



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

June 8, 1999

Mr. Robert Hoffman
National Marine Fisheries Service
Southeast Region
Protected Species Division
9721 Executive Center Drive North
St. Petersburg, FL 33702

SUBJECT: COMMENTS ON DRAFT BIOLOGICAL OPINION REGARDING IMPACT TO
SEA TURTLES AT THE CRYSTAL RIVER ENERGY COMPLEX (TAC NO.
MA1706)

Dear Mr. Hoffman:

By letter dated October 1, 1998, Florida Power Corporation (FPC) provided to the United States Nuclear Regulatory Commission (NRC) a Biological Assessment of Impact to Sea Turtles at Florida Power Corporation's Crystal River Energy Complex (BA). The BA was prepared by FPC to support a Section 7 consultation with the National Marine Fisheries Service (NMFS) under the Endangered Species Act and the issuance of a biological opinion (BO). By letter dated October 14, 1998, the NRC provided the BA and the NRC staff's recommendation to NMFS. Based on the BA and NRC recommendation, NMFS completed a draft BO which was forwarded by the NRC to FPC for review and comment on March 30, 1999.

The NRC and FPC have completed review of the draft BO issued by NMFS. FPC written comments were provided to the NRC by letter dated May 24, 1999, and are provided as Enclosure 1. NRC comments are provided as Enclosure 2.

Please contact Ms. Cynthia Sochor at 301-415-2462 with any questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia A. Carpenter".

Cynthia A. Carpenter, Branch Chief
Generic Issues, Environmental, Financial, and
Rulemaking Branch
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Enclosures: As stated

cc w/ enclosure: See next page

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Original Signed By:

Cynthia A. Carpenter, Branch Chief
Generic Issues, Environmental, Financial, and
Rulemaking Branch
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

NRC FILE CENTER COPY

Enclosure: As stated
cc w/ enclosure: See next page

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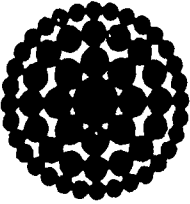
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**Florida
Power**
CORPORATION
Crystal River Unit 3
Docket No. 90-302
Operating License No. DPR-72

May 24, 1999
3F0599-20

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

Subject: Comments on the Draft Biological Opinion Regarding Impact to Sea Turtles at the Crystal River Energy Complex (TAC No. MA1706)

Reference: NRC to FPC letter, 3N0499-04, dated April 8, 1999, "Draft Biological Opinion Regarding Impact to Sea Turtles at the Crystal River Energy Complex (TAC No. MA1706)"

Dear Sir:

This letter encloses Florida Power Corporation's comments on the above referenced National Marine Fisheries Service's April 8, 1999, draft biological opinion.

If you have any questions regarding this submittal, please contact Mr. Sid Powell, Manager, Nuclear Licensing at (352) 563-4883.

Sincerely,

S. L. Bernhoft
Director, Nuclear Regulatory Affairs

SLB/smg

Attachment

xc: Regional Administrator, Region II
NRR Project Manager
Senior Resident Inspector

Enclosure 1

Comments on the National Marine Fisheries Service's Draft Biological Opinion Regarding Impact to Sea Turtles at the Crystal River Energy Complex

General Comments

Florida Power Corporation (FPC) concurs with the environmental baseline information provided in the draft Biological Opinion (Sections I – VII), except for the minor and specific comments below. This environmental baseline information is comprehensive and descriptive of the environmental factors existing near the Crystal River Energy Complex (CREC).

Section VIII. Incidental Take Statement

The sea turtle influxes in the CREC intake canal have been documented to vary widely between approximately 2 to 50 sea turtles annually. Since conditions at the plant site have not changed significantly, the large variation is likely due to environmental factors unrelated to operations at the CREC.

FPC believes that a numerical limit on live takes is not necessary to ensure protection of the sea turtle population. However, if established, it should be averaged over a longer time period to allow for periodic higher influxes. Accordingly, FPC recommends that the time period on the live incidental take limit be extended, but without increasing the annual average value. FPC recommends the time period be averaged over a three or five year period. The allowed live incidental take therefore would be increased to 75 over a three year time period or 125 over a five year period. This allows the annual levels to still be averaged at the National Marine Fisheries Service's (NMFS) original proposed level of 25 per year (biennially 50).

Lethal Takes

The draft biological opinion makes an appropriate distinction between mortalities being causally or non-causally plant related. This distinction further encourages FPC to maintain an aggressive sea turtle rescue program to prevent mortalities. However, FPC recommends the lethal incidental take limit also be averaged over the same time span as that recommended for the live incidental takes. This would result in a lethal take limit of no more than 7 sea turtles over a three year period or 12 over a five year period.

