



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

October 19, 2016

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 OYSTER CREEK  
INDEPENDENT SPENT FUEL STORAGE INSTALLATION  
DECOMMISSIONING FUNDING PLAN

Dear Mr. Miller:

By letters dated December 17, 2012, and March 31, 2015, Exelon Generation Company, LLC (EGC) submitted decommissioning funding plans (DFP) for the Oyster Creek Independent Spent Fuel Storage Installation (ISFSI) for the U.S. Nuclear Regulatory Commission's (NRC) review and approval. The ISFSI is part of the Oyster Creek facility located in New Jersey. 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 EGC. Specifically, the NRC must determine whether EGC DFP contains the information required by 10 CFR 72.30(b) and 10 CFR 72.30(c) Tri-Annual Update and whether EGC has provided reasonable assurance that funds will be available to decommission the ISFSI.

The EGC 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 ML12353A488 for the 2012 submission and ML15090A537 for the 2015 submission.

The NRC approval of EGC 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 Oyster Creek site. Any future NRC approval of site-disturbing remediation activities conducted by EGC 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: John McKirgan, Mail Stop TWFN 4B-34, 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](mailto:richard.baum@nrc.gov). Thank you for your assistance.

Sincerely,

**/RA/**

John McKirgan, Chief  
Spent Fuel Licensing Branch  
Division of Spent Fuel Management  
Office of Nuclear Material Safety  
and Safeguards

Docket No.: 72-15  
CAC No.: L24794

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Consultation Letter to FWS.docx

**ADAMS P8 Accession No.: ML16293A885**

<b>OFC</b>	DSFM		DSFM		DSFM					
<b>NAME</b>	RBaum		WWheatley		JMcKirgan					
<b>DATE</b>	9/21/16		10/4/16		10/19/16					

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