

Teleconference with the U.S. Fish and Wildlife Service Regarding Endangered Species Act  
Section 7 Consultation for Peach Bottom Atomic Power Station, Units 2 and 3,  
Subsequent License Renewal

Consultation Code 05E2PA00-2018-SLI-1582

October 24, 2018

**PARTICIPANTS**

Briana Grange, NRC Biologist

Richard McCorkle, FWS Fish and Wildlife Biologist  
(814) 206-7470  
richard\_mccorkle@fws.gov

**TELECONFERENCE NOTES**

Chesapeake Logperch (*Percina bimaculata*)

- This species is under review for listing. The Service currently anticipates completing the status review in 2022 and making a listing decision in 2023.
- For species undergoing status review, the Service's policy is that it is best to treat such a species as if it were listed and to consider it in-depth as part of an action agency's Endangered Species Act (ESA) assessment because of the potential for the species to be listed in the future. The Service's concurrence on the action agency's determination, however, need not be requested unless the species becomes listed.
- The Service issued Director's Order No. 218, [Policy Regarding Voluntary Prelisting Conservation Actions](#), in January 2017. The policy establishes a mechanism to encourage and reward voluntary conservation actions that benefit at-risk species. Under the policy, landowners can obtain conservation credits for efforts that benefit declining species that can later be redeemed or sold to a third party to offset or mitigate actions that are detrimental to a species should it subsequently be listed under the ESA.
- For Chesapeake logperch specifically, the Pennsylvania Fish and Boat Commission has issued a [Species Action Plan](#) that identifies several conservation actions. Conservation Action (1)(b) is:

“Continue to work with federal and state government agencies to minimize impingement and entrainment.”

The plan also specifically identifies direct mortality at Peach Bottom through impingement to be a major threat to the species.

- Alternatives to the Peach Bottom cooling water intake system, as it currently exists and functions, should be explored in order to address Chesapeake logperch conservation. The Service understands that NRC's authority does not extend to water quality issues and that the authority to implement any changes to the cooling water intake system that would benefit aquatic species lies with the State under the Clean Water Act.
- Regarding the Peach Bottom's National Pollutant Discharge Elimination System (NPDES) permit, the Service views the Federal nexus for ESA Section 7 related to the permit renewal to be the Clean Water Act. In this case, the U.S. Environmental Protection Agency (EPA) is the Federal action agency because it has oversight authority for the NPDES program. In

Pennsylvania, the EPA has delegated the NPDES program to the Pennsylvania Department of Environmental Protection. The State has been in communication with the Service during its NPDES permit renewal review thus far, and the Service plans to continue its involvement in the review, as it has opportunity to do so, to ensure protection of the Chesapeake logperch and other aquatic species.

American Eel (*Anguilla rostrata*)

- The Service determined that listing of this species was not warranted in 2015 and has no plans to reconsider the species for listing.

Indiana Bat (*Myotis sodalis*)

- The NRC asked if the Service agrees with the NRC staff's current assumptions regarding the Indiana bat's potential to occur in the Peach Bottom action area, which were shared with the Service via email in advance of the teleconference as follows.

*My preliminary research indicates that the Indiana bat would only have the potential to occur in the action area in spring and summer. Thus, the action area could support foraging, mating, roosting, and pup rearing. The species would not occur within the action area in the fall because the action area is not within a fall swarming buffer, and the species would not occur in the winter because no extant hibernacula occur in Pennsylvania.*

- The Service agrees with the above assumptions except the statement about extant hibernacula in Pennsylvania. This is not correct. There are approximately 20 Indiana bat hibernacula in the State. Of these, Indiana bats have been extirpated from many, but the Service has data indicating the continued use of at least three. Indiana bats are likely still using at least a few others, but the Service has been unable to access some hibernacula due to landowner restrictions and others have not been surveyed recently.
- The Peach Bottom action area does not occur within the conservation buffer (e.g., fall swarming) of any of these hibernacula. Therefore, the NRC doesn't need to assume that bats could be present in the action area in the winter. Even if Indiana bats used the closest known northern long-eared bat hibernaculum (12.5 miles away), the action area would still be outside of the conservation buffer associated with that hibernaculum.
- The nearest documented maternity roost to Peach Bottom is 41 miles away. Maternity roosts are usually in close proximity to known hibernacula, so the chances are low that there would be maternity roosting in the action area.
- The Service's [October 9, 2018, letter](#) to the NRC recommends limiting tree removal and pruning to November 15 to March 31 in order to avoid potential effects to this species during the summer roosting season. The Service and Exelon Generation have not discussed these recommendations. However, generally for a given project, if >40 acres of tree removal is proposed, the Service would recommend a written commitment to time-of-year restrictions on removal and pruning of trees  $\geq 5$  in. diameter at breast height (dbh) for the Service to concur with a "not likely to adversely affect" determination. Alternatively, an applicant could conduct a habitat survey, and if suitable habitat exists, conduct a bat survey. Or, an applicant could request to proceed to formal consultation. However, if <40 acres of tree removal is proposed for a given project, then the Service would not recommend written commitments.

