EDWARD J. MARKEY OF MASSACHUSETTS
RANKING DEMOCRATIC MEMBER

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

February 27, 2012

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko:

I am writing to request that the Nuclear Regulatory Commission (NRC) not re-license the Pilgrim Nuclear Power Station (PNPS) in Plymouth, Massachusetts until all legal requirements stipulated by the Endangered Species Act (ESA) have been met. Specifically, I wish to draw your attention to the fact that two threatened species, the Atlantic sturgeon and the river herring, were not considered in NRC's 2007 biological assessment, the document that disclosed which threatened or endangered species, if any, are likely to be affected if PNPS is re-licensed. The NRC is legally obligated to consider these species before granting the license extension for PNPS. It is also my understanding that the National Marine Fisheries Service (NMFS) has not yet formally responded to the NRC's biological assessment: NMFS must either issue a written concurrence with NRC or write a biological opinion that sets forth its own proposal for the protection of any endangered or threatened species that could be impacted by the license extension for PNPS. NMFS must take action prior to the issuance of the PNPS license extension under the requirements of the ESA.[1]

Under the Atomic Energy Act and NRC regulations, commercial power reactor licenses are limited to 40 years, but may be renewed for another 20 years. Before the NRC can re-license a plant, it must complete a General Environmental Impact Statement that includes a biological assessment of potential effects on threatened or endangered species. As an initial step, the NRC is encouraged to inquire with NMFS as to whether any threatened or endangered species may be present in the area of the proposed action, and what effects the proposed action could have on those species. Importantly, NMFS considers "candidate species" – those species considered for possible addition to the List of Endangered and Threatened Species – when making natural resource decisions,[2] so the NRC should also consider candidate species when formulating its biological assessment. Under the ESA, NMFS must either issue a written concurrence with NRC's biological assessment or issue its own biological opinion that addresses whether the proposed action would jeopardize the species or adversely modify critical habitat.[3] In cases

[1] 16 U.S.C. § 1536(a)(2); 16 U.S.C. § 1536(b)
[2] http://www.nmfs.noaa.gov/pr/pdfs/laws/esa_section7_handbook.pdf
[3] 16 U.S.C. § 1536(a)(2); 16 U.S.C. § 1536(b)

where the biological opinion finds that there would be adverse impacts, the action may not proceed unless the NMFS suggests ways to avoid or mitigate those impacts.[4]

The current PNPS license expires on June 8, 2012, and Entergy Nuclear Operations, Inc. has requested permission to continue operating the plant for another 20 years. In 2007, the NRC issued a biological assessment for PNPS re-licensing in which it concluded that "continued operation of PNPS for an additional 20 years would not have any adverse impact on any threatened or endangered marine aquatic species."[5] However, on February 6, 2012, NMFS declared that the Gulf of Maine distinct population segment of Atlantic sturgeon (*Acipenser oxyrinchus desotoi*) is "threatened" under the ESA.[6] In addition, two species of river herring (*Alosa pseudoharengus* and *Alosa aestivalis*) are currently candidates for listing.[7] There is reason to believe that these species could be impacted by PNPS's operations, as they are known to occur in the region. Since the NRC's biological assessment does not consider Atlantic sturgeon or river herring, it is incomplete and must be revised – and NMFS must issue a written concurrence or its own biological opinion – before PNPS can be re-licensed.

So that I can better understand the process by which the NRC considers endangered species during its re-licensing process, I ask that you respond to the following questions and requests for information no later than March 23, 2012:

1) Please outline the steps (including a timeline for each step) the NRC is taking to investigate and disclose the potential impacts of PNPS re-licensing on Atlantic sturgeon and river herring and revise its biological assessment.

2) Please provide copies of any written correspondence (including but not limited to emails) between the NRC and NMFS regarding, a) which threatened and endangered species could be affected by PNPS re-licensing, and b) how PNPS re-licensing is expected to affect these threatened or endangered species.

3) Is the NRC committed to concluding this process prior to the issuance of the license extension for PNPS?

4) Please provide a description of the process that NRC uses to decide whether an endangered or threatened species will be adversely affected by a proposed action, including but not limited to a description of: a) the manner in which the NRC determines the geographic extent of impacts for a proposed action, b) the manner in which the NRC determines possible impacts on threatened and endangered species, and c) the time it typically takes to complete an assessment for threatened and endangered species.

5) For each nuclear reactor for which a license extension was granted in the past ten years, please provide a copy of either, a) NMFS written concurrence with NRC's biological

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[4] 16 U.S.C. § 1536(b)(3)(A)
[5] http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement29/v2/sr1437s29v2.pdf, page E-73
[6] http://www.nmfs.noaa.gov/pr/pdfs/species/atlanticsturgeon_gulfofmaine_dps.pdf
[7] http://www.nero.noaa.gov/nero/regs/frdoc/11/1190dayindingriverherring.pdf

assessment or b) NMFS biological opinion that was used to form the basis of NRC's ESA compliance for the license extension. If neither document was prepared, please further explain the basis for concluding that the license extension complied with the legal obligations of the ESA.

Thank you for your assistance and cooperation in responding to this request. Should you have any questions about this request, please have your staff contact Jillian Cohen or Michal Freedhoff of the House Committee on Natural Resources Democratic Staff at 202-226-6241.

Sincerely,

Edward J. Markey

Edward J. Markey
Ranking Democrat
House Committee on Natural Resources