

Environmental Review for Subsequent License Renewal

Category 2 Public Meeting

September 19, 2016

1:00 pm – 3:30 pm



Environmental Review for Subsequent License Renewal

On May 19, 2016 NRC held a Category 2 public meeting with representatives of the Nuclear Energy Institute (NEI) License Renewal Environmental Task Force.

NRC and NEI each presented a list of items for optimizing the effectiveness of the environmental reviews for power reactor subsequent license renewals.

NRC and NEI agreed to review the items on the lists, determine those items that should be discussed further, and hold a future meeting on those items.

Conducting More Efficient Endangered Species Act (ESA) Section 7 Consultations

NRC Endangered Species Act Section 7 Contacts:

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ESA Section 7 Consultation for Subsequent License Renewal

The NRC's review of an SLR application may require section 7 consultation with the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), or both (collectively, the Services).

The outcome of an SLR ESA section 7 consultation may differ from prior consultations for a given plant due to:

- New species listings or critical habitat designations
- Shifts or expansions in listed species' ranges
- New information on listed species

ESA Section 7 Challenges

Prolonged consultations may affect NRC's timeline for making licensing decisions.

NRC staff need sufficient information to develop Biological Assessments (BAs) with well-supported and species-specific effect determinations.

The Services have ultimate discretion in determining whether the data NRC provides in its BAs form a sufficient basis for the Services':

- concurrence with NRC effect determinations of “not likely to adversely affect” (informal consultation) or
- formulation of a biological opinion (formal consultation).

Best Practices for Future ESA Section 7 Consultations

Based on a review of nearly 100 section 7 consultations for license renewal and other licensing actions, the NRC staff has identified 4 actions to increase the efficiency of future consultations:

1. Developing an SLR ESA section 7 consultation workshop
2. Engaging early with FWS and/or NMFS
3. Updating biological surveys
4. Designating NRC and applicant points of contact

Developing an SLR ESA Section 7 Consultation Workshop

Challenge:

Ensure a consistent, industry-wide understanding of the ESA section 7 consultation process and the roles and responsibilities of the NRC, the Services, and applicants.

NRC Proposed Actions:

Develop and host a workshop that will address the following:

- Overview of the ESA section 7 consultation process
- Role of NRC, the Services, and applicants
- Similarities and differences between National Environmental Policy Act (NEPA) and ESA analyses and requirements
- NRC lessons learned from previous section 7 consultations
- Actions to increase efficiency and avoid delays in future section 7 consultations

Engaging Early with FWS and/or NMFS

Challenges:

Applicants cannot themselves fulfill ESA section 7 requirements because ESA section 7 consultation is between the Federal agency and the Services.

NRC staff cannot initiate section 7 consultation until the NRC accepts an SLR application.

NRC Actions:

Invite FWS and NMFS representatives to site audits.

Issue BAs prior to NEPA documents on a case-by-case basis.

Proposed Applicant Actions:

Engage the Services during the pre-application phase via letter, phone, and/or in-person meetings.

Discuss the Services' anticipated information needs, such as new or updated biological surveys, prior to SLR application submittal

Updating Biological Surveys

Challenges:

The Services have ultimate discretion in determining whether NRC has provided sufficient data to support section 7 consultation.

The Services may request applicants to conduct biological surveys to document the presence/absence of ESA-listed species.

Proposed Applicant Actions:

Consider conducting recent surveys* for ESA species.

Positive examples of sufficient information for the Services' needs:

- **Sequoyah:** Applicant-maintained natural heritage database
- **Fermi:** Applicant-initiated survey to assess the potential occurrence of proposed species for COL application
- **Braidwood:** Use of an already-planned survey to satisfy FWS's information needs

**completed within 5 years or less before SLR application submittal*

Designating NRC and Applicant Points of Contact

Challenges:

ESA section 7 consultation is a complex process that requires expert-level technical and regulatory knowledge.

The Services may request additional information during the section 7 consultation process to support their conclusions.

NRC and Applicant Actions:

Designate appropriately qualified points of contact to assure that NRC and the applicant are engaged in the consultation process and can expediently respond to information requests from the Services.

NRC Actions:

NRR assigns one of its biologists (Briana Grange or Michelle Moser) as lead for each section 7 consultation.

Proposed Applicant Actions:

Assign a knowledgeable point of contact for each consultation.

Anticipate periodic interface with the NRC's lead biologist until consultation is concluded.

Expectations for “Incorporation by Reference” in Environmental Reports

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IBR Regulatory Requirements

NRC Regulations: 10 CFR 51.53 and Appendix A to Subpart A of Part 51 allow for the incorporation by reference (IBR) of any information contained in a prior environmental report or supplement including information in a final environmental document previously prepared by the NRC staff.

Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the license renewal stage; NRC staff-prepared final generic environmental impact statements; and environmental assessments and records of decisions prepared in connection with the construction permit, operating license, early site permit, combined license and any license amendment for that facility.

The techniques of incorporation by reference described in 40 CFR 1502.21 of CEQ's NEPA regulations may be used as appropriate to aid in the presentation of issues, eliminate repetition or reduce the size of an environmental impact statement.

IBR Regulatory Requirements

Appendix A to Subpart A of Part 51, Footnote 1 –
Incorporation by reference.

40 CFR 1502.21 states:

"Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference."

IBR in Environmental Reports

Incorporation of more information by reference would likely improve the efficiency of LR environmental reviews.

NRC Guidance – when incorporating information by reference:

- Provide a brief summary of the relevant information
- Identify the chapter, section (and subsection, if necessary) of the incorporated reference information

Pre-application Discussions with Applicant on Environmental Topics

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Pre-application Discussions

Would pre-application discussions with the applicant about new site-specific information and other information needs improve the efficiency of LR environmental reviews?

Pre-application discussions could include the following topics:

- Latest environmental survey information (e.g., fish count data, cultural resources, etc.)
- Projected consultations with environmental agencies
- Recent changes in environmental conditions at the power plant site (e.g., unplanned leaks, spills, etc.)

Replacement Power Alternatives

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Replacement Power Alternatives Background

“...the environmental review will include a characterization of alternative energy sources as being the alternatives to license renewal and not merely the consequences of the no-action alternative...” (61 FR 28472)

“The test of reasonableness focuses on an analysis of whether the environmental impacts anticipated for continued operation during the term of the renewed license reasonably compare with the impacts that are expected from the set of alternatives considered for meeting generating requirements.” (61 FR 28473)

“The NRC has no authority or regulatory control over the ultimate selection of future energy alternatives.” (61 FR 28473)

Replacement Power Alternatives

Applicability of utility integrated resource plans (IRPs) or regional transmission organization planning documents in determining replacement power alternatives.

Focused evaluation of energy portfolio trends and technologies that have changed or were not previously assessed in license renewal environmental reviews.