



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

AUG - 3 2012

Dr. Amy Hull, Acting Chief
Environmental Review and Guidance Update Branch
Office of Nuclear Reactor Regulation
Mail Stop: O-11F1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: Nuclear Generating Unit Nos. 2 and 3

Dear Dr. Hull:

We received your letter dated May 16, 2012, requesting reinitiation of consultation pursuant to Section 7 of the Endangered Species Act of 1973, as amended. On October 14, 2011, we issued a Biological Opinion on the effects of your proposed issuance of extended operating licenses for Entergy's Indian Point Unit 2 (IP2) and Unit 3 (IP3) on endangered shortnose sturgeon. In the Opinion, we concluded that the operation of these facilities during the 20-year extended operating period was likely to adversely affect, but not likely to jeopardize the continued existence of this species. The Nuclear Regulatory Commission (NRC) has not yet made a decision on whether to issue the extend operating licenses.

As described in 50 CFR 402.16, reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) the amount or extent of taking specified in the ITS is exceeded; (b) new information reveals effects of these actions that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) any of the identified actions are subsequently modified in a manner that causes an effect to the listed species that was not considered in the Opinion; or (d) a new species is listed or critical habitat designated that may be affected by the identified actions. Based on discussions with your staff, we understand that, for purposes of Section 7 consultation, you retain discretionary involvement or control for the benefit of listed species over any facility that operates pursuant to a license issued by the NRC, or such discretionary involvement or control is authorized by law.

As acknowledged in your letter, on February 6, 2012, we listed five distinct population segments (DPS) of Atlantic sturgeon as threatened (Gulf of Maine DPS) or endangered (New York Bight, Chesapeake Bay, South Atlantic and Carolina DPSs). Atlantic sturgeon occur in the Hudson River and are known to be affected by operations of IP2 and IP3. Atlantic sturgeon in the Hudson River could originate from any of the five DPSs, but most Atlantic sturgeon in this area



originate from the New York Bight DPS. We agree that because of the listing of Atlantic sturgeon, reinitiation of consultation is necessary.

The scope of the action under consideration was clarified in a phone call between NRC and NMFS staff on July 3, 2012. The ongoing consultation considers effects of continued operations of IP2 and IP3, pursuant to their existing operating licenses and the proposed extended operating licenses from now through the expiration of the proposed extended operating licenses (September 2033 for IP2 and December 2035 for IP3), on shortnose sturgeon and the five DPSs of Atlantic sturgeon.

Following the July 3, 2012 call, we believed that we had all the information necessary to complete consultation. However, on July 23, 2012, more than 60 days after consultation was initiated, Entergy submitted a report to us titled, "Atlantic Sturgeon and Shortnose Sturgeon Impingement at IPEC Units 2 and 3: Review of Historical Data, Projections of Impingement, and Assessment of the Condition of Impinged Sturgeon Upon Arrival at IPEC." In the July 23 e-mail transmitting this report, Entergy requests that NMFS consider this report in the ongoing consultation.

This late submission of information will delay completion of the consultation. We have been working on the draft Opinion since we received your Biological Assessment in May 2012. We received no indication from you or Entergy that Entergy would be submitting additional information to us. Despite making progress on drafting the new Opinion, we now need to spend a considerable amount of time evaluating this report. We need to review and understand the methodology used, evaluate its validity, and determine what impact it may have on our ongoing analysis. In an e-mail dated July 27, 2012, we forwarded the report to NRC and requested that NRC determine if Entergy was planning on submitting any additional information or reports to us during the consultation period. NRC confirmed that they had already received the report and would inquire as to whether Entergy would be submitting additional information; to date, we have not received a reply to this request. Therefore, we do not know if additional information and analysis will be forthcoming from Entergy. Please let us know whether NRC and/or Entergy expects to provide additional information.

The report submitted to us on July 23, 2012, provides new analysis of existing information on shortnose and Atlantic sturgeon in the Hudson River and includes novel predictions of impingement as well as new hypotheses regarding the cause of impingement. We have determined that the consultation period should be extended in accordance with 50 CFR 402.14(e-g) to allow us to review the July 23 report and incorporate information in the report, as appropriate, into the ongoing analysis of effects of the continued operation of IP2 and IP3 on listed species. As noted above, this information was submitted to us by the applicant more than 60 days after NRC requested consultation be initiated and has caused a delay in our drafting of the Opinion. We require an additional 60 days to allow our Section 7 biologists to confer with other biologists with expertise in statistical analysis, population dynamics, sturgeon biology and Hudson River gillnet fisheries, to review the information provided by Entergy, to determine how it can or should be incorporated into the ongoing consultation, if at all, and to allow time for drafting of the Biological Opinion.

When the consultation period is extended more than 60 days, the consent of the applicant is required. While we do not require the consent of the applicant for an initial 60-day extension, we reiterate our request that NRC confirm with us whether NRC or the applicant intends to submit additional information to us, as further submission would also have implications for our timeline. We do require agreement from NRC to this request. As we have indicated above, this delay in the consultation has been caused by the receipt of a report from the applicant more than 60 days after you requested consultation be initiated; therefore, we expect that you will agree that an extension of time is reasonable. Please let us know as soon as possible if you have any objection to this request. If no additional information is submitted by Entergy or NRC, we anticipate completing consultation by November 28, 2012. NRC has requested the opportunity to review a draft Biological Opinion. Based on a final due date of November 28, 2012, we anticipate providing a draft Biological Opinion to NRC on October 22 for a two week review. Please let us know as soon as possible if you anticipate needing a longer review period.

We look forward to continuing to work cooperatively with NRC and Entergy throughout the consultation period. Should you have any questions regarding this letter, please contact Kimberly Damon-Randall, Acting Assistant Regional Administrator for Protected Resources (978-282-8485 or Kimberly.Damon-Randall@noaa.gov).

Sincerely,



Daniel S. Morris
Acting Regional Administrator

ec: Crocker, F/NER3
Williams, GCNE
Balsam, Logan – NRC

File Code: Sec 7 NRC Indian Point Nuclear Plant
PCTS: F/NER/2012/00619