



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 1, 2012

Mr. Daniel S. Morris
Acting Northeast Regional Administrator
National Marine Fisheries Service
55 Great Republic Dr.
Gloucester, MA 01930-2276

SUBJECT: RESPONSE TO REQUEST FOR EVALUATION OF ECOLAW'S JUNE 28, 2012,
LETTER CONCERNING INFORMAL SECTION 7 CONSULTATION AT
PILGRIM NUCLEAR POWER STATION

Dear Mr. Morris:

The U.S. Nuclear Regulatory Commission (NRC, the staff) is writing you to respond to your letter dated July 16, 2012, which requests the NRC to review a June 28, 2012, letter from Ecolaw addressed to the National Marine Fisheries Service (NMFS) regarding section 7 consultation under the Endangered Species Act of 1973, as amended (ESA), for Pilgrim Nuclear Power Station (Pilgrim).

Prior to this request, the NMFS concluded informal section 7 consultation with the NRC for Pilgrim on May 17, 2012, with a letter indicating that the license renewal and continued operation of Pilgrim is not likely to adversely affect any listed species under NMFS jurisdiction and would have no effect on right whale critical habitat.

The NRC staff has reviewed Ecolaw's letter and did not identify any information in the letter that would warrant reinitiation of section 7 consultation for Pilgrim. The NRC offers the following responses to the general concerns contained in Ecolaw's June 28, 2012, letter.

2003 Power Uprate

Ecolaw notes that Pilgrim is currently operating at a higher electrical rating than it was during the periods of time during which several scientific studies took place at Pilgrim. Because NMFS cites these studies in its assessment of the effects of the action, Ecolaw asserts that NMFS's conclusions are invalid. The Ecolaw letter, however, mischaracterizes the 2003 power uprate.

The NRC issued a license amendment for Pilgrim on May 9, 2003, that increased the licensed power level by 1.5 percent from 1998 megawatts thermal (MWt) to 2028 MWt.¹ In the safety evaluation associated with this amendment, the NRC staff concluded that the power increase would result in "no significant increase in the amounts, and no significant changes in the types, of any effluents that may be released offsite." Additionally, despite the higher licensed power level, Entergy Nuclear Operations, Inc. (Entergy) must continue to comply with its National Pollutant Discharge Elimination System (NPDES) permit for Pilgrim, which limits the quantity of

¹ Letter from T. Tate, NRC, to M. Bellamy, Entergy. Subject: Pilgrim Nuclear Power Station – Issuance of Amendment Regarding Appendix K Measurement Uncertainty Recovery – Power Uprate Request. May 9, 2003. ML031220007.

water withdrawn and temperature of water discharged to and from Cape Cod Bay. The current permit has been in effect since April 29, 1991, and was modified on August 30, 1994. Thus, the limitations on discharges and withdrawals remained the same following the 2003 license amendment.

The power uprate does not affect NRC's conclusions in its biological assessments or supplemental environmental impact statement (SEIS) regarding Pilgrim license renewal because the NRC staff conservatively assumed the maximum allowable water quantities and temperatures allowed per Pilgrim's NPDES permit and operation at 100 percent capacity under uprate conditions in its conclusions. To the extent that NMFS relied on these NRC documents, the 2003 power rate should also not affect NMFS's conclusions on the effects of the action.

Thermal Plume Characterization

Ecolaw states that NMFS's conclusions regarding the thermal plume are flawed because they rely on dated studies that were conducted prior to the 2003 power uprate.

The section 7 regulations at 50 CFR 402.14(d) state that a Federal agency is responsible for providing the Service (in this case, NMFS) with the "best scientific and commercial data available or which can be obtained during the consultation..." The thermal plume studies which the NRC provided NMFS as part of the Pilgrim informal consultation represent the best available information on the thermal plume. Though Pilgrim is operating at a higher licensed power level than when the available studies were conducted, the small increase in power output is not likely to significantly alter the characterization of the size and shape of the thermal plume contained in these studies. Because all of the potentially affected listed species in the action area are capable of avoiding waters with higher temperatures, the NRC does not expect individuals to be adversely affected by the thermal plume in either the pre-power uprate or post-power uprate operating scenario. Additionally, in its SEIS, the NRC staff conservatively assumed the maximum allowable water quantities and temperatures allowed per Pilgrim's NPDES permit and operation at 100 percent capacity under uprate conditions in its conclusions regarding impacts to aquatic life. As stated previously, the same NPDES permit remains in effect to date, and thus, the maximum allowable temperatures remain the same under the post-power uprate operating scenario. To the extent that NMFS relied on NRC's thermal analysis in its SEIS, the thermal plume characterization presented in NMFS's determination should not affect NMFS's conclusions on the effects of the action.

Threatened and Endangered Species Reporting

Ecolaw notes that NMFS does not cite the statement on page 9 of its determination that says, "as a condition of their existing license, Entergy must report to NRC any observation of listed species."

Appendix B, Section 4.1, of Pilgrim's operating license² requires Entergy to report the occurrence of any species protected by the ESA.

² Pilgrim Nuclear Power Station, Current Facility Operating License DPR-35. ML052720275.

