

\*Jones River Watershed Association\*Pilgrim Watch\*

April 4, 2012

By Express Mail

Bruce K. Carlisle  
Director  
Massachusetts Office of Coastal  
Zone Management  
251 Causeway Street  
Suite 800  
Boston MA 02114

Re: MCZM July 11, 2006 Consistency Certification for Entergy's Nuclear  
Pilgrim Nuclear Power Station, Plymouth MA

Dear Mr. Carlisle,

We are writing to request that your office immediately suspend its July 11, 2006 Coastal Zone Management Act (CZMA) Consistency Certification for the Nuclear Regulatory Commission (NRC) relicensing of the Entergy Nuclear Generation Company and Entergy Nuclear Operations Inc. (Entergy) Pilgrim Nuclear Power Station (PNPS). Entergy has inaccurately certified to the NRC that relicensing will be consistent with the MCZM program. The facts show that continued operation of PNPS as proposed by Entergy will be inconsistent with enforceable state coastal zone management policies, as codified at 301 CMR §§ 20.00 to 26.00 (MCZM program), and therefore the 2006 consistency determination is invalid. Time is of the essence as Entergy's current NRC operating permit expires June 8, 2012 and relicensing based on MCZM's 2006 consistency determination is likely to occur before May 29, 2012.

We further request that your office notify Entergy that a supplemental coordination is required for the relicensing application. See, 10 C.F.R. § 930.66 and CZMA, 16 U.S.C.S. §§ 1451 *et seq.*

Entergy's NRC application states that during the relicensing period (2012 to 2032) it plans to continue its 40-year use of its once-through cooling water system. It is documented that this system has had destructive impacts on Cape Cod Bay coastal zone resources and uses due to impingement, entrainment, thermal discharges, and discharges of other pollutants including chlorine and biocide residuals. Entergy's 2006 Coastal Zone Management Consistency Certification (CZM Report) certified that operations during relicensing will be consistent with MCZM policies. Some of these statements were not true at the time they were made, and others are no longer true.

Entergy's continued operation of the Pilgrim station for the relicensing period will violate at least MCZM Water Quality Policy #1, 301 CMR 21.98(3), and Habitat Policies, #1-2, 301 CMR 21.98(4), in the following ways:<sup>1</sup>

1. Noncompliance with its Clean Water Act NPDES permit: Since 1999, Entergy has failed to obtain state and federal approval of its Biological Monitoring plans, in violation of its NPDES permit, Part A.8, and has failed to conduct the Biological Monitoring it did do, under the oversight of the Pilgrim Advisory Technical Committee, in violation of Part 8.d.

2. Entergy's NPDES permit expired in 1996, but has been administratively extended since that time. EPA and MassDEP do not have the capacity to issue a new NPDES permit before June 8, 2012, the NRC relicensing deadline

3. Entergy's last § 316 demonstration project was provided to U.S EPA in 1977, Additional information for a new review was submitted to EPA by ENSR in 2000 but the review was never completed. MCZM staff comments on the 2000 ENSR report forcefully stated that this submittal failed to demonstrate § 316 and MCZM standards were met.

4. Since 2006, Entergy has annually violated the state's moratorium on the taking of river herring, 322 CMR 6.17(3), and river herring is now a candidate species under the federal Endangered Species Act. 76 Fed. Reg. 67652 (11/2/2011) River herring are the third most impinged species at PNPS.

5. Entergy's CZM Report stated there would be "no effects" on endangered and threatened species. On March 26, 2012, the U.S. Fish and Wildlife Service informed the NRC Staff it does not agree that there will be "no effects" on Cape Cod Bay endangered and threatened species from PNPS operations.

6. MCZM's 2006 certification fails to address or acknowledge impacts to marine mammals such as whales, porpoise, and dolphin, which are known to be present in the PNPS area and in Cape Cod Bay, and which are protected by the federal Marine Mammal Protection Act, 16 U.S.C.S. §§ 1362 (13), 1372 (a).

7. Impacts to species listed under the Massachusetts Endangered Species Act were ignored or inadequately assessed, including impacts to hawksbill turtle, humpback whale, roseate tern, and arctic tern.

