

Why Updating the NRC's Mission Isn't the Implementation Nightmare Some Think



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Policymakers in Congress are currently considering legislation to refocus the mission of the Nuclear Regulatory Commission (NRC) and emphasize nuclear energy's potential to improve "the general welfare". While many lawmakers believe that emphasizing "general welfare"—a term originating from the Atomic Energy Act of 1954—would position the NRC to take on a broader role in supporting clean energy deployment and public health, other policymakers and external stakeholders are concerned this will make it harder for the agency to fulfill its *many* responsibilities.

Some have raised serious doubts around this effort, suggesting that 1) improving “general welfare” is too vague of a goal; 2) expanding the NRC’s mission may invite further litigation from groups already suing the NRC; and 3) changing the mission could negatively impact state, tribal, and public perception of the NRC.

This memo addresses these concerns by contextualizing the formation of the NRC’s statutory mission and misconceptions associated with updating the mission.

With new direction, Congress could clarify the intent behind the Commission’s governing statutes and set the NRC on a path to evolve as a regulator.

Background

The NRC’s Current Mission

“The NRC licenses and regulates the Nation's civilian use of radioactive materials, to provide reasonable assurance of adequate protection of public health and safety, to promote the common defense and security, and to protect the environment”.¹

The NRC is subject to two governing pieces of legislation: the Atomic Energy Act of 1954 (AEA) and the Energy Reorganization Act of 1974 (ERA). Each landmark bill has been amended multiple times and includes broad authorities granted to the Commission to carry out its responsibilities. However, neither law explicitly defines the NRC’s mission—leaving ambiguity around the NRC’s role. While the NRC has continued to carefully navigate its duties, a clearer definition of its mission is needed.

Popular Misconceptions on Improving the NRC’s Mission

We’ve long advocated for the Commission to modernize the NRC without compromising public safety and environmental protection. Although the NRC’s mission does not carry direct regulatory weight, it emphasizes the Commission’s internal and external priorities and, if appropriately embraced, could establish the culture of forward-thinking that the Commission needs for the road ahead. Despite this, there are several misconceptions around updating the NRC’s mission. We’ve collected three of the biggest misconceptions and broken them down below:

Misconception #1: There's little value in emphasizing "the general welfare" as noted in the AEA, because it has no definition.

The AEA is clear that the general welfare, standards of living, and strengthening free competition in private enterprise are interconnected but independent concepts. However, the term is not explicitly defined in either the AEA or ERA. So, what is "the general welfare?"

At the highest level, "general welfare" encompasses the continuous goals of the public in all areas that are not individually identified by statute. The term refers to actions that make life better for everyday Americans—everything from more macro-level benefits like fighting climate change and lowering household costs by transitioning to clean energy; to more localized benefits like working with state, local, and tribal communities to make the regulatory process more inclusive. But the lack of an explicit statutory definition for general welfare does not mean that there isn't value in updating the NRC's mission to emphasize it. Here's why this is a misconception:

- **Congress can easily define the term.** As with any legislation, a new bill that would direct the NRC to update its mission could also provide statutory clarity for the term. Such a definition should recognize the NRC's role in fostering improvement in the long-term health outcomes of the public. This term would then emphasize the NRC's duty not just to protect public health, but to uplift it where possible.
- **Defining the term would strengthen implementation of the existing language in the AEA and ERA.** The legal framework for the NRC to focus on general welfare already exists— derived from the AEA and ERA—but it has never been put into practice. By updating the NRC's mission to explicitly highlight the importance of general welfare, policymakers can align the NRC with the original intentions laid out by Congress.

Misconception #2: Updating the NRC's mission would open the Commission to lawsuits from the nuclear energy industry and other stakeholders.

Some stakeholders are concerned that by including improvement of the general welfare in the NRC's mission, an applicant could sue the NRC if an application for a new project was denied or not accepted. The assumption is that because a new facility would provide jobs, tax base, and clean energy, a change in statute could expose the Commission to claims that it's dismissing its responsibilities to the general welfare by rejecting a project for other reasons. It's a fair concern at face value, but here's why it's unfounded:

- **The nuclear energy industry is responsible for just 9% of cases brought against the NRC in the past decade.** Industry groups brought just one more case against the NRC than Tribal stakeholders, who've filed the least litigation. Ultimately, the industry is not particularly litigious when it comes to NRC decisions.
- **Opposition groups are the largest initiators of lawsuits toward the NRC.** Eighty-five percent of regulatory lawsuits brought against the NRC in the past 10 years have been brought by anti-nuclear opposition groups and states, and the overwhelming majority of these cases are unsuccessful. ² These groups are unlikely to initiate lawsuits on behalf of the nuclear industry in the case of a licensing dispute.
- **In only one case was the NRC sued regarding its regulatory authority—and courts dismissed the case.** Even in this instance, the challenge was based on jurisdiction of regulatory authority as relevant to a pending decommissioning action, rather than a general challenge to the Commission's statutory authority. ³

Ultimately, the NRC has a strong track record of fending off legal attacks. The NRC is afforded substantial deference by the courts in cases where the agency's decision is based upon "evaluation of complex scientific data within [the agency's] technical expertise." ⁴ This extensive case law would be exceptionally difficult for a state, applicant, or opposition group to override.

