



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

August 9, 2017

MEMORANDUM TO: Benjamin Beasley, Chief
Environmental Review and Project Management Branch
Division of License Renewal
Office of Nuclear Reactor Regulation

FROM: Briana Grange, Aquatic Biologist /RA/
Environmental Review and Project Management Branch
Division of License Renewal
Office of Nuclear Reactor Regulation

Michelle Moser, Aquatic Biologist /RA/
Environmental Review and Project Management Branch
Division of License Renewal
Office of Nuclear Reactor Regulation

SUBJECT: SUMMARY OF JULY 19, 2017, SUBSEQUENT LICENSE
RENEWAL PUBLIC WORKSHOP ON CONDUCTING MORE
EFFICIENT BIOLOGICAL CONSULTATIONS

On July 19, 2017, the U.S. Nuclear Regulatory Commission (NRC, the staff) held a public workshop on how to conduct more efficient biological consultations in connection with the anticipated preparation, submittal, and the NRC staff's review of applications for subsequent license renewal (SLR) of nuclear power plants. The workshop fulfilled the one follow-up action item identified during a September 19, 2016, teleconference on SLR optimization with the Nuclear Energy Institute (NEI) License Renewal Environmental Task Force.¹

The staff publicized the workshop on the NRC's public meeting webpage² and made the agenda available in advance through ADAMS at Accession No. ML17199F784. Participants were able to attend the workshop in person or participate remotely via GoToMeeting webinar and teleconference. Both NRC staff and the NEI License Renewal Environmental Task Force made presentations during the workshop. Representatives of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, "the Services") were also in attendance to participate in interactive question-and-answer (Q&A) sessions related to consultations under the Endangered Species Act of 1973, as amended (ESA), and Magnuson-Stevens Fishery Conservation and Management Act (MSA). The detailed agenda, slide presentations, and handouts from the workshop are available at ADAMS Package No. ML17199A046.

¹ The meeting summary for the September 19, 2016, teleconference is available at Agencywide Documents Access and Management System (ADAMS) Accession No. ML16280A412.

² <https://www.nrc.gov/pmns/mtg?do=details&Code=20170685>

The purpose and goals of the workshop were to (1) provide background regarding the ESA and MSA; (2) describe requirements for consultation under the ESA and MSA; (3) describe the role of the NRC, the Services, and applicants during consultation; (4) review past challenges and lessons learned from previous consultations; and (5) discuss best practices for future consultations related to SLR application reviews.

The major areas of discussion are summarized as follows:

I. Opening Remarks

The workshop began with brief opening remarks by Benjamin Beasley, Chief of the Environmental Review and Project Management Branch, and George Wilson, Director of the Division of License Renewal.

II. Introduction

During the introduction, Nancy Ranek, on behalf of the NEI License Renewal Environmental Task Force, presented the nuclear industry's concerns related to biological consultations and the industry's goals for participating in the workshop. Michelle Moser, NRC Aquatic Biologist, gave an introductory presentation that addressed the regulatory framework for the National Environmental Policy Act of 1969, as amended (NEPA), ESA, and MSA and the requirements for addressing protected sensitive species and habitats under each statute.

III. Consultation under the ESA

Briana Grange, NRC Aquatic Biologist, presented an overview of the ESA; discussed ESA Section 7 consultation requirements; described the role of the NRC, the Services, and applicants during consultation; reviewed difficulties and challenges in past NRC consultations; and presented best practices for future NRC consultations. Specifically, the presentation focused on the following four best practices.

1. Hold pre-application meetings
2. Engage early with the Services
3. Provide sufficient, high-quality data
4. Designate NRC and applicant points of contact

A Q&A session with the Services followed the staff's presentation. Participants asked a variety of questions related to the consultation process and the four best practices listed above. Many of the questions focused on early engagement and data needs.

In response to questions concerning pre-application meetings, the NRC staff stressed that such meetings will be a good opportunity for prospective applicants and NRC staff to identify the Federally listed species present in areas affected by prospective SLRs and to review whether additional data would be needed (e.g., whether new or updated surveys should be conducted) in order to complete required consultations. The NRC staff recommended that applicants reach out to the Services prior to application submittal. Some participants described past hardships with getting the Services to meaningfully engage during preparation of applications. One Service representative

recommended using the “technical assistance” process as a means of gathering data and discussing data needs with the Services. The NRC staff also stated that the Services could be invited to pre-application meetings or that prospective applicants could consider pre-application site visits with NRC staff and the Services for those sites which might involve more complex Section 7 consultations. For instance, pre-application site visits could be especially helpful if a new or revised biological opinion is anticipated for an SLR.

Some questions focused on the issue of sufficient, high-quality data. The NRC staff explained that prospective applicants should first determine what data is already available at the pre-application stage and whether that data is sufficient.

