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ON
ENVIRONMENTAL REVIEW AND PERMITTING PROCESS
BEFORE THE

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY
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Chair and Members of the Subcommittee, I am Chris Oliver, Assistant Administrator for Fisheries at the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce. Thank you for inviting me to testify today on environmental review and permitting processes. NOAA Fisheries is responsible for the stewardship of the nation's ocean resources and their habitat. We provide vital services for the nation: productive and sustainable fisheries, safe sources of seafood, the recovery and conservation of protected resources, and healthy ecosystems—all backed by sound science and an ecosystem-based approach to management.

Many migratory fish, such as Pacific and Atlantic salmon, American shad, river herring, American eel, and Atlantic and shortnose sturgeon need access to both the ocean and freshwater habitat to complete their life cycles. When barriers such as hydropower dams block their upstream and downstream passage, migratory fish cannot reproduce and maintain or grow their populations. NOAA Fisheries has authorities under the Federal Power Act (FPA) and Endangered Species Act (ESA) to protect and restore migratory fish and their habitats for new or

relicensed Federal Energy Regulatory Commission (FERC) hydropower facilities. This work supports the sustainability of economically important commercial and recreational fisheries and aids the survival and recovery of federally threatened and endangered fish. With more than 1,000 hydropower dams licensed by FERC, NOAA Fisheries is busy keeping up with the demand to upgrade the nation's hydropower infrastructure.

Overview of Permitting Processes/Timelines and Streamlining Efforts

At present, a typical FERC relicensing, for a license which lasts 30-50 years, takes about 5 years to complete under FERC's default Integrated Licensing Process (ILP). The ILP is intended to streamline licensing by providing a predictable, efficient, and timely process that continues to ensure natural resource protections. The ILP establishes time frames to complete process steps for all stakeholders, including FERC and NOAA.

Under the ILP, the applicant must start the relicensing process with FERC five to five and a half years before the current license is set to expire. The relicensing process is divided into two distinct parts: 1) pre-license application activity and 2) post-license application filing activity. Pre-license application activity encompasses the first three to three and a half years of the process and is highly focused on project scoping and scientific studies. Post-license application filing activity encompasses the final two years of the process and is highly focused on fulfilling National Environmental Policy Act (NEPA) requirements, parties' compliance with license terms and conditions (including NOAA Fisheries' mandatory fish passage measures and

recommended habitat improvements), ESA consultation, and state water quality certification (under the Clean Water Act).

As with other federal action agencies, FERC has a responsibility under the ESA, in consultation with NOAA Fisheries and/or the Fish and Wildlife Service, to ensure that their actions are not likely to jeopardize the existence of an endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. NOAA Fisheries' consultation work involves a great deal of collaboration with federal action agencies, including FERC, to ensure NOAA Fisheries understands the scope and scale of their actions in order to effectively address the impacts and identify appropriate mitigation measures. The operation of dams can have significant effects on migratory fish stocks, including those that are listed as threatened or endangered under the ESA. Therefore, NOAA Fisheries typically issues biological opinions for FERC actions on hydropower projects. To the extent FERC incorporates NOAA Fisheries' mandatory fish passage measures and recommended habitat improvements under the FPA into their proposed action, NOAA Fisheries evaluates these measures when considering the effects of FERC's action on endangered or threatened species during consultations required by section 7(a)(2) of the ESA.

Consistent with the principles of E.O. 13807, NOAA Fisheries' preferred approach for streamlining ESA consultation in FERC proceedings is to front-load the ESA process into FERC's licensing steps. Use of the pre-filing process improves the quality of hydropower applications filed with the Commission, accelerates the environmental review process, assists the participants in addressing the resource impacts of the applicant's proposal and evaluating

reasonable alternatives pursuant to NEPA, and allows participants to reach a negotiated settlement on all issues raised by a hydropower license application. Early resolution of issues can provide for earlier implementation of recommended environmental measures and allow the licensee to plan for anticipated license conditions. Early resolution of issues often results in less time and expense for applicants. Because the new license will contain measures to protect NOAA Fisheries' trust resources and mitigate impacts, NOAA Fisheries has a strong interest in avoiding unnecessary delays in the licensing process.

In general, NOAA Fisheries processes ESA actions through three types of consultations: informal consultations, formal consultations, and programmatic consultations covering thousands of projects at one time. NOAA Fisheries completes 1,200-1,500 individual informal consultations per year and approximately 315 formal consultations. In addition, NOAA Fisheries addresses approximately 22,000 actions through over 100 programmatic consultations. The approximate average time to review actions covered by programmatic consultations is 10 days. For informal consultations, 36% are currently completed within 30 days and 61% are completed within 90 days. There are approximately 46 informal consultations that have been open for over 200 days. The average time to complete a formal consultation is 211 days.

