



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
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FROM: John H. Nagle, Industrial Permits Section

TO: Schiller Station NPDES Permit File

DATE: January 19, 2018

RE: Summary of Multiple Schiller Station ESA Concurrence Request Letters to NMFS

The Schiller Station Endangered Species Act (ESA) section 7 informal consultation involved a number of documents exchanged between the Environmental Protection Agency Region 1 (EPA) and the National Marine Fisheries Service Protected Resources Division of the Greater Atlantic Regional Fisheries Office (NMFS), including a reinitiation of consultation. This memo serves to document this process.

EPA submitted an ESA section 7 informal consultation letter to NMFS regarding the Schiller Station permit action, dated January 26, 2016 (AR-376). A return letter, dated May 11, 2016, was sent to EPA by NMFS (AR-375). In the letter, NMFS concurred with EPA's determination that the proposed Schiller Station federal action may affect, but is not likely to adversely affect, any species listed by NMFS as threatened or endangered under the ESA of 1973, as amended. As part of the letter, NMFS informed EPA that the ESA section 7 consultation had been completed.

Subsequent to the May 11, 2016, completion of consultation, on August 17, 2017, NMFS published a final rule designating critical habitat for the five Atlantic sturgeon Distinct Population Segments (DPS). The rule became effective on September 18, 2017.

The Schiller Station outfall action area is within one of the newly designated critical habitat units. EPA made the judgment that in this case reinitiation of consultation was warranted because newly designated critical habitat (September 18, 2017) may be affected by the identified action and could not be evaluated in EPA's January 26, 2016, consultation letter because the rule designating critical habitat for Atlantic sturgeon had not yet been finalized and published.

In order to consult on the newly established critical habitat, EPA submitted a second ESA section 7 letter to NMFS, reinitiating informal consultation, dated November 17, 2017 (AR-377). NMFS then sent an e-mail to EPA (Chris Vaccaro, NMFS to John H. Nagle, EPA, dated November 30, 2017; AR-374) which included specific comments on the EPA letter of November 17, 2017. EPA agreed with the NMFS comments and incorporated them into a revised consultation letter. This revised (third) ESA Section 7 informal consultation letter, with these comments, was then submitted to NMFS. The letter was dated December 15, 2017 (AR-378).

Finally, NMFS submitted a letter to EPA, dated January 2, 2018 (AR-379), concurring with EPA's determination that the proposed action is not likely to adversely affect any ESA listed species or designated critical habitat under NMFS jurisdiction and that no further consultation pursuant to section 7 of the ESA was required.