



ASSOCIATION *of*  
FISH & WILDLIFE  
AGENCIES

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The voice of fish and wildlife agencies

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October 30, 2013

Ms. Julie A. Smith  
Mr. Christopher Lawrence  
Office of Electricity Delivery and Energy Reliability  
Mail Code: OE-20  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Ms. Smith and Mr. Lawrence:

The Association of Fish and Wildlife Agencies (AFWA) would like to provide comments on the Federal Register Notice Request for Information (RFI) on Improving Performance of Federal Permitting and Review of Infrastructure Projects, Federal Register Document 2013-21098.

AFWA is the professional association that represents the collective voice of North America's state, provincial and territorial fish and wildlife agencies. The state fish and wildlife agencies (State agencies) have statutory authority for management of fish and wildlife within their borders as a public trust resource. State agencies have upheld, and continue to uphold that primary responsibility for conserving and managing those resources on public and private lands for current and future generations. Comments and recommendations provided in this letter are intended to represent State agency concerns regarding the effect this process may have on their ability to manage those public trust resources.

As part of the Administration's efforts to improve the performance of Federal siting, permitting and review processes for infrastructure development, a Rapid Response Team for Transmission (RRTT) was developed. This was a collaborative effort involving nine executive departments and agencies. The RRTT is working to improve the efficiency, effectiveness, and predictability of transmission siting, permitting and review processes through creating increased interagency coordination and transparency. This Integrated Interagency Pre-application process is one potential method to achieve these goals and to increase the predictability of the siting, permitting and review processes.

The RFI refers to three documents that are integral to this process: Executive Order 13604 (Improving Performance of Federal Permitting and Review of Infrastructure Projects); Presidential Memorandum - Modernizing Federal Infrastructure Review and Permitting Regulations, Policies and Procedures; and Presidential Memorandum – Transforming Our Nation's Electric Grid Through Improved Siting, Permitting and Review.

The RFI asked for public input on two issues: (1) the Interagency Integrated Pre-application process, whether it meets the goals stated in the Presidential Memorandum on Transmission, and if there should be mandatory attendance for all Federal agencies with applicable permitting authority; and (2) whether analogous integrated, interagency pre-application processes should be developed for permitting of other major infrastructure projects covered in section 2(a) of Executive Order 13604, what should be the highest priority sectors and what changes need to be made to the IIP for these sectors.

AFWA is providing comments, as well as comments from State agencies, on both those issues. Specific section-by-section comments on the Interagency Integrated Pre-application process are provided in the Attachment.

### Integrated Interagency Pre-application Process (IIP)

It appears this process was developed with no apparent review or input from State agencies which have jurisdiction over fish, wildlife and water resources on federal, public and private lands. Although there are plans to designate transmission corridors on federal lands, across the United States most of these transmission lines will also cross private property and other public managed lands. These lines will undoubtedly affect resources managed by State agencies, and we encourage the Administration to integrate State agencies into the pre-planning processes as early as possible to reduce potential state and/or wildlife land use conflicts and unintended consequences.

This is recognized in the Council on Environmental Quality discussion of the duties of the RRTT: “The RRTT aims to improve the overall quality and timeliness of electric transmission infrastructure permitting, review, and consultation by the Federal government on both Federal and non-Federal lands through...” as well as in the Presidential Memorandum on Transmission, Section 1(vi) “design energy corridors to minimize impacts on environmental and cultural resources to the extent practicable, including impacts that may occur outside the boundaries of federal lands...”

The process as described determines that State agencies will be categorized as a Non-Federal Entity and may or may not be consulted during the IIP process. AFWA has several concerns with the process as currently drafted, in particular the role and responsibility of Non-Federal Entities. Our concerns include the following:

- The Project Proponent is the one identifying Non-Federal Entities to participate in the IIP process. State agencies are frequently not recognized by industry/developers as having jurisdiction over fish and wildlife resources. Most State agencies already experience problems with not being contacted regarding project developments in their state, and there is a great desire to change this dynamic for the benefit of our nation’s rich fish and wildlife resources.
- Only Federal Entities are involved in review of the Initiation Request and review of the information provided in the Meeting Requests.
- There is a substantial difference in time between when the Federal Entities receive the Initiation Request, subsequent Meeting Requests and when that information is provided to the Non-Federal Entities.

Federal Entities are responsible only for those trust resources under their jurisdiction, which will not always include the majority of fish, wildlife and water resources that will be impacted by the project(s). Therefore, it is important to recognize the jurisdiction and valuable role of State agencies when developing processes for large scale projects such as electric transmission. The National Environmental Policy Act (NEPA) recognizes the value of State agency involvement: Section 101 “...it is the continuing policy of the Federal Government, in cooperation with State and local governments...”; Subsection 1501.1(d)(2) requires early coordination with appropriate State agencies; Subsection 1501.5(b) gives State agencies the ability to be joint lead agency and Subsection 1501.7(a)(1) discusses participation of affected State agencies. Therefore, we encourage the Administration to coordinate with State agencies as early as possible.

