

March 26, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
Entergy Nuclear Generation Co., and) Docket No. 50-293-LR
Entergy Nuclear Operations, Inc.)
)
(Pilgrim Nuclear Power Station))

NRC STAFF'S ANSWER TO
CORRECTION AND SUPPLEMENT TO
JONES RIVER WATERSHED ASSOCIATION AND PILGRIM WATCH'S
PETITIONS TO INTERVENE AND MOTIONS TO SUPPLEMENT

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission ("Staff") answers the Correction and Supplement filed by Jones River Watershed Association and Pilgrim Watch (collectively "Petitioners") on March 15, 2012.¹ The Correction and Supplement attempts to add new bases to the March 8, 2012 contention the Petitioners filed in this license renewal proceeding for the Pilgrim Nuclear Power Station ("Pilgrim" or "PNPS").²

¹ Correction and Supplement to: Jones River Watershed Association Petitions for Leave to Intervene and File New Contentions Under 10 C.F.R. § 2.309(a), (d) or in the alternative 10 C.F.R. § 2.309(e) and Jones River Watershed Association and Pilgrim Watch Motion to Reopen under 10 C.F.R. § 2.326 and Request for a Hearing Under 10 C.F.R. § 2.309(a) and (d), Originally Filed on March 8, 2012 in the above Captioned License Renewal Proceeding (March 15, 2012) (Agencywide Documents Access and Management System ("ADAMS") Accession No. ML12075A029) ("Correction and Supplement").

² Jones River Watershed Association Petitions for Leave to Intervene and File New Contentions Under 10 C.F.R. § 2.309(a), (d) or in the alternative 10 C.F.R. § 2.309(e) and Jones River Watershed Association and Pilgrim Watch Motion to Reopen under 10 C.F.R. § 2.326 and Request for a Hearing Under 10 C.F.R. § 2.309(a) and (d) in the above Captioned License Renewal Proceeding (March 8, 2012) ADAMS Accession Nos. ML12068A282, ML12068A183) ("Petition"). The Staff thoroughly discussed the procedural history of this case in its answer to the Petition. NRC Staff's Answer to Jones River Watershed Association and Pilgrim Watch's Petitions for Leave to Intervene and Motions to Reopen the Record, at 2-5 (March 19, 2012) (ADAMS Accession No. ML12079A300) ("Staff Answer").

But, the Correction and Supplement relies on information that has been available for months or years. Therefore, the new bases presented in the Correction and Supplement are untimely. Moreover, even if the Commission considered these untimely bases, they do not provide sufficient support for an admissible contention let alone reopening the record.

DISCUSSION

A. The Correction and Supplement is Untimely

In NRC proceedings “[n]ew bases for a contention cannot be introduced in a reply brief, or any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. § 2.309(c), (f)(2).”³ Allowing petitioners to provide “the necessary threshold support for contentions” after the initial filing “would effectively bypass and eviscerate [the Commission’s] rules governing timely filing, contention amendment, and submission of late-filed contentions.”⁴

As the Staff explained in its Answer, because the Petitioners seek to reopen the record in this proceeding to litigate a new issue, they must meet the criteria for nontimely contentions in 10 C.F.R. § 2.309(c).⁵ Section 2.309(c) generally requires a petitioner to file a nontimely pleading within thirty days of discovering previously unavailable information or to show a “compelling” balance among the eight factors in that section.⁶ Failure to address these factors

³ *Nuclear Management Company, LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006).

⁴ *Louisiana Energy Services, LP* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004).

⁵ Staff Answer at 32 & n. 185 (*citing* 10 C.F.R. § 2.326(d)).

⁶ *Id.* at 32-34(*citing Amergen Energy Co., LLC*. (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260-61 (2009).

