



INTEROFFICE CORRESPONDENCE

NUCLEAR LICENSING

OFFICE

NA1B

MAC

240-3281

TELEPHONE

SUBJECT: Evaluation of Reporting Requirements for Non-Causally Related Sea Turtle Mortality

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TO: File

The purpose of this IOC is to document the evaluation of NRC reporting requirements under 10 CFR 50.72(b)(2)(vi) related to the reporting of non-causally related sea turtle mortalities to the National Marine Fisheries Service (NMFS). The evaluation concludes that non-causally related sea turtle mortality reports to the NMFS do not need to be reported to the NRC under 50.72 for essentially 2 reasons: 1) the NRC guidance excludes routine reports of little significance, and 2) that the event is not related to protection of the environment as a result of CR-3 operations.

10 CFR 50.72¹ requires:

(b) (2) Non-emergency events ... the licensee shall notify the NRC as soon as practical and in all cases, within four hours of the occurrence of any of the following:

(vi) any event or situation, related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other government agencies is planned or notification has been or will be made. Such an event may include an onsite fatality or inadvertent release of radioactively contaminated materials.

CR-3 Evaluation:

NUREG-1022, Revision 1, Section 3.3.7 provides NRC guidance on the use of these 50.72 requirements. Example (7) of Section 3.37 (see NUREG-1022 evaluation below) provides that 50.72(b)(2)(vi) reports are not needed for notification of other governmental agencies on issues that are "routine and have little significance."

¹ On October 25, 2000, a revision was made to 10 CFR 50.72 which becomes effective January 23, 2001. In addition, a corresponding NUREG 1022, Revision 2 was issued. This 50.72 revision and revised NUREG do not change any requirements or interpretations regarding reporting to other governmental agencies (changes were made in numbering only.)

B/18

In addition, Section 50.72(b)(2)(vi) requires reporting of "any event...related to the...protection of the environment, for which...notification to other government agencies is planned or...will be made." The criterion "protection of the environment" infers that the event in question is a direct consequence of something related to plant operation that affects the environment. This criterion is not met when a deceased sea turtle floats from the Gulf of Mexico into the CR-3 intake canal.

However, the NMFS has explicit notification requirements in the Biological Opinion for reporting of non-causally related sea turtle mortalities. The purpose of this reporting requirement is to provide NMFS with sea turtle mortality data from the West-Central Florida Gulf coast. This notification to NMFS is therefore a "routine agency notification" and meets the exclusionary intent of Example (7). However, CR-3 staff will update the NRC of the event during the normal course of communication with onsite NRC staff (Senior Resident).

NUREG-1022, Rev. 1

3.3.7 News Release or Notification of Other Government Agency

Discussion: The purpose of this criterion is to ensure the NRC is made aware of issues that will cause heightened public or governmental concern related to the radiological health and safety of the public or on-site personnel or protection of the environment.

Examples of events likely to be reportable under this criterion include:

- *release of radioactively contaminated tools or equipment to public areas*
- *unusual or abnormal releases of radioactive effluents*
- *onsite fatality*

Licensees do not have to report media or governmental interactions unless they are related to the radiological health and safety of the public or onsite personnel, or protection of the environment.

For example, the NRC does not need to be informed under this criterion of:

- *minor deviations from sewage or chlorine effluent limits*
- *minor non-radioactive, onsite chemical spills*
- *minor oil spills*
- *problems with plant stack or water tower aviation lighting*
- *peaceful demonstrations*
- *routine reports of effluent releases to other agencies*
- *releases of water from dams associated with the plant*

CR-3 Evaluation:

The implication is that the "issues" are causally related to licensee activities.

Other Government Notifications

For reporting purposes, "other government agencies" refers to local, State, or other Federal agencies....

Examples

(6) Reports Regarding Endangered Species

The licensee notified the US Fish and Wildlife Service and a State agency that an endangered species of sea turtle was found in their circulating water structure trash bar. No press release was planned.

An ENS notification is required because of the notification of state and federal agencies regarding the taking of an endangered species. (The NRC has statutory responsibilities regarding the protection of endangered species.)

CR-3 Evaluation:

FPC previously reported sea turtle takes under this criteria, prior to obtaining an Incidental Take Statement through the NRC and NMFS. The example given implies that this stranding event is an anomaly, which may not have been evaluated by a responsible government agency, and therefore could cause governmental agency concern. However, the NMFS and NRC are well aware of CR-3 sea turtle influxes. The NMFS and NRC have cooperated in completing a formal Endangered Species Act consultation. A formal Biological Opinion/Incidental Take Statement has been issued by the NMFS and NRC to CR-3. Thereafter, a turtle stranding event has become "routine" since the event has been previously evaluated and authorized.

Note: The NRC clearly states under example (7) below that routine events of little significance do not need to be reported.

The example given also shows that there is an interaction and causal relationship between plant operations and the sea turtle (i.e., the sea turtle is stranded on the plant trash bar). Therefore, there is a concern related to protection of the environment, i.e., the plant's intake water flow is directly affecting an endangered sea turtle.

(7) Routine Agency Notifications

A licensee notified the U.S. Environmental Protection Agency (EPA) that the circulation water temperature rise exceeded the release permit allowable. This event was caused by the unexpected loss of a circulating water pump while operating at 92-percent power. The licensee reduced power to 73 percent so that the circulating water temperature would decrease to within the allowable limits until the pump could be repaired.

A licensee notified the Federal Aviation Agency that it removed part of its auxiliary boiler stack aviation lighting from service to replace a faulty relay.

A licensee notified the State, EPA, U.S. Coast Guard and Department of Transportation that 5 gallons of diesel fuel oil had spilled onto gravel-covered ground inside the protected area. The spill was cleaned up by removing the gravel and dirt.

The staff does not consider an ENS notification to be needed because these events are routine and have little significance.

CR-3 Evaluation:

The Incidental Take Statement applies to the Crystal River Energy Complex as a whole, not just the nuclear plant. The NMFS "agrees with the Biological Assessment (BA) that dead turtles floating in the canal are not causally related to plant operations for the reasons stated above." The NMFS has required the reporting of non-causally related sea turtle mortalities such that NMFS can be aware of the circumstances surrounding turtle mortalities that are occurring in the Gulf of Mexico. FPC is essentially providing a reporting mechanism to NMFS for turtle activities unrelated to CR-3. Therefore, this report to NMFS is not related to CR-3, and therefore has little significance to the licensed activities of the nuclear plant.

While dead non-causal turtles are reportable to NMFS under the Incidental Take Statement, they are not reportable to NRC since they are not related to plant operations.



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