

NOTE TO FILE

FROM: Jessie Quintero, Environmental Project Manager (NMSS/FCSE/ERB)
DATE: May 15, 2017
RE: ESA Section 7 No Effect Determination for ISFSI DFP Reviews

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule amending its decommissioning planning regulations (76 *FR* 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for their Independent Spent Fuel Storage Installations (ISFSIs). This regulation now requires each holder of, or applicant for, a license under 10 CFR Part 72 to submit, for NRC review and approval, a Decommissioning Funding Plan (DFP). The purpose of the DFP is to demonstrate the licensee's financial assurance (i.e., that funds will be available to decommission the ISFSI). The NRC staff reviews the information submitted by the licensees and must determine whether the DFP contains the information required by 10 CFR 72.30(b) (and 10 CFR 72.30 (c) for the triennial update if the review is a hybrid that combines both the initial and the triennial update) and whether the licensee has provided reasonable assurance that funds will be available to decommission the ISFSI. The first round of DFPs were submitted in 2012 and the initial triennial updates in 2015. The next triennial updates are expected in 2018.

As part of the NRC's review of the ISFSI DFPs, the NRC must also consider the environmental impacts, under 10 CFR Part 51, the implementing regulations for the National Environmental Policy Act (NEPA). For each licensee review, the NRC prepared Environmental Assessments (EAs). The EAs stated that the approval of the DFPs do not authorize any land-disturbing activities or change current operations. The following is an excerpt from one of the EAs exemplifying that DFP approval does not result in land-disturbing or other environmental effects.

The NRC's approval of the DFP will not change the scope or nature of the operation of the ISFSI and will not authorize any changes to licensed operations or maintenance activities. The NRC's approval of the DFP will not result in any changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity or facility modification.

As part of its NEPA reviews, the NRC staff made determinations under Section 7 of the Endangered Species Act (ESA) as to whether or not the approval of the DFPs would affect endangered or threatened species (collectively referred to as “listed species”) or designated critical habitats. Because the DFPs do not authorize new or different activities or any land-disturbing activities, the NRC staff concluded that reviews of ISFSI DFPs would have **No Effect** on listed species, their habitats, or proposed or designated critical habitat. Initially, the NRC sent letters for each review to the appropriate region of the U.S. Fish and Wildlife Service (FWS) and requested the FWS’s concurrence on the staff’s **No Effect** determination.

After sending numerous letters, the NRC staff received responses from two different FWS regions (Region 1 – ML15338A225; Region 8 – ML17107A123) pointing out that it was not necessary under ESA Section 7 to request FWS’s concurrence on a **No Effect** determination. Therefore, the NRC staff has decided to instead prepare this Note to File, documenting our determination of **No Effect** on a programmatic level for NRC’s review of ISFSI DFPs.

With this Note to File, the NRC staff concludes generically that the NRC’s approval of an ISFSI DFP would not affect listed or proposed species or proposed or designated critical habitats. The NRC staff makes this determination based on its review of more than thirty DFPs since issuance of the final rule amending the NRC’s decommissioning planning regulations. Because the DFP approval does not result in construction or other ground disturbing activities, change in effluent releases, or produce any other environmental effects that would in any way affect natural resources, none of the staff’s DFP reviews identified any impacts on species or habitats protected under the ESA. Accordingly, the NRC staff concludes on a programmatic level that the staff’s future review and approval of DFPs would have **No Effect** on listed or proposed species or proposed or designated critical habitats and that consultation with the FWS or National Marine Fisheries Service under ESA Section 7 for future DFP reviews is not required.

The enclosed table tracks the letters that were sent out to the FWS Regions and the responses, if any, that were received up May 12, 2017.