“constitutes sufficient grounds for rejecting . . . intervention and hearing requests.”⁷

The Correction and Supplement does not address the Commission’s standard for nontimely filings in 10 C.F.R. § 2.309(c) or the Commission’s standard for late-filed contentions under 10 C.F.R. § 2.309(f)(2).⁸ Therefore, the Commission can reject the Correction and Supplement’s additional arguments out of hand.⁹

Moreover, the Correction and Supplement would not meet the Commission’s standards for untimely filings under 10 C.F.R. § 2.309(c). Most importantly, the Petitioners could not demonstrate good cause because the Correction and Supplement is not based on new information.¹⁰ To support its additional arguments, the Correction and Supplement cites the NRC Staff’s 2007 Final Supplemental Environmental Impact Statement for Pilgrim (“2007 Pilgrim FSEIS”), an April 2011 Massachusetts Supreme Court case, Pilgrim’s 1991 National Pollution Discharge Elimination System (“NPDES”) Permit, Water Quality certifications for Pilgrim from the early 1970’s, and a 2000 letter from the Massachusetts Office of Coastal Zone Management.¹¹ All of these sources were available for well over 30 days, some for years or

⁷ *Oyster Creek*, CLI-09-07, 69 NRC at 260-61 (internal quotations omitted) (alteration in original).

⁸ Correction and Supplement. 10 C.F.R. § 2.309(c) governs Petitioners’ late filings. 10 C.F.R. § 2.326(d). Nonetheless, as discussed below, the Correction and Supplement does not rest on new information. Therefore, it would also not meet the standards in 10 C.F.R. § 2.309(f)(2).

⁹ *Oyster Creek*, CLI-09-07, 69 NRC at 260-61.

¹⁰ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-05, 69 NRC 115, 125-26 (2009).

¹¹ Correction and Supplement at 3-6 (*citing* NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 29 Regarding Pilgrim Nuclear Power Station Final Report – Appendices, at E-82, E-131, E-135 (Jul. 2007) (ADAMS Accession Number ML071990027) (“Pilgrim FSEIS”); *Entergy Nuclear Generation Company v. Department of Environmental Protection*, 459 Mass. 319, 320 (Mass. 2011); Applicant’s Environmental Report, Operating License Renewal Stage, Pilgrim Nuclear Power Station, Attachment A (Jan. 25, 2006) (ADAMS Accession No. ML060830611) (“Pilgrim ER”); Affidavit of E. Pine duBois, Second Attachment (March 8, 2011) (ADAMS Accession No. ML12068A184) (containing the 2000 Massachusetts Office of Coastal Zone Management letter) (“duBois Affidavit”).

decades, before the Petitioners submitted the Correction and Supplement. As a result, Petitioners cannot demonstrate good cause.

Finally, the Petitioners cannot show a compelling balance on the remaining factors in 10 C.F.R. § 2.309(c). As discussed in the Staff's Answer, Petitioners' participation will necessarily delay this proceeding and broaden the scope of adjudicated issues, other proceedings will better protect Petitioners' interests, and Petitioners' failure to submit an admissible contention shows that they will not be able to assist in developing a sound record.¹² Consequently, the Commission should decline to consider the additional arguments in the Correction and Supplement because they are untimely.

B. Petitioners Acknowledge the Claims in Their Petition Rested on Factual Errors

The Petition claimed, without foundation, that the NRC neither did an essential fish habitat ("EFH") Assessment nor submitted the EFH Assessment to the National Marine Fisheries Service ("NMFS").¹³ Petitioners belatedly acknowledge in the Correction and Supplement that those claims were based on a fundamental error; Petitioners have just now reviewed the 2007 Pilgrim FSEIS and discovered that the NRC both did the required EFH Assessment and submitted it to NMFS.¹⁴ Thus, Petitioners effectively concede that their EFH claim is groundless because contrary to Petitioners' allegations, the NRC complied with the Magnuson-Stevens Fishery Conservation and Management Act ("MSA") by completing the EFH Assessment and submitting it to NMFS.

¹² Staff Answer at 37-40 (noting that the fifth, seventh, and eighth factors in 10 C.F.R. § 2.309(c)(1) weigh heavily against Petitioners).

¹³ Petition at 12, 30.

¹⁴ Correction and Supplement at 2.

