



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 19, 2021

Ms. Julie Crocker
Endangered Fish Branch Chief
Greater Atlantic Regional Fisheries Office
Protected Resources Division
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

SUBJECT: OCTOBER 26, 2020, DISCOVERY OF AN ENTANGLED ATLANTIC
STURGEON AT SURRY POWER STATION UNITS 1 AND 2 LOW-LEVEL
INTAKE TRASH RACKS

Dear Ms. Crocker:

This letter describes an October 2020 incident involving the discovery of an Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) at the Surry Power Station, Units 1 and 2 (Surry), low-level intake trash racks. As explained in this letter, the U.S. Nuclear Regulatory Commission (NRC) has determined that reinitiation of consultation under Section 7 of the Endangered Species Act (ESA) is not required as a result of this incident, and the NRC requests your concurrence with this conclusion.

Atlantic Sturgeon Entanglement Incident

On October 26, 2020, at 8:30am Eastern Daylight Time, Dominion Energy, Inc. (Dominion) personnel identified an Atlantic sturgeon at Surry's low-level intake structure trash racks. Divers entered the water to remove the fish. The maintenance supervisor and divers reported that the sturgeon's back fin was entangled in a crab pot line associated with shellfish trapping. The line was hooked into the back fin and tightly wound around the fish. The other end of the line was tangled on components of the trash rack such that the fish was unable to swim away. The divers reported the fish as healthy and breathing other than some cuts and scrapes on the back fin associated with the entanglement. The divers untangled the sturgeon, brought it to the surface, and used a plastic sheet to transport the fish back to the water for release along the side of the low-level intake structure. Once released, the fish swam away.

On October 27, 2020, Dominion notified relevant Federal and State agencies of the incident, including the NRC, National Marine Fisheries Service (NMFS), the Virginia Marine Resources Commission, the Virginia

Department of Wildlife Resources, and the Virginia Department of Environmental Quality.¹ On the same day, the NRC notified NMFS of the incident by phone and e-mail,² and NMFS confirmed its receipt of the information.³

On November 30, 2020, the NRC, NMFS, and Dominion discussed the event in a teleconference.⁴ The NRC's summary of this teleconference includes photographs of the entangled sturgeon.

ESA Section 7 Consultation History

The NRC and NMFS have consulted under ESA Section 7 on several occasions concerning Atlantic sturgeon at Surry. Most recently, the NRC and NMFS consulted in 2019-2020 concerning the subsequent license renewal of Surry's operating license, which would allow Dominion to operate Surry for an additional 20 years, if approved by the NRC. During that consultation, the NRC determined that continued operations of Surry during the proposed subsequent license renewal term may affect but is not likely to affect the Atlantic sturgeon and shortnose sturgeon (*Acipenser brevirostrum*), both of which occur in the action area.⁵ The NRC concluded that impingement of either sturgeon species is extremely unlikely to occur because the life stages that occur in the action area would be of sufficient size and swimming capability to resist the flow of water into Surry's low-level intake structure. Additionally, impingement studies performed over the course of Surry operations have reported no impingement of either sturgeon species. Dominion had otherwise reported no sturgeon impingement at that time. The NRC requested the NMFS's concurrence with its determinations in a letter dated October 17, 2019,⁶ and the NMFS provided its concurrence in a letter dated January 30, 2020.⁷ The NMFS's letter concluded consultation.

Evaluation of Consultation Reinitiation Criteria

The regulations that implement ESA Section 7 prescribe circumstances under which reinitiation of consultation is required. Specifically, Title 50 of the *Code of Federal Regulations* Part 402.16(a)(2) states in part that Federal agencies shall reinitiate consultation if new information

¹ NRC. Email from Headquarters Operations Officer to M. Miller, NRC. Subject: Notification to Environmental Government Agencies of Atlantic Sturgeon at Surry. October 27, 2020. ADAMS Accession No. [ML20302A459](#).

² NRC. Email from B. Grange to J. Crocker, NMFS. Subject: Atlantic Sturgeon Captured at Surry. October 27, 2020. ADAMS Accession No. [ML20307A139](#).