Table Updated as of May 12, 2017

Docket #	ISFSI	Location	FWS Region	Date FWS Ltr	FWS Contact	Ltr to FWS	FWS Response
72-35	Columbia	Richland, WA (20 miles NNE of Pasco, WA) in Region IV	1	07/07/2016	Marilet Zablan	ML16189A442	
72-17	Trojan	Columbia County, Oregon	1	06/24/2015	Marilet Zablan	ML15175A413	ML15338A225
72-74	Comanche Peak	Glen Rose, TX (40 miles SW of Fort Worth, TX) in Region IV	2	07/15/2016	Susan Jacobsen	ML16197A054	
72-44	Palo Verde	Wintersburg, AZ (50 miles W of Phoenix, AZ) in Region IV	2	10/20/2016	Susan Jacobsen	ML16299A075	
72-43	Big Rock Point	Charlevoix, MI	3	07/07/2016	Alisa Shull Burr Fisher	ML16189A446	ML16239A276
72-73	Braidwood	Braceville, IL (20 miles SSW of Joliet, IL) in Region III	3	06/22/2016	Alisa Shull Burr Fisher	ML16174A363	
72-68	Byron	Byron, IL (17 miles SW of Rockford, IL) in Region III	3	06/23/2016	Alisa Shull Burr Fisher	ML16175A489	
72-14	Davis Besse	Oak Harbor, OH (21 miles ESE of Toledo, OH) in Region III	3	07/15/2016	Alisa Shull Burr Fisher	ML16197A381	
72-72	DC Cook	Bridgman, MI (13 miles S of Benton Harbor, MI) in Region III	3	07/27/2016	Alisa Shull Burr Fisher	ML16209A405	
72-37	Dresden	Morris, IL (23 miles SW of Joliet, IL) in Region III	3	06/29/2016	Alisa Shull Burr Fisher	ML16181A237	
72-32	Duane Arnold	Palo, IA (8 miles NW of Cedar Rapids, IA) in Region III	3	07/27/2016	Alisa Shull Burr Fisher	ML16209A377	
72-64	Kewaunee	Kewaunee, WI	3	09/26/2016	Alisa Shull Burr Fisher	ML16271A034	
72-46	LaCrosse	Genoa, WI	3	09/26/2016	Alisa Shull Burr Fisher	ML16271A081	
72-70	LaSalle	Marseilles, IL (11 miles SE of Ottawa, IL) in Region III	3	06/29/2016	Alisa Shull Burr Fisher	ML16182A191	
72-58	Monticello	Monticello, MN (35 miles NW of Minneapolis, MN) in Region III	3	09/26/2016	Alisa Shull	ML16270A209	
72-07	Palisades	Covert, MI (5 miles S of South Haven, MI) in Region III	3	10/19/2016	Alisa Shull	ML16295A012	
72-69	Perry	Perry, OH (35 miles NE of Cleveland, OH) in Region III	3	10/26/2016	Alisa Shull	ML16301A368	
72-05	Point Beach	Two Rivers, WI (13 miles NNW of Manitowoc, WI) in Region III	3	10/19/2016	Alisa Shull	ML16293A125	
72-53	Quad Cities	Cordova, IL (20 miles NE of Moline, IL) in Region III	3	06/29/2016	Alisa Shull	ML16182A161	
72-13	Arkansas Nuclear One	London, AR (6 miles WNW of Russellville, AR) in Region IV	4	07/08/2016	Leopoldo Miranda	ML16190A296	ML16246A313
72-06	Brunswick	Southport, NC (40 miles S of Wilmington, NC) in Region II	4	08/10/2015	Leopoldo Miranda	ML15224B471	ML16069A193
72-45	Catawba	York, SC (18 miles S of Charlotte, NC) in Region II	4	08/10/2015	Leopoldo Miranda	ML15224A659	ML16069A206
72-50	Grand Gulf	Port Gibson, MS (20 miles SW of Vicksburg, MS) in Region IV	4	09/01/2016	Leopoldo Miranda	ML16270A428	
72-60	H.B. Robinson (GL)	Hartsville, SC (26 miles NW of Florence, SC) in Region II	4	08/10/2015	Thomas McCoy Mark Caldwell	ML15224B441	ML16069A204
72-03	H.B. Robinson (SL)	Florence, SC) in Region II					
72-38	McGuire	Huntersville, NC (17 miles N of Charlotte, NC) in Region II	4	08/10/2015	Leopoldo Miranda	ML15224A937	ML16089A438
72-40	Oconee (GL)	Seneca, SC (30 miles W of Greenville, SC) in Region II	4	08/10/2015	Leopoldo Miranda	ML15224B592	ML16069A200
72-04	Oconee (SL)	Greenville, SC) in Region II					
72-61	St. Lucie	Jensen Beach, FL (10 miles SE of Ft. Pierce, FL) in Region II	4	06/22/2016	Leopoldo Miranda	ML16174A195	
72-62	Turkey Point	Homestead, FL (25 miles S of Miami, FL) in Region II	4	06/22/2016	Leopoldo Miranda	ML16174A332	
72-08	Calvert Cliffs	Lusby, MD (40 miles S of Annapolis, MD) in Region I	5	07/08/2016	Marty Miller Steve Patch	ML16190A350	
72-12	Fitzpatrick	Scriba, NY (6 miles NE of Oswego, NY) in Region I	5	05/20/2016	Marty Miller Steve Patch	ML16144A785	ML16217A326
72-39	Haddam Neck	East Hampton, CT	5	09/02/2016	Marty Miller Steve Patch	ML16250A476	
72-48	Hope Creek and Salem	Hancocks Bridge, NJ (18 miles SE of Wilmington, DE) in Region I	5	09/01/2016 09/26/2016	Marty Miller Steve Patch	ML16250A242 ML16270A363	
72-51	Indian Point	Buchanan, NY (24 miles N of New York City, NY) in Region I	5	05/20/2016	Marty Miller Steve Patch	ML16146A218	ML16217A327
72-65	Limerick	Limerick, PA (21 miles NW of Philadelphia, PA) in Region I	5	04/25/2016	Marty Miller Steve Patch	ML16117A513	ML16193A317
72-30	Maine Yankee	Wiscasset, ME	5	09/26/2016	Marty Miller Steve Patch	ML16270A506	ML17086A063
72-47	Millstone	Waterford, CT (3.2 miles WSW of New London, CT) in Region I	5	09/26/2016	Marty Miller Steve Patch	ML16274A241	ML17086A058

