



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

May 20, 2016

Mr. Marty Miller
Chief, Endangered Species
U.S. Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035-9589

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION PRELIMINARY
DETERMINATION OF NO EFFECTS REGARDING THE JAMES FITZPATRICK
INDEPENDENT SPENT FUEL STORAGE INSTALLATION
DECOMMISSIONING FUNDING PLAN

Dear Mr. Miller:

By letters dated December 13, 2012, and December 17, 2015, Entergy Nuclear Operations (ENO) submitted decommissioning funding plans (DFP) for the James FitzPatrick Independent Spent Fuel Storage Installation (ISFSI) for the U.S. Nuclear Regulatory Commission's (NRC) review and approval. The ISFSI is part of the James FitzPatrick nuclear power plant facility located in New York. Pursuant to Title 50 of the *Code of Federal Regulations* (CFR) 402.13, the NRC seeks to initiate informal consultation with the U.S. Fish and Wildlife Service to determine whether the NRC's review and approval of the DFP requires formal consultation under Section 7 of the Endangered Species Act of 1973, as amended.

The NRC regulations at 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste," govern the storage of spent nuclear fuel (spent fuel) generated at commercial nuclear power reactors licensed by the NRC. Spent fuel that has been removed from the reactor's spent fuel pool is typically stored at a nuclear power plant's ISFSI.

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 *Federal Register* (FR) 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSI. 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 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 is reviewing the information submitted by ENO. Specifically, the NRC must determine whether ENO DFP contains the information required by 10 CFR 72.30(b) and 10 CFR 72.30(c) Tri-Annual Update and whether ENO has provided reasonable assurance that funds will be available to decommission the ISFSI.

The ENO ISFSI DFP is publicly available in the NRC's Agencywide Documents Access and Management System (ADAMS) accessible at <http://www.nrc.gov/reading-rm/adams.html>.

The ADAMS accession number for the application package is ML12352A126 for the 2012 submission and ML15351A524 for the 2015 submission.

The NRC approval of ENO DFP will not authorize or result in changes to licensed operations or maintenance activities, or 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, facility modification, or any other land-disturbing activity. Additionally, the scope of this proposed action does not include, and will not result in, the review and approval of any decontamination or decommissioning activity or license termination for the ISFSI or any other part of the James FitzPatrick site. Any future NRC approval of site-disturbing remediation activities conducted by ENO would require an NRC environmental review, including an Endangered Species Act review.

In accordance with 10 CFR Part 51, the NRC regulations that implement the National Environmental Policy Act of 1969, as amended, the NRC is preparing an environmental assessment for the proposed action. Given the reasons set forth above, the NRC has determined that the approval of the DFP is a procedural and administrative action that will not result in any significant impact to the environment. Therefore, the NRC has determined that the proposed action will not affect listed species or critical habitat and that formal consultation under Section 7 is not required. The NRC respectfully requests the Fish and Wildlife Service's concurrence with this determination. Please provide your concurrence, or any comments or information that you may have regarding the NRC's Section 7 determination for this matter to the U.S. Nuclear Regulatory Commission, Document Control Desk, ATTN: Steve Ruffin, Mail Stop TWFN 4E-04, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If you have any questions, please contact Mr. Richard Baum of my staff by telephone at 301-415-0018 or by e-mail at richard.baum@nrc.gov. Thank you for your assistance.

Sincerely,

/RA/

Steve Ruffin, Acting Chief
Spent Fuel Licensing Branch
Division of Spent Fuel Management
Office of Nuclear Material Safety
and Safeguards

Docket No.: 72-12
CAC No.: L24828

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Consultation Letter to FWS.docx

ADAMS P8 Accession No.: ML16144A785

OFC	DSFM		DSFM		DSFM					
NAME	RBaum		WWheatley		SRuffin					
DATE	05/02/16		05/10/16		05/20/16					

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