

Craver, Patti

From: Logan, Dennis
Sent: Thursday, June 21, 2012 9:22 AM
To: Cooper, Paula
Subject: FW: Columbia: 6/11/12 letter from NMFS
Attachments: NMFS letter dated 6-11-12.pdf

Paula,

Briana was here yesterday when this came in and summarized the letter.

The "discretion" sentence may actually be OK, as discretion also means the following:

the power of a judge, public official or a private party (under authority given by contract, trust or will) to make decisions on various matters based on his/her opinion within general legal guidelines

I think you can tell the plant that we will be spending more time on this. The duration of this task is hard to predict right now.

I believe that much study and effort went into the design, location, and construction of the present intake structures. NMFS may have participated in those studies. I also think that reviewing those studies and information would be very helpful, if we can locate them. Anything you can do in this regard would be helpful.

We may or may not need to get PNNL (Becky Krieg) involved as they wrote the biological assessment and biological sections of the SEIS and are very familiar with the species there—we don't have to make that decision right now, though.

Dennis

From: Balsam, Briana
Sent: Wednesday, June 20, 2012 4:53 PM
To: Logan, Dennis; Susco, Jeremy; Subin, Lloyd
Subject: Columbia: 6/11/12 letter from NMFS

All,

We just received the attached letter ([ML12172A377](#)) from NMFS regarding the ongoing Columbia section 7 consultation today. In summary, the letter:

- States that NMFS does not agree with our "not likely to adversely affect" determination and that NMFS believes formal consultation (and a biological opinion) is required.
- Requests that NRC provide the basis for its conclusion that license renewal does not constitute an irreversible or irretrievable commitment of resources that has the effect of foreclosing mitigation options per section 7(d) of the ESA (this is basically what we documented in this internal memo: [ML12139A115](#))
- Makes an additional request for which we will probably need to have a call on because the sentence makes no sense—" NMFS will need to understand the nature and scope of NRC's continuing discretion regarding the configuration and operation of the Columbia Generating Station."

As a side note, the letter doesn't address our last formal correspondence ([ML11335A127](#)) with them at all. We had previously asked them to either agree to informal consultation or justify (with new information on Chinook

or steelhead juvenile entrainment) their reasoning for requesting formal consultation, but this letter doesn't even reference our last letter to them.

Dennis is the lead for this consultation, but I just wanted to get this summary out so that Jeremy can pass on the main points to management.

Briana



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

June 11, 2012

Jeremy Susco
Acting Branch Chief
Environmental Review and Guidance Update Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Columbia Generating Station, Consultation No. 1/NWR/2011/05286.

Dear Mr. Susco:

National Marine Fisheries Service (NMFS) understands that the Nuclear Regulatory Commission (NRC) issued a renewal of the operating license for the Columbia Generating Station on May 22, 2012. This development requires a reassessment of the Endangered Species Act (ESA) consultation concerning your regulatory action since an ESA consultation is completed before the action under consultation is taken.

By your letter of August 23, 2011, NRC initiated an informal consultation with NMFS pursuant to Section 7(a)(2) of the ESA, based on NRC's determination that renewing the operating license for this plant 'may affect' two ESA listed species. NRC also determined that its license renewal action was 'not likely to adversely affect' (NLAA) the listed salmonids in the Columbia River. NMFS responded by our letter of October 24, 2011, that, pursuant to our ESA consultation regulations, 50 C.F.R. § 402.14(a), NMFS did not concur with NRC's NLAA determination, largely because the current cooling water intake configuration is likely to cause adverse effects, including impingement and entrainment, to ESA listed species. NMFS cannot concur with an action agency's NLAA determination if it determines that adverse effects are likely. As we mentioned in our letter, NMFS can provide NRC with design guidance for such an intake structure. The consequence of our inability to concur with NRC's NLAA determination is that informal consultation is not permitted for this license renewal action. As provided in our regulations, a formal consultation resulting in a biological opinion is required.

At our request, following our October 24, 2011 letter, you provided NMFS with additional information concerning the cooling water intake structure for seeking reconsideration of our position that we could not concur with NRC's NLAA determination. We have considered this information and continue to find that issuance of a renewed license for the Columbia Generating Station' operation, in part due to its continued use of the existing cooling water intake structure, is likely to adversely affect listed salmonid species.

To determine the significance of NRC's decision to issue the license renewal despite the pendency of the ESA consultation, NMFS now requires additional procedural information. The



only opportunity for continuing the ESA consultation for the renewed license for the Columbia Generating Station under ESA's Section 7 would depend on NRC's basis for deciding to proceed with its action. ESA Section 7(d) provides that an action agency, such as NRC, can proceed with its action while the ESA consultation continues, provided it makes a determination that by doing so NRC is not making "any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would" avoid jeopardizing listed species or adversely modifying critical habitat.

Please advise NMFS of any determinations NRC has made under ESA § 7(d) and the basis for such a determination. Assuming NRC made an ESA § 7(d) determination, NMFS will need to understand the nature and scope of NRC's continuing discretion regarding the configuration and operation of the Columbia Generating Station. Once NMFS receives this information we can better assess the appropriate next steps in this ESA consultation.

Sincerely,



William W. Stelle, Jr.
Regional Administrator

cc: Dennis Logan, Division of License Renewal