Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 10/7/2019 7:55:31 PM
To: Hurld, Kathy [Hurld.Kathy@epa.gov]
Subject: FW: Cooling Water Intake Rule - ESA
Attachments: EPA-HQ-OW-2008-0667-4094 (316b esa memo to record).pdf; 316(b) FR notice 8-15-14.pdf; fr66-11202 (Coordination MOA).pdf; Final-316b-Biological-Opinion-and-Appendices-May-19-2014.pdf; cooling-water_esa-instructional-memo_12-11-2014.pdf

Mindy Eisenberg
Associate Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4504T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Wade, Alexis <Wade.Alexis@epa.gov>
Sent: Monday, October 07, 2019 2:32 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Witt, Richard <Witt.Richard@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: Cooling Water Intake Rule - ESA

Here are the key 316(b) documents and I've highlighted the pages I think are most important for Dave.

1. 316(b) ESA memo to the record – Ex. 5 Attorney Client (AC)
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2. Preamble and rule – The preamble reaffirms the commitments in the 2001 MOA and includes the ESA procedures that are relevant. See pg. 48380 Section K for that discussion, in particular page 48381 column 3 to 48382.
3. 2001 Coordination MOA with the Services. See pgs. 11215-11216 for the procedures for issuance of state permits.
4. Joint Biological Opinion – Pages 68-74 describes the procedures in the rule and the Services' conclusions re: effects. The incidental take statement is on page 75-76.
5. Instructional memo to the water division directors. The memo describes the rule requirements for permitting director's relevant to listed species. We sent this memo to comply with Term and Condition #4 on page 77 of the BO.

Alexis Wade
Attorney-Adviser
Water Law Office
EPA Office of General Counsel

(202) 564-3273

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Monday, October 07, 2019 11:58 AM
To: Wade, Alexis <Wade.Alexis@epa.gov>
Cc: Witt, Richard <Witt.Richard@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: Cooling Water Intake Rule - ESA
Importance: High

Alexis and Richard,

See below. Dave would like the ESA-based components of the Cooling Water Intake Structure rulemaking, such as targeted discussion in the preamble, RTC, Bi-Op, etc., to inform his decision on the applicability of ESA to approving state CWA section 404 programs. Is that something you could pull together? Let me know if I can help with this.

We should send to Mindy when compiled.

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Goodin, John <Goodin.John@epa.gov>
Sent: Monday, October 7, 2019 11:42 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>
Subject: Re: Cooling Water Intake Rule - ESA

Thanks, Steve— and Mindy, please send me those materials from OGC and the letters Dave references so that we can bundle into one email response.
Thanks!
John

Sent from my iPhone

On Oct 7, 2019, at 11:29 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

> can you all coordinate with mindy – and send her whatever we did to support the silva memo at the time as well as the later legal analysis.
>
> Steve Neugeboren
> Associate General Counsel for Water
> U.S. EPA
> 1200 Pennsylvania Ave., NW
> Washington, DC 20460
> 202 (564-5488)
>
> **From:** Ross, David P <ross.davidp@epa.gov>
> **Sent:** Monday, October 7, 2019 8:41 AM

To: Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Fwd: Cooling Water Intake Rule - ESA

John,

Could you also send me a copy of the Pete Silva memo and the ECOS letter that triggered it? And are you aware of any OGC analysis that was done in support of the Silva memo? Thanks.

Dave

Sent from my iPad

Begin forwarded message:

> **From:** "Ross, David P" <ross.davidp@epa.gov>
> **Date:** October 7, 2019 at 8:39:09 AM EDT
> **To:** "Fotouhi, David" <Fotouhi.David@epa.gov>, "Sawyers, Andrew" <Sawyers.Andrew@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
> **Cc:** "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Aguirre, Janita" <Aguirre.Janita@epa.gov>, "Wildeman, Anna" <wildeman.anna@epa.gov>
> **Subject: Re: Cooling Water Intake Rule - ESA**
>
> Adding Steve.
>
> Sent from my iPad
>
> > On Oct 7, 2019, at 8:38 AM, Ross, David P <ross.davidp@epa.gov> wrote:
> >
> > Confidential; Deliberative
> >
> > I'm currently evaluating a 404(g) state assumption proposal from Florida and Arizona and how to address ESA issues in state-assumed permitting. The proposal mentions the ESA process for the cooling water intake rule as a potential model. Could someone pull together the ESA-based components of that rulemaking for me, such as targeted discussion in the preamble, RTC, Bi-Op, etc. I'm not sure if this is an OGC or OWM assignment, so please work together to figure out the most efficient way to get a packet together.
> >
> > Thanks!
> >
> > Dave
> >
> > Sent from my iPad