

**Testimony of Greg Sheehan, Principal Deputy Director,  
U.S. Fish and Wildlife Service, Department of the Interior  
before the House Committee on Energy and Commerce, Subcommittee on Energy  
on Improving the Hydropower Licensing Process**

**June 7, 2018**

Good morning Chairman Upton, Ranking Member Rush, and Members of the Subcommittee. I am Greg Sheehan, Principal Deputy Director of the U.S. Fish and Wildlife Service (Service). I appreciate the opportunity to testify today on the Service's role in the hydropower licensing process. It is the goal of the Administration to make the licensing process more efficient so hydropower projects get their licenses faster, while achieving the important conservation objectives that are a part of the review process. These objectives—the conservation of fish, wildlife, and habitat—are important to current and future generations of Americans.

The Service is the longest standing federal fish and wildlife conservation agency, tracing its lineage back to 1871. Our primary responsibility is conservation of fish and wildlife resources for the American public. The Service and other bureaus within the Department of the Interior (Department) are stewards of our nation's natural resources and are committed to the responsible development of those resources, furthering our nation's goal of energy independence. Hydropower is an important component of a diverse and sustainable energy portfolio.

The Service's mission is "working with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people." In the licensing of hydropower projects, "working together" includes close and timely coordination with our federal, state and tribal partners; engagement with project applicants; and open communication with affected communities and the public. When Tribal lands are involved, the Service works directly with the Bureau of Indian Affairs for ensuring that there is an adequate record to support conditions and recommendations for licensing.

The Federal Energy Regulatory Commission (FERC) is the lead federal entity in the regulation of non-federal hydroelectric projects, authorizing initial construction of facilities, issuing licenses for operation, and reviewing license renewals every 30 to 50 years. In licensing decisions, the Federal Power Act (FPA), as amended by the Energy Policy Act of 2005, directs FERC to "give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality." The FPA also provides an avenue through which other agencies, such as the Service, engage and provide expertise to the licensing process.

The consideration of fish and wildlife resources, recreational opportunities, and other aspects of environmental quality are valuable to Americans and an important aspect of the licensing renewal process. Energy production and conservation achieved through the licensing of hydroelectric projects is also of great value and a similarly important consideration in the licensing process. The licensing process can be lengthy and there are often delays resulting from the federal and state review for environmental considerations. There are many reasons for such

delays, and some are unavoidable, but we must do better to get licenses renewed more efficiently.

### **Fish and Wildlife Service Role in the Hydropower Licensing Process**

The Service's overall role in the hydropower licensing process is to facilitate the development and approval by FERC of environmentally sound projects. Under the authority of section 10(j) of the FPA, the Service evaluates hydropower license applications and makes recommendations to FERC on measures to mitigate the impacts of project development and operation on fish and wildlife. The FPA, in section 18 of the law, also authorizes the Service to prescribe upstream and downstream fish passage, and those fish passage prescriptions are incorporated into the license by FERC. The Service is engaged in an advisory or consultative role with FERC on nonfederal hydropower projects under a number of other statutory authorities, including the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), and Fish and Wildlife Coordination Act, including coordination with the Bureau of Indian Affairs regarding tribal treaty rights and reservation trust natural resources.

In hydropower license reviews, the Service works with project proponents, FERC, other partner agencies, and non-governmental organizations to help avoid and minimize harm to fish and wildlife, and to offset those impacts that are unavoidable. A large portion of the licensing process is devoted to the study plan phase, which provides an opportunity for the license applicant to perform studies to determine the project's effects on natural resources. The Service engages early in the licensing process to request and guide the license applicant to conduct studies related to our trust resources. Information from these studies is critical in informing and providing the scientific basis for the Service's recommendations.

FERC's licensing processes encourage applicants to come to agreement with stakeholders on proposed conservation measures, resulting in a settlement agreement. The Service, along with other agencies and nonfederal stakeholders, often engage in such settlement negotiations with the applicant. Our collaborative engagement with license applicants facilitates timely development and approval of appropriate study plans.

The hydropower project licensing process provides the Service with a significant opportunity to pursue conservation of the nation's wetlands, waterways, and watersheds and the fish and wildlife populations that they sustain. These opportunities include improving instream flows at existing projects, protecting fish from project-induced injury and mortality, conserving threatened and endangered species, providing fish passage to reconnect fragmented river habitats, and managing project-related riparian, wetland, and upland habitats to maintain healthy fish and wildlife populations for the benefit of the public.

