), NRC determined that the proposed action was not likely to adversely affect any listed species. The BA considered effects to the following species: North Atlantic Right, humpback and fin whales; and loggerhead, Kemp's ridley, green and leatherback sea turtles. NRC requested our concurrence with that determination.

As noted in your letter, under Section 7(a)(2) of the ESA, each Federal agency is required to insure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or destroy or adversely modify any designated critical habitat. If the federal action agency determines that the project is "not likely to adversely affect" any listed species and NMFS concurs with this determination, we reply in a letter that conveys this concurrence and Section 7 consultation is completed. If the action agency determines that the project is "likely to adversely affect" any listed species or NMFS does not concur with the "not likely to adversely affect" determination, formal Section 7 consultation, resulting in the issuance of a Biological Opinion with an appropriate Incidental Take Statement, may be required. We anticipate that consultation will be completed prior to the action agency taking any final agency action (e.g., issuing a final permit or license).

To date, the consultation with NRC has not been completed. While coordination between NRC and NMFS has been ongoing, discussions of potential impacts to listed species were superseded

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by changes in the listing status of two species in the action area. On September 22, 2011, we published a final rule that modified the previous listing of loggerhead sea turtles from one listed entity listed as threatened throughout its global range to nine Distinct Population Segments (DPS)(see 76 Federal Register 58868). One DPS of loggerhead sea turtles, the Northwest Atlantic DPS (listed as threatened) occurs in the action area. Additionally, on February 6, 2012, we published two rules listing five DPSs of Atlantic sturgeon (see 77 FR 5880 and 77 FR 5914). The range of all 5 DPSs extends from Labrador Inlet, Canada to Cape Canaveral, Florida. The final rule lists the Gulf of Maine DPS as threatened and the New York Bight, Chesapeake Bay, Carolina and South Atlantic DPSs as endangered. Atlantic sturgeon originating from all 5 DPSs may occur in Cape Cod Bay. Because of these changes and additions to the list of species in the action area, NRC is preparing a supplemental consultation request. We discussed the ongoing consultation with NRC on February 13, 2012, and confirmed that NRC is developing a supplemental consultation request to consider newly listed species. We anticipate completing ESA consultation with NRC after we receive that letter and in advance of any final licensing decision. As we move forward with this consultation, we will take the comments and issues raised in your letter into consideration.

As noted in your letter, Pilgrim also operates pursuant to a National Pollutant Discharge Elimination System (NPDES) permit issued by the U.S. Environmental Protection Agency (EPA). The NPDES permit was last issued in 1994 for a 5 year term. The permit expired in 1999; however, it has been administratively extended since it expired. When EPA proposes a new permit, we will work with EPA to ensure that the appropriate ESA consultation is completed.

Additionally, you indicated in your letter that NMFS should consult on effects to alewife and blueback herring (collectively, river herring). We wanted to provide clarification that river herring are NMFS Candidate Species, which does not confer any substantive protection under the ESA, and there is no means under which they can be considered in an ESA Section 7 consultation. Section 7 consultations consider only those species listed as threatened or endangered under the ESA as well as any designated critical habitat that occurs in the "action area. We are conducting a status review for river herring and will consider all known threats to these species in that review. A determination as to whether listing is warranted will be published in August.

Thank you for your interest in our ongoing consultation with NRC regarding the relicensing of the Pilgrim facility. When our consultation is complete, we will provide you a copy of the final consultation document. Should you have any questions regarding this letter, please contact Kim Damon-Randall, Acting Assistant Regional Administrator for Protected Resources at 978-282-8485.

Sincerely,



Daniel S. Morris
Acting Regional Administrator

CC: Chiarella, F/NER4
Williams, Lynch – GCNE
Logan, Balsam – NRC
Nagle, Webster – EPA