



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

NOV 14 2018

Elise Zoli
Jones Day
21st Floor
100 High Street
Boston, MA 02110-1781

Re: Monitoring at Indian Point

Dear Ms. Zoli,

We received your September 24, 2018, letter regarding the terms of the amended Incidental Take Statement (ITS) for Entergy's continued operation of Indian Point Unit 2 and Unit 3 under renewed licenses issued by the Nuclear Regulatory Commission (NRC). We understand that you prepared this letter on behalf of your client, Entergy Nuclear, who operates the Indian Point facility. Your letter provides us several reasons to be concerned about Entergy's compliance with the requirements of the ITS. As you know, failure to comply with the terms of the ITS nullifies its exemption of sturgeon takes from the Endangered Species Act's (ESA) prohibition against takes. Failure to comply with the ITS also undermines the incidental take monitoring plan that is critical to determining whether the effects of Unit 2 and Unit 3 operations truly are "not likely to jeopardize the continued existence" of sturgeon and whether it is reasonable for NRC to continue to rely on the January 30, 2013, Biological Opinion.

Your September 24 letter states in several places that it is "consistent with" with the ITS. We disagree. The ITS requires (not "requests") Entergy to submit a schedule of planned sampling days no later than October 1, 2018. Instead of complying with this requirement, your September 24 letter provides a schedule for when you will submit a schedule, bifurcating and delaying our receipt of the required information until mid-March and mid-August 2019. Neither the delay nor the bifurcation of the schedule is acceptable. During the lengthy and detailed discussions on monitoring and the draft amended ITS, which we thought were conducted in good faith, Entergy never indicated that the sampling schedule "cannot reasonably be set" by October 1, 2018. Neither Entergy's January 26, 2018, comments on the draft amended ITS, nor NRC's January 26, 2018, comments on the same, indicated that October 1 was not a reasonable due date. At no time between transmission of the final amended ITS in February 2018 and now have you, Entergy, or NRC raised concerns about the sampling schedule due date. Furthermore, we set October 1, 2018, as the due date so that we have time to review it and work out any concerns we may have well in advance of the sampling period, which must begin no later than April 1, 2019. Because we have not received the sampling schedule required by the ITS on or before October 1, 2018, we consider the failure to provide the sampling schedule on or before that date to be a violation of the terms of the ITS.



The amended ITS allows changes to be made to the sampling schedule. As a result, we expect Entergy to provide a single sampling schedule, even if it notes that the intended dates and times for sampling are subject to change based on outages and unsafe weather conditions. We expect a single sampling schedule covering April, May, September, and October 2019 to be provided to us no later than December 1, 2018.

The September 24 letter also states that “[a]s expected, the necessary equipment, systems integration and procedures are not yet in place in a manner that would allow commencement of Monitoring to begin in 2018” (emphasis added). In discussions leading up to the final revised ITS, including Entergy’s explanations of its plans to insert necessary equipment in the fish return system during 2018 outages so that the tanks can be integrated once they are obtained, Entergy represented to us that there was a possibility that monitoring could begin in 2018. It was precisely because of those statements, and the expectations they created, that the third bullet in Section 11.3(1) was written the way it was: “This impingement sampling must begin as soon as possible following the installation of necessary equipment but no later than April 1, 2019 for both IP2 and IP3. If equipment is in place at IP2 before September 1, 2018, sampling must occur during September and October 2018.”

Suggesting that there was no expectation sampling could begin in 2018 not only does not comport with our discussions, it raises our concerns about the September 24 letter’s other statements regarding the “status of the engineering, procurement, technical and procedural Station systems integration work” needed to start sampling in April 2019. In particular, the letter seems to be suggesting that the equipment installation and other work that needs to be done so that sampling may begin in April 2019 may not be completed on time. We strongly encourage Entergy to complete all necessary work prior to April 1, 2019, so that the sampling program, which is required by the ITS and necessary for the exemption to apply, may begin on time. We remind you that failure to comply with the terms of the ITS jeopardizes the ESA section 9 take exemption provided by the ITS.

We look forward to receiving a sampling schedule covering April, May, September, and October 2019 no later than December 15, 2018. Please provide a detailed update on the installation of the sampling equipment and procedures no later than December 15 as well. Thank you for your cooperation in this matter.

Sincerely,



Michael Asaro
Acting Assistant Regional Administrator for
Protected Resources

cc: Grange, NRC
Gray, Entergy
Williams, Crocker – NMFS