Misconception #3: Updating the NRC's mission could jeopardize the perception of NRC with State and Tribal stakeholders.

Perception is crucial to the NRC's effectiveness and is a good barometer for public understanding of the Commission's work and responsibilities. The general public remains most concerned by the safety and environmental impact of nuclear, and, as the industry works to assuage these concerns, a change in the NRC's mission could create the false impression that the Commission is less committed to maintaining safety and minimizing environmental damage. The NRC has a strong reputation internationally as a safety regulator and many countries look toward the Commission to license new technology. But the Commission's relationships with domestic stakeholders have been rockier. A [2018 NRC Office of Inspector General report](#) found several opportunities for the NRC to improve its relationship with Tribal stakeholders, and any change to the mission must be accompanied by robust public engagement efforts to expand public education of the regulatory process and improved NRC mission.

Let's unpack the misconception:

- **Spent fuel activities draw the largest share of public attention and support for new nuclear energy has consistently grown.** A third of all cases brought against the NRC in the past decade have been related to spent fuel activities. In the past decade, only three cases were initiated by states regarding licensing actions; none were initiated by tribal groups.⁵ Further, a majority of Americans support more nuclear power plants in the country exactly because they recognize its value to society. Articulating the value of nuclear energy in the mission affirms the public's priorities, rather than undermines it.
- **Emphasizing the “general welfare” could bolster confidence.** If Congress acts to define “the general welfare” in statute, it could encompass efforts that would improve long-term public health outcomes, without being inimical to the NRC's primary responsibility for safety. In fact, emphasizing the general welfare in the mission could increase confidence in the agency as such definition would include issues such as spent fuel and storage that are major priorities for state and tribal stakeholders.

Conclusion

The NRC's mission serves as the foundation for the agency's duties and affirms the culture of the organization as a regulatory partner. Incorporating the general welfare into the mission would send a long-term ideological signal to Commission staff, potential hires, and the broader public that could help recruitment, training, and stakeholder engagement. This change could help the NRC embrace its role as a critical partner in the energy transition and help set the tone for countries looking to adopt new nuclear technology as part of their own energy strategies.

Emphasizing the general welfare is an opportunity for Congress and the NRC. If Congress clarifies the definition in the AEA and directs the Commission to update its mission, there will be clarity in both meaning and implementation of the new statement.

The NRC is very effective in defending against legal attacks. In the past decade, two-thirds of all cases brought against the NRC were resolved in the Commission's favor. In 9 out of 33 cases, the courts ruled in favor of the NRC. In seven more instances, the courts granted the NRC's motion to dismiss the case. In another six instances, the courts denied the cases against the NRC outright. Six more cases were withdrawn, closed, or are currently pending. This case law would protect the NRC from new challenges.

Updating the mission is unlikely to negatively impact public perception of the NRC's performance. The NRC is working on efforts to improve its stakeholder engagement process and Congress is also considering pathways to expand the NRC's public education. Efforts at the Commission should naturally include public education on the NRC's mission and how such priorities factor into the Commission's activities.

Modernizing the NRC's mission would precipitate a major cultural shift at the Commission that benefits several activities. With a clear and appropriate emphasis on the general welfare, the NRC can be positioned to navigate a new and diverse civil nuclear energy landscape unlike anything we've seen before.

For more details on the recent case history of the NRC, [see the Appendix.](#)

TOPICS

NUCLEAR 216

ENDNOTES

1. “About NRC”. <https://www.nrc.gov/about-nrc.html>. Accessed October 16, 2023.
2. Just two cases in this time-period were ruled against the NRC. In one case, the licensee successfully challenged the NRC for inappropriately charging \$2M in fees that were not chargeable to the licensee. The other case was the Fifth Circuit decision ruling that the NRC does not have the ability to issue a license for an away-from-reactor spent fuel storage facility.
3. Under the NRC Agreement States Program, the Commission delegates regulatory authority for certain activities and licenses to the participating states. In this case, an NRC licensee sued in an attempt to maintain a pathway for compliance with the NRC decommissioning rules, rather than contend with an alternate pathway at the agreement state level.
4. *BCCA Appeal Grp. v. U.S. E.P.A.*, 355 F.3d 817, 824 (5th Cir. 2003) (citing *Balt. Gas & Elec. Co.*, 462 U.S. at 103); see also *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 843 (1984) (holding that a bedrock principle of statutory interpretation is that an agency’s reasonably permissible interpretation, expressed with respect to a subject matter within its authority, is entitled to deference).
5. Each of these cases were denied/dismissed by the courts.