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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF361

Endangered Species; File No. 21318

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS has received an application from Mr. Mark F. Strickland, Public Service Enterprise Group Inc. (PSEG) for an incidental take permit (permit), pursuant to the Endangered Species Act (ESA) of 1973, as amended, for activities associated with the operation and decommissioning of Mercer Generating Station in Trenton, NJ. As required by the ESA, PSEG's application includes a conservation plan designed to minimize and mitigate the impacts of any take of endangered or threatened species. The permit application is for the incidental take of ESA-listed Atlantic sturgeon (*Acipenser oxyrinchus*) and shortnose sturgeon (*Acipenser brevirostrum*) associated with the withdrawal of cooling water from the Delaware River Estuary, the discharge of heat and other pollutants to the River associated with the operations of the facility, the transport of goods and materials to the station via barge or dredging necessary to support the Station's coal/natural gas fired units' operations, and the decommissioning of the coal/natural gas fired units.

NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become

part of the public record and will be available for review.

DATES: Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before [*insert date 30 days after date of publication in the Federal Register*].

ADDRESSES: The application is available for download and review at http://www.nmfs.noaa.gov/pr/permits/esa_review.htm under the section heading ESA Section 10(a)(1)(B) Permits and Applications. The application is also available upon written request or by appointment in the following office: Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13752, Silver Spring, MD 20910; phone (301) 427-8403; fax (301) 713-4060.

You may submit comments, identified by NOAA-NMFS-2017-0036 by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0036 click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- **Fax:** (301) 713-4060; Attn: Ron Dean or Lisa Manning.
- **Mail:** Submit written comments to Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910; Attn: Ron Dean or Lisa Manning.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered.

All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Ron Dean or Lisa Manning, (301) 427-8403.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ‘taking’ of a species listed as endangered or threatened. The ESA defines “take” to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Pursuant to the ESA, NMFS reviewed in PSEG’s September 2016 draft Application, including the analytical methods for estimating potential takes. After PSEG announced its plans to retire two existing coal/natural gas fired units, they provided estimates of potential takes due to entrainment associated with the operation of service water pumps during the decommissioning period, and an analysis of the potential effects of vessel traffic associated with the removal of coal presently on-site at the plant. PSEG submitted an updated

application on March 7, 2017.

PSEG is requesting that this permit cover operations through the decommissioning of the coal/natural gas- fired units. The total duration of decommissioning is undetermined; however, PSEG expects to complete the decommissioning of the coal/natural gas fired units no later than March 1, 2022. The duration of the proposed permit is therefore 5 years.

PSEG's application addresses the Delaware River Estuary in the immediate vicinity of Mercer's cooling water intake structure, including the circulating water pumps and the service water pumps, the areas potentially occupied by the station's thermal discharge plume, other effluent waste streams, and vessel traffic associated with the removal of coal from the station during the pre-retirement and decommissioning Periods. The permit application is for the incidental take of ESA-listed Atlantic sturgeon (*Acipenser oxyrinchus*) and shortnose sturgeon (*Acipenser brevirostrum*).

For entrainment, during the pre-retirement period, ending on June 1, 2017, PSEG proposes a take limit based on statistical models and historical data of 60 age-1 equivalent (i.e. pre-migratory) shortnose sturgeon and 13 age-1 Atlantic sturgeon. The expected annual number of shortnose sturgeon entrained during the decommissioning period would be 0.8 and 0.9 age-1 equivalents, and 2 shortnose sturgeon age-1 equivalents per year. Due to the fragile nature of fish in the yolk-sac larval life stage, it is anticipated that any entrained yolk-sac larvae are likely to die.

For impingement, based on statistical models and historical data, PSEG proposes a pre-retirement period take limit of 13 Atlantic sturgeon and 13 shortnose sturgeon. For the decommissioning period, no Atlantic or shortnose sturgeon are expected to be impinged because circulating water pumps will not be operating and no more than two service water

pumps will operate. The velocity through the traveling water screens will therefore be well below 0.5 fps which is the generally accepted threshold velocity for impingement. No incidental take is expected from any of the other activities covered in the application.

Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate habitat conservation plan. The conservation plan prepared by PSEG describes measures designed to minimize and mitigate the impacts of any incidental takes of ESA-listed Atlantic and shortnose sturgeon.

To avoid and minimize take of sturgeon during the pre-retirement period, PSEG proposes to only run Mercer's circulating water pumps when the station is generating electricity, when cooling water is needed for other essential station operations, for incidental maintenance, or as required by a governmental agency or other entity. PSEG also proposes to run the minimum number of service water pumps required to support essential operations when possible. These measures are intended to avoid and minimize the incidental take of sturgeon due to entrainment or impingement by eliminating or reducing water withdrawals.

PSEG also has modified traveling screens and a fish return. Sturgeon that encounter the traveling screens and become impinged will be transferred to the fish return sluice and transported in flowing water back to the Delaware River. During the pre-retirement period, PSEG proposes to operate each of the modified traveling screens continuously whenever they operate the associated circulating water pump. PSEG also proposes to implement an operating and maintenance plan for the modified traveling screens and fish return system to ensure that the system is operating properly to return sturgeon the River.

During the decommissioning period, Mercer will not operate circulating water pumps,

and will therefore avoid any take of sturgeon due to impingement and entrainment. Mercer plans to operate up to two service water pumps for equipment cooling and fire safety requirements during the decommissioning period, but the through-screen velocity of the traveling water screen is less than 0.1 fps, which is below the velocity generally accepted to not pose a risk of impingement.

Funding required to support the implementation of this permit and its habitat conservation plan would be included as part of PSEG's standard budgeting process for regulatory compliance.

PSEG evaluated three alternatives: (1) retrofitting the Station to operate with a closed cycle recirculating system utilizing mechanical draft cooling towers; (2) installation of fine mesh screens and a fish return system; and (3) a "no action" alternative. The technologies considered have been previously evaluated by PSEG and have been shown to be impractical to implement at the station or disproportionately costly compared to any benefits realized, and were therefore rejected. PSEG's plan to discontinue operation of the existing coal/natural gas-fired generating units is consistent with the No Action Alternative in that no take would occur after the units are decommissioned.

National Environmental Policy Act

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and submitted comments to determine whether the application meets the requirements of the ESA section 10(a)(1)(B) permitting process. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed Atlantic and shortnose sturgeon.

The final permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: May 11, 2017.

Angela Somma,
Acting Deputy Director,
Office of Protected Resources,
National Marine Fisheries Service.

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