C. Petitioners' Additional Claims in the Correction and Supplement Are Groundless and Immaterial

Although the Petitioners' admission in the Correction and Supplement demonstrates that the Petition's claims rest on unfounded allegations, Petitioners attempt to repeat and augment the claims set forth in their Petition. Petitioners persist in alleging that the NRC did not comply with the requirements of the MSA, the Endangered Species Act ("ESA"),¹⁵ and the National Environmental Policy Act ("NEPA")¹⁶ and make new allegations concerning the status of Entergy's NPDES permits.¹⁷ In addition to being untimely and procedurally deficient, none of these arguments have any merit because they are based on incorrect readings of the law or inaccurate factual assertions. Thus Petitioners' request to reopen the record and add a new contention should be denied.

1. The EFH Consultation Process Is Complete

Despite Petitioners' admission that the NRC completed the EFH Assessment and

¹⁵ On March 21, 2012, the Staff received a copy of a letter from NMFS to the Petitioners that indicated "consultation with the NRC has not been completed." Letter from Daniel S. Morris, Acting Regional Administrator, NMFS, to Margaret E. Sheehan and Anne Bingham, Jones River Watershed Association, at 1 (Mar. 8, 2012) (ADAMS Accession No. ML12083A234). The conclusion in that letter is based on the erroneous assumption that the NRC's 2006 biological assessment determined that renewing the Pilgrim operating license "was not likely to adversely affect any listed species." *Id.* As discussed in the Staff's Answer, the biological assessment actually found that the action would have "no effect" on any listed species. Pilgrim FSEIS at E-38, E-67 to E-72. On March 26, 2012, NMFS sent the NRC a letter agreeing that both the 2006 biological opinion and 2012 supplement actually found "no effect." Letter from Daniel S. Morris, Acting Regional Administrator, NMFS, to Andrew S. Imboden, NRC (Mar. 26, 2012) (Attachment). While NMFS did not agree with that determination, NMFS indicated that it may agree with a "not likely to adversely affect" finding by April 15, 2012. Nonetheless, because the NRC Staff made a "no effect" finding in the first instance, NMFS regulations require no formal consultation. Staff Answer at 8-9 (*citing* 50 C.F.R. § 402.14(a)).

¹⁶ *Id.* at 3 ("[T]he NRC's EFH assessment, like the NRC's biological assessment and indeed the entire PNPS EIS, blatantly flouts federal and state law, and constitutes an agency derogation of duty."). Similarly, Petitioners allege "There is no record, however, that the EFH consultation process under the MSA has been completed." *Id.* at 2. *But see* Staff Answer at 6-31 (demonstrating compliance with the ESA, MSA, and NEPA).

¹⁷ *Id.* at 4-5.

submitted it to NMFS, Petitioners again take up their allegation that the required EFH consultation process is not complete.¹⁸ But as the NRC Staff explained in its Answer, the NRC concluded the EFH consultation process with NMFS and clearly set forth evidence in the 2007 Pilgrim FSEIS that the MSA consultation process was complete.¹⁹ Moreover, as the Staff's Answer detailed, the Petitioners' position is incorrect and rests on a fundamental misreading of applicable law.²⁰ Under the MSA and NMFS implementing regulations, NMFS does not provide conservation recommendations to a lead agency that lacks statutory authority to implement such recommendations. Rather, NMFS consults separately with the agency that does have such authority. On this basis, NMFS concluded the EFH consultation with the NRC and stated that it would coordinate the implementation of any conservation recommendations with the Environmental Protection Agency ("EPA"), which possesses the requisite statutory authority.²¹ Consequently, Petitioners' claim remains meritless because it does not raise a genuine dispute and is not material to the findings the NRC must make.²²

2. Petitioners Do Not Raise a Genuine Challenge to the EFH Assessment

Petitioners for the first time attempt to raise substantive challenges to the EFH Assessment by contending that information from a state court case and comments from a state

¹⁸ Correction and Supplement at 2 ("PNPS cannot be relicensed until the MSA consultation process is completed" and there is "no record" that the process is complete). Petitioners also allege that the NRC committed a "series of obfuscations... by virtue of attempting to shift the EFH assessment process to EPA." *Id.* at 6. Petitioners also contend that the "NMFS must provide conservation recommendations" and that "Entergy and the NRC have managed to side step the MSA process." *Id.*

¹⁹ Staff Answer at 21-23.

