



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XA276

Endangered Species; File No. 23148

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that NMFS has issued an Incidental Take Permit (ITP) (No. 23148) to Exelon Generating Company, LLC, pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of shortnose (*Acipenser brevirostrum*) and Atlantic (*Acipenser oxyrinchus*) sturgeon associated with the otherwise lawful operation of the Eddystone Generating Station in Eddystone, PA. The permit is issued for a duration of 10 years.

ADDRESSES: The incidental take permit, final environmental assessment, and other related documents are available on the NMFS Office of Protected Resources website at <https://www.fisheries.noaa.gov/action/incidental-take-permit-eddystone-generating-station>.

FOR FURTHER INFORMATION CONTACT: Celeste Stout, phone: (301) 427-8436; e-mail: Celeste.Stout@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibits 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 when the takes are 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. The regulations for issuing incidental take permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Exelon Generating Company, LLC, owns Eddystone Generating Station (the facility), a natural gas/fuel oil-fired electric power generating facility that operates as a peaking plant, (*i.e.*, typically running at higher levels of generation capacity during the summer and winter periods). The facility is located at 1 Industrial Highway Eddystone, PA 19022. The facility presently consists of two natural gas/fuel oil-fired electric generating units that are steam-electric generators. Cooling water for each unit is withdrawn from the Delaware River through a cooling water intake structure (CWIS), which is located along the west shore of the River, directly in front of the facility. Exelon conducted entrainment sampling at the facility in 2005-2006, 2016, and 2017. One Atlantic sturgeon yolk-sac larva was collected in May 2017. Thus, Exelon determined it was necessary to apply for an ITP in accordance with the requirements under Section 10(a)(1)(B) of the ESA.

NMFS received a draft permit application from Exelon on June 28, 2018. Based on our review of the draft application, we requested further information and clarification. On December 21, 2018, Exelon submitted an application. Based on review of the updated application, NMFS and Exelon held further discussions regarding what needed to be incorporated in the Conservation Plan. On June 21, 2019, Exelon submitted a revised

application and Conservation Plan. This application was considered complete and on July 16, 2019, NMFS published a notice of receipt of the Exelon application for the Eddystone facility in the **Federal Register** (84 FR 33924). The comment period ended on August 15, 2019. No comments were received. An additional notice was published in the **Federal Register** (84 FR 65970) and was published on December 2, 2019 to allow other agencies and the public the opportunity to review and comment on the draft Environmental Assessment (EA). The comment period closed on January 2, 2020. Two comments were received on the EA. One commenter was opposed to the killing of any sturgeon. This is not consistent with the ESA, which allows for the incidental take of listed species if certain criteria are met and a permit is issued by NMFS. The other commenter seemed confused regarding the requirements of the ITP and advised the Agency to select the no action alternative in the draft EA, so that Eddystone could continue to monitor interactions with sturgeon. However, it is the issuance of the ITP that will require Eddystone to monitor interactions with sturgeon, not the no action alternative.

Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by Exelon Generation Company, LLC, describes measures to monitor, minimize and mitigate the impacts of incidental takes of ESA-listed shortnose and Atlantic sturgeon. To avoid and minimize take of sturgeon, Exelon will only operate Eddystone's circulating water pumps (CWPs): when the station is generating electricity; for incidental maintenance or testing (generally once per month) (referred to collectively as "Essential Station Operations"); or

as required by a governmental agency or other entity with jurisdiction to require operations. Depending on station generation and ambient water temperatures, Exelon will also limit operations to one CWP per unit when possible. In addition, Exelon will rely on the river water pumps (RWPs), which intakes less water than Eddystone's other CWP, to provide cooling water for other critical station operations outside of Essential Station Operations. These measures will avoid and minimize the incidental take of sturgeon due to entrainment or impingement by eliminating or reducing water withdrawals at times when such withdrawals are not specifically required for Essential Station Operations or for governmental agency-mandated use. Additionally, Exelon will make all reasonable efforts to schedule fuel oil deliveries outside March 15-July 15. Continued monitoring related to the take of shortnose and Atlantic sturgeon will be ongoing and funding will be provided through the facility's annual operating budget.

Permit 23148

NMFS authorizes the following lethal incidental takes:

New York Bight DPS Atlantic sturgeon

Vessel Strike: 1 sub-adult/adult over 10 years

Entrainment: 27,000 larvae per year, which is equivalent to 2 age-1 equivalents per year

Impingement: 5 young of the year (YOY)/sub-adults per year

Total: 1 sub-adult/adult, 270,000 larvae, and 50 YOY/sub-adults over 10 years

Shortnose sturgeon

Impingement: 5 YOY/sub-adults per year

Total: 50 YOY/sub-adults over 10 years.

The first 3-years of monitoring data collected under the permit will be analyzed to verify the requested total annual incidental take. As data are gathered and analyzed through monitoring, NMFS may amend the permit to reflect any changes in the take estimate, if appropriate.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500-1508 and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS prepared an EA to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from the authorization of this permit. NMFS found that issuing the ITP would have no significant impacts on the quality of the environment.

Dated: July 9, 2020.

Angela Somma,

Chief, Endangered Species Conservation Division,

Office of Protected Resources, National Marine Fisheries Service.

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