



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



In Response Refer To:
FWS/AES/DER/BCH/056189

Mr. Robert Wood
Director
Engineering and Analysis Division
Office of Water
U.S. Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Wood:

In accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), and the Interagency Cooperation Regulations (50 CFR 402), this transmits our final biological opinion (Opinion) on the U.S. Environmental Protection Agency's (EPA) issuance and implementation of the final regulations implementing Section 316(b) of the Clean Water Act (CWA). Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. 1536(a)(2)), requires Federal agencies to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. When a Federal agency's action may affect listed species or critical habitat, formal consultation with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (USFWS) is required (50 CFR 402.14(a)). EPA requested formal consultation even though EPA was of the opinion that its action would not cause adverse effects to listed species and critical habitat. After review of the proposed regulation, biological evaluation, and other available information we determined that the proposed action is likely to adversely affect threatened and endangered species and designated critical habitat.

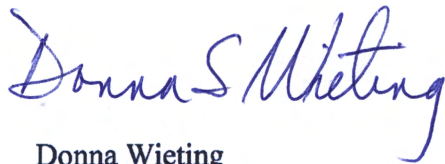
Federal agencies may request a conference on a proposed action that may affect proposed species or proposed critical habitat. While the EPA request for consultation indicates proposed species were addressed in the biological evaluation, a conference opinion was not requested, nor was the information presented in the biological evaluation sufficient to complete a conference opinion for all proposed species. Therefore, we are not providing a conference opinion at this time.

EPA proposes to issue and implement final regulations (40 CFR 122 and 125; Rule) to establish requirements for cooling water intake structures (CWIS) at existing facilities under section 316(b) of the CWA. This document transmits a joint NMFS and USFWS Opinion on the proposed action and its effects on ESA-listed species and designated critical habitat. We based our Opinion on information provided in the draft Rule and Preamble, the Services' interpretations of that rule as agreed upon by EPA on April 8, 2014, the biological evaluation for the CWA section 316(b) Rulemaking provided by EPA on June 18, 2013, consultation meetings, peer-reviewed publications, recovery plans, government reports, grey literature, scientific and

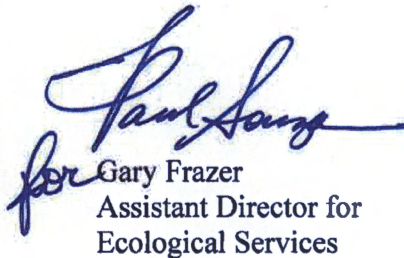
commercial data, and other sources of information. We prepared our Opinion in accordance with section 7(a)(2) of the statute (16 U.S.C. 1536(a)(2)), associated implementing regulations (50 CFR 402), and agency policy and guidance (USFWS and NMFS 1998).

We appreciate your commitment in the conservation of endangered species. If you require further assistance or have any questions, please contact Ms. Cathy Tortorici, Chief, Interagency Cooperation Division, NMFS, at 301-427-8495 or by e-mail at cathy.tortorici@noaa.gov, or Ms. Patrice Ashfield, Chief, Branch of Consultations and Habitat Conservation Planning, USFWS, at 703-358-2478 or by e-mail at patrice_ashfield@fws.gov.

Sincerely,



Donna Wieting
Director for
Office of Protected Resources


for Gary Frazer
Assistant Director for
Ecological Services

Attachment