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Docket #	ISFSI	Location	FWS Region	Date FWS Ltr	FWS Contact	Ltr to FWS	FWS Response
72-1036	Nine Mile Point	Scriba, NY (6 miles NE of Oswego, NY) in Region I	5	09/26/2016	Marty Miller Steve Patch	ML16270A037	
72-15	Oyster Creek	Forked River, NJ (9 miles S of Toms River, NJ) in Region I	5	10/19/2016	Marty Miller Steve Patch	ML16293A885	
72-29	Peach Bottom	Delta, PA (17.9 miles S of Lancaster, PA) in Region I	5	10/25/2016	Marty Miller Steve Patch	ML16299A091	
72-48	Salem	Hancocks Bridge, NJ (18 miles S of Wilmington, DE) in Region I	5	09/01/2016	Marty Miller Steve Patch	ML16250A066	
72-28	Susquehanna	Salem Township, Luzerne County, PA (70 miles NE of Harrisburg, PA)	5	05/24/2016	Marty Miller Brian Scofield	ML16147A137	ML16215A114
72-66	Cooper	Brownville, NE (23 miles S of Nebraska City, NE) in Region IV	6	07/15/2016	Seth Willey John Cochnar	ML16197A237	ML16237A035
72-26	Diablo Canyon	Avila Beach, CA (12 miles WSW of San Luis Obispo, CA) in Region IV	8	04/25/2016	Mike Fris Julie Vanderweir	ML16120A606	ML17107A123
72-27	Humboldt Bay	Eureka, CA	8	04/25/2016	Mike Fris	ML16118A221	ML17061A734
72-11	Rancho Seco	Herald, CA	8	05/20/2016	Mike Fris	ML16147A004	
72-41	San Onofre	San Clemente, CA	8	05/20/2016	Mike Fris	ML16146A068	