8. New discharges of radioactive tritium to groundwater at the Pilgrim station are being documented, and this groundwater is reported to flow toward Cape Cod Bay. It is unknown for how long this discharge has been occurring. MCZM has not determined whether discharges of this radioactive material, combined with PNPS point source discharges of radioactive wastewater to Cape Cod Bay, is consistent with MCZM policies.

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<sup>1</sup> This is not a comprehensive list of all the ways in which continued operations will violate MCZM policies, but only examples. More information is available upon request.

9. An Essential Fish Habitat consultation with NMFS as required by Magnuson-Stevens Fishery Conservation and Management Act has not been completed and will not be done prior to June 8, 2012, the relicensing deadline. Instead, the NRC has postponed the EFH consultation indefinitely to the NPDES permit renewal process. Therefore the MCZM's consistency review was done without the benefit of the results of this consultation.

10. Entergy has not demonstrated compliance with MassDEP's 2006 cooling water intake structure water quality standards, upheld by the Massachusetts Supreme Judicial Court in April 2011, following a legal challenge by Entergy. Entergy Nuclear Generation Company v. Department of Environmental Protection, 459 Mass. 319 (2011). These regulations are designed, *inter alia*, to minimize impacts on aquatic life through entrainment, impingement and thermal discharge. See, 314 CMR § 4.05(b)(2)(d), 4.05(3)(c)(2)(d), 4.05(4)(a)(2)(d), 4.05(4)(b)(2)(d), 4.05(4)(c)(2)(d).

Entergy should have provided all of the information listed above to MCZM, pursuant to 16 U.S.C.S. 1456(c)(3)(A), which requires an applicant to submit "all material relevant to a State's management program..." 15 CFR 930.58; 301 CMR 21.07(3). See, e.g. Conservation Law Foundation v. Lujan 560 F.Supp. 561 (D.Mass. 1983).

Under 15 C.F.R. § 930.66(a), applicants for federal consistency review "shall further coordinate with the State agency and prepare a supplemental consistency certification if the proposed activity will affect any coast use or resource substantially different than originally described." Significant new circumstances or information and substantial changes both warrant such supplemental review. *Id.* § 930.66(a)(1)-(3). The information we have indicated above shows a supplemental coordination is required. Facts, documents, and data establishing this information were obtained from agency files.

About two weeks ago we requested a meeting with your staff to discuss this, and we remain willing to do so, in order to reach a mutually agreeable resolution of the concerns raised here. We are ready and able to provide you with full documentation of these facts and others that show that NRC relicensing of PNPS will violate MCZM policies.

In the meantime, we reiterate our request that you immediately suspend the 2006 Consistency Certification and so notify the NRC, and inform Entergy that supplemental coordination is needed under 15 C.F.R. § 930.66.

Thank you for consideration of our information. Please contact Pine duBois, Executive Director, Jones River Watershed Association, 781-585-2322 or pine@jonesriver.org should you have any questions or concerns.

Very truly yours,

Jones River Watershed Association, Inc.

By:

A handwritten signature in black ink, appearing to read "Pine duBois". The signature is written in a cursive style with a horizontal line above the name.

Pine duBois, Executive Director

Margaret E. Sheehan, Esq., Volunteer

Anne Bingham, Esq.

Cc: Representative Edward Markey  
The Hon. Duval Patrick, Governor  
Senator Therese Murray  
Provincetown Center for Coastal Studies  
James McCaffrey, Director, Sierra Club, Massachusetts  
Susan M. Reid, Conservation Law Foundation  
Curt Spaulding, Regional Administrator, USEPA Region 1  
David Webster, US EPA  
Kenneth Kimmel, Commissioner, MassDEP  
Beth Card, MassDEP  
State Senators and Representatives  
Whale and Dolphin Conservation Society  
Pilgrim Coalition  
Herring Alliance  
Cape Cod Hook Fisherman's Association  
Trout Unlimited, Massachusetts Chapter  
Massachusetts Rivers Alliance  
Cape Cod Commission