One participant asked whether the NRC staff anticipates involving cooperating agencies in its NEPA reviews for SLR. The staff stated that it does not anticipate cooperating agencies to be regularly involved with SLR reviews, but that cooperating agencies may be involved on a case-by-case basis. For instance, the Prairie Island Indian Community was a cooperating agency on the Prairie Island Nuclear Generating Plant, Units 1 and 2, license renewal environmental review.

One participant asked what happens if an applicant does not agree to an extension of formal consultation. The NRC staff and Service representatives stated that they had not had direct experience with such a scenario. Service representatives stated, however, that the Service would have an obligation to complete the consultation and biological opinion within the initial timeframe stipulated by the ESA Section 7 consultation regulations if the applicant did not agree to an extension.

One Service representative asked how the NRC ensures licensee compliance with biological opinions once issued. The staff described its process for incorporating biological opinions into a nuclear power plant’s operating license through license conditions. The staff explained, however, that the specific mechanism will vary depending on whether the NRC has an open licensing action before it. The staff offered to meet with the Services in the future if the NRC staff and Service staff determine that additional discussion on the topic is warranted.

One participant asked questions regarding candidate and proposed species and how such species are addressed in ongoing reviews. The NRC staff described its process for maintaining awareness of the Services’ ESA listing actions and gave examples of how the staff has taken action following previous proposed rules to list new species during ongoing environmental license renewal reviews. The NRC staff stated that it would do the same for SLR. The staff recommended that if proposed species are of particular concern to a prospective applicant, that the topic be raised during the pre-application meeting to alert NRC staff of such a concern. Related to these questions, a Service representative asked questions regarding the NRC’s process for reinitiating consultation if a new species is listed. Members of the NRC’s Office of General Counsel explained that the NRC would have an obligation to reinitiate consultation if a new species is listed and the agency action, such as SLR, has not yet been taken. The staff offered to meet with the Services in the future if the NRC staff and Service staff determine that additional discussion on the topic is warranted.

IV. Consultation under the MSA

Michelle Moser, NRC Aquatic Biologist, presented an overview of the MSA; discussed Essential Fish Habitat (EFH) consultation requirements; described the role of the NRC, the NMFS, and applicants during consultation; reviewed difficulties and challenges in past NRC consultations; and presented best practices for future NRC consultations. Specifically, the presentation focused on the four best practices previously listed above under “Consultation under the ESA.”

A Q&A session with the NMFS followed the staff’s presentation. During the Q&A session, the NMFS representatives described the uses and limitations of the NMFS’s EFH Mapper, an online resource for identifying whether projects are located near EFH. The NMFS representatives stressed that the EFH Mapper is a good starting point for analyzing impacts to EFH, but that direct coordination with NMFS or the applicable Fishery Council(s) is necessary to ensure that EFH in a given area has been correctly identified.

During the Q&A discussions, the NRC staff pointed out that pre-application meetings would also be useful in determining whether adverse impacts to EFH may occur, especially for plants that are not located within designated EFH. Additionally, the NRC staff stated that past discussions with NMFS staff have helped the agencies to conduct efficient consultations. For instance, for some license renewal reviews, NRC staff and NMFS staff have worked together to determine which species would be appropriate to focus on as representative species during the NRC staff’s development of the EFH Assessment. Lastly, the NRC staff stated that (1) understanding EFH data needs early in the process and (2) considering representative EFH species can help potential applicants design new biological studies or identify existing studies that efficiently address data needs for both ESA and EFH consultations and help to characterize the aquatic resources near the plant.

Participants asked several questions regarding EFH Conservation Recommendations. The NMFS representatives explained the process for resolving disagreements between a Federal agency and NMFS for actions that are inconsistent with EFH Conservation Recommendations. The NMFS stated that if disagreements occur, it does not consider EFH consultation concluded until such disagreements are resolved.

V. Summary of Consultation Risks and Mitigation Strategies

During the final presentation, the NRC staff reviewed various issues that could cause delays or complications during biological consultations and strategies that the NRC staff and prospective SLR applicants could follow to mitigate such risks. The staff discussed ways to address: (1) confusion regarding consultation processes, consultation roles, and consultation data needs; (2) schedule delays for issuing the NRC license(s); (3) unexpected data needs; and (4) challenges that consultation is not properly documented.

VI. Next Steps

During the Q&A sessions, participants requested the NRC staff to consider taking action on the following items.

1. Make a generic 18-month SLR environmental review schedule publically available.
2. Consider expanding the discussion of EFH requirements and data needs in NRC's Regulatory Guide 4.2, Supplement 1, and other NRC license renewal guidance.

Additionally, as a result of discussions during the workshop, the NRC staff may continue dialogue with Service representatives concerning how to best involve the Services early in the SLR environmental review process; ways that the NRC staff and Services can work together to facilitate more efficient consultations; and the NRC's process for complying with the ESA and its regulations.