²⁰ *Id.* at 18-26.

²¹ *Id.*

²² 10 C.F.R. § 2.309(f)(1)(iv); (vi).

agency show that the environmental impact of Entergy's operations will adversely affect EFH.²³ But, this information does not controvert the findings in the EFH Assessment, which acknowledged that there would be adverse impacts on EFH.²⁴ Therefore, these claims do not establish a genuine dispute and are immaterial.²⁵

3. Petitioners' Challenges Regarding Findings Under the CWA Lack Merit

Petitioners also raise the new claim in the Correction and Supplement that Entergy has not provided "'current' 316(b) or (a) determinations" under the Clean Water Act ("CWA") in contravention of 10 C.F.R. § 51.53(c)(3)(ii)(B).²⁶ As the Staff detailed in its Answer,²⁷ and as Petitioners acknowledge,²⁸ the existing NPDES permits, which contain the CWA section 316 determination, remain in force by virtue of the timely renewal provision.²⁹ Petitioners now appear to allege that the NRC may not rely on those submissions because the expiration date of those

²³ *Id.* at 3, 5 (citing *Entergy Nuclear*, 459 Mass. at 332; duBois Affidavit, second attachment).

²⁴ Pilgrim FSEIS, E-135 (finding that "[c]ontinued operation of the PNPS cooling water system was determined to have a minimal adverse effect on EFH for 17 species, a less than substantial adverse effect on EFH for 8 species, and a substantial adverse effect on EFH for 7 species.").

²⁵ 10 C.F.R. § 2.309(f)(1)(vi); (iv).

²⁶ Correction and Supplement at 4-5 (alleging that Entergy "has provided no 'current' 316(b) or (a) determinations" because it tried "to rely upon 40 year old state certifications and two pages from a 1991 permit."). Similarly, Petitioners claim that the NRC's EFH Assessment relies on "Entergy's purported compliance with the federal Clean Water Act and Section 316 Requirements," *id.* at 3, and that "for the NRC EFH Assessment to rely on these outdated documents shows its complete lack of credibility," *id.* at 5.

²⁷ Staff Answer at 26.

²⁸ Correction and Supplement at 4; Bingham Affidavit at ¶ 5 (noting that the permits have been administratively extended by the relevant agencies).

²⁹ Entergy clearly stated in its ER that the NPDES permits under Sections 316(a) and (b) were in timely renewal. Pilgrim ER at 4-9. "Because Entergy submitted a timely application for renewal of the PNPS NPDES Permit, the 1994 permit and its Section 316(b) determination remain in effect." *Id.* at 4-9. "As noted previously, Entergy has submitted a timely application for renewal of the PNPS NPDES Permit. The current NPDES Permit (provided in Attachment A) and its Section 316(a) variance therefore remain in effect." *Id.* at 4-12.

permits has passed.³⁰

Contrary to Petitioners' claims, the timely renewal provision in federal and state law continues the existing permits in force as a matter of law.³¹ Specifically, the timely renewal provision of the Administrative Procedure Act provides that if a licensee files a timely application for license renewal the license "does not expire until the application has been finally determined by the agency."³² Thus, the D.C. Circuit explicitly approved EPA's application of the timely renewal provision to expired NPDES permits.³³ The timely renewal provision applies to Entergy's timely submitted permit applications filed in accordance with EPA and Massachusetts DEP regulations. Therefore, the existing NPDES permits continue in force as a matter of law until the permit applications are "finally determined" by the EPA and Massachusetts.³⁴ Accordingly, these are "current" permits and Petitioners' claim raises neither a genuine dispute nor an issue material to the findings that the NRC must make.³⁵

³⁰ Correction and Supplement at 4-5.

³¹ Staff Answer at 26 (citing 5 U.S.C. § 558(c) and 314 C.M.R. § 3.09)).

³² Administrative Procedure Act, 5 U.S.C. § 558(c) (2010). Congress intended Section 558(c) to broadly protect private licensees from the "very severe consequences of the conferring of licensing authority [over private parties] upon administrative agencies," including "the threat of disastrous, arbitrary, and irremediable agency action." See 92 Cong. Rec. 5654 (1946) (statement of Rep. Walters).

