

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****Region 1****5 Post Office Square, Suite 100****Boston, MA 02109-3912**

FROM: John H. Nagle, Industrial Permits Section

TO: Schiller Station NPDES Permit File

DATE: January 25, 2018

RE: Schiller Station ESA Sea Turtle Review – EPA Discretion

Section 7(a) of the Endangered Species Act of 1973, as amended (ESA), grants authority to, and imposes requirements upon, federal agencies, the U.S. Environmental Protection Agency (EPA) in this case, regarding endangered or threatened species of fish, wildlife, and plants ("listed species") and habitat of such species that has been designated as critical (a "critical habitat"). The ESA requires EPA, in consultation with, and with the assistance of, the Secretary of Interior and/or the Secretary of Commerce, depending on the species at issue, to insure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (USFWS) administers Section 7 consultations for freshwater species. The National Marine Fisheries Service (NMFS) administers Section 7 consultations for marine species and anadromous fish.

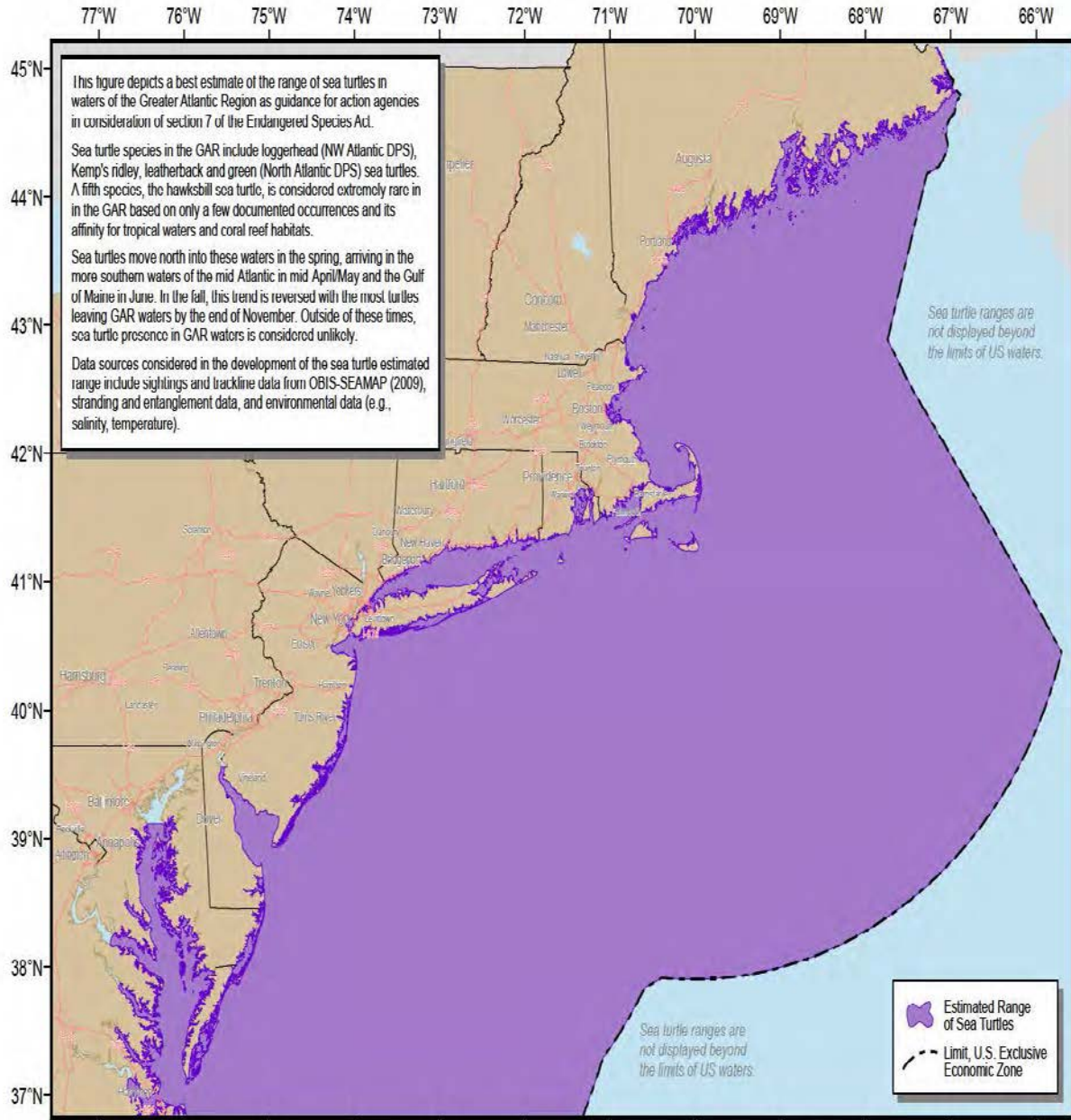
As part of its preparation to issue or reissue a National Pollutant Discharge Elimination System (NPDES) permit, EPA must determine the level of consultation needed under Section 7 of ESA (i.e., no consultation, informal consultation or formal consultation). When fulfilling this requirement, biologists and permit writers have flexibility in how they determine whether listed species and critical habitat would reasonably be expected to be directly or indirectly affected by the federal action. In addition, EPA is not restricted to a preset framework when documenting this process. In a particular case, EPA will ask the relevant custodial agency (either USFWS or NMFS, or both) to concur that the level of consultation undertaken, and the listed species and critical habitat identified, by EPA are appropriate under the ESA. The custodial agency will also inform EPA if additional listed species and critical habitat not evaluated by EPA must be added to the consultation process.