It appears the purpose of this IIP process is to precoordinate the permit prior to the NEPA process so the review will be more efficient, effective and predictable in order to produce a permit in a shorter timeframe. To ensure that outcome the same entities that would be involved in a NEPA process should also be involved in the IIP process. Involvement of State agencies early and at all stages of the IIP process will reduce the potential for conflict, issues to be overlooked and then raised during the permit review process, and reduce the possibility of unintended consequences of permit delay.

To address the concerns listed above AFWA makes the following recommended changes to the IIP process:

**Recommendation:** AFWA recommends State agencies be by definition a Non-Federal Entity and invited to every IIP activity. The Project Proponent should be required to contact the State agency and the respective State agency will then decide whether to participate.

AFWA also recommends State agencies be provided the Initiation Request at the same time as Federal Entities and be given the same amount of review time to provide input. State agencies should also be involved in the review process for each Meeting Request.

It is also recommended the Project Proponent provide information to the Federal Entities and State agencies at the same time. This will enable State agencies to provide comments back to the Lead Agency regarding fish and wildlife resources potentially impacted by the project. This would make the Meetings more timely and productive by requesting the Project Proponent bring all the information needed to the project meeting(s) to address both Federal and State agency issues, instead of the delaying until the actual meeting to discover State agency concerns. This will also allow State agencies time to schedule attendance and/or travel.

To address the other questions raised in the RFI, AFWA has the following comments.

AFWA believes for the IIP process to “efficiently meet the goals stated in the Presidential Memorandum on Transmission” there should be early and equal State agency involvement as stated earlier in this letter. The IIP process should be amended to include the recommendations provided.

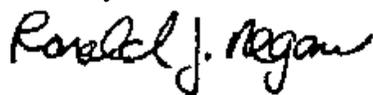
If a Federal Entity has jurisdiction over a fish and wildlife resource that could be impacted by the project then mandatory attendance by agencies at IIP meetings would assure those resources are being addressed during the pre-application process. This would also facilitate the NEPA review process, thereby expediting the permit review as intended. It should be mandatory to involve State agencies in this process, but attendance of State agencies should not be required.

Section 2(a) Executive Order 13604 states “the Steering Committee shall facilitate improvements in Federal permitting and review processes for infrastructure projects in sectors including surface transportation, aviation, ports and waterways, water resource projects, renewable energy generation, electricity transmission, broadband, pipelines, and other such sectors as determined by the Steering Committee.” For any process to be effective, efficient, and predictable there should be early and equal State agency involvement to guarantee State jurisdictions and processes are integrated at the same level as the Federal processes. As stated earlier, this level of involvement will provide surety those jurisdictions and processes will not impede the review and development process of the aforementioned infrastructure projects.

State agencies are partners with Federal agencies in the management and conservation of the fish and wildlife resources throughout the United States. These State agencies are committed to working in a full, collaborative relationship to assist their Federal partners in infrastructure project development while still fulfilling the responsibilities for their public trust resources.

If you have any questions regarding our comments, please contact AFWA’s Wildlife and Energy Liaison, Kathy Boydston at (512) 389-8522.

