

An Overview of the Federal Energy Regulatory Commission process

House Fisheries, February 8, 2018



Joe Klein, P.E.
Aquatic Resources Unit Supervisor
Division of Sport Fish
Alaska Department of Fish and Game
907-267-2148



Federal Energy Regulatory Commission (FERC, Commission)

- FERC is an independent agency that regulates non-federal hydroelectric projects by authorizing their construction and operation.
- The Commission is composed of up to five commissioners who are appointed by the President of the United States and confirmed by the Senate.
- The Federal Power Act (FPA) was enacted in 1935 and grants the Commission jurisdiction over non-federal hydropower projects throughout the United States.



FERC Hydropower Jurisdiction

FERC authorization is required for non-federal hydropower projects:

- Located on navigable waters; or
- Located on federal lands; or
- Using surplus water from a federal dam; or
- Located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.



Types of Hydroelectric Projects

Reservoir / Storage



Bradley River project, Homer



Blue Lake near Sitka



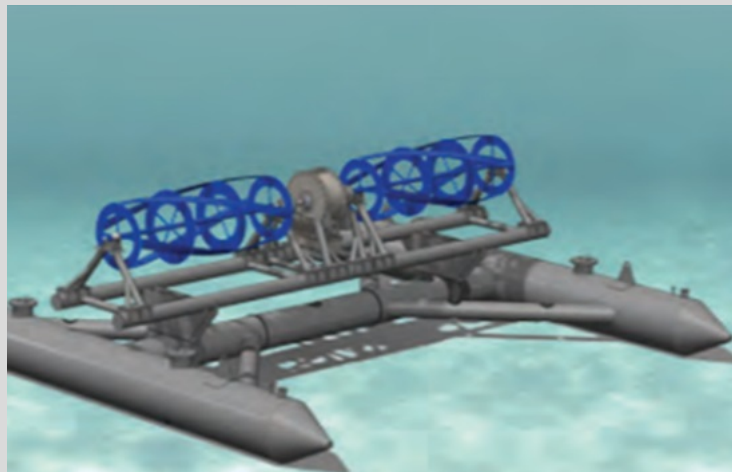
Types of Hydroelectric Projects

Run-of-the-river



Power Creek project, Cordova

Hydrokinetic





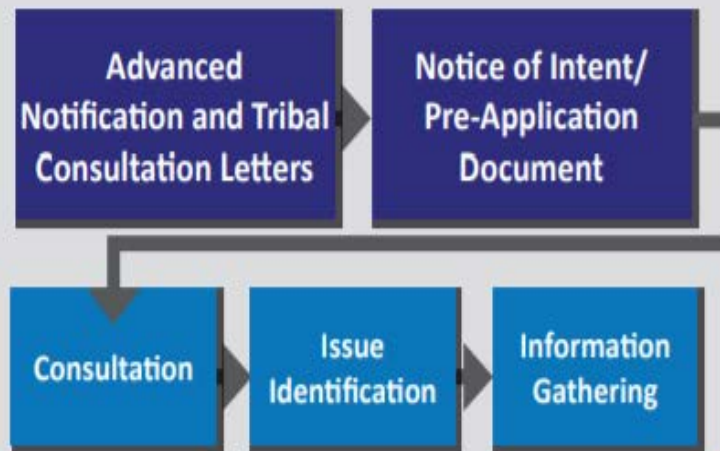
Federal Power Act

3 License Processes

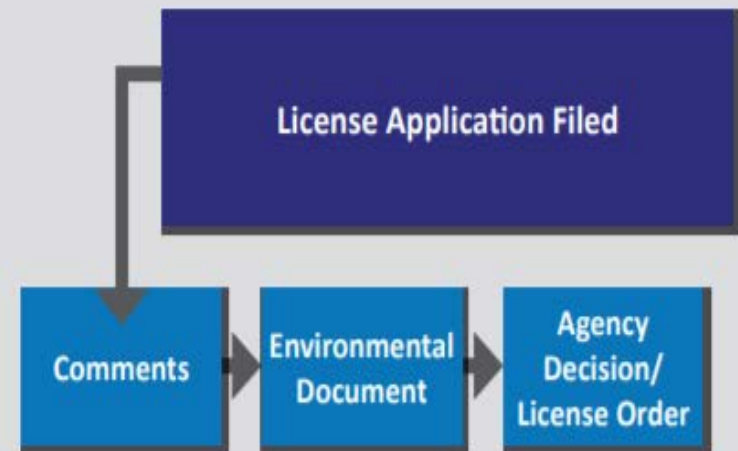
1. Integrated Licensing Process (default)
2. Alternative Licensing Process
3. Traditional Licensing Process

General Process

Pre-filing



Post-filing





Major Sections of the FPA

- **Preliminary permit**

Allow permittee to study a project for a 3-year period with an option to extend to 5 years. Gives the permittee priority over other potential applicants.

- **Section 4(e)**

Equal consideration to developmental and environmental values. Any license issued within a federal reservation is also subject to mandatory terms and conditions issued by the federal land management agency.

- **Section 10(j)**

Any license issued must include conditions to protect, mitigate damages to, and enhance, fish and wildlife habitat. Conditions are based on recommendations from federal and state fish and wildlife agencies.

- **Section 18**

Fishway prescriptions by the Secretaries of Interior or Commerce are mandatory and must be included in the license.

- **License Order**

Order approves the license applications with specific terms and conditions for 30-50 years. Licensee may file for amendments during license period.



National Environmental Policy Act (NEPA)

The Federal Power Act requires preparation of a NEPA document (EA or EIS) that analyzes developmental issues

(energy, flood control, water supply, irrigation, etc.) and environmental issues (water quality, fisheries, geology, wildlife, recreation, archaeology, etc.)

NEPA National Environmental Policy Act

- Scoping
- Preparation of environmental documents (EA/EIS)
- Public comments on EA/EIS
- Responding to Comments in final EA/EIS
- Final agency action



Exemptions & Hydrokinetic Projects

2 Types of Exemptions

1. Small hydropower projects (≤ 10 megawatts) that will be built at an existing dam or that utilize a natural water feature for head or an existing small project that proposes to increase capacity.
2. Conduit exemption for projects on an existing conduit (e.g. water supply, irrigation canal) that was constructed primarily for purposes other than power production.

Exempted projects are subject to mandatory terms and conditions set by state and federal fish and wildlife agencies.

Hydrokinetic Projects (marine, wave & in-river)

- Special licensing process due to experimental technology.
- Pilot projects are small, short-term, & removable to allow developers to test technologies and environmental effects.



Summary



Questions