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## Issue 184: Endangered Species

### DESCRIPTION

In 1973, Congress passed the Endangered Species Act for the protection of endangered or threatened species.

In responding to a Commission memorandum dated July 30, 1991,<sup>1</sup> concerning efforts of the Commission, applicants, and licensees to protect endangered species in the vicinity of nuclear power facilities, the staff identified that the U.S. Nuclear Regulatory Commission (NRC) may not have completed all the necessary activities required by the Endangered Species Act for some of the facilities that have identified endangered species.

The Office of Nuclear Reactor Regulation identified this issue in a February 1996 memorandum<sup>2</sup> to the Office of Nuclear Regulatory Research, calling for the staff to do the following:

Develop a list of currently listed protected species in the vicinity of each nuclear power plant site.

Identify individual licensee programs and activities being conducted to further the conservation of protected species.

Conduct informal or formal consultation with either the National Marine Fisheries Service or the U.S. Fish and Wildlife Service, as warranted, about any specific site.

This issue addressed impacts from the environment of nuclear plants and, therefore, was considered an environmental issue.<sup>3</sup>

### DISCUSSION

Generally, plant refurbishment and continued operation are not expected to adversely affect threatened or endangered species.

Title 10 of the Code of Federal Regulations (10 CFR) Part 51, "Environmental protection regulations for domestic licensing and related regulatory functions," Subpart A, "National Environmental Policy Act—Regulations Implementing Section 102(2)," Appendix B, "Environmental Effect of Renewing the Operating License of a Nuclear Power Plant," Table B-1, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants," states, in part, the following:

The magnitude of impacts on threatened, endangered, and protected species, critical habitat, and essential fish habitat would depend on the occurrence of listed species or habitats, and the effects of power plant systems on them. Consultation with appropriate agencies would be needed to determine whether special status species or habitats are present and whether they would be adversely affected by continued operations and refurbishment associated with license renewal.

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<sup>1</sup> Responds to 910730 staff requirements memo requesting info re efforts for protection of endangered species by Commission or applicants previously identified at const permit stage. [ML19333B118]

<sup>2</sup> Memorandum for C. Serpan from A. Chaffee, "Nuclear Reactor Regulation (NRR) Input Into Research NUREG-0933 (WITS Item 9400213)," February 13, 1996. [9602260124]

<sup>3</sup> Memorandum for W. Russell from D. Morrison, "Prioritization of the NRR Action Plans Submitted to RES on February 13, 1996," June 24, 1996. [9606260260]

The NRC developed an action plan to determine the additional actions, if any, that needed to be taken at individual sites so that the NRC could meet its obligations under the Endangered Species Act. This plan called for the staff to take two actions:

- (1) Evaluate plant-specific lists of endangered species and existing licensee commitments to further the conservation of the protected species.
- (2) Determine whether informal or formal consultation with either the National Marine Fisheries Service or the U.S. Fish and Wildlife Service is warranted.

The staff developed an inventory of currently listed protected species and habitats in the vicinity of each nuclear power plant site and documented the results in supplements to NUREG-1437, "Generic Environmental Impact

Statement for License Renewal of Nuclear Plants," issued May 1996.<sup>4</sup>

In accordance with Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 USC 1531 et seq.), Federal agencies must review actions they undertake or support (such as issuing permits and licenses) to determine whether they may jeopardize the continued existence of an endangered species or its habitats. If such a review reveals the potential for adversely affecting listed or candidate species, the Federal agency must consult with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), as appropriate. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service implement the interagency cooperation provisions of Section 7 at 50 CFR Part 402, "Interagency Cooperation—Endangered Species Act of 1973, as Amended," Subpart B, "Consultation Procedures": (1) early consultation (50 CFR 402.11), (2) informal consultation (50 CFR 402.13), and (3) formal consultation (50 CFR 402.14). Further, Section 9 of the Endangered Species Act prohibits certain actions by a Federal agency, licensee, or potential licensee that may hurt an endangered species or its habitat. The provisions of Section 9 related to prohibited acts are implemented at 50 CFR 17.31(a) and 50 CFR 17.71(a).

## CONCLUSION

As a result, the staff developed a list of currently protected species in the vicinity of each nuclear power plant site. The NRC publishes the list for each site in supplements to NUREG-1437.

This issue is RESOLVED.

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<sup>4</sup> NUREG-1437 "Generic Environmental Impact Statement

