



August 12, 2019

Mr. Chris Oliver
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Via email: CHRIS.W.OLIVER@NOAA.GOV

Dear Mr. Oliver,

Once again, we are reaching out to the National Marine Fisheries Service (NMFS) to urge you to do your job and to protect the endangered Atlantic Sturgeon of the Delaware River. We have reached out to you time and time again about the excessive takes of sturgeon by both the Army Corps of Engineers and by PSEG's Salem Nuclear Generating Station. Every time we reach out you turn a blind eye despite the excessive takes. When will it stop?

This time we are writing you again about PSEG's Salem Nuclear Generating Station. Takes of Atlantic sturgeon are on the rise at Salem and NMFS needs to act.

The Delaware River population of Atlantic Sturgeon, along with the entire NY Bight Distinct Population Segment (DPS), of which the Delaware River population is a part, are designated as endangered pursuant to the Endangered Species Act. The Delaware Estuary, including the reach where Salem operates, has been designated critical habitat for the Atlantic Sturgeon of the Delaware River. As we have reminded you before and are reminding you again, the Delaware River population of Atlantic Sturgeon (that segment of the NY Bight unique to the Delaware River) is in fact genetically unique and today has a surviving population that includes less than 300 spawning adults.¹ With numbers this precariously low, the responsibility for vigilant protection by the National Marine Fisheries Service and all government agencies and private actors could not be greater.

¹ ASSRT (Atlantic Sturgeon Status Review Team) 2007. Status Review of Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*). Report to National Marine Fisheries Service, Northeast Regional Office. February 23, 2007. 174 pp.

On July 17, 2014, NMFS issued a final biological opinion and incidental take statement for the Salem Nuclear Generation Station, Units 1 and 2. As NMFS is aware, Salem withdraws up to 3.024 billion gallons per day of water from the Delaware River via its once through cooling (“OTC”) system to cool its nuclear generating station operations. Salem’s OTC system kills more than 14 billion fish at varying life stages annually, via impingement and entrainment. The aquatic creatures are squeezed in the intake of water against or through screens and trash bars, which has been likened to the effect of a giant blender. NMFS has recognized that Salem “adversely affects” Atlantic Sturgeon of the Delaware River which are listed as endangered as part of the NY Bight DPS. But to our shock and alarm, NMFS postulated, however, that Salem will not be likely to appreciably reduce the survival and recovery of this species (see BiOp at 161, here: <https://delawariverkeepernetwork.sharepoint.com/:b:/g/staff/EU3N4tlbLzxGkQv70DG0SkIBsB7zmEy61aT70syWV73Gig?e=bBoHqj>). NMFS then issued an incidental take statement which authorized a total take of Atlantic Sturgeon from the Trash Bars of the Cooling Water Intake Structures at Salem Nuclear to be 200 (all age classes and DPS combined) prior to the expiration of the extended operating license for Salem Unit 1 (April 2036) and Salem Unit 2 (April 2040) (Id. at 190). It was estimated that of the impinged sturgeon, no more than 61 fish would be killed (as opposed to injured) (Id). These estimates were based upon records from 2011-2013 which were apparently deemed to be sufficiently representative (Id. at 121). They reflected an average rate of 8 impingements per year, with a range of 2-18 impingements annually (Id). At the time that the Biological Opinion was written, the Delaware River was not yet designated as Critical Habitat for the Atlantic Sturgeon.

NMFS predictions of annual harms – based on the data provided by PSE&G – regarding the expected impingement has not proven to be even remotely correct. For example, in the past 4 months of 2019 for which there is data: there are 9 dead Atlantic Sturgeon -CWIS trash rack- and 6 injured Atlantic Sturgeon- CWIS trash rack- and 2 injured Shortnose sturgeon (see PSE&G documented reports dated 1/1/19,1/2/19, 1/7/19, 1/18/19, 2/7/19, 2/15/19, 2/19/19, 2/28/19, 3/8/19, 3/18/19, 4/1/19, 4/2/19, 4/15/19, 4/23/19, and 2/24/19, here: https://delawariverkeepernetwork.sharepoint.com/:f:/g/staff/EkVD2ZC4jttJkxiBzQFWWh0YBvfykg7f_DfW4THmU_nW0iw?e=Hfcwnk). If this rate continues, by the end of 2019 there will have been 45 injured or killed Atlantic Sturgeon. I previously sent NMFS a letter dated September 11, 2014, likewise documenting a high number of “takes”² of Atlantic Surgeon in 2014 (15 “takes” in the first four months of 2014), such that there is every reason to believe that this is not an idiosyncratic year but rather a disturbing pattern (see letter here: <https://delawariverkeepernetwork.sharepoint.com/:b:/g/staff/EUuHkRtKkhVIgC69QYu33CMBR8GyLU7jCDEOBF6qCtIEOg?e=5whLRT>). At this rate, the incidental takes permitted by NMFS will inevitably be exceeded in a relatively short time span; this, to the severe detriment of these endangered species and all of humanity.

² “Take” is defined broadly to include “harass, harm, pursue, hunt, shoot, wound, trap, kill, capture, or collect, or attempt to engage in any such conduct. 16 U.S.C. § 1532 (19).

I again call upon NMFS to reinitiate consultation. A renewed consultation should include consideration of other presently available and affordable alternative technologies. As NMFS is aware, closed cycle cooling is an alternative technology that could be employed at the Salem Nuclear Generating Station and would substantively reduce the impact of Salem on endangered species and all aquatic resources (reducing fish kills of all species by over 95%). The New Jersey Department of Environmental Protection relied, in part, upon NMFS' incidental take statement when issuing its renewal of PSEG's NJPDES Permit, in 2016, and allowing Salem to continue to use of its antiquated OTC system. This system impinges and entrains fish, causing grievous injury and traumatic deaths. By way of one small example, please see the below recent photographs of just one fish:



Documentation of Dead Atlantic Sturgeon reported by PSE&G, Salem Nuclear Generation Station, to NJ DEP and NOAA, dated 1/2/2019.

Because of the continuing and egregious aquatic harms, including to Atlantic Sturgeon, DRN challenged the New Jersey's Renewal Water Permit for the facility. In addition, and because new information clearly demonstrates that endangered species including but not limited to the Atlantic Sturgeon are being impacted in a manner and/or to an extent not previously considered, NMFS should exercise its authority to reinitiate consultation. See 50 CFR §402.16. Accordingly, we urge NMFS to reconsider its incidental take exemptions and to reevaluate the devastating and cumulative harms inflicted upon endangered species by Salem's continued operation of its antiquated OTC systems which cause unnecessary and

grievous injury and death in numbers that do jeopardize the existence of endangered species, including the Atlantic Sturgeon.

NMFS acting as a Rubber Stamp on the devastating damage being inflicted to the sturgeon populations of the Delaware River is unacceptable and must stop. We urge you to immediately protect these majestic species for present and future generations.

Sincerely and Urgently,

A handwritten signature in blue ink that reads "Maya K. van Rossum" followed by a horizontal line.

Maya K. van Rossum
the Delaware Riverkeeper

Cc:
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