



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
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July 25, 2019

MEMORANDUM TO: Cinthya I. Román, Chief */RA/*  
Environmental Review Branch  
Division of Fuel Cycle Safety, Safeguards,  
and Environmental Review  
Office of Nuclear Material Safety  
and Safeguards

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SUBJECT: CLARIFICATION OF TERMS USED FOR DETERMINING  
SIGNIFICANCE OF ENVIRONMENTAL IMPACTS IN  
ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL  
IMPACT STATEMENTS

The staff in the Environmental Review Branch (ERB) of the Division of Fuel Cycle Safety, Safeguards, and Environmental Review (FCSE) in the Office of Nuclear Materials Safety and Safeguards (NMSS) routinely develop environmental assessments (EAs) and environmental impact statements (EISs) to evaluate environmental impacts of materials and waste-related licensing actions in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 et seq). In its EAs and EISs, the staff also documents its analyses and findings related to Environmental Justice (EJ) reviews and evaluations required by other statutes, such as Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108), the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. § 1801 et seq.). The FSCE/ERB staff have requested clarity on the terms used to describe the significance of impacts in EAs and EISs, and terms used to describe the findings of EJ reviews and NHPA, ESA, and MSA evaluations. This memo provides the requested clarifications. This approach will be incorporated into the next update to NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs."

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### NEPA Environmental Impact Statements

An EIS evaluates the environmental impacts of the proposed action and alternatives to the proposed action on each environmental resource area (e.g., land use, ground water, ecology, etc.). Determining the significance of an impact involves the consideration of context and intensity of the impacts. In assessing the significance of environmental impacts in an EIS, the staff uses the following significance levels defined in NUREG-1748 (see Section 4.2.5.3) and codified in the footnotes of Table B-1 in Appendix B of Subpart A, “Environmental Effect of Renewing the Operating License of a Nuclear Power Plant,” of Title 10 of the *Code of Federal Regulations* Part 51:

SMALL – Environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission’s regulations are considered SMALL.<sup>1</sup>

MODERATE – Environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.

LARGE – Environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

However, the terms SMALL, MODERATE, or LARGE should not be used for documenting the findings from EJ reviews or evaluations under NHPA, ESA, and MSA. For such evaluations, the staff should use terms that are consistent with those used in the statutes and implementing regulations; or Executive Order 12898, the Commission’s EJ Policy Statement, and existing staff guidance in the case of EJ. The appropriate terms for EJ, NHPA, ESA, and MSA are discussed below.

### NEPA Environmental Assessments

An EA evaluates the environmental impacts on various resource areas (e.g., land use, ground water, ecology, etc.) from the proposed action and any alternatives to the proposed action. As discussed above, determining the significance of an impact involves the consideration of context and intensity of the impacts. In an EA, the staff determines whether there are significant impacts from the proposed action and, thus, preparation of an EIS is required, or whether there are no significant impacts from the proposed action and preparation of a finding of no significant impacts (FONSI) is appropriate. Within the “Environmental Impacts” section of an EA, where the staff documents its impact analysis and findings, the EA should have concluding statements for the various resource areas evaluated explaining whether the impact from the proposed action is “significant” or “not significant.” The evaluation of significance of an impact is discussed in Section 4.2.5.3 of NUREG-1748.

However, the terms “significant” or “not significant” should not be used for EJ reviews or evaluations under NHPA, ESA, and MSA. For such evaluations, the staff should use terms that are consistent with those used in the statutes and implementing regulations, or Executive Order 12898, the Commission’s EJ Policy Statement, and existing staff guidance in the case of EJ.

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<sup>1</sup> The second sentence in the definition of SMALL is excerpted from Footnote 3, Table B-1 of Subpart A, Appendix B of 10 CFR part 51. This sentence will be incorporated into the next revision of NUREG-1748.

## Environmental Justice

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” (59 FR 7629) requires<sup>2</sup> federal agencies to make environmental justice part of its mission through evaluation, as appropriate, of disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The Commission’s Policy Statement on the treatment of EJ matters in NRC regulatory and licensing actions (69 FR 52040) explained that an analysis of disproportionately high and adverse impacts would be conducted as part of the agency’s NEPA review process. It is the NRC staff’s practice to conduct EJ reviews as part of its EISs. For EAs, the Commission’s policy statement explained that in most EAs there “will be little or no offsite impacts and, consequently, impacts would not occur to people outside the facility. However, if there is a clear potential for significant offsite impacts from the proposed action then an appropriate EJ review might be needed to provide a basis for concluding that there are no unique impacts that would be significant.”

In an EJ review, the staff will first determine the geographic area of assessment and whether low-income or minority populations exist in the potentially affected area whose unique characteristics could be affected by the proposed action. After assessing the environmental effects on low-income and minority populations, the EJ review should conclude whether the proposed action would “have disproportionately high and adverse human health or environmental effects on minority and low-income populations.” Conversely, if no low-income or minority populations are identified in the potentially affected area, that conclusion should be documented in the EIS or EA as well.

## Section 106 of the NHPA

The NHPA requires the NRC to determine whether historic properties are present, and if present, whether the undertaking would have an adverse effect upon such properties. If the undertaking does not have the potential to cause effects on historic properties, assuming those are present, the NRC has no further obligations under Section 106, and can conclude its Section 106 review with a determination of no potential to cause effects consistent with 36 CFR 800.3(a)(1). If the undertaking has the potential to cause effects, the NHPA Section 106 review should first determine the area of potential effects (APE) and whether or not historic properties are present within the APE. If historic properties are not present within the APE, the staff’s findings should conclude that there are no historic properties affected. If historic properties are present within the APE, the staff should either conclude that historic properties would not be adversely affected by the proposed action; or that the proposed action would adversely affect historic properties. If historic properties will be adversely affected, the staff should continue to follow the process in the Section 106 review for resolving adverse effects (36 CFR 800.6).

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<sup>2</sup> Executive Order 12898 only requested that independent federal agencies comply with the Executive Order. The Commission, however, indicated in its Policy Statement that the NRC “is committed to the general goals of E.O. 12898, [and] will strive to meet those goals through its normal and traditional NEPA review process.” (69 FR 52040).

### Section 7 of the ESA

The ESA requires the NRC to ensure the proposed action is not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any critical habitat for such species. If the NRC determines that a proposed action will not affect a listed species or habitat, the impact discussion should conclude that the proposed action will have “no effect” on the listed species or habitat. If the NRC determines that an action “may affect” a listed species or habitat, the discussion should conclude, as appropriate, that the proposed action “is not likely to adversely affect” or “is likely to adversely affect” the listed species or habitat. Where the NRC has found that the proposed action “is likely to adversely affect” the species or habitat, the NRC may further conclude that the proposed action “is [or is not] likely to jeopardize listed species or adversely modify designated critical habitat.”

### MSA Reviews

The MSA requires the NRC to consult with the Secretary of Commerce through the National Marine Fisheries Service before authorizing any action which may adversely affect essential fish habitat identified under the MSA. Similar to the ESA, the impact discussion regarding the resources protected under the MSA should conclude whether the effects of the proposed action would have: (1) no adverse impact, (2) minimal adverse impact, or (3) substantial adverse impact to the essential habitat of federally managed fish populations during the license term.

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