³³ *Natural Resources Defense Counsel v. EPA*, 859 F.2d 156, 214 (D.C. Cir. 1988). "[T]he agency's lack of independent statutory power to extend the permit" beyond the expiration date "is over-balanced by [the timely renewal provision]". *Id.* Thus, "the expired permit is continued, not by affirmative agency action but by operation of law." *Id.* Moreover, the court found, "there is no indication in the language or history of either provision that this safeguard is to subsist for only a limited interval." *Id.*

³⁴ The Commission has affirmed that the NRC may rely on existing NPDES permits and the processes involved at the permitting agencies, consistent with the NRC's lack of statutory authority over the CWA. *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 379-390 (2007). See also 10 C.F.R. § 51.10(c).

³⁵ 10 C.F.R. § 2.309(f)(1)(iv), (vi).

4. Petitioners Mischaracterize NRC Statements in the EFH Assessment

Petitioners also allege that NRC inaccurately portrayed the status of mitigation measures in the EFH Assessment. Selectively reading from the EFH Assessment, Petitioners allege that “without supporting documentation, and relying on an NPDES permit that expired 16 years ago, the NRC EFH assessment claims that appropriate ‘mitigation measures’ to avoid adverse impacts to species are in place at PNPS.”³⁶ Petitioners claim that the Staff’s finding is a “sweeping, inaccurate statement” “devoid of any proof.”³⁷ But Petitioners’ allegation takes the statement out of context. That statement in the EFH Assessment simply cites the status and requirements of the existing NPDES permit for PNPS.³⁸ As established above, Petitioners’ challenge to the NRC’s reliance on the NPDES permit lacks merit. Moreover, in the very next sentence, which Petitioners omit, the EFH Assessment addresses the Staff’s evaluation of the impacts of the proposed mitigation measures for license renewals and ends with a footnote specifically detailing the NRC’s lack of authority to impose those mitigation measures under the CWA.³⁹ Accordingly, the Petitioners’ allegations are not founded in fact and are groundless.⁴⁰

5. Petitioners Make Unsupported Allegations that Entergy Is Stalling the Permit Process

Petitioners additionally claim that Entergy has “successfully stalled” the EPA NPDES

³⁶ Correction and Supplement at 6.

³⁷ *Id.*

³⁸ The EFH Assessment statements cited by Petitioners actually read as follows: “The NPDES permit allows the PNPS cooling system to operate if it does not exceed specified entrainment, impingement, and discharge limits. The NPDES permit also requires mitigation measures, which are in place at PNPS.” Pilgrim FSEIS at E-131.

³⁹ Pilgrim FSEIS at E-132, n. a.

⁴⁰ 10 C.F.R. § 2.309(f)(1)(v), (vi).

permit renewal process through legal challenges.⁴¹ But despite Petitioners' exhortations that the "record demonstrates that Entergy has, at every turn, challenged any regulatory effort to bring the NPDES permit up to date,"⁴² the record demonstrates no such thing. The state case cited by the Petitioners addresses only a challenge to the scope of the state's authority regarding cooling water intake structures, not any effort by Entergy to delay the issuance of its permit or to stall the process.⁴³ Petitioners provide no other information to support this allegation. Moreover, allegations that Entergy's challenges to Massachusetts's regulatory actions constituted improper attempts to delay the EPA's NPDES renewal process are matters for the EPA to resolve, not the NRC. Consequently, this bare assertion, unsupported by any proof, fails to establish a genuine dispute and, in any case, is immaterial to the findings the NRC must make.⁴⁴

CONCLUSION

For the reasons set forth above, the claims in the Correction and Supplement are untimely and do not provide a sufficient basis to support an admissible contention. Therefore, they do not suffice to render the Petitioners' underlying contention admissible or satisfy the Commission's requirements for reopening the record.

/Signed (electronically) by/
Maxwell C. Smith
Counsel for NRC Staff

Executed in Accord with 10 CFR 2.304(d)
Lauren Woodall
Counsel for NRC Staff

⁴¹ Correction and Supplement at 4, 6.