### Northern Long-Eared Bat (*Myotis septentrionalis*)

- The NRC asked if the Service agrees with the NRC staff's current assumptions regarding the northern long-eared bat's potential to occur in the Peach Bottom action area, which were shared with the Service via email in advance of the teleconference as follows.

*My preliminary research indicates that the northern long-eared bat would have the potential to occur in the action area in spring, summer, and fall. Thus, the action area could support foraging, mating, roosting, pup rearing, and fall swarming. The species would not occur within the action area in the winter because the action area due to the absence of known hibernacula on or near the Peach Bottom site.*

- The Service agrees with the above assumptions.
- A documented hibernaculum occurs 12.5 miles away from Peach Bottom, but there are no hibernacula within the action area.
- Final 4(d) Rule for Northern Long-Eared Bat ([81 FR 1900](#))
  - The final rule prohibits purposeful take of the species within its range, except when necessary to protect human health or in instances of removal from human structures.
  - Within the white-nose syndrome zone, which includes all of Pennsylvania, the 4(d) rule prohibits incidental take within hibernacula, including physical alteration of the entrance or environment of a hibernaculum.
  - Incidental take outside of hibernacula resulting from activities other than tree removal is not prohibited provided that activities do not result in incidental take of bats inside hibernacula.
  - Incidental take resulting from tree removal is prohibited if it (1) occurs within 0.25 miles of known hibernacula or (2) cuts or destroys known, occupied maternity roost trees or any other trees within 150 feet of a maternity roost tree during the pup season (June 1 to July 31).
  - Removal of hazardous trees for the protection of human life and property is not prohibited.
- The Service's January 5, 2016, [Programmatic Biological Opinion on the Final 4\(d\) Rule](#) would apply to the proposed Peach Bottom license renewal.
  - Federal agencies can rely on the biological opinion to fulfill their consultation responsibilities if they use the optional framework, which requires prior notification of activities that may affect the northern long-eared bat, along with a determination that the action would not cause prohibited incidental take.
  - Service concurrence with the action agency's determination is not required, although the Service may advise the action agency on additional information that may indicate project-level consultation is required.
  - The Service has created a [Key to the Northern Long-Eared Bat 4\(d\) Rule for Federal Actions that May Affect Northern Long-Eared Bats](#) that includes a stepwise process to help action agencies determine when it is appropriate to use the framework for streamlined consultation.
  - If an action agency determines that it is appropriate to use the streamlined consultation framework, then the agency must provide to the Service project-level documentation that the action would not cause prohibited incidental take. The agency must also complete

the Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form (available for download through a link [here](#)).

- Once the action agency submits this information to the Service, if the Service does not respond within 30 days, the action agency can presume that the determination is correct and can proceed with its action.
- More information on the 4(d) Rule and streamlined consultation process is available on the Service's [Northern Long-Eared Bat Section 7 Consultation](#) webpage.

#### Rufa Red Knot (*Calidris canutus rufa*)

- The NRC asked if the Service agrees with the NRC staff's current assumptions regarding the rufa red knot's potential to occur in the Peach Bottom action area, which were shared with the Service via email in advance of the teleconference as follows.

*Although not specifically addressed in the Service's October 9, 2018, letter to the NRC, the rufa red knot appears on the Information for Planning and Consultation (IPaC) official species list that the staff generated for the project. Based on my preliminary research, red knots are not common in Pennsylvania, but infrequent sightings of the species have been reported by birders along the Susquehanna River both north and south of the Peach Bottom action area according to the Cornell Lab of Ornithology's eBird database. Within the action area itself, no surveys have been conducted for red knots, and Exelon Generation reports no known occurrences of the species on the site. Red knots would only potentially be present in the action area during spring and fall migration periods. However, suitable stopover habitat does not occur within the action area, so individuals would be more likely to stop north or south of the action area rather than in the action area itself, consistent with reported sightings of the species. These regions of the river provide exposed flats, islands, inlets, and other shallow riparian habitats that red knots require for resting and foraging. The action area lacks such habitat. Based on this information, I have preliminarily concluded that the red knot is not likely to occur in the Peach Bottom action area due to lack of suitable habitat.*

- The Service agrees with the above assumptions. The red knot is not likely to occur in the action area due to lack of suitable habitat.

#### Bog Turtle (*Glyptemys muhlenbergii*)

- The Service's Pennsylvania field office determinations are valid for two years.
- The Service reviewed Exelon Generation's Phase I bog turtle habitat survey in November 2017.
- NRC will request the Service's concurrence with its ESA determinations for bog turtle and other species once it completes its draft environmental impact statement, which is currently scheduled for issuance in summer 2019. The Service's concurrence would be valid for two years following this, so NRC should be aware of this timeline in relation to the final license renewal decision.