### **Coordination with Partners and the MOU on One Federal Decision**

The Service cannot achieve its conservation goals without our federal, state, and tribal partners. Likewise, the Service has a long tradition of working with these partners to support their management objectives. Many states depend on the Service to exercise its authority to prescribe fishways to further the state's fishery management and restoration targets, as fish passage can be a critical component of maintaining a healthy fishery.

To ensure that this important conservation work does not lead to avoidable delays to the detriment of environmentally sound energy production and conservation, the agencies must maximize their coordination and efficiency.

The Departments of the Interior, Energy and Army are all party to a 2015 Memorandum of Understanding (MOU) for Hydropower, which established the Federal Inland Hydropower Working Group composed of 16 federal entities involved in the regulation, management, or development of hydropower resources in rivers and streams of the United States. The Service is a member of the working group and, in that role, participates in fostering and maintaining the interagency relationships established by the MOU.

Last year, in an effort to streamline complex multi-agency reviews for major infrastructure projects, President Trump signed Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure. This executive order includes a framework to coordinate environmental reviews and authorizations under one lead agency, facilitating improved coordination and timely decisions. This April, the federal agencies involved in the permitting process, including the Service, signed a MOU setting out goals under the One Federal Decision framework, to implement the executive order and fulfill the President's goal of completing Federal environmental review and permitting decisions for major infrastructure projects within two years, on average. The Service supports this as it will improve and accelerate the review process for hydropower licensing.

The Service typically carries out environmental reviews at the field level, working closely with license applicants, other DOI agencies, federal partners, tribes and other stakeholders. The Service's local field staff have in-depth knowledge of the ecosystems in which they work and the species that inhabit them, bringing expertise to project reviews to facilitate efficient, project-specific analyses. These field staff are also engaged in their local communities in order to further facilitate coordination in license reviews. By engaging in the relicensing process, the Service is able to contribute to license terms that both fulfill the power needs of local communities and provide significant conservation benefits for species and their habitat.

### **Additional Efforts to Streamline Environmental Permitting and Reviews**

In addition to supporting the President's priorities related to infrastructure, the Service and Department have established priorities to guide our work, including sustainably developing our energy and natural resources, modernizing our infrastructure, supporting tribal land and tribal natural resources, and striking a regulatory balance. We believe that responsible energy development and the conservation of wildlife can go hand in hand through a transparent and efficient permitting process. We are committed to completing environmental reviews in a timely and accountable manner and have taken several actions to do so. For example, our Information for Planning and Consultation (IPaC) online platform allows project applicants to quickly and easily identify Service-managed resources and, in some cases, seek concurrence that a project is not likely to adversely affect ESA-listed species or is consistent with a programmatic ESA consultation. Other efficiencies include recent guidance for expediting ESA consultations for those projects designed to benefit listed species, programmatic consultations that address multiple projects, and large-scale Habitat Conservation Plans that allow for the efficient permitting of numerous covered projects in a geographic area.

The Service is also participating in the Department's efforts to streamline and improve the NEPA-review process under Secretarial Order 3355. By setting target time and page limits for analyses under NEPA, the Service can deliver more timely and consistent reviews. The Service is also improving our NEPA training so that staff can make more structured reviews and better informed decisions under the law.

### **Conclusion**

The Service is focused on building efficiencies into our review and permitting processes that will improve and expedite consideration of many projects, while still delivering on our mission to conserve fish, wildlife, and habitat for the American people. We are committed to improving the environmental review process to facilitate environmentally sound hydropower operations through timely, transparent, and predictable reviews, while ensuring the conservation of our nation's fish and wildlife resources. E.O. 13807 and its implementing MOU on One Federal Decision will facilitate increased coordination and result in more timely decisions. These are important steps in integrating various reviews and facilitating efficient processes across the Federal government.

As highlighted above, the Service is working under our existing authorities to improve the environmental review process for applicants, while ensuring conservation of our trust resources. In the review and permitting of complex hydropower projects, delays are inevitable, but we recognize that there are steps that the Service, and my colleagues on this panel, can take to provide all stakeholders with more efficient and effective reviews, resulting in more certainty for the relicensing of hydropower projects. We appreciate the Subcommittee's interest in further improving this process.

Thank you for the opportunity to discuss the Service's work in the hydropower licensing process. I would be happy to address any questions that you may have.