A list of participants is included as the Enclosure.

Enclosure:

1. List of Participants

SUBJECT: SUMMARY OF JULY 19, 2017, SUBSEQUENT LICENSE RENEWAL PUBLIC WORKSHOP ON CONDUCTING MORE EFFICIENT BIOLOGICAL CONSULTATIONS

DISTRIBUTION:

E-Mail:

PUBLIC

RidsNrrDir Resource

RidsNrrDirRerp Resource

RidsOgcMailCenter Resource

EndangeredSpecies Resource

BGrange

MMoser

KFolk

BBeasley

JDonoghue

GWilson

PDoub

JWachutka

APessin

TCampbell

AGosh

JMartin

OMikula

KRoach

MWright

MYoung

david.dale@noaa.gov

amy.dierolf@duke-energy.com

steve.dillard@aecom.com

downinjk@westinghouse.com

kristin.eaton@fpl.com

jeffrey.m.goto@sargentlundy.com

ogottlieb@aldenlab.com

erika.grace@aecom.com

karen.greene@noaa.gov

bobbie.hurley@aecom.com

rpkalinowski@aep.com

doug_laye@fws.gov

david.lewis@pillsburylaw.com

dluchsinger@enercon.com

lisa.matis@tetrattech.com

kara.meckley@noaa.gov

aminor@swri.org

janelle.mueller@noaa.gov

harriet.nash@noaa.gov

richard.orthen@fpl.com

nancy.ranek@exeloncorp.com

cjriedl@tva.gov

sscott@enercon.com

paul.snead@duke-energy.com

andrew.c.taylor@sargentlundy.com

andrea.threet@morganlewis.com

tony.banks@dominionenergy.com

kristy.beard@noaa.gov

jbergman@curtisswright.com

rbuckle@entergy.com

richard_bulavinetz@fws.gov

Hard Copy:

Ms. Nancy L. Ranek

Sr. Project Manager, Plant Life Extension

Nuclear Energy Institute

1201 F Street, NW, Suite 1100

Washington, DC 20004

ADAMS Accession No. ML17206A093

***Concurred via email**

OFFICE	DLR:RERP:AQ	DLR:RPG:LA	DLR:RERP:AQ
NAME	BGrange*	YEdmonds (SLent for)*	MMoser*
DATE	8/9/17	7/31/17	8/1/17

OFFICIAL RECORD COPY

**Summary of July 19, 2017, Subsequent License Renewal Public Workshop on
Conducting More Efficient Biological Consultations**

July 19, 2017

LIST OF PARTICIPANTS

<u>Participant</u>	<u>Affiliation</u>
Tony Banks	Dominion Energy
Kristy Beard	National Marine Fisheries Service (NMFS)
Benjamin Beasley	U.S. Nuclear Regulatory Commission (NRC)
Jana Bergman	Curtiss-Wright Corporation
Rick Buckley	Entergy Corporation
Richard Bulavinetz*	U.S. Fish and Wildlife Service (FWS)
Tison Campbell*	NRC
David Dale*	NMFS
Amy Dierolf	Duke Energy Corporation
Steve Dillard*	AECOM
Joe Donoghue	NRC
Peyton Doub	NRC
John Downing*	WECTEC LLC
Kristin Eaton*	Florida Power & Light Company
Kevin Folk	NRC
Anita Gosh*	NRC
Jeff Goto*	Sargent & Lundy, LLC
Orli Gottlieb*	Alden Research Lab
Erika Grace*	AECOM
Briana Grange	NRC
Karen Greene	NMFS
Bobbie Hurley*	AECOM
Bob Kalinowski*	American Electric Power
Doug Laye*	FWS
David Lewis	Pillsbury Winthrop Shaw Pittman, LLP
Deb Luchsinger	Enercon Services, Inc.
Jody Martin	NRC
Lisa Matis	Tetra Tech, Inc.
Kara Meckley	NMFS

Enclosure

<u>Participant</u>	<u>Affiliation</u>
Olivia Mikula*	NRC
Amy Minor*	Center for Nuclear Waste Regulatory Analyses
Michelle Moser	NRC
Janelle Mueller	NMFS
Harriet Nash*	NMFS
Rich Orthen*	NextEra Energy, Inc.
Andrew Pessin	NRC
Nancy Ranek	Exelon Generation, LLC and Nuclear Energy Institute
Chris Riedl*	Tennessee Valley Authority
Kevin Roach*	NRC
Susanna Scott	Enercon Services, Inc.
Paul Snead	Duke Energy Corporation
Andrew Taylor*	Sargent & Lundy, LLC
Andrea Threet	Morgan, Lewis & Bockius, LLP
Jeremy Wachutka	NRC
George Wilson	NRC
Megan Wright*	NRC
Mitzi Young*	NRC

* Participation by GoToMeeting webinar and/or teleconference