⁴² *Id.* at 4 (citing *Entergy Nuclear*, 459 Mass. at 332).

⁴³ *Entergy Nuclear*, 459 Mass. at 320 (concluding "that the State Act confers on the department authority to protect the water resources of the Commonwealth, and that that authority is broad enough to encompass the regulation of" cooling water intake structures).

⁴⁴ 10 C.F.R. § 2.309(f)(1)(iv), (vi).

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NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
ENTERGY NUCLEAR GENERATION)
COMPANY AND ENTERGY NUCLEAR) Docket No. 50-293-LR
OPERATIONS, INC.)
)
(Pilgrim Nuclear Generating Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S ANSWER TO CORRECTION AND SUPPLEMENT TO JONES RIVER WATERSHED ASSOCIATION AND PILGRIM WATCH'S PETITIONS TO INTERVENE AND MOTIONS TO SUPPLEMENT" have been served upon the following by the Electronic Information Exchange this 26th day of March, 2012:

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/Signed (electronically) by/
Maxwell C. Smith
Counsel for NRC Staff

Dated at Rockville, Maryland
this 26th Day of March 2012

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
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MAR 26 2012

Andrew S. Imboden, Chief
Environmental Review and Guidance Update Branch
Division of License Renewal, Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
MS T-11 F1
Washington, DC 20555-0001

Re: Coordination with NOAA's National Marine Fisheries Service (NMFS) re. Pilgrim Nuclear Power Station

Dear Mr. Imboden,

On a March 22, 2012, conference call, staff from the Nuclear Regulatory Commission (NRC), NMFS' Protected Resources Division, and NOAA's Office of General Counsel, Northeast Section, discussed ongoing interagency coordination on the proposed relicensing of the Pilgrim Nuclear Power Station (Pilgrim) and specifically the status of coordination regarding potential effects of Pilgrim on species listed under NMFS' jurisdiction as threatened or endangered. This letter documents our understanding of the current status of our coordination.

In 2006, you prepared a Biological Assessment (BA) that concluded that the proposed continued operations of Pilgrim would have "no effect" to several species of listed whales and sea turtles. At that time, you requested NMFS concurrence with that determination. When my staff received the BA in December 2006, we began working on a response to NRC. Unfortunately, we did not complete it at that time and only realized that recently. We apologize for the delay and the confusion it has caused. Our improved consultation tracking procedures in place now will help ensure that it does not happen again. In February 2012, in response to the listing of five Distinct Population Segments (DPS) of Atlantic sturgeon, you prepared a supplemental BA. In this BA, you concluded that the continued operations of Pilgrim would have "no effect" on Atlantic sturgeon. You have requested our concurrence with that determination.

As discussed on the March 22 conference call, we are unable to concur with your "no effect" determination because listed species are present in the action area and may be exposed to effects of the operations of Pilgrim. In addition, on the call, we requested information on the effects to listed species' prey resources and effects of the thermal plume. In response, your staff provided references to appropriate sections of the Environmental Impact Statement. Based on our initial reviews of the available information, barring any unforeseen circumstances, we may be able to conclude that the continued operation of the Pilgrim facility may affect, but is not likely to adversely affect, any NMFS listed species. This is the appropriate conclusion of a Section 7



Attachment

consultation when listed species or critical habitat are present in the action area, but effects of an action are wholly beneficial, insignificant or discountable. As explained in the joint U.S. Fish and Wildlife and NMFS Section 7 Handbook, “[i]nsignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur.” In the case of Pilgrim, the action area does not overlap with any NMFS-designated critical habitat. At this time, we anticipate providing you with our ESA determination by April 15, 2012.

Thank you for your ongoing cooperation in this matter. I look forward to continuing to work with NRC on ESA issues. Should you have any questions regarding this letter, please contact Kim Damon-Randall, Acting Assistant Regional Administrator for Protected Resources, at (978) 282-8485.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. S. Morris', with a long horizontal line extending to the right.

Daniel S. Morris

Acting Regional Administrator

EC: Crocker, Damon-Randall – F/NER3
Chiarella, F/NER4
Williams – GCNE
Balsam, Logan – NRC