



Smith, Glenn <glenn_s_smith@fws.gov>

Re: Important Feedback Needed!

1 message

Smith, Glenn <glenn_s_smith@fws.gov>

Wed, Apr 19, 2017 at 11:20 AM

To: "Salata, Larry" <larry_salata@fws.gov>

Cc: "Ziewitz, Jerry" <jerry_ziewitz@fws.gov>, Daniel Brown <daniel_brown@fws.gov>, Delfinia Montano <delfinia_montano@fws.gov>, Doug Laye <doug_laye@fws.gov>, Drew Crane <drew_crane@fws.gov>, Ellen McBride <Ellen_McBride@fws.gov>, Michelle Durlinger <michelle_durlinger@fws.gov>, Patrice Ashfield <patrice_ashfield@fws.gov>, Phil Delphey <phil_delphey@fws.gov>, John Morse <john_morse@fws.gov>

So I think we are on the same page Larry. Once the surveys are completed, FERC would essentially send a "batch" of new information, sufficient to complete dozens and dozens of site-specific analyses and provide an ITS for each of those species' outstanding portions of the pipeline. And that would be at least technical reinitiation for those segments of the project and the idea is that we could complete reinitiation prior to construction on those areas since they will have *hundreds* of miles of other construction to complete in other areas.

That is my "dream" scenario. Granted, not very *lofty* dreams, but considering the circumstances, better is always better than worse! Other thoughts still appreciated.

Thanks,

Glenn

On Wed, Apr 19, 2017 at 11:10 AM, Salata, Larry <larry_salata@fws.gov> wrote:

Glenn: Respect the fact pattern.

As you noted: "At present, the proposed actions have very detailed site-specific information for much of the project alignment sufficient to complete 7(a)(2) and issue an ITS for those segments of the project. For those remaining areas that won't have surveys completed until after the BO needs to be completed, we would do an analysis sufficient to determine JAM wasn't likely for the entire project, and then defer issuance of either ITS or concurrence following completion of surveys."

Assuming the entire action is likely to avoid JAM, when there is sufficient information to prepare a supplement to the ITS to address the segments at issue, the action agency should reinitiate formal consultation so that we can officially revise the ITS accordingly. This would be a straight-forward approach. Hopefully if any take is likely to occur in those segments, the revised ITS is in place before the take occurs.

Larry

On Wed, Apr 19, 2017 at 6:59 AM, Smith, Glenn <glenn_s_smith@fws.gov> wrote:

So Larry and Jerry-

Thanks for the comments. If you wouldn't take this approach, and given my constraints about requesting more surveys prior to initiation of formal, would you simply try to fill the blanks as best you could- essentially creating the "baseline" including assuming presence, creating population densities and locations, estimate impacts assuming reasonable worst case scenario, etc.?

And to respond to your comments, this "new" approach being forced upon us has the ultimate application of a programmatic action because FERC will approve the entire project without all environmental reviews having been completed. For, example, one project hasn't even completed wetland surveys for 30% of it's projects, so doesn't/wont have some unknown number of Corps permits issued prior to completion of its EIS. So fundamental baseline information is missing, and the pipeline routes continue to be tweaked throughout the process, so there is not more more than a "framework" for significant parts of the project.

As you both mentioned, we all did what are now called "mixed programmatic action" consultations on LRMPs for the Forest Service for the last couple of decades without having regulations specifically authorizing such an approach.

The way agencies are allowing projects to be "approved" these days, is creating an analogous "framework," where you can see the whole project, but not all the details and not all the parts.

Finally, I would really like to see language that every Region uses regarding "recommending surveys" in your tech assistance or informal consultation letters. We are being pushed to state up front that "surveys are not required" and then maybe making a suggestion for surveys might be helpful? I don't understand, but it would be great to see some standard language the other Regions use on this topic.

Thanks!

Glenn

On Fri, Apr 14, 2017 at 4:06 PM, Salata, Larry <larry_salata@fws.gov> wrote:

Glenn: I applaud your creative thinking, but, in my view, the action you described doesn't meet the regulatory definition of a MPA.

Jerry: In R1, we've completed one LRMP consultation to date where the LRMP action conformed to a MPA.

Larry

On Fri, Apr 14, 2017 at 11:22 AM, Ziewitz, Jerry <jerry_ziewitz@fws.gov> wrote:

Glenn,

Some part of an action needs to meet the definition of a framework programmatic action in order to apply the mixed programmatic action definition for purposes of an ITS, i.e., to defer issuing an ITS to subsequent required project-specific consultations. Is some part of the pipeline proposal "a Federal action that approves a framework for the development of future action(s) that are authorized, funded, or carried out at a later time, and any take of a listed species would not occur unless and until those future action(s) are authorized, funded, or carried out and subject to further section 7 consultation"? It's a stretch to equate this definition with a lack of data for some parts of an action.

I don't recall seeing any applications of the mixed programmatic action definition as yet in R4 consultations. We've used the framework definition for things like Forest Plans.

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On Fri, Apr 14, 2017 at 12:34 PM, Smith, Glenn <glenn_s_smith@fws.gov> wrote:

Hey Folks-

We have a couple of FAST41, streamlining infrastructure interstate pipeline project consultations going on at light speed. For some unexplained reason, these projects no longer plan on completing species surveys for *significant* portions of project alignment before initiating formal consultation. Our internal direction is that we can't require surveys and will not make further requests for surveys that interfere with applicant's project schedule since these are priority fast-track projects, and we will not state that we have insufficient information to initiate consultation and will not delay initiation of consultation based on lack of baseline/species survey data. So that is what it is and need to move on from there.

Consequently, that puts the Service in the position of having to develop estimated baseline data, develop the basis for reasonable certainty for assuming species presence, and develop reasonable worst-case-scenario of effects providing the benefit of the doubt to the species where information is equivocal- for large parts of the project. Given that I believe this approach has the likely result of creating a huge additional workload burden for the Service in a situation where we will be given less time to complete consultation, this seems

like a less-than-optimal approach. Additionally, it may lead to unnecessary and costly conservation measures for the applicant- of which we have one *extremely* extreme example of such assumptions and lack of coordination with the Service.

I am trying to figure out the most efficient consultation process that doesn't shift a huge burden of the applicant/action agency to provide us the best available information onto our Field Offices, not delay completion of consultation, and complete a defensible consultation process. Therefore, I am contemplating use of the 2015 regulations which defined a consultation process for "mixed programmatic actions." While I don't believe that this scenario was specifically contemplated in implementation of the regulation, I think it closely fits the spirit and intent.

At present, the proposed actions have very detailed site-specific information for much of the project alignment sufficient to complete 7(a)(2) and issue an ITS for those segments of the project. For those remaining areas that won't have surveys completed until after the BO needs to be completed, we would do an analysis sufficient to determine JAM wasn't likely for the entire project, and then defer issuance of either ITS or concurrence following completion of surveys. This approach seems unusual for this type of project, but is not dissimilar in concept to how we have been doing Forest Service consultations on their Forest Management Plans for decades-here at least.

So prior to fully committing to this process, I wanted folks to weigh in, get a read from HQ, and see whether your Regions are already engaging in this approach for similar projects and if so, can alert to any pitfalls with this approach.

Thanks,

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Glenn S. Smith

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4/19/2017

DEPARTMENT OF THE INTERIOR Mail - Re: Important Feedback Needed!

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