



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

OCT 15 2014

Maya K. van Rossum
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007

Dear Ms. van Rossum,

Thank you for your September 11, 2014, letter voicing your concerns about the status of the Delaware River population of Atlantic sturgeon. As you know, section 7 of the Endangered Species Act (ESA) of 1973, as amended, requires Federal agencies to consult with us to ensure that their proposed actions are not likely to jeopardize the continued existence of any ESA-listed species or result in the destruction or adverse modification of designated critical habitat. There is no critical habitat currently designated for any DPS of Atlantic sturgeon; however, in all of our section 7 consultations we carefully consider effects to individual sturgeon as well as the habitats on which they depend.

As noted in your letter, we have received reports of three Atlantic sturgeon entrained in the hopper dredge McFarland in 2014. This dredge is owned and operated by the U.S. Army Corps of Engineers. In May, the McFarland was conducting maintenance of the 40' Philadelphia to the Sea Federal Navigation Channel in an area where deepening has not occurred. In August and September, the McFarland was conducting maintenance dredging in the Philadelphia to Trenton Federal Navigation Channel. We completed consultation with the USACE Philadelphia District on maintenance of the 40' Philadelphia to the Sea channel with the issuance of a Biological Opinion dated August 31, 2013. USACE requested reinitiation of consultation on the effects of maintenance of the Philadelphia to Trenton channel in August 2014. That consultation is currently in process.

Your letter correctly notes that 15 Atlantic sturgeon were collected at the Salem Nuclear Generating Stations trash racks between January and April, 2014. We issued a Biological Opinion to the Nuclear Regulatory Commission on July 17, 2014 that contained an Incidental Take Statement exempting incidental take of shortnose and Atlantic sturgeon and Kemp's ridley, green and loggerhead sea turtles. In the Opinion we state our expectation that the number of Atlantic sturgeon impinged at the trash racks would vary annually; as such, we state that we expect a potential range of 12-18 impingements each year. To date, the number of Atlantic sturgeon collected at the Salem intakes in 2014 remains within that range.

The Section 7 consultation regulations outline four "triggers" for reinitiation. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary federal agency



involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may not have been previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to listed species; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. We carefully monitor the available information for all of our consultations to determine if these have been met. At this time, we do not have information to indicate that any of these triggers have been met for the two consultations you address in your September 11 letter (the USACE's deepening of the Delaware River's Philadelphia to the Sea Channel and the continued operation of the Salem nuclear power plant as licensed by the NRC). Please note that we are currently awaiting results of genetic assignment testing for the sturgeon referenced in your letter. We are also awaiting results of an analysis of the reproductive condition of the adult Atlantic sturgeon entrained on the McFarland on August 31.

Your letter raises your concerns about our assessment in Biological Opinions of impacts to Atlantic sturgeon of other human activities (i.e., vessel traffic, capture in commercial fishing gear). In the jeopardy analysis, we consider the effects of the action under consultation on Atlantic sturgeon in the context of the status of the species and all the other impacts to Atlantic sturgeon in the action area, as summarized in the Environmental Baseline, and Cumulative Effects sections of the Opinion.

In your letter, you state that the Opinion we issued for Salem "operates under the false premise that the Salem Facility cannot operate in a way that modifies their cooling water intake system." You go on to state your determination that PSEG could install a closed cycle cooling system. While we agree based on our general understanding of cooling towers (that a facility operating with cooling towers typically withdraws approximately 95% less water than a facility with a once through cooling system), the installation of cooling towers at Salem would result in a large reduction in the amount of water withdrawn and a potentially significant reduction in the number of listed species impinged. However, the operation of Salem with closed-cycle cooling was not the action proposed by NRC. In our Biological Opinion, we must analyze the effects of the action proposed by NRC, which is the continued operation of Salem with the existing once-through cooling system. Further, requiring closed cycle cooling does not meet the definition of a Reasonable and Prudent Measure (RPM). As stated in 50 CFR§402.14, "reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration or timing of the action and may involve only minor changes." While closed-cycle cooling would likely minimize take, we cannot require that PSEG convert to closed-cycle cooling or install cooling towers as an RPM, because such a modification to the facility would be more than a minor change to the basic design of the proposed action. Estimates of the total cost of installation of cooling towers at Salem are over a billion dollars and would be a major construction project. Thus, while we agree with you that requiring the conversion of the facility from once through cooling to closed-cycle cooling would have environmental benefits, it is not reasonable to include as an RPM. As noted in the Section 7 handbook (page 4-49), an RPM cannot be considered reasonable if it would result in more than a minor change to the proposed action.

We appreciate your ongoing concerns regarding the impacts of anthropogenic activities on Atlantic sturgeon in the Delaware River. We recommend that you address your concerns regarding the timing of dredging in the Delaware River navigation channels with the USACE Philadelphia District as they set the schedule for maintenance of the navigation channel. Concerns regarding the potential for installation of closed cycle cooling at Salem are best addressed with the New Jersey Department of Environmental Protection. We welcome recommendations you have on ways to minimize the potential for interactions between vessels and Atlantic sturgeon on the Delaware River and elsewhere.

Sincerely,


for John K. Bullard
Regional Administrator

EC: Crocker, Damon-Randall, Murray-Brown – F/NER3
Boelke, Greene – F/NER4
Casey, Williams – GCNE
Logan, Balsam – NRC
Brandreth, Pasquale – USACE NAP