³ NMFS. Email from J. Crocker to B. Grange, NMFS. Atlantic Sturgeon Captured at Surry. October 27, 2020. ADAMS Accession No. [ML20307A138](#).

⁴ NRC. Summary of Meeting with the National Marine Fisheries Service and Dominion Energy, Inc, Regarding Atlantic Sturgeon Capture at Surry Power Station. December 7, 2020. ADAMS Accession No. [ML20335A112](#).

⁵ NRC. Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 6, Second Renewal, Regarding Subsequent License Renewal for Surry Power Station, Units 1 and 2. NUREG-1748, Supplement 6, Second Renewal. April 2020. 523 pp. [ML20071D538](#).

⁶ NRC. Email from B. Grange to J. Crocker, NMFS. Subject: Request for Concurrence with Endangered Species Act Determinations for Proposed Subsequent License Renewal of Surry Power Station in Virginia. October 17, 2019. ADAMS Accession No. [ML19274B590](#).

⁷ NMFS. Letter from J. Anderson to B. Grange, NRC. Subject: Concurrence with Endangered Species Act Findings and Conclusion of Consultation for Surry Power Station Proposed License Renewal. January 30, 2020. ADAMS Accession No. [ML20030B278](#).

reveals effects of the action that may affect listed species or critical habitat in a manner or extent not previously considered.

The NRC considers the October 26, 2020, Atlantic sturgeon incident to be new information. As described above, prior to this incident, the NRC and NMFS had determined that impingement of Atlantic and shortnose sturgeon would be extremely unlikely to occur, and no impingement of sturgeon had been reported since the plant began operating in 1972. Therefore, the impingement of this individual is new information.

However, the NRC does not find that the incident necessitates reinitiation of consultation because the October 26, 2020, incident did not reveal information about an effect of the proposed action that is reasonably certain to occur as defined in 50 CFR 402.02 and 50 CFR 402.17(a). Because the Atlantic sturgeon involved in the October 26, 2020, incident was entangled tightly in a crab pot line and the line was also tangled on components of the trash rake, the fish was unable to swim away. Such an event has only occurred once in 48 years of operation at Surry, and the NRC believes this particular set of circumstances is extremely unlikely to occur again and that impingement of another sturgeon (either Atlantic or shortnose) is extremely unlikely to occur over the course of the proposed license renewal term. In accordance with 50 CFR 402.17(a) and 402.16(a), the NRC considered past experience with operations at Surry and existing plans for Surry's continued operation through the proposed license renewal term and determined that incidents such as the October 26, 2020, sturgeon incident are not reasonably certain to occur as a result of the proposed subsequent license renewal. Therefore, reinitiation of consultation is not necessary, and the NRC's previous conclusion (i.e., that continued operations of Surry through the proposed license renewal term may affect but is not likely to adversely affect Atlantic and shortnose sturgeon) remains valid.

Request for NMFS's Concurrence

The NRC requests that NMFS confirm in writing its agreement with the NRC's above position that reinitiation of consultation for Atlantic and shortnose sturgeon at Surry is not required and that the NRC's previous conclusion regarding these species remains valid. Should you need to discuss the information in this letter, please contact me at 301-415-1042 or briana.grange@nrc.gov.

Sincerely,

Briana A. Grange, Conservation Biologist & ESA
Consultation Coordinator
Environmental Review License Renewal Branch
Division of Regulatory, Environmental,
and Financial Support
Office of Nuclear Material Safety
and Safeguards

Docket Nos. 50-280 and 50-281

cc: Listserv

SUBJECT: OCTOBER 26, 2020, DISCOVERY OF AN ENTANGLED ATLANTIC STURGEON AT SURRY POWER STATION UNITS 1 AND 2 LOW-LEVEL INTAKE TRASH RACK

Dated:

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ADAMS Accession No.: ML21004A039

***via email**

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DATE	01/04/2021	01/04/2021	01/04/2021	01/14/2021	01/19/2021

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