Sincerely,



Ronald J. Regan  
Executive Director

RR:KB:arn  
Attachment

## Attachment

Section	Page	Recommendation, Comment, or Question
Overall Document Comments		State agencies feel the policy is reasonable, but would stress to the Department of Energy (DOE) that State agencies, having special expertise and wildlife management authority, be considered by definition a Non-Federal Entity and thus invited to participate in the IIP Process meetings for all projects impacting non-tribal lands.
		State agencies do not oppose efficiency in the permitting process as long as the security and concerns of our charge natural resources are not adversely affected. They support early coordination in the permitting process and has encouraged potential applicants to hold pre-application permit field reviews so that issues can be addressed prior to an official application submittal. The IIP process will be more efficient if state agencies with regulatory authorities are full partners in the process.
		The Presidential Memorandum – Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures states that best management practices that have achieved better outcomes include promoting the sharing of scientific and environmental data. States maintain many of the relevant datasets of state-level information important to siting transmission projects (such as Natural Heritage Program data) and can only share it if invited to participate in the process.
		The Federal Register specifically requests feedback on the proposed process and whether an analogous integrated interagency pre-application process should be developed for permitting of other major infrastructure section projects. The primary issue we have with the process, as currently proposed, is the secondary status assigned to Non-Federal Entities, specifically state regulatory agencies
		State agencies do not oppose using a framework similar to the IIP if State regulatory agencies are fully included in the process for other major infrastructure projects including, <i>inter alia</i> , oil/gas pipelines and major transportation projects.
IIP Process – Applicability		This Section should be amended to include a paragraph on Non-Federal Entities, and outline that for the purpose of this process that state fish and wildlife agencies are considered Non-Federal Entities but have the same status as Federal Entities and will participate in the IIP process at the same level as Federal Entities
Cost Recovery		State agencies should be able to request cost recovery from the Project Proponent
		In some instances, State agencies may only be able to participate if cost recovery is available, particularly in cases where restrictions on out-of-state travel apply. Ensuring the availability of information technologies to allow Non-Federal Entities to participate would help alleviate this issue
I - Purpose, Goals, Design and Applicability of the IIP Process		
I.D(2) - Lead Coordinating Agency	53439	The wording “to the maximum extent practicable and consistent with Federal law” indicates that DOE can choose to not coordinate with Non-Federal entities. This statement should clarify the DOE will coordinate throughout the process with State Non-Federal Entities.
I.(E)(3)(a) - Federal Entity Participation	53439	The initial list of Federal Entities that will participate in the IIP process will be identified by the DOE and will be revised as necessary based on information provided by the Project Proponent. State agencies should also be allowed to recommend federal entities that should be invited to interim meetings based on potential impacts of the project.
I.E(3) – Applicability	53439	Additional Section should be added here to reflect that Non-Federal Entities – State Agency will be identified here as well, DOE and Project Proponent required to contact for all regular and interim meetings, and provided the same amount of time to review information and provide comments back to DOE and/or Lead Agency.
I.D(5) - Cost Recovery	53440	State agencies should be able to request cost recovery from the Project Proponent

Section	Page	Recommendation, Comment, or Question
II – Initial Meeting	53440-53442	<p>There are several concerns with this Section. It should be clearly defined here that the Project Proponent be required to contact State agencies as a Non-Federal Entity. As stated earlier, State agencies have authority over all fish and wildlife resources, not just listed species, and already experience issues with industry/developers not contacting them regarding development projects. State agencies also own and manage public lands (state parks, state refuges, wildlife management areas, natural areas) that will be affected by the routing of these projects. These agencies may also have rules that resemble Section 4(f) of the Department of Transportation Act which may require the Project Proponent to hold additional meetings to satisfy individual state requirements.</p> <p>State agency Non-Federal Entities should be included in the review of the Initiation Request material prior to the Initial Meeting, with the same review time. This will allow State agencies time to review the proposed corridor and provide information to DOE or the Lead Agency in preparation for the Initial Meeting. Providing this information upfront to the Project Proponent enhances the efficiency of the first meeting.</p> <p>The statement is made the meeting will be held in the region where the project is located. What “region” is being described, and how will this be handled when these transmission projects cross more than one state?</p>
II – Initial Meeting	53440-53442	<p>During the “Initial Meeting” the document describes in great detail the responsibilities of the Federal Agencies with only one sub-section referencing any Non-Federal Entity participating in the meeting by indicating they will be “invited to comment”. The document specifically mentions that routes through “Federal” lands may present conflicts but does not mention that routes through protected State Lands may similarly present possible conflicts and delays in the permitting process. The document specifically states “the preliminary feedback and any later feedback do not constitute an agency decision or commitment by those Federal entities to approve any authorization request”. The document should extend that same courtesy to the Non-Federal partners in the IIP.</p>
IV.A(1)(i) - Public Outreach and Tribal Coordination Plans	53442	<p>The document states the public outreach plan will identify how and when information will be provided to and input will be received from Non-Federal Entities identified at the Initial Meeting. When notified of a proposed transmission line project, the public often contacts the state wildlife agency regarding potential impacts to habitat on private property. State agencies should be consulted when identifying stakeholders who need to be notified, how the project information will be disseminated, and how the comments will be tracked.</p>
V – Study Corridors Meeting	53442-53443	<p>The Study Corridors Meeting process should follow the same protocol as outlined for the Initial Meeting and Final Meeting where Federal and Non-Federal Entities are treated equally.</p>
VI – Routing Meetings	53443-53444	<p>The Routing Meeting process should follow the same protocol as outlined for the Initial Meeting and Final Meeting where Federal and Non-Federal Entities are treated equally</p>
VII – Final Meeting	53444-53445	<p>In the “Final Meeting” sub-section the document treats Federal and Non-Federal participants equally. The document should have followed the same protocol for the Initial Meeting, the Study Corridors Meeting, and Routing Meetings.</p>
Glossary	53446	<p>It may be appropriate here to amend the definition of Non-Federal Entities to indicate that the Project Proponent is required to contact State fish and wildlife agencies; this will separate them from the other entities such as NGOs or landowner groups who could also be classified as Non-Federal Entities.</p>