



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

February 14, 2014

Ms. Margaret Sheehan
Mr. Kevin Cassidy
Earthrise Law Center
Lewis & Clark Law School
P.O. Box 445
Norwell, MA 02061

Dear Ms. Sheehan and Mr. Cassidy:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am writing in response to your November 11, 2013, letter expressing concerns related to Endangered Species Act (ESA) compliance at Pilgrim Nuclear Power Station (Pilgrim).

Your letter requests that the NRC amend the Pilgrim operating license¹ by adding a condition requiring Entergy Nuclear Operations, Inc. (Entergy) to report to the NRC sightings of any federally endangered or threatened (herein referred to as "listed") species in the vicinity of Pilgrim. Your letter also asserts that the failure to include such a reporting requirement in Pilgrim's renewed license was an error. I would like to take the opportunity to clarify the requirements under the previous and current operating licenses and to provide an initial response to your request for a license condition.

The NRC issued an operating license for Pilgrim on June 8, 1972, before the enactment of the ESA, and the operating license did not contain requirements related to federally listed species. The ESA was signed into law in December 1973, and the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) issued Federal regulations related to interagency consultation under Section 7 of the ESA in June 1983. Following these events, the NRC did not amend Pilgrim's operating license to include requirements on federally listed species. In connection with its review of the Pilgrim license renewal application and in accordance with Section 7 of the ESA, the NRC staff prepared biological assessments that concluded the renewed license would have no effect on any listed species before issuance of a renewed license for Pilgrim. By letter dated May 17, 2012,² NMFS determined that continued operation of Pilgrim under a renewed license "is not likely to affect any listed species under NMFS jurisdiction" and would have no effect on any designated critical habitat. As a result, the NRC did not add requirements regarding federally listed species when it issued a renewed license for Pilgrim on May 29, 2012.

In an October 1, 2012, letter to NMFS,³ the NRC staff incorrectly stated that Appendix B of the Pilgrim operating license contained a condition that requires Entergy to report the occurrence of any species protected by the ESA. I apologize for any misunderstanding or confusion this error may have caused. In a March 2013 letter from the staff to NMFS, regarding the January 2013 North Atlantic right whale (*Eubalaena glacialis*) cow and calf sighting near Pilgrim, the NRC staff

¹ The NRC issued a renewed operating license to Entergy for the operation of Pilgrim on May 29, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML091040286).

² Letter from D. Morris, NMFS, to A. Imboden, NRC dated May 17, 2012 (ADAMS Accession No. ML12145A072).

³ Letter from A. Hull, NRC, to D. Morris, NMFS dated October 1, 2012 (ADAMS Accession No. ML12249A162).

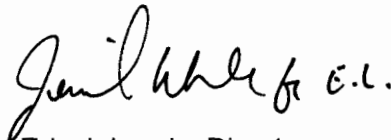
acknowledged its erroneous statement that the Pilgrim license included a listed species reporting requirement. The NMFS subsequently noted the error in its April 24, 2013, letter to the NRC.⁴ In this letter, NMFS also asked the NRC to "add a requirement to Pilgrim's operating license that would require the reporting of any observations of listed species to the NRC and NMFS within 24 hours."

As stated above, neither the previous nor the renewed Pilgrim operating license includes a condition that requires listed species to be reported to the NRC. The NRC staff is presently considering NMFS's request regarding Pilgrim's license and what future regulatory action, if any, should be taken.

As indicated by your email, dated January 23, 2014 (ADAMS Accession No. ML14035A064), you are aware that Entergy recently instituted a voluntary protocol regarding whale sightings at Pilgrim. By letter dated December 31, 2013 (ADAMS Accession No. ML14007A141), Entergy submitted a new regulatory commitment to report confirmed sighting of listed whales in the vicinity of the plant and indicated Pilgrim plans to proceduralize its whale sighting protocol by March 1, 2014. Entergy also stated that Pilgrim "recognizes the appropriateness of promptly reporting to NMFS any observed incidental taking of an endangered marine species" and that any such report would be reported to NRC under Title 10 of the *Code of Federal Regulations* Section 50.72(b)(2)(xi).

Please be assured that the NRC takes ESA compliance seriously. The NRC staff biologists regularly interact with NMFS, FWS, and licensee staff, as appropriate, to address the continued protection of federally listed species at NRC-licensed nuclear power reactors. Should you have any further questions, please contact Michele Evans, Director of the Division of Operating Reactor Licensing, at 301-415-1453 or John Lubinski, Director of the Division of License Renewal, at 301-415-1183.

Sincerely,



Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

Docket No. 50-293

cc: John K. Bullard
Northeast Regional Administrator
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930-2276

Listserv

⁴ Letter from J. Bullard, NMFS, to A. Hull, NRC dated April 24, 2013 (ADAMS Accession No. ML13115A918).

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/RA by JUhle for /
 Eric J. Leeds, Director
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 See next page

ADAMS Accession Nos. PKG ML13318A820; Incoming ML13318A819; Response ML13340A795

OFFICE	NRR/DORL/LPLI-1/PM	NRR/DORL/LPLI-1/LA	QTE	NRR/DLR/RERB/BC	NRR/DLR/D	OGC
NAME	NMorgan	KGoldstein JBurkhardt for	CHsu	DWrona	JLubinski	MYoung
DATE	12/13/2013	12/9/2013	12/11/2013	12/26/2013	12/16/2013	1/30/2014
OFFICE	NRR/DORL/LPLI-1/BC	NRR/DORL/D	NRR/D			
NAME	BBeasley	MEvans	ELeeds JUhle for			
DATE	12/20/2013	12/23/2013	2/14/14			

OFFICIAL RECORD COPY

Letter to Margaret Sheehan and Kevin Cassidy dated February 14, 2014

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