When writing an ESA Section 7 consultation letter to the custodial agency in connection with an NPDES permit proceeding, EPA may or may not include a discussion profiling all listed species expected to overlap the general regional area of the facility before focusing on the subset of listed species that are likely to be directly or indirectly affected within the action area of the facility's regulated discharges. In other words, the action agency does not necessarily catalogue for the custodial agency the listed species that will not be affected by the permit action in question.

In the specific case of the renewal of the Schiller Station NPDES permit, EPA decided not to include a section profiling all listed species expected to overlap the general regional area of the facility. This was because EPA was able to benefit from a recent (at the time) successfully completed ESA Section 7 consultation with NMFS in the same receiving water (the Piscataqua River) for the Newington Station power plant, a facility less than one mile upstream from Schiller Station. In an e-mail exchange between NMFS and EPA, beginning December 18, 2012 (Schiller AR-374), NMFS confirmed that the listed species evaluated for Newington Station (i.e., the Atlantic sturgeon and the shortnose sturgeon) should also be evaluated for the Schiller Station federal action. This pre-consultation communication allowed EPA to focus on potential affects to listed sturgeon species within the Schiller Station action area, without the need to evaluate a larger group of regionally overlapping listed species, such as the loggerhead, green, leatherback, Kemp's ridley and hawksbill sea turtles. These listed sea turtles are generally found along the New Hampshire coastal region during the warm weather months, but based on their normal expected distribution, these sea turtles are not expected to be present in the Piscataqua River or Great Bay. Therefore, these listed species of sea turtles are not expected to be affected by the proposed permit action, which affects an area located approximately six miles upstream from the mouth of the Piscataqua River (Attachment I).

Attachment I Schiller Memo - Sea Turtle Distribution

Estimated Range of Sea Turtles



General distribution:

Four species (loggerhead, green, Kemp's ridley, and leatherback) are found throughout continental shelf and slope waters of the Northwest Atlantic Ocean; tropical to boreal waters, preferred temperatures greater than 10°C; northward and inshore movement into waters of the Greater Atlantic Region begins in the spring, with turtles arriving into Mid-Atlantic waters in mid-April/May and into Gulf of Maine waters in June; in the fall, this trend is reversed with most turtles leaving the region's waters by the end of November; outside of these times, sea turtle presence in the region's waters is considered unlikely aside from cold-stunned individuals that fail to migrate south (see below); a fifth species (hawksbill) is considered extremely rare in the region based on only a few documented occurrences and its affinity for tropical waters and coral reef type habitats

Loggerhead Sea Turtle

In the Atlantic, the loggerhead turtle's range extends from Newfoundland to as far south as Argentina. Loggerheads occupy three different ecosystems during their lives: beaches (terrestrial zone), water (oceanic zone) and nearshore coastal areas ("**neritic**" zone)

Green Sea Turtle

In U.S. Atlantic and Gulf of Mexico waters, green turtles are found in inshore and nearshore waters from Texas to Massachusetts, the U.S. Virgin Islands, and Puerto Rico. Important feeding areas in Florida include the Indian River Lagoon, the Florida Keys, Florida Bay, Homosassa, Crystal River, Cedar Key, and St. Joseph Bay.

Atlantic Leatherback

Adult leatherbacks are capable of tolerating a wide range of water temperatures and have been sighted along the entire continental east coast of the United States as far north as the Gulf of Maine and south to Puerto Rico, the U.S. Virgin Islands, and into the Gulf of Mexico.

Kemp's Ridley

Kemp's ridleys are distributed throughout the Gulf of Mexico and U.S. Atlantic seaboard, from Florida to New England. A few records exist for Kemp's ridleys near the Azores, waters off Morocco, and within the Mediterranean Sea. They are generally found in the *nearshore coastal areas* ("**neritic**" zone)

Hawksbill

The hawksbill sea turtle is considered extremely rare in the Greater Atlantic Region based on only a few documented occurrences and its affinity for tropical waters and coral reef habitats.

Source: <http://www.nmfs.noaa.gov/pr/species/turtles/#species>