



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
203 West Second Street
Grand Island, Nebraska 68801

July 2, 2003

Mr. Pao-Tsin Kuo
Program Director
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Kuo:

This responds to your May 30, 2003 (received June 5, 2003), letter requesting comments from the U.S. Fish and Wildlife Service (Service) on a Biological Assessment (BA) of the Potential Impacts to Threatened and Endangered Species Resulting from an Additional 20 Years of Operation of the Fort Calhoun Station (FCS), Unit 1, Nuclear Power Plant (TAC No. MB3402), located in Washington County, Nebraska. The U.S. Nuclear Regulatory Commission (NRC) submitted the BA to the Service in a letter dated December 9, 2002. The BA determined that the proposed action is not likely to adversely affect the federally listed endangered pallid sturgeon (*Scaphirhynchus albus*) or the threatened bald eagle (*Haliaeetus leucocephalus*). In addition, the BA stated that the proposed action would have no effect on the federally listed threatened western prairie fringed orchid (*Platanthera praeclara*) and piping plover (*Charadrius melodus*), or the endangered least tern (*Sterna antillarum*). After reviewing the BA, the Service concluded that additional information was required before an evaluation could be completed to determine whether the Service could concur with NRC's not likely to adversely affect determination for the pallid sturgeon. The Service requested the additional information in a letter to NRC dated January 13, 2003. NRC provided the additional information in the May 30, 2003, letter.

After reviewing the BA, and the additional information, the Service is concerned that if pallid sturgeon spawning does occur in the Missouri River between Gavins Point Dam and FCS, the larvae produced would be susceptible to entrainment or impingement at FCS. Under Section 9(a)(1) of the Endangered Species Act (ESA) of 1973, as amended, it is unlawful to "take" endangered species of fish and wildlife. As defined in the ESA, "The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Therefore, because pallid sturgeon larvae may potentially be taken under the proposed action, the Service has concluded that it is not able to concur with NRC's not likely to adversely affect determination for the pallid sturgeon.

Since the Service is unable to concur with NRC's determination of not likely to adversely affect, we request that NRC undertake one of the following conservation measures, as part of the proposed federal action, to minimize or compensate for, project effects on the pallid sturgeon:

Measure 1: Conduct a 3-year larval monitoring study at FCS to determine the impacts of the facility on pallid sturgeon larvae. Larval monitoring studies conducted by the Omaha Public Power District (OPPD) at FCS during the 1970s found that *Scaphirhynchus sp.* larvae were being impacted by the facility. However, at that time, it was not possible to differentiate between shovelnose (*Scaphirhynchus platorhynchus*) and pallid sturgeon larvae. Consequently, OPPD determined that it was highly likely that all of the collected larvae were shovelnose sturgeon, the more abundant species. Since the 1970s, advanced study techniques have evolved and researchers have developed techniques to distinguish between larvae of the two species. Therefore, the Service believes that a larval monitoring study would be instrumental in determining if the facility is taking pallid sturgeon larvae. The design of a larval monitoring study should be coordinated with the Service and Nebraska Game and Parks Commission (NGPC).

If NRC chooses this measure, the relicensing process could continue. If the larval monitoring study documents that pallid sturgeon larvae are being taken at FCS, the consultation process, under Section 7 of the ESA, would need to be reinitiated. During the consultation process, methods to minimize (e.g., structural modifications) the take of pallid sturgeon larvae at FCS would be pursued.

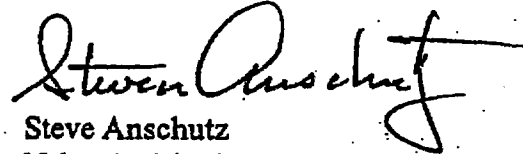
Measure 2: Forgo the larval monitoring study described under Measure 1, and pursue structural modifications at FCS, using the best available technology, which would either minimize or avoid the take of pallid sturgeon larvae. If NRC chooses this measure, and commits to making the structural modifications, the relicensing process could continue and the Section 7 consultation process would be completed.

If NRC chooses not to commit to either Measure 1 or 2, NRC should request initiation of formal Section 7 consultation with the Service. Under the ESA, the Service has 90 days following initiation of formal consultation during which to develop a draft biological opinion (BO), and an additional 45 days to issue a final BO. The BO would contain an incidental take statement, with reasonable and prudent measures, which the Service believes are necessary or appropriate to minimize the impacts (i.e., amount or extent) of incidental take.

In addition to the federally and state listed endangered pallid sturgeon, the sturgeon chub (*Macrhybopsis gelida*) and lake sturgeon (*Acipenser fulvescens*) are listed as endangered and threatened species, respectively, under the Nebraska Nongame and Endangered Species Conservation Act, and may be impacted by FCS. Therefore, the Service recommends that NRC consult with the NGPC regarding the possible impacts of FCS operations on state listed species. The appropriate contact person with the NGPC would be Mr. Frank Albrecht at (402)471-5422.

If you desire, the Service would be willing to participate in a conference call or attend an informal meeting (preferably at FCS) to discuss the aforementioned measures. If you or members of your staff have any questions regarding this matter, please contact Mr. Wally Jobman within our office at (308)382-6468, extension 16.

Sincerely,



Steve Anschutz
Nebraska Field Supervisor

cc: AES, R-6, MS 60120 (Attn: Bob McCue)
FWS; Bismarck, ND (Attn: Steve Krentz)
EPA; Kansas City, KS (Attn: John Dunn)
EPA; Kansas City, KS (Attn: Joe Coethern)
NGPC; Lincoln, NE (Attn: Frank Albrecht)
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