Atlantic Sturgeon Report

Ecolaw states that NMFS should consider a June 1, 2012, report of Atlantic sturgeon in the North River. NMFS's July 16, 2012, letter indicates that this report does not change its analysis. NRC staff agrees that this report should not affect NMFS's conclusions regarding this species.

Climate change

The NRC did not address climate change in its biological assessments for Pilgrim and did not provide the information on which NMFS relies in its May 17, 2012, letter concluding consultation. Therefore, the NRC staff has no comment on this portion of Ecolaw's letter.

Dredging

Ecolaw addresses several concerns regarding dredging of the intake embayment and discharge canal during the relicensing period. In its July 16, 2012, letter, NMFS requests that NRC indicate whether any new information or plans for dredging are available that were not considered in its May 17th determination.

At this time, the NRC has no new information regarding dredging at Pilgrim. Entergy has indicated that though dredging will likely be necessary during the relicensing period, it has no specific plans to dredge at this time. It should be noted that NRC does not require dredging as a condition of Pilgrim's current operating license. The U.S. Army Corps of Engineers (USACE) would be responsible to review and permit any dredging activities that Entergy pursues at Pilgrim. If Entergy seeks such permits in the future, the USACE would be the Federal agency responsible for coordinating with NMFS to ensure that dredging activities do not adversely affect any listed species or critical habitat protected under the ESA.

Please contact Ms. Briana Balsam, Biologist, of my staff with any additional information you might have regarding the information contained in this letter. You can reach her at 301-415-1042 or by e-mail at Briana.Balsam@nrc.gov.

I have also forwarded a copy of this letter to Ms. Julie Crocker of your office. Ms. Crocker has been NRC's main point of contact for ESA issues related to Pilgrim.

Sincerely,



Dr. Amy Hull, Acting Chief
Environmental Review and
Guidance Update Branch
Division of License Renewal
Office of Nuclear Reactor Regulation

Docket No. 50-293

cc: Listserv

Atlantic Sturgeon Report

Ecolaw states that NMFS should consider a June 1, 2012, report of Atlantic sturgeon in the North River. NMFS's July 16, 2012, letter indicates that this report does not change its analysis. NRC staff agrees that this report should not affect NMFS's conclusions regarding this species.

Climate change

The NRC did not address climate change in its biological assessments for Pilgrim and did not provide the information on which NMFS relies in its May 17, 2012, letter concluding consultation. Therefore, the NRC staff has no comment on this portion of Ecolaw's letter.

Dredging

Ecolaw addresses several concerns regarding dredging of the intake embayment and discharge canal during the relicensing period. In its July 16, 2012, letter, NMFS requests that NRC indicate whether any new information or plans for dredging are available that were not considered in its May 17th determination.

At this time, the NRC has no new information regarding dredging at Pilgrim. Entergy has indicated that though dredging will likely be necessary during the relicensing period, it has no specific plans to dredge at this time. It should be noted that NRC does not require dredging as a condition of Pilgrim's current operating license. The U.S. Army Corps of Engineers (USACE) would be responsible to review and permit any dredging activities that Entergy pursues at Pilgrim. If Entergy seeks such permits in the future, the USACE would be the Federal agency responsible for coordinating with NMFS to ensure that dredging activities do not adversely affect any listed species or critical habitat protected under the ESA.

Please contact Ms. Briana Balsam, Biologist, of my staff with any additional information you might have regarding the information contained in this letter. You can reach her at 301-415-1042 or by e-mail at Briana.Balsam@nrc.gov.

I have also forwarded a copy of this letter to Ms. Julie Crocker of your office. Ms. Crocker has been NRC's main point of contact for ESA issues related to Pilgrim.

Sincerely,
/RA/
Dr. Amy Hull, Acting Chief
Environmental Review and
Guidance Update Branch
Division of License Renewal
Office of Nuclear Reactor Regulation

Docket No. 50-293

cc: Listserv

DISTRIBUTION:

See next page

ADAMS Accession No: ML12249A162

OFFICE	LA:RPB1:DLR	PM:RERB:DLR	AB:RERB: DLR	OGC (NLO)	BC:RERB:DLR
NAME	YEdmonds	BBalsam	DLogan	MSmith	AHull
DATE	09/11/12	09/12/12	09/12/12	09/14/12	10/01/12

OFFICIAL RECORD COPY

Letter to D. Morris from A. Hull dated October 1, 2012.

**SUBJECT: RESPONSE TO REQUEST FOR EVALUATION OF ECOLAW'S JUNE 28, 2012,
 LETTER CONCERNING INFORMAL SECTION 7 CONSULTATION AT
 PILGRIM NUCLEAR POWER STATION**

DISTRIBUTION:

E-MAIL:

PUBLIC

RidsNrrDir Resource

RidsNrrDirRpb1 Resource

RidsNrrDirRpb2 Resource

RidsNrrDirRarb Resource

RidsNrrDirRasb Resource

RidsNrrDirRapb Resource

RidsOgcMailCenter Resource

RidsNrrPMPilgrim Resource

AHull

BBalsam

DLogan

MSmith, OGC

julie.crocker@noaa.gov