As part of the Department of Commerce's review of agency actions pursuant to E.O. 13783, NOAA Fisheries has committed to improving the processing time for informal ESA consultations by 25% on average nationwide. We chose to focus on the informal consultation

process leading to the development of letters of concurrence[1] because about three-quarters of NOAA Fisheries' consultation work is completed through this process. In August 2017, we implemented an expedited approach to letters of concurrence. The purpose of this approach is to be able to agree with the federal action agency's conclusion more quickly when they provide sufficient information to do so. For calendar year 2017, NOAA's ESA section 7 informal consultations took an average of 53 days from request to completion of the letter of concurrence. From 2013-2016, our ESA section 7 informal consultations took an average of 122 days from request to completion. This is an overall improvement of more than 50% nationally.[2] In addition, we are also focusing on increasing the use of programmatic or batched consultations, increased tracking, and workforce management to improve timeliness. We are also exploring improvements to our formal consultation process which we intend to implement over the coming year.

Executive Order 13807 and One Federal Decision

Building on our commitment to streamlining our environmental review processes, NOAA is also committed to implementing the provisions of Executive Order 13807 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure) and the One Federal Decision Memorandum of Understanding signed by the Secretary on behalf of the Department of Commerce. Under the One Federal Decision approach established in E.O. 13807, federal agencies with a role in the environmental review and permitting process for a

[1] Letters of concurrence are issued for actions where the effect is determined to be insignificant, discountable, or wholly beneficial on ESA-listed species.
[2] Due to the nature of the ESA section 7 program, future results will vary from quarter to quarter, and year-to-year based on the number, scope, and complexity of the consultation requests we are working on at any one time.

major infrastructure project are directed to develop an environmental review and authorization decision schedule for that project. For each major infrastructure project, agencies will work together to develop a single permitting timetable for the necessary environmental review and authorization decisions, prepare a single environmental impact statement (EIS), sign a single record of decision (ROD), and issue all necessary authorization decisions within 90 days of issuance of the ROD, subject to limited exceptions. E.O. 13807 also sets a goal for agencies to reduce the time to complete environmental reviews and authorization decisions to an agency average of not more than two years from publication of a Notice of Intent (NOI) to prepare an EIS. NOAA is currently in the process of developing a One Federal Decision implementation plan that details specific actions we are planning to take to ensure the success of the policy. These actions include creating a centralized process for monitoring our authorizations and consultations, internal process improvements to reduce permitting timelines, and enhanced coordination with lead and other cooperating agencies.

Non-federal hydropower projects that meet the E.O.'s definition of a major infrastructure project can benefit from the provisions of the One Federal Decision MOU. NOAA serves primarily as a cooperating agency, rather than a lead agency, in environmental review processes for major infrastructure projects. NOAA will work cooperatively with our federal agency partners and project sponsors to ensure that the goals of the MOU, including providing a more predictable, transparent and timely federal review and authorization process, eliminating duplication of effort among agencies, and promoting good environmental, community and economic outcomes, are achieved for eligible hydropower projects.

What's Working?

NOAA has a strong interest in avoiding unnecessary delays in the FERC licensing process. NOAA recognizes the critical importance of our national energy infrastructure and the potential economic and safety implications of delays caused by the environmental review and permitting process. As mentioned above, NOAA's preferred approach is to "front-load" our ESA consultations into FERC's licensing steps, in particular through engagement in the pre-filing consultation process. We have found that our engagement in the pre-filing process improves the quality of hydropower applications filed with FERC, accelerates the environmental review process, assists other participants in addressing resource impacts of the applicant's proposal, and reasonable alternatives pursuant to NEPA, and allows participants to reach a negotiated settlement on all issues raised by a hydropower license application. Early resolution of issues often saves the applicants both time and money in the overall FERC licensing process.

The Clackamas Hydroelectric Project (FERC No. 2195) is one example of many that highlights the benefits of front loading ESA consultations into a FERC license proceeding. Portland General Electric owns and operates five dams and four hydroelectric plants associated with this project that affect more than 100 miles of the Clackamas River in Oregon. A project of this size and scope naturally affects the interests of many stakeholders, including multiple federal and state agencies, local municipalities, tribes, and non-governmental organizations. Each of these parties had objectives that needed to be addressed as part of the FERC license proceeding, potentially setting the stage for a lengthy and combative relicensing process. However, all parties committed early on in the process to resolving issues collaboratively, enabling a

negotiated settlement on the Clackamas Hydroelectric Project that achieved a shared outcome supported by all. NOAA worked with Portland General Electric to include information about the needs of potentially affected ESA-listed salmon and steelhead species (Upper Willamette River Chinook as well as Lower Columbia River spring Chinook, coho, and steelhead) in FERC's pre-filing consultation. NOAA also collaborated with Portland General Electric to identify studies to determine the project's impacts on ESA-listed species as well as the benefits of the settlement's proposed enhancements to fish and wildlife. In total, 33 parties signed the settlement for the Clackamas Hydroelectric Project in March 2006. The settlement included $120 million worth of enhancements for fish and wildlife which have significantly improved fish-passage efficiencies in the system and enhanced the population diversity of the ESA-listed species. The settlement also provided increased regulatory assurances for Portland General Electric. Once the State of Oregon's water certificate was issued for this project in June 2009, NOAA issued a Biological Opinion, and FERC granted a new project license in December of 2010.