Section IX. Conservation Recommendations

FPC believes that Conservation Recommendation #1 should be deleted. Tissue sampling of sea turtles is normally performed to determine associations between nesting populations. While tissue sampling may be appropriate for other sea turtle species, tissue sampling of Kemp's ridleys is unnecessary since the entire Gulf population is associated with one nesting beach in Mexico. Since genotypes typically overlap, a large sampling population is needed to look at the frequency of genotypic variations. In addition, tissue samples are typically collected from dead specimens, and the low number of sea turtle mortalities occurring at the CREC would not provide a sufficient number of tissue samples for the data to be of significance.

FPC concurs with Conservation Recommendation #2 which states that a tagging program should be established in conjunction with the Florida Department of Environmental Protection (FDEP).

FPC believes that Conservation Recommendation #3 should be modified to a recommendation that FPC continue evaluation of methods to reduce sea turtle takes. FPC's concern is that a diversionary structure in the CREC intake canal is not likely an effective means of reducing sea turtle takes.

Specific Comments

Section II. Description of the Proposed Action

The exact schedule for the bar rack inspection program is based on sea turtle observations and the judgement of the CREC environmental staff. The dates of "February through May" should be qualified with "e.g., February through May" and are "normally" inspected once every two hours during other times of the year.

Section V. Effects of the Action

Paragraph 3, replace "moralities" with "mortalities"

Paragraph 6, replace "biannually" with "biennially". Replace BSEP with CREC

Section VIII. Incidental Take Statement

In Paragraph 3, the take numbers are inconsistent with Section V, the last paragraph. The Section V paragraph states that the live takes may reach 50 sea turtles rescued alive from the bar rack biennially and 5 lethal takes, whereas Section VIII, paragraph 3, states 50 takes with 5 being lethal. FPC recommended in its Biological Assessment that specific numerical limits not be included. However, if specific numerical limits must be included, a clarification of intent is needed as to whether the lethal take limits are inclusive or exclusive of the live take numerical limits.

**NRC Comments on the National Marine Fisheries Service's Draft Biological Opinion
Regarding the Impact to Sea Turtles at the Crystal River Energy Complex**

Section: The Proposed Action

(5th paragraph, 1st sentence)

"The bar racks are inspected 24 hours a day during times of high turtle concentrations in the intake canal (February through May) and once every two hours during other times of the year."

Comment 1: This statement is not consistent with Florida Power Corporation's biological assessment. The bar racks are inspected 24 hours a day with a minimum observation schedule of once every two hours during periods of known turtle presence. Periodic observations are provided at other times.

Section: Effects of the Action

(Last paragraph)

"Based on this information, and the fact that another anomalous year such as 1998 is possible, NMFS believes that the level of live take of sea turtles in BSEP's intake canal may reach 50 sea turtles rescued alive from the bar racks biannually and 5 lethal takes, biannually that are casually related to plant operation."

Comment 2: This statement conflicts with the Incidental Take which states "50 sea turtles with 5 being lethal." The effects statement appears to state that turtle live and lethal takes may reach 55 with 5 of those takes being lethal.

Section: Incidental Take Statement

(1st paragraph, last sentence)

"Only incidental taking resulting from the agency action as described in the proposed action of the biological opinion, including incidental takings caused by activities approved by the agency, and that comply with the specified reasonable and prudent measures and terms and conditions, are exempt from the takings prohibition of section 9(a), pursuant to section 7(o) of the ESA."

Comment 3: Is the agency action as described in the proposed action section referring to general plant operation or specifically to the intake and discharge of cooling water into and out of the nuclear plant? Would plant operations not specifically related to the intake or discharge of cooling water into the nuclear plant that resulted in a lethal take be exempt from the takings prohibition of section 9(a)?

Section: Conservation Recommendations

(Bullet 1)

"1. CREC should conduct tissue sampling for the genetic identity of turtles interacting with plant cooling water intake system."

Comment 4: What is the purpose of conducting tissue sampling?

(Bullet 3)

"3. CREC should continue working on a design for diversion structures, which would be used to keep sea turtles away from the bar racks."

Comment 5: Limiting CREC to continue to work on a design for diversion structures would prevent CREC from exploring different alternatives that may be more effective and cost beneficial. CREC could be asked to continue to research methods to lessen the impacts of sea turtle impingement on the intake bar racks without prescribing a specific means of achieving the desired end result.

Mr. John Paul Cowan
Florida Power Corporation

CRYSTAL RIVER UNIT NO. 3

cc:

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