Another example of a coordinated and streamlined federal effort is ongoing on the Columbia River, where Douglas and Chelan County Public Utility Districts (PUDs) own and operate three large run-of-river FERC-licensed projects (the Wells, Rocky Reach, and Rock Island hydroelectric projects). In the late 1990s, NOAA listed Upper Columbia River spring-run Chinook salmon and steelhead under the ESA. These listings were followed by more than a decade of litigation relating to the impacts of these projects and other activities on protected Upper Columbia River salmon and steelhead. Despite high tensions in the Upper Columbia River area, NOAA and the Douglass and Chelan PUDs elected to work collaboratively and pursue comprehensive settlements for these projects through three Habitat Conservation Plans

(HCP). These HCPs satisfied the PUD's obligations to protect ESA-listed threatened and endangered fish, protected ecologically and economically important non-listed salmon species, and satisfied the PUD's many other regulatory obligations under the FPA, the Fish and Wildlife Coordination Act, the Pacific Northwest Electric Power Planning and Conservation Act, and Title 77 of the Revised Code of Washington. The HCPs were signed in 2002 by NOAA, FWS, the PUDs, the Washington Department of Fish and Wildlife, the Confederated Tribes and Bands of the Yakama Nation, and the Confederated Tribes of the Colville Reservation. In 2003, NOAA issued three ESA Section 10 Incidental Take Permits to the PUDs for a period of 50 years. Based on the strength of the commitments in these HCPs, when FERC requested formal ESA consultation on the amendment of the project licenses in December 2003, NOAA completed and issued biological opinions in just four months. Although the process to develop the HCPs took years to complete, these plans - the first ever for hydroelectric projects in the United States - resolved substantial issues relating to the protection of both ESA-listed and non-listed salmon and steelhead species, provided regulatory assurances to the projects for a period of 50 years, and streamlined the subsequent amendment of the project licenses. These HCP agreements established over 15 years ago helped usher in a renewed spirit of collaboration in the upper Columbia River basin, and the plans are still being successfully implemented by the signatory parties today.

We also recently worked with FERC on the path forward regarding hydroelectric projects along the Tuolumne River, California. NOAA is reserving its right to file prescriptions for mandatory fish passage under the FPA for the La Grange and Don Pedro projects until December 31, 2025. This reservation of authority aligns with timeframes and conditions in the San Joaquin River

Restoration Settlement Act and facilitates coordination of future fish passage actions for both California Central Valley steelhead and Central Valley spring-run Chinook salmon. NOAA has provided fish passage planning recommendations to FERC that are consistent with our goals for recovery of these two threatened species. When FERC issues a new license for these projects, FERC will decide whether to include NOAA's fish passage planning recommendations.

Potential Upcoming ESA Consultations with FERC and Looking Forward

NOAA is actively working with applicants on hydroelectric licenses for four projects in California: the Lassen Lodge Project (FERC No. 12496) on Upper South Fork Battle Creek; the Anderson Dam Project (FERC No. 5737) on Coyote Creek near Silicon Valley; and the La Grange and Don Pedro Projects (FERC No. 14581 and FERC No. 2299) on the Tuolumne River. We anticipate FERC initiating ESA consultations on each of these projects in the near future. We will use the informal ESA consultation process and the existing steps of FERC's pre-filing consultation process to identify and avoid potential conflicts between each project's operations and the needs of ESA-listed species early in the licensing process. We have already participated in numerous meetings to date concerning each of these projects, and have provided the applicants with information on ESA-listed species in the project areas including: (1) species presence and distribution, as well as the location of critical habitat; (2) the need for surveys or studies to examine the effects of the project on ESA-listed species; and (3) appropriate measures for species protection or enhancement.

NOAA Fisheries remains committed to increasing efficiency and effectiveness of our permitting processes. As discussed, the agency is developing and/or implementing multiple program improvements to support faster processing times and reduce burden on applicants. In addition, NOAA Fisheries recently conducted a Fish Passage Program review where a diverse external panel considered the effectiveness of NOAA's fish passage activities over the past ten years, including those under our Hydropower Program. NOAA Fisheries' fish passage activities are managed by various national and regional offices across the country and work to maintain (or improve) access for migrating fish that need to reach riverine habitats to complete their life cycle. We look forward to receiving the recommendations provided by the panel on potential ways to improve our program effectiveness.

This concludes my testimony. Thank you again for the opportunity to testify before your Subcommittee today. I